

STATE OF NORTH CAROLINA UTILITIES COMMISSION RALEIGH

DOCKET NO. E-2, Sub 1149

In the matter of

Complaint by

FRESH AIR XXIV, LLC
a North Carolina limited liability company,

and

FRESH AIR XXIII, LLC
a North Carolina limited liability company,

and

FRESH AIR XXXVIII, LLC
a North Carolina limited liability company,

against

DUKE ENERGY PROGRESS, LLC
a North Carolina limited liability company.

COMPLAINT

Pursuant to N.C. Gen. Stat. § 62-73 and Rule R1-9 of the Rules and Regulations of the North Carolina Utilities Commission (the “Commission”), Complainant Fresh Air XXIV, LLC (“Complainant Willoughby PV1”), Complainant Fresh Air XXIII, LLC (“Complainant East Nash PV1”), and Complainant Fresh Air XXXVIII, LLC (“Complainant Boykin PV1”) (collectively, the “Complainants”) make a formal Complaint against Respondent Duke Energy Progress, LLC (“Respondent”). Specifically, among other violations of statutes and Commission Rules and Orders, Respondent has failed to comply with the standards required by the North Carolina Interconnection Procedures, Forms, and Agreements (“NC Interconnection Standard”)

that were approved in the Commission's *Order Approving Revised Interconnection Standard* issued on June 9, 2008, in Docket No. E-100, Sub 101 ("June 9, 2008 Order") and the North Carolina Interconnection Procedures, Forms, and Agreements ("NC Interconnection Procedures") that was approved in the Commission's *Order Approving Revised Interconnection Standards* issued on May 15, 2015 in Docket No. E-100, Sub 101 ("May 15, 2015 Order").

In support of the Complaint, Complainants respectfully show the Commission the following:

PARTIES AND JURISDICTION

1. Complainant Willoughby PV1 is a limited liability company, duly organized and existing under the laws of the State of North Carolina. Complainant's business address is 101 Second Street, Suite 1250, San Francisco, CA 94105-3627.
2. Complainant East Nash PV1 is a limited liability company, duly organized and existing under the laws of the State of North Carolina. Complainant's business address is 101 Second Street, Suite 1250, San Francisco, CA 94105-3627.
3. Complainant Boykin PV1 is a limited liability company, duly organized and existing under the laws of the State of North Carolina. Complainant's business address is 101 Second Street, Suite 1250, San Francisco, CA 94105-3627.
4. Complainants are wholly-owned subsidiaries of Ecoplexus, Inc. ("Ecoplexus"), a Delaware corporation that is authorized to do business in the State of North Carolina.
5. Complainants are self-certified as Qualifying Facilities ("QF").

6. Respondent provides electric service to customers in North Carolina.

Respondent is a public utility under the laws of the State of North Carolina, and is subject to the jurisdiction of the Commission with respect to its operations in this State. Upon information and belief, Respondent's business address is P.O. Box 1006, Charlotte, North Carolina, 28201.

7. Complainants' legal representative in this proceeding to whom all notices, pleadings, and other documents related to this proceeding should be directed is:

Karen M. Kemerait
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FACTS

A. Background as to Interconnection Requirements

8. Respondent has a legal obligation to interconnect QFs to its electric system pursuant to The Public Utilities Regulatory Policies Act of 1978 ("PURPA") and assess costs for such interconnections on a nondiscriminatory basis with respect to other customers with similar load characteristics. *See* Sections 292.303 (c) and 292.306 of PURPA. Individual state regulatory authorities are authorized to promulgate rules and procedures governing QF interconnections, provided that said rules and procedures comply with PURPA.

9. On June 4, 2004, DEP, Duke Energy Carolinas, LLC, and Virginia Electric and Power Company d/b/a Dominion North Carolina Power filed in Docket No. E-100, Sub 101, a proposed small generator interconnection standard, application, and

agreement to be applicable in North Carolina. The proposal was intended to streamline the interconnection process and standardize the interconnection criteria for safety and reliability. By Orders dated March 22, 2005, and July 6, 2005, the Commission approved a small generator interconnection standard for North Carolina.

10. On June 9, 2008, the Commission issued its June 9, 2008 Order that adopted a modified version of the Federal Energy Regulatory Commission (“FERC”) small generator interconnection procedures, forms and agreements for generators up to 20 megawatts (“MW”) as the NC Interconnection Standard. The NC Interconnection Standard is binding on Respondent. The NC Interconnection Standard applies to all interconnection requests made after June 9, 2008 and before May 15, 2015.

11. Thereafter, as a result of a collaborative review process with representatives from industry stakeholders, the Public Staff, and other interested parties, on May 15, 2015, the Commission adopted the Interconnection Procedures in Docket No. E-100, Sub 101, as the new interconnection standard for North Carolina. The Interconnection Procedures are binding on Respondent. The NC Interconnection Procedures apply to all interconnection requests pending at the time of the May 15, 2015 Order and to all interconnection requests submitted thereafter.

B. The NC Interconnection Standard

12. The pertinent provisions and requirements of the Interconnection Standard and the June 9, 2008 Order are as follows.

Interconnection Request

13. In order to interconnect a QF to Respondent’s electric system, the interconnection customer must submit an Interconnection Request to Respondent, along

with the required processing fee or deposit. *See* Section 1.3 of the NC Interconnection Standard.

Interconnection Queue Position

14. After the interconnection customer submits an Interconnection Request, Respondent must assign a queue position to the interconnection customer based on the date- and time-stamp of the Interconnection Request. *See* Section 1.6 of the NC Interconnection Standard. The queue position of each Interconnection Request shall be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection. Respondent is permitted to study Interconnection Requests serially or in clusters for the purpose of the System Impact Study, if required, in accordance with the required timelines on the NC Interconnection Standard. *See* Section 1.6 of the NC Interconnection Standard.

Scoping Meeting

15. A Scoping Meeting is required to be held within ten (10) business days after the Interconnection Request is deemed complete, or as otherwise mutually agreed to by the parties. *See* Section 4.2.1 of the NC Interconnection Standard. During the Scoping Meeting, the parties shall discuss whether Respondent should perform a Feasibility Study or proceed directly to a System Impact Study. *See* Section 4.2.2 of the NC Interconnection Standard.

Feasibility Study

16. If the parties agree that a Feasibility Study should be performed, Respondent is required to provide the interconnection customer with a Feasibility Study Agreement within five (5) business days after the Scoping Meeting. *See* Section 4.2.3 of

the NC Interconnection Standard.

17. If the parties agree not to perform a Feasibility Study, but to proceed directly to a System Impact Study or Facilities Study, Respondent is required to provide the interconnection customer with either a System Impact Study Agreement or a Facilities Study Agreement no later than five (5) business days after the Scoping Meeting. *See* Section 4.2.4 of the NC Interconnection Standard.

System Impact Study

18. If a System Impact Study is required, the interconnection customer must return a signed System Impact Study Agreement within thirty (30) business days of receiving it. *See* Section 4.4.4 of the NC Interconnection Standard. The purpose of the System Impact Study is to identify any electrical system impacts from the interconnection, including any impact of the interconnection on the reliability of the electric system. *See* Section 4.4.2 of the NC Interconnection Standard.

19. If the System Impact Study shows no potential for adverse system impacts, Respondent shall send the interconnection customer a Facilities Study Agreement within five (5) business days. *See* Section 4.4.7 of the NC Interconnection Standard.

Facilities Study

20. The interconnection customer is required to return the executed Facilities Study or a request for an extension of time within thirty (30) business days of receiving it. *See* Section 4.5.3 of the NC Interconnection Standard.

21. Respondent may require a deposit of the good faith estimated costs for the Facilities Study. *See* Section 4.5.4 of the NC Interconnection Standard.

Interconnection Agreement

22. If the System Impact Study shows that no additional facilities are required, Respondent is required to provide the interconnection customer an executable Interim Interconnection Agreement within five (5) business days. *See* Section 4.4.7 of the NC Interconnection Standard.

23. Also, upon completion of the Facilities Study, Respondent is required to provide the interconnection customer an executable Interim Interconnection Agreement within five (5) business days. *See* Section 4.5.6 of the NC Interconnection Standard.

24. The interconnection customer has thirty (30) business days, or another mutually agreeable timeframe, to sign and return the Interconnection Agreement. *See* Section 5.8 of the NC Interconnection Standard.

Written Notice of Failure to Comply

25. If the interconnection customer has not executed an Interconnection Agreement with Respondent prior to the effective date of the NC Interconnection Procedures, the interconnection customer has thirty (30) days to demonstrate site control and to post the interconnection request deposit. *See* Section 1.3 of the NC Interconnection Standard.

26. If the interconnection customer does not demonstrate site control or post the interconnection deposit within the thirty (30)-day time frame, Respondent is required to provide written notice to the interconnection customer and allow an opportunity to cure. If the interconnection customer fails to comply after ten (10) business days of receiving the written notice, the interconnection customer will lose its queue position and its Interconnection Request will be deemed withdrawn. *See* Section 1.9 of the NC

Interconnection Standard.

C. The NC Interconnection Procedures

27. The pertinent provisions and requirements of the Interconnection Procedures, and the May 15, 2015 Order and comments are as follows.

Increased Cost for Interconnection Request to Reduce Respondent's Backlog.

28. In order to interconnect a QF to Respondent's electric system, the interconnection customer must submit an Interconnection Request to Respondent, along with the required Interconnection Request Deposit. *See* Section 1.4 of the NC Interconnection Procedures. As part of the industry-wide effort to reduce Respondent's backlog of Interconnection Requests, Section 1.4 of the Interconnection Procedures increased the Interconnection Request Deposit required to be paid by each interconnection customer from \$1,000 in the previous Interconnection Procedures, to a minimum of \$20,000 in the current Interconnection Procedures, plus \$1.00 per kWac of capacity. *Id.* The Interconnection Request Deposit is intended to cover Respondent's reasonably anticipated costs for staffing, administering and conducting the System Impact Study and the Facilities Study in accordance with the timelines set forth in the Interconnection Procedures. *Id.*

29. Subsequent to the adoption of the new Interconnection Process, Respondent's processing of Interconnection Requests has slowed rather than quickened.

Interconnection Queue Number

30. After the interconnection customer submits an Interconnection Request, Respondent must assign a queue number to the interconnection customer. *See* Section 1.7 of the NC Interconnection Procedures. The queue number of each Interconnection

Request shall be used to determine the order in which each Interconnection Request is study is begun, as well as the cost responsibility for the upgrades necessary to accommodate the interconnection subject to any interdependency as described in Section 1.8. Respondent is required to process each Interconnection Request individually as defined in Sections 2, 3 and 4 of the NC Interconnection Procedures, subject to the applicable timelines contained therein.

Scoping Meeting

31. A Scoping Meeting shall be held within ten (10) business days after the Interconnection Request is deemed complete, or as agreed to by the parties. *See* Section 4.2.1 of the NC Interconnection Procedures. During the Scoping Meeting, the parties shall discuss whether Respondent should perform a Feasibility Study or proceed directly to a System Impact Study, a Facilities Study, or an Interconnection Agreement based on the complexity of the proposed interconnection for the customer. *See* Section 4.2.2 of the NC Interconnection Procedures.

Feasibility Study

32. If the parties agree that a Feasibility Study should be performed, Respondent shall provide the interconnection customer a Feasibility Study Agreement no later than five (5) business days after the Scoping Meeting. *See* Section 4.2.3 of the NC Interconnection Procedures. The interconnection customer must return the executed Feasibility Study Agreement within fifteen (15) business days. *See* Section 4.3.2 of the NC Interconnection Procedures.

System Impact Study

33. If a System Impact Study is required, the interconnection customer must

return a System Impact Study Agreement signed by the interconnection customer within fifteen (15) business days of receiving it. *See* Section 4.3.1 of the NC Interconnection Procedures. The System Impact Study identifies any electrical system impacts from the interconnection, including any impact of the interconnection on the reliability of the electric system, and the preliminary estimated upgrade charge. *See* Sections 4.3.3 and 4.3.4 of the NC Interconnection Procedures. Respondent's System Impact Study Report will provide the preliminary estimated upgrade charge and the preliminary estimated interconnection facilities charge. *See* Sections 4.3.4 and 4.3.5 of the NC Interconnection Procedures. Section 10 of the System Impact Study Agreement states that the System Impact Study will also include any analysis of distribution and transmission impacts as may be necessary to understand the impact of the proposed generating facility on the electric system operation.

34. Section 4.3.2 of the NC Interconnection Procedures increased the Interconnection Request timeframe that Respondent is required to complete the System Impact Study from thirty (30) business days to fifty (50) business days if distribution system impacts are studied. The Interconnection Procedures also increase the timeframe that Respondent is required to complete the System Impact Study if there are transmission system impacts from forty-five (45) business days to sixty-five (65) business days, and an additional twenty (20) business days are allowed only if the study involves an affected system. *See* Section 4.3.2 of the Interconnection Procedures and Sections 16, 17 and 19 of the System Impact Study Agreement. The required timeframe under the NC Interconnection Procedures to complete the System Impact Study was extended from the previous timeline, and agreed to by the utilities, to ensure that the

utilities would have adequate time to complete full studies.

Interconnection Agreement and Scheduling

35. If requested by the interconnection customer following delivery of the System Impact Study Report, Respondent is required to provide the customer an executable Interim Interconnection Agreement within ten (10) business days. *See* Section 4.3.8 of the NC Interconnection Procedures. Also, at the time that the System Impact Report is delivered to the interconnection customer, Respondent shall deliver an executable Facilities Study Agreement to the customer. *See* Section 4.3.9 of the NC Interconnection Procedures.

36. Within ten (10) business days of receipt of the Facilities Study Report, the interconnection customer shall request a construction planning meeting that shall be scheduled within ten (10) business days of the interconnection customer's request. *See* Sections 5.1 and 5.2 of the NC Interconnection Procedures. Within fifteen (15) business days of the construction planning meeting, Respondent is required to provide an executable Final Interconnection Agreement. *See* Section 5.1.4 of the NC Interconnection Procedures.

D. Respondent's Obligation to Comply with Required Timeframes to Process Interconnection Requests

37. Section 5.1 of the NC Interconnection Standard and Section 6.1 of the NC Interconnection Procedures require Respondent to make "reasonable efforts" to meet all time frames provided in the Interconnection Procedures, including processing Interconnection Requests. The provisions further provide that if Respondent cannot meet a deadline, Respondent must "notify the Interconnection Customer, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete

the applicable interconnection procedure in the process.” The May 15, 2015 Order made it clear that one of the purposes of the revised Interconnection Procedures is that it “establish[es] clearly defined and enforceable deadlines for both the utilities and the QFs”. *See* Page 8 of the May 15, 2015 Order.

38. The May 15, 2015 Order generally addressed the necessity for increased transparency and communication by Respondent for the purpose of allowing an orderly flow to the study of Interconnection Requests. This was to be accomplished by making information available regarding the status of the interconnection queue, increasing cooperation between Respondent and the interconnection customers wishing to interconnect at an early stage in the process through scoping meetings and detailed correspondence.

E. Respondent’s Implementation of Advanced Study Criteria

39. Upon information and belief, on or before June 24, 2016, Respondent halted processing interconnection requests, in direct violation of the Interconnection Procedures, as part of Respondent's unilateral effort to implement a new interconnection screen called Circuit Stiffness Review (“CSR”). CSR is a proxy technical screen standard designed to ensure that the electric distribution system has sufficient capability or “stiffness” to support a proposed generating facility interconnection. CSR applies a stiffness ratio threshold of 25. For those interconnection requests that do not meet the CSR threshold, additional advanced studies screens are required. Upon information and belief, approximately eighty percent (80%) of all interconnection requests in Respondent's queue have not or would not meet Respondent’s CSR threshold of 25. To date, it has not been substantiated to Complainants that the use of CSR is based on

accepted industry practices or that the selected CSR threshold of 25 bears any relationship to power quality issues that Respondent may have experienced in its system. The use of CSR is also not common among other utilities that have significantly higher QF penetration than Respondent. Any tests relating to power quality or reliability should be part of the System Impact Study of the established Interconnection Procedures, and Respondent is obligated to conduct such tests within the time frames described in the NC Interconnection Procedures. The inclusion of CSR as a study screen did not change the obligations of Respondent to meet the time frames required by the NC Interconnection Procedures. Without consent from the QF industry, Respondent began applying CSR to interconnection requests on July 7, 2016, and further delayed work on the queue as a result of such application.

F. Complainant Willoughby PV's Compliance with Interconnection Requirements

40. Complainant Willoughby PV1 has complied in full with all applicable provisions of the NC Interconnection Standard and the NC Interconnection Procedures.

41. In September, 2013, Complainant Willoughby PV1 submitted an Interconnection Request for a 20 MW generating facility, and paid the required deposit. In the Interconnection Request, Complainant Willoughby PV1 provided evidence of site control, as required by Section 1.3 of the NC Interconnection Standard.

42. On October 4, 2013, Respondent deemed Complainant Willoughby PV1's Interconnection Request application to be complete. Thereafter, on November 3, 2013, Complainant Willoughby PV1 promptly returned an executed Facilities Study Agreement.

43. On March 6, 2014, Complainant Willoughby PV1 resubmitted the Interconnection Application for a 19.99 MW generating facility with a corrected site address. On November 12, 2014, Respondent confirmed that the Interconnection Application was complete.

44. Thereafter, on March 7, 2015, Respondent provided an Interconnection Agreement with information about the estimated upgrade charge and the estimated interconnection facility charge. Following Complainant Willoughby PV1's receipt of the estimated charges, Complainant Willoughby PV1 communicated with Respondent about the estimated charges and use of a surety bond to satisfy the financial security arrangements for the interconnection facilities and upgrades. Complainant Willoughby PV1 informed Respondent that a surety bond is permitted as a financial security arrangement by Section 6.3 ("Financial Security Arrangements") of the Interconnection Agreement.

45. Even though a surety bond is permitted as a financial security arrangement, Respondent nonetheless refused to accept a surety bond. Due to Respondent's refusal to accept a surety bond, on April 20, 2015, Complainant Willoughby PV1 provided Respondent with a written Notice of Dispute, attached hereto as Exhibit A and incorporated herein by reference. In the Notice of Dispute, Complainant Willoughby PV1 requested that Respondent accept a surety bond for the interconnection facilities and upgrades in accordance with Section 6.3 of the Interconnection Agreement.

46. Despite the pending Notice of Dispute, to which Respondent had provided no response, on May 8, 2015, Respondent informed Complainant Willoughby PV1 that

the project was deemed withdrawn due to its failure to return an executed Interconnection Agreement and provide payment for the interconnection facilities and upgrades. After Complainant Willoughby PV1 informed Respondent that Respondent could not lawfully deem the project withdrawn from the queue, Respondent granted Complainant Willoughby PV1 an extension of time to return the signed Interconnection Agreement and provide payment for the interconnection facilities and upgrades.

47. In accordance with the NC Interconnection Procedures that had been implemented by the May 15, 2015 Order, on July 24, 2015, Respondent requested that Complainant Willoughby PV1 (i) provide payment for the balance of the interconnection application deposit, and (ii) submit evidence of site control. On August 25, 2015, Respondent notified Complainant Willoughby PV1 that its Interconnection Request was deemed withdrawn because it had not provided evidence of site control within thirty (30) days of the request, even though Complainant Willoughby PV1 had provided evidence of site control in its Interconnection Request.

48. Respondent's withdrawal of the project from the queue is unlawful because Respondent failed to provide Complainant Willoughby PV1 with written notice of the alleged deficiency and an opportunity to cure, as required by Section 1.9 of the Interconnection Standard.

49. In light of Respondent's unlawful withdrawal of Complainant Willoughby PV1's project from the queue, on August 27, 2015, Complainant Willoughby PV1 submitted a new Interconnection Request and payment of \$40,000 for the Interconnection Request Deposit for a 19.99 MW generating facility.

50. On October 23, 2015, Complainant Willoughby PV1 executed and

delivered to Respondent a complete and executed System Impact Study Agreement. Per Section 19.0 of the System Impact Study Agreement, the System Impact Study was required to be completed by Respondent within fifty (50) business days as there is no transmission impact in the proposed interconnection, no affected systems, and no interdependencies. The System Impact Study should have been completed and results delivered to Complainant no later than January 4, 2016 in accordance with the Interconnection Procedures.

G. Respondent's Failure to Comply with Interconnection Requirements as to Complainant Willoughby PV1

51. Despite Complainant Willoughby PV1's full compliance with the NC Interconnection Standard and the NC Interconnection Procedures, Respondent has failed, and continues to fail, to comply with critical interconnection requirements.

52. Respondent withdrew Complainant Willoughby PV1 from the queue on August 25, 2015 in violation of Section 1.9 of the NC Interconnection Standard and despite the fact that Complainant Willoughby PV1 had provided evidence of site control in its Interconnection Request. Respondent failed to provide written notice of the alleged deficiency and an opportunity to cure, as required by Section 1.9 of the Interconnection Standard. As such, Respondent's action to withdraw the project from the queue was unlawful.

53. Due to Respondent's failure to provide Complainant Willoughby PV1 with written notice and an opportunity to cure, as required by Section 1.9 of the Interconnection Standard, on April 20, 2015, Complainant Willoughby PV1 provided Respondent with a written Notice of Dispute, attached hereto as Exhibit A and incorporated herein by reference. In the Notice of Dispute, Complainant Willoughby

PV1 requested that the project be returned to the queue.

54. As of December 11, 2015, fifty (50) business days had elapsed from the date that Complainant Willoughby PV1 had delivered the System Impact Study Agreement to Respondent. Respondent has still failed to complete the System Impact Study.

55. Respondent failed to notify Complainant that it would not meet the required deadline for completing the System Impact Study, failed to explain the reason for its failure to meet the deadline, and also failed to provide an estimated time for completion of the System Impact Study. Despite repeated requests, Respondent has failed to complete the System Impact Study and has failed to provide information as to when it will be completed.

56. Due to Respondent's failure to comply with the NC Interconnection Procedures, on July 15, 2016, Complaint provided Respondent with a written Notice of Dispute, attached hereto and incorporated herein by reference as Exhibit B. In the Notice of Dispute, Complainant requested that Respondent complete the System Impact Study immediately. Since Respondent's failure to comply with the required interconnection time frames has resulted in substantially greater cost for interconnection upgrades, Complainant Willoughby PC1 also requested that Respondent pay the incremental increase in upgrade costs over the original estimate of upgrade costs provided in July 2015 .

H. Complainant East Nash PV1's Compliance with Interconnection Requirements

57. Complainant East Nash PV1 has complied in full with all applicable provisions of the NC Interconnection Standard and the NC Interconnection Procedures.

58. On April 26, 2013, Complainant East Nash PV1 submitted an Interconnection Request for a 20 MW generating facility, and paid the required deposit.

59. On May 6, 2013, Respondent deemed Complainant East Nash PV1's Interconnection Request application to be complete. Thereafter, on July 26, 2013, Complainant East Nash PV1 promptly returned an executed Facilities Study Agreement.

60. On August 3, 2015, Complainant East Nash PV1 executed and delivered to Respondent a complete and executed System Impact Study Agreement. Respondent completed the System Impact Study on September 15, 2015.

61. Even though East Nash returned an executed Facilities Study Agreement on July 26, 2013, Respondent had failed to complete the Facilities Study as of July 15, 2016. At that time, more than 100 business days had elapsed since Respondent had completed the System Impact Study Agreement. Due to Respondent's failure to comply with the required time frames in the NC Interconnection Procedures, on July 15, 2016, Complaint provided Respondent with a written Notice of Dispute, attached hereto as Exhibit B. In the Notice of Dispute, Complainant East Nash PV1 requested that Respondent complete the Facilities Study immediately.

62. On August 1, 2016, Respondent provided information to Complainant East Nash PV1 of the results of its recently implemented Circuit Stiffness Review screen.

63. On April 28, 2017, Respondent provided Complainant East Nash PV1 with mitigation options, including downsizing the maximum physical export capability requested from 19.99 MW to 18.5 MW. Thereafter, on May 9, 2017, Respondent withdrew the mitigation option to downsize the maximum physical export capability from 19.99 MW to 18.5 MW.

I. Respondent's Failure to Comply with Interconnection Requirements as to Complainant East Nash PV1

64. Despite Complainant East Nash PV1's full compliance with the NC Interconnection Standard and the NC Interconnection Procedures, Respondent has failed, and continues to fail, to comply with critical requirements of the interconnection requirements.

65. As of July 15, 2016, when Complainant East Nash PV1 had provided Respondent with a written Notice of Dispute, Respondent has failed to timely complete the Facilities Study. At that time, more than 100 business days had elapsed since Respondent had completed the System Impact Study, and Respondent had failed to complete the Facilities Study. Moreover, Respondent failed to notify Complainant that it would not meet the deadline for completing the Facilities Study, failed to explain the reason for the failure to meet the deadline, and also failed to provide an estimated time for completion of the Facilities Study.

66. Due to Respondent's failure to comply with the NC Interconnection Procedures, on July 15, 2016, Complainant East Nash PV1 had provided Respondent with a written Notice of Dispute, attached hereto as Exhibit B. In the Notice of Dispute, Complainant East Nash PV1 requested that Respondent complete the Facilities Study immediately.

67. Thereafter, Respondent failed to timely complete the System Impact Study as required by the NC Interconnection Procedures. Respondent failed to notify Complainant that it would not meet the deadline, failed to explain the reason for the failure to meet the deadline, and also failed to provide an estimated time for completion of the System Impact Study.

68. Due to Respondent's failure to comply with the NC Interconnection Procedures in timely completing the Facilities Study and the System Impact Study, Complainant East Nash PV1 has been substantially delayed in being able to execute an Interconnection Agreement. Such delay in being able to execute an Interconnection Agreement has materially prejudiced Complainant East Nash PV1, as Respondent has subsequently required mitigation options that would not have been required if Respondent's failure to comply with the interconnection requirements had not delayed Complainant in entering into an Interconnection Agreement. Upon information and belief, the mitigation options would ultimately render Complainant East Nash PV 1's generating facility unfeasible.

J. Complainant Boykin PV1's Compliance

69. Complainant Boykin PV1 has complied in full with all applicable provisions of the NC Interconnection Standard and the NC Interconnection Procedures.

70. On October 15, 2013, Complainant Boykin PV1 submitted an Interconnection Request for a 20 MW generating facility, and paid the required deposit.

71. On October 16, 2013, Respondent deemed Complainant Boykin PV1's Interconnection Request application to be complete. Thereafter, on October 22, 2013, Complainant Boykin PV1 immediately returned an executed Facilities Study Agreement.

72. On August 3, 2015, Complainant Boykin PV1 executed and delivered to Respondent a complete and executed System Impact Study Agreement. Respondent failed to complete the System Impact Study in the time frame required by the NC Interconnection Procedures.

73. Complainant Boykin PV1 returned another executed Facilities Study

Agreement on October 23, 2015.

74. Even though Complainant Boykin PV1 returned executed Facilities Study Agreements on October 22, 2013 and on October 23, 2015, Respondent failed to complete the Facilities Study as of July 15, 2016. At that time, more than 130 business days had elapsed since Respondent had completed the System Impact Study. Due to Respondent's failure to comply with the NC Interconnection Procedures, on July 15, 2016, Complainant provided Respondent with a written Notice of Dispute, attached hereto as Exhibit B. In the Notice of Dispute, Complainant Boykin PV1 requested that Respondent complete the Facilities Study immediately.

75. On July 7, 2016, Respondent provided notification of additional advanced study screens to which Complainant Boykin PV1 would be subject.

76. On April 28, 2017, Respondent provided Complainant Boykin PV1 with mitigation options.

K. Respondent's Failure to Comply with Interconnection Requirements as to Complainant Boykin PV1

77. Despite Complainant Boykin PV1's full compliance with the NC Interconnection Standard and the NC Interconnection Procedures, Respondent has failed, and continues to fail, to comply with critical requirements of the NC Interconnection Standard and the Interconnection Procedures.

78. As of July 15, 2016 when Complainant Boykin PV1 had provided Respondent with a written Notice of Dispute, Respondent has failed to timely complete the Facilities Study. At that time, more than 130 business days had elapsed since Respondent had completed the System Impact Study, and Respondent had not completed the Facilities Study. Respondent failed to notify Complainant that it would not meet the

deadline for completing the Facilities Study, failed to explain the reason for the failure to meet the deadline, and also failed to provide an estimated time for completion of the Facilities Study.

79. Due to Respondent's failure to comply with the NC Interconnection Procedures, on July 15, 2016, Complainant Boykin PV1 had provided Respondent with a written Notice of Dispute, attached hereto as Exhibit B. In the Notice of Dispute, Complainant Boykin PV1 requested that Respondent complete the Facilities Study immediately.

80. Thereafter, Respondent failed to timely complete the System Impact Study. Respondent failed to notify Complainant that it would not meet the deadline, failed to explain the reason for the failure to meet the deadline, and also failed to provide an estimated time for completion of the System Impact Study.

81. Due to Respondent's failure to comply with the NC Interconnection Procedures in timely completing the Facilities Study and the System Impact Study, Complainant Boykin PV1 has been substantially delayed in being able to execute an Interconnection Agreement. Such delay in being able to execute an Interconnection Agreement has materially prejudiced Complainant Boykin PV1, as Respondent has subsequently required mitigation options that would not have been required if Respondent's failure to comply with the interconnection requirements had not delayed Complainant in entering into an Interconnection Agreement. Upon information and belief, the mitigation options would ultimately render Complainant Boykin PV 1's generating facility unfeasible.

L. Dispute Proceeding as to Complainants

82. The allegations contained in the above paragraphs 1 through 81 of this Complaint are realleged and incorporated herein by reference as if fully set forth.

83. Since Respondent failed to resolve the disputes of Complainants by showing reasonable efforts to comply with the Interconnection Procedures, Complainants submitted written Notice of Dispute on April 20, 2015 and on July 15, 2016 in good-faith efforts to informally resolve the disputes. Despite Complainants' efforts to informally resolve the disputes, Complainants have been unable to resolve the disputes.

M. Respondent's Failure to Comply with the Interconnection Procedures

84. The allegations contained in the above paragraphs 1 through 83 of this Complaint are realleged and incorporated herein by reference as if fully set forth.

85. Respondent failed to make reasonable efforts to timely complete the Facilities Studies and to meet the 50-business day time frame to complete the System Impact Studies.

86. Respondent failed to notify Complainants that it would not meet the required 50-day deadline, and it provided no explanation for its failure to meet the deadline.

87. Respondent's delay in completing the Facilities Studies and System Impact Studies have substantially prejudiced Complainants.

88. Respondent is in violation of the NC Interconnection Standard and the NC Interconnection Procedures by (1) failing to make reasonable efforts to timely complete the Facilities Studies, (2) failing to make reasonable efforts to meet the 50-business day deadline for completing the System Impact Studies, providing ball park costs, and Interim Interconnection Agreements, and (3) failing to notify Complainants that it would not

meet the deadlines and explain the reason for such failure.

89. Pursuant to the Interconnection Procedures, Respondent is not entitled to require additional studies and impose additional screens and requirements for Complainants' projects since the System Impact Studies would have been completed if Respondent had complied with the time frames required by the NC Interconnection Standard and the NC Interconnection Procedures.

N. Violations of PURPA Obligations

90. The allegations contained in the above paragraphs 1 through 89 of this Complaint are realleged and incorporated herein by reference as if fully set forth.

91. Due to Respondent's failure to comply with the Interconnection Procedures and failing to interconnect Complainants' facilities in a non-discriminatory manner, Respondent is also in violation of the rules and regulations associated with PURPA by:

- a. Creating new interconnection screens and standards that apply to QF Interconnection Requests, and no other interconnection requests from load customers, that are discriminatory against QFs and have no reasonable basis for being added to the Interconnection Procedures as they required to be performed by Respondent as part of the agreed upon study process.
- b. Processing interconnection requests for QF customers through a single statewide queue impedes and delays the start of the System Impact Study review process for QFs by creating bottlenecks that other interconnection customers, such as new retail or industrial customers, do not experience.

See PURPA § 292.303 (c) and § 292.306.

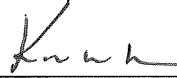
92. The practical effect of Respondent's discriminatory treatment limits Complainants' ability to interconnect and sell its electrical output in violation of PURPA.

PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully requests that the Commission:

1. Find and conclude that Respondent failed to use reasonable efforts to comply with the NC Interconnection Standard and the NC Interconnection Procedures.
2. Order Respondent to: (1) expeditiously complete the System Impact Study for Complainant Willoughby PV 1 without subjecting Complainant Willoughby PV1 to Respondent's recently implemented study criteria, and pay the incremental increase in upgrade costs over the original estimate of upgrade costs provided in July 2016; (2) expeditiously complete the System Impact Study for Complainant East Nash PV 1 without subjecting Complainant East Nash PV1 to Respondent's recently implemented study criteria, allow Complainant East Nash PV1 to select the mitigation option to downsize the maximum physical export capability from 19.99 MW to 18.5 MW, as offered by Respondent on April 28, 2017; and (3) expeditiously complete the System Impact Study for Complainant Boykin PV1 for interconnection of a 20 MW generating facility without subjecting Complainant Boykin PV1 to Respondent's recently implemented study criteria.
3. Grant such other and further relief as the Commission may deem just and proper.

Respectfully submitted this the 13th day of June, 2017.



Karen M. Kemerait
Smith Moore Leatherwood LLP
434 Fayetteville St., Suite 2800
Raleigh, NC 27601
Telephone: (919) 755-8764
E-mail:
karen.kemerait@smithmoorelaw.com

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco

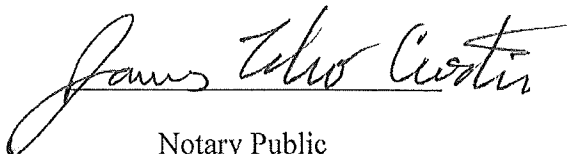
VERIFICATION

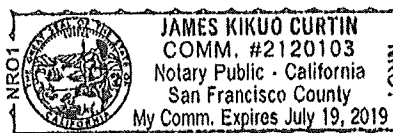
Erik Stuebe, being first duly sworn, deposes and says that he is the President of Ecoplexus, Inc., the Sole Member of Complainant Fresh Air XXIV, LLC, Complainant Fresh Air XXIII, LLC, and Complainant Fresh Air II, LLC, that he has read the foregoing Complaint and that the same is true of his own knowledge, except as to those matters and things therein alleged upon information and belief, which he believes to be true.

This the 13th day of June, 2017.



Sworn to and subscribed before me,
this the 13th day of June, 2017.


Notary Public



My Commission expires: July 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of June, 2017, a true and exact copy of the foregoing document was duly served upon the following counsel for Duke Energy Progress, LLC by either depositing same in a depository of the United States Postal Service, first-class postage prepaid, or by electronic delivery.


This 13th day of June, 2017.

Christopher J. Ayers, Esq.
Executive Director
North Carolina Public Staff
430 N. Salisbury Street
Raleigh, NC 27611

Lawrence B. Somers
Deputy General Counsel
Duke Energy Corporation
Post Office Box 1551/ PEB20
Raleigh, NC 27602
Email: bo.somers@Duke-Energy.com

E. Brett Breitschwerdt
McGuireWoods LLP
434 Fayetteville Street, Suite 2600
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Email: bbreitschwerdt@mcguirewoods.com

FRESH AIR XXIV, LLC
FRESH AIR XXIII, LLC
FRESH AIR II, LLC



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Smith Moore Leatherwood LLP
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Re: Ballpark Interconnection Agreement for Fresh Air Energy II, LLC (Willoughby)

John Gorman <johng@ecoplexus.com>

Mon, Apr 20, 2015 at 1:45 PM

To: "Grantham, Stewart" <Stewart.Grantham@duke-energy.com>, Charlotte Mitchell <cmitchell@lawofficecm.com>

Cc: "Interconnection EcoP (interconnection@ecoplexus.com)" <interconnection@ecoplexus.com>, "Jacob Pundyk (jpundyk@ecoplexus.com)" <jpundyk@ecoplexus.com>

Stewart,

Per Section 5.2 of the current NC Interconnection Standards, we are providing this written notice of a dispute to Duke Energy Progress. We are disputing the position DEP has taken regarding our Fresh Air Energy II Willoughby project as it relates to Section 6.3 of the proposed Interconnection Application for "Financial Security Arrangements." Section 6.3 is clear and unambiguous in its wording and intention from our perspective and DEP is not acting in good faith by continuing to assert that a surety bond is not relevant for all applicable interconnection facilities and upgrades.

We are available to discuss this dispute and try to resolve it in good faith with you this week.

John

On Tue, Apr 21, 2015 at 3:18 AM, Grantham, Stewart <Stewart.Grantham@duke-energy.com> wrote:

This one is past due on execution. I will extend till Friday and then project may be deemed withdrawn

From: Grantham, Stewart**Sent:** Friday, April 17, 2015 2:11 PM**To:** 'John Gorman'**Cc:** Interconnection EcoP (interconnection@ecoplexus.com); Jacob Pundyk (jpundyk@ecoplexus.com)**Subject:** RE: Ballpark Interconnection Agreement for Fresh Air Energy II, LLC (Willoughby)

You can post a surety bond for the interconnection facilities under the non-contributory plan. But system upgrades is a separate upfront charge.

From: John Gorman [mailto:johng@ecoplexus.com]**Sent:** Tuesday, April 14, 2015 10:10 AM**To:** Grantham, Stewart**Cc:** Interconnection EcoP (interconnection@ecoplexus.com); Jacob Pundyk (jpundyk@ecoplexus.com); Charlotte Mitchell**Subject:** Re: Ballpark Interconnection Agreement for Fresh Air Energy II, LLC (Willoughby)

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Stewart,

Pursuant to Section 6.3 of the current North Carolina Interconnection Standards, Ecoplexus is requesting confirmation of the use of a surety bond for its financial security requirements for the Willoughby IA. Ecoplexus has posted security in this form for all IA related costs (distribution and network) for more than 70MWs of std offer and larger projects with Dominion to date with no issues.

Additionally, Ecoplexus is currently working with Duke's procurement group on the PPA negotiations and execution. Please refer to Gary Freeman's attached letter dated May 14, 2014 regarding non standard offer QFs and the Interconnection and PPA process.

Finally, we have requested a call previously to review and discuss the estimated IA works, design and costs for Willoughby. To date we have received no response to that request.

Regards,

John

On Sat, Mar 7, 2015 at 4:02 AM, Grantham, Stewart <Stewart.Grantham@duke-energy.com> wrote:

Attached is the Interconnection Agreement (IA) with estimated interconnection costs which does not account for the terrain that DEP personnel will encounter to connect your renewable generation project to the DEP grid. Please be advised the preliminary costs of the IA are subject to change will be modified once the DEP project planner has met with your field representative to determine the interconnection route and point-of-delivery (POD). Once the meeting has occurred and the actual costs are provided. There will be a true-up that will occur for the remaining balance via invoice and an amendment to complete missing fields in the IA.

You will have 30 business days from [date] to return the attached executed IA, request for information (RFI) form, and the applicable payment amount referenced in Appendices 2 and 6 of the agreement. All items must be secured/completed and received by the close of business on the 30 business day or the project will be deemed withdrawn from the interconnection queue and as a result, you must start the interconnection process from the beginning. If you choose to withdraw the project you may do so at any time before the 30 business days have elapsed. Please see below regarding the required items:

Request for Information (RFI)

This form must be completed in its entirety or it will be incomplete.

Appendix 2 Interconnection/Additional Facilities

You have a choice of paying for the additional facilities one of two ways; Contributory Plan – Pay the total cost of the additional facilities upfront and as a result have a lower monthly MFC (Monthly Facilities Charge) or the Non-Contributory Plan – Pay a deposit, letter of credit, or surety bond of the total cost of the additional facilities to be installed and as a result have a higher MFC. The deposit will be refunded in years 6 thru 10. Surety Bonds or Letter of Credit if chosen must be for the initial 10-year term of the IA. Please circle your chosen plan and initial, then circle the plan you decline and initial. The Contributory Plan that is selected must be paid in full before DEP will schedule and construct the aforementioned facilities. Please note that the MFC of this IA will remain in full force and effect as long as DEP's facilities are installed for project.

Appendix 6 System Upgrade/Improvement (IF APPLICABLE)

This separate payment must be submitted in its entirety to the address above for the project's system upgrade construction that must occur before additional facilities for the project can be constructed.

After you have reviewed the agreement and completed the pages that require your action, you are required to send the IA, applicable payment(s) and RFI to me at the following address:

Duke Energy Progress, Inc.

Stewart Grantham
410 S. Wilmington Street, NC16
Raleigh, NC 27601

Once all items have been received the following next steps will occur:

- DEP Project Planner will schedule the site visit with your company's field representative to determine the project's interconnection route and location of the point-of-delivery (POD).
- After the site visit with the Project Planner, the actual costs to interconnect the project will be determined
- Once the interconnection costs are determined you will be provided with the aforementioned invoice per the IA for the interconnection cost true-up. This invoice payment is due within 30 business days or the project will be deemed withdrawn from the interconnection queue and as a result, you must start the interconnection process from the beginning.

Let me know if you have questions in the meantime.

Thanks.

--

John Gorman
EcoPlexus, Inc.
650 Townsend Street, Suite 310
San Francisco, CA 94103
(o) 650 425 7851
(f) 415 449 3466
www.ecoplexus.com

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(f) 415 449 3466
www.ecoplexus.com

Duke Energy Progress
Attention: Customer Owned Generation - Mail Code ST13A
P.O. Box 1010
Charlotte, NC 28201
Email: CustomerOwnedGeneration@duke-energy.com
Phone: 866.233.2290

July 15, 2016

Re. Notice of Interconnection Process Disputes, DEP Interconnection Queue

Dear Sir or Madam:

In accordance with Section 6.2 of the North Carolina Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Generator Interconnections in effect by order of the NCUC filed in Docket No. E-100, Sub 101 on May 15, 2015 (the "New Standards"), Ecoplexus and its various Fresh Air Energy affiliates ("Ecoplexus") hereby disputes Duke Energy Progress' ("DEP") processing of the interconnection requests for Willoughby 1, East Nash, and Boykin projects for reasons specified herein. Capitalized terms used but otherwise not defined in this notice shall have the same meaning given under the New Standards.

Willoughby, Queue Position 13-128 & 10667

In September 2013, Ecoplexus filed an interconnection request to connect the 20MWac Willoughby project to DEP's system, and paid the requisite deposit. DEP assigned the project queue position number 13-128. In November 2013, DEP deemed the Willoughby application complete, and Ecoplexus immediately executed and forwarded a Facility Study Agreement. DEP indicated it was overwhelmed with interconnection requests, and processing of the Willoughby interconnection took an inordinate amount of time. Further delays occurred throughout 2014 and into 2015.

In accordance with the New Standards, on July 24, 2015, DEP requested that Ecoplexus (i) pay the balance of the interconnection application deposit, and (ii) submit evidence of site control. However, on August 25, 2015, DEP notified Ecoplexus that Willoughby was deemed withdrawn because Ecoplexus had not provided evidence of site control within thirty (30) days of the request. Ecoplexus protested this action because DEP failed to provide notice to Ecoplexus of the deficiency and failed to provide Ecoplexus the ability to cure this deficiency as required Section 1.9 of the New Standards. It is worth noting that Ecoplexus

previously provided evidence of site control with the original Interconnection request.

In an abundance of caution, Ecoplexus filed a new interconnection request on August 27, 2015. Ecoplexus paid the \$40,000 study deposit on September 1, 2015, and the project was assigned new Queue Position 10667. The parties executed a System Impact Study Agreement for the project on October 23, 2015. Ecoplexus requested several Scoping Meetings but DEP failed to respond to these requests. Ecoplexus reached out to DEP on multiple occasions for an update on study status with no response. Finally, on March 9, 2016, a DEP engineer from the utility's transmission department inquired as to whether the project would connect to the distribution or to the transmission facilities. Ecoplexus confirmed that the project would connect to the distribution line, and DEP indicated that the Willoughby project would be re-assigned to the distribution department for purposes of the study. Despite repeated requests by Ecoplexus, DEP has provided no further information regarding the status of Willoughby's interconnection.

Ecoplexus believes that DEP violated the New Standards in the first instance by forcibly removing Willoughby from the queue, without notice, and without an ability to cure the claimed deficiencies. This is especially egregious considering DEP's own failures to meet the timelines specified by the New Standards. Ecoplexus requests that DEP complete the System impact study and process poste haste and as restitution pay the incremental increase in upgrade costs over the upgrade costs original upgrades estimates as of July 2015.

East Nash, Queue Position 7742

On April 26th, 2013, Ecoplexus filed an interconnection request to connect the 20MWac ENash project to DEP's system, and paid the requisite deposit. DEP assigned queue number IC13-063. The request was subsequently deemed complete and Ecoplexus executed and sent the Facilities Study Agreement to DEP on July 26, 2013. On April 2, 2014, DEP informed Ecoplexus that the E Nash study process was placed on hold while the project in front of E Nash in the queue decided to move forward or withdraw. Similar to Willoughby, East Nash experience significant study delays in 2013 until the time that the New Standards took effect in 2015. Per the New Standards, Ecoplexus executed a System Impact Study Agreement on August 3, 2015 and received Study results in September 2015. By late fall of 2015, DEP requested additional information which Ecoplexus provided while referencing the original Facility Study Agreement that was signed in 2013. The Facilities Study appears to have initially been in

process, but to date, no study results have been returned. The results are now more than 100 Business Days overdue, more so when you consider the original 2013 application. Ecoplexus requests the results of the Facilities Study Agreement be forwarded.


Boykin, Queue Position 7819

On October 16, 2013 Ecoplexus filed an interconnection request to connect the 20MWac Boykin project to DEP's system, and paid the requisite deposit. Under the New Standards DEP assigned checklist number 7819. A Facilities Study Agreement for Boykin was executed and returned to DEP on October 23, 2015. The results of the Facilities Study Agreement are currently more than 130 Business Days overdue, therefore, Ecoplexus requests the results of the Facilities Study Report that conform to Attachment 7 of the New Standards be forwarded at your earliest convenience.

Ecoplexus is hopeful that the parties can resolve these disputes, and we respectfully request your earliest response to this notice, but in no event later than the ten business days required by the New Standards. Please route all correspondence and notifications through Jacob Pundyk.

Jacob Pundyk
Ecoplexus – Manager Interconnections
650 Townsend St., Ste. 315, San Francisco, CA 94103
interconnection@ecoplexus.com, jpundyk@ecoplexus.com,
415-626-1802 x201

Sincerely,



Joseph M. DeVito
Senior Vice President of Development
Ecoplexus, Inc.