

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1220

In the Matter of)	
Williams Solar, LLC,)	
Complainant,)	
)	
v.)	VERIFIED COMPLAINT
)	
Duke Energy Progress, LLC)	
Respondent.)	

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 Williams Solar, LLC (“Williams Solar”) makes a formal Complaint against Duke Energy Progress, LLC (“Respondent”). Specifically, among other violations of statutes and Commission Rules and Orders, Respondent has failed to undertake and comply with its obligations under the standards required by the North Carolina Interconnection Procedures, Forms, and Agreements (“Interconnection Procedures”) that were approved in the *Order Approving Revised Interconnection Standards* that was issued on May 15, 2015, in Docket No. E-100, Sub 101 (“May 15, 2015 Order”), as amended by the Order Approving Revised Interconnection Standard and Requiring Reports and Testimony issued on June 14, 2019, in Docket No. E-100, Sub 101 (“June 14, 2019 Order”), together with the Impact Study Agreement and Facilities Study Agreement, in good faith.

In support of this Complaint, Complainant respectfully shows the Commission the following:

PARTIES AND JURISDICTION

1. Complainant is a limited liability company, duly organized and existing under the laws of the State of North Carolina. Complainant's business address is 1447 S. Tryon St. Suite 201, Charlotte, NC, 28203.

2. Williams Solar is self-certified as a Qualifying Facility ("QF"), and is therefore granted certain rights under The Public Utilities Regulatory Policies Act of 1978 ("PURPA").

3. Williams Solar has been granted a certificate of public convenience and necessity by the Commission to construct a to construct a 5-MW solar facility to be located at approximately 8185 Harper House Road, Newton Grove, Johnston County, North Carolina. *See* Docket SP-8274, Sub 0. Contemporaneously with its CPNC application, Williams Solar submitted a registration statement with the Commission as a new renewable energy facility. *Id.*

4. 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. Respondent is obligated to comply with PURPA, and the rules and regulations that are promulgated by the Commission in accordance with its delegated authority to implement certain parts of PURPA in accordance with the law's requirements. Upon information and belief, Respondent's business address is P.O. Box 1006, Charlotte, North Carolina, 28201.

5. Complainant's legal representatives in this proceeding to whom all notices, pleadings, and other documents related to this proceeding should be directed are:

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FACTS

6. Williams Solar was issued queue number NC2016-02927 on October 17, 2016, for its request to interconnect a proposed 4.992 MWac solar generation facility to Respondent's distribution system.

7. The Williams Solar project was initially designated by Respondent as a "B" project, meaning that the project was interdependent with another project with a lower queue number.

8. Although required by the Interconnection Procedures then in effect (May 15, 2015 Order) to conduct the System Impact Study in parallel with Project A, Respondent refused to proceed with the System Impact Study until Williams Solar submitted a Notice of Dispute on this issue. As a result of this dispute, Respondent agreed to move forward with the Systems Impact Study.

9. Prior to tendering the System Impact Study Report to Williams Solar, Respondent raised multiple technical barriers to entry to its regulated distribution system resulting in multiple industry disputes from nearly all solar developers which culminated in a Commission-filed settlement dated January 30, 2018, as to which both Williams Solar and Respondent are signatories. *See* Docket No. E-100, Sub 101 (Feb. 2, 2018). Pursuant to the Settlement Agreement, DEP agreed, among other things, not to materially change any currently effective interconnection policies and practices or introduce any new interconnection policies, screens, or practices unless required by law or Commission order. *See* Settlement Agreement, § 2(b).

10. After waiting in excess of two (2) years, a period of time far in excess of the period contemplated by the Interconnection Procedures, on or about January 28, 2019, Williams Solar finally received a System Impact Study Report (“SIS Report”) dated December 20, 2018, in which Respondent notified Williams Solar that certain System Upgrades would be required in order to effectuate the requested interconnection.

11. The Upgrades included replacing non-electronic protective devices such as fuses or hydraulic reclosers with electronic devices and reclosers and reconductoring certain distribution line segments.

12. Per the Interconnection Procedures then in effect (May 15, 2015 Order), the SIS Report was required to include

the Preliminary Estimated Upgrade Charge, which is a preliminary indication of the cost and length of time that would be necessary to correct any System problems identified in those analyses and implement the interconnection.

Interconnection Procedures § 4.3.4.

13. The Interconnection Procedures further explain that the “Preliminary Estimated Upgrade Charge” is

[t]he estimated charge for Upgrades that is developed using unit costs and is presented in the System Impact Study report and Interim Interconnection Agreement. This charge is not based on field visits and/or detailed engineering cost calculations.

Interconnection Procedures Glossary of Terms.

14. The System Impact Study Agreement between Williams Solar and Respondent also required Respondent to “provide the Preliminary Estimated Upgrade Charge, which is a preliminary indication of the cost and length of time that would be necessary to correct any System problems identified in those analyses and implement the interconnection.” SIS Agreement ¶ 12.

15. In its SIS Report, DEP stated that “[t]he budgetary One-Time estimate for the required System Upgrades is **\$774,000.**” (emphasis added)

16. In the January 28, 2019 e-mail transmitting the SIS Report, DEP reiterated its estimate of \$774,000 for the required system upgrades and gave no indication that substantial cost increases would be triggered or that Complainant should be aware of any changes in costing System Upgrades.

17. Respondent was aware that Williams Solar (like other solar project developers) would use the cost estimate provided at the System Impact Study stage to determine whether to proceed with project analysis and thereby incur additional costs.

18. Indeed, in the January 28, 2019 e-mail, DEP’s representative stated:

The purpose of this email is for a decision to be made whether or not to continue moving forward with the project for the final costs or to withdraw.

19. In fact, the Interconnection Procedures require interconnection customers to “submit payment or Financial Security reasonably acceptable to the Utility equal to the cost of any Network Upgrades identified in the Preliminary Estimated Upgrade Charge, as set forth in the System Impact Study Report,” which “shall be held by the Utility as a non-refundable pre-payment for the estimated cost of Network Upgrades to be designed by the Utility in the Section 4.4 Facilities Study.” Interconnection Procedures § 4.3.9.

20. Based on Respondent’s initial estimate, Williams Solar determined to proceed to a Facilities Study pursuant to section 4.4 of the Interconnection Procedures. Williams Solar invested over \$100,000 in development costs since receipt of the SIS Report based on Williams Solar’s understanding that the costs estimated by SIS Report were a good faith, reasonable estimate.

21. Pursuant to Interconnection Procedures section 4.4.4, the Facilities Study report was required to

specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the System Impact Studies and to allow the Generating Facility to be interconnected and operated safely and reliably.

22. Likewise, the Facilities Study Agreement requires the facilities study to

specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact studies. The facilities study shall also identify (1) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of the . . . Upgrades necessary to accomplish the interconnection,

and (3) an estimate of the construction time required to complete the installation of such facilities.

Facilities Study Agreement ¶ 4.

23. By e-mail on July 30, 2019, Respondent notified Williams Solar that the project's Facilities Study design and cost estimation was complete.

24. Respondent stated that the "estimated installed cost of the System Upgrades is **\$1,388,374.26** (amount includes the North Carolina Sales Tax of 7%)." (emphasis added). The identified upgrades identified in the Facility Study report are substantially identical to those identified in the SIS Report.

25. The revised estimate reflects an increase of approximately 80% over the initial estimate provided by Respondent in less than six months that do not reflect any material engineering changes identified within the SIS report.

26. Williams Solar submitted a Notice of Dispute to Respondent seeking justification of the substantially and materially revised estimate on September 10, 2019.

27. Respondent responded on October 2, 2019, arguing that it had no obligation to justify deviations from the initial cost estimate and that it was required to "produce a more refined estimate during the Facilities study."

28. Pursuant to Interconnection Procedures section 6.2.3, the parties agreed to continue negotiations for 20 additional business days.

29. On October 22, 2019, the parties convened an informal negotiation conference to discuss the issues arising out of the NOD, however the parties were unable to resolve the dispute. In particular, Respondent reiterated its position that it was not obligated to justify deviations in the various cost estimates provided.

30. Upon information and belief, the approximate 80% increase in cost of

System Upgrades from SIS report to Facilities Study report is not attributed to engineering changes relating to the required Upgrades but other non-engineering factors that include changes in practices of estimating labor and/or overheads, which calls into question the justification for the additional costs claimed by the Respondent for this and for other projects borne by other interconnectors and ratepayers generally.

31. On information and belief, Respondent's new estimating methodology has not been approved or reviewed or otherwise validated by third parties.

32. Respondent contended that its revised estimate produced with the Facilities Study was the "product of the more detailed engineering that the Companies performed as part of the Facilities Study," that it was "informed by DEP's extensive recent experience," that Respondent "has gathered a substantial amount of information concerning the actual cost of Upgrades." Respondent further contends that "a number of factors . . . have contributed to escalating actual costs, including increase labor and equipment costs."

33. Upon information and belief, labor rates within North Carolina have not dramatically changed over the six-month timeframe between Respondent's tender of Williams Solar's interconnection study reports, so the Complainant presumes that other non-engineering factors like changes in Respondent's costing practices and/or methodologies (which may include but are not limited to labor and overhead costing) are primarily responsible.

34. Based on the substantial increase in the estimated system upgrade costs as tendered in the Facilities Study report, the Williams Solar project has now become uneconomical.

35. The Respondent is required to act in good faith with regard to all aspects of

processing and analyzing interconnection requests, including in providing any cost estimates to interconnection customers.

36. Respondent is also required to act fairly and in good faith in carrying out its obligations with respect to the System Impact Study Agreement and Facilities Study Agreement.

37. On information and belief, given the proximity in time and disparity in amount of the estimates, Respondent's initial estimate of the cost of upgrades and its later estimated installed cost could not both have been made in good faith.

38. On information and belief, all of the factors allegedly causing increased costs would have been known to Respondent before it produced the initial cost estimate with the SIS Report. Accordingly, on information and belief, the initial cost estimate was not made in good faith.

39. Alternatively, on information and belief, the cost estimate produced with the Facilities Study was not made in good faith.

40. Such estimates not made in good faith breach Respondent's obligations under the Interconnection Procedures as well as Respondent's obligations under the System Impact Study Agreement and Facilities Study Agreement.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the Commission:

1. Find and conclude that Respondent failed to estimate System Upgrade costs in good faith.

2. Order Respondent to refund all charges incurred by Williams Solar in connection with the Facilities Study and issue an order accounting for all monetary losses

caused by Respondent's breach of its obligation of good faith.

3. Enter a declaratory ruling declaring that Respondent is required to review and process all interconnection requests in accordance with the Interconnection Procedures and in good faith, where good faith requires that any estimate of costs be based on commercially reasonable actual cost data.

4. Require Respondent to promptly render a revised cost estimate and executable interconnection agreement within seven business of the order.

5. Enforce the maximum of \$1,000 per day in penalties for non-compliance with the Interconnection Procedures as allowed by N.C.G.S. § 62-310(a).

6. Grant such other and further relief as the Commission may deem just and proper.

Respectfully submitted, this 24th day of October, 2019.



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NORTH CAROLINA

VERIFICATION

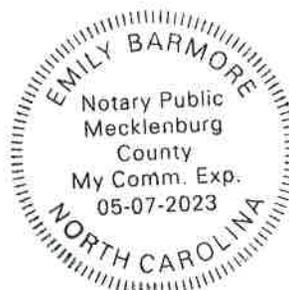
MECKLENBURG COUNTY

Jonathan Burke, being first duly sworn, deposes and says that he an Authorized Agent of Williams Solar, LLC, Complainant, 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 24th day of October, 2019.



Sworn to and subscribed before me,
this the 24th day of October, 2019.



Notary Public

My Commission expires: 5/7/2023