**STATE OF NORTH CAROLINA**
**UTILITIES COMMISSION**
**RALEIGH**

DOCKET NO. E-100, SUB 101

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| In the Matter of<br>Petition for Approval of Revisions<br>to Generator Interconnection<br>Standards | )<br>)<br>)<br>)<br>) | GREENGO ENERGY'S<br>COMMENTS ON DUKE<br>PETITION FOR LIMITED<br>WAIVER |

Pursuant to the Commission's Order Requesting Comments on Petition for Limited Waiver issued September 14, 2020, GreenGo Energy US, Inc. ("GreenGo"),[1] by and through counsel, hereby submits these Comments on the Petition for Limited Waiver ("Petition") filed by Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke") on September 3, 2020.[2]

## INTRODUCTION

Following prior multi-party settlement agreements filed with the Commission in 2016 and 2018, Duke has filed a new Notice of an Interconnection Settlement (the "Settlement Agreement") with various solar developers and has sought waiver of three

[1] GreenGo was allowed to intervene in this proceeding by Order of the Commission dated September 18, 2019. As stated in its Comments filed June 15, 2020, GreenGo has focused the entirety of its development activity in North Carolina on 5 MWac distribution-connected projects. Of its approximately 34 total projects in Duke's territory, 10 have been located in DEC territory and 24 in DEP territory—and all have proposed interconnection via Duke's distribution system. Of these projects, 20 have progressed to the interconnection agreement stage and 9 are either in-service or have received in-service date commitments from the serving utility

[2] It should be noted that GreenGo has not been provided access to the confidential portions of the filing. Consistent with Duke's September 3, 2020, transmittal letter offering to make confidential information available to parties subject to a confidentiality agreement, GreenGo has requested access to the confidential portions of Duke's filing but Duke has, to date, refused to honor the commitment it made in its transmittal letter. Accordingly, GreenGo reserves the right to comment further should it be afforded access to a complete copy of Duke's filing.

provisions of the North Carolina Interconnection Procedures (the "NC Procedures") to implement the Settlement Agreement. As of this date, GreenGo is not a signatory to the Settlement Agreement.

The twenty-six page Settlement Agreement is wide ranging and extraordinarily complex. In contrast to previous agreements that focused on technical issues, this agreement touches on a host of issues relating to the manner in which solar projects are interconnected to Duke's network. A succinct summary of the agreement is nearly impossible—but, at a high level, the agreement includes the following elements—each of which represents a deviation from Duke's existing practices:

- Legacy interconnection projects
    - For projects with an Interconnection Request ("IR") on or before November 30, 2018, each settling developer will be given an allocation equal to 40% of the total nameplate capacity of its pending distribution projects ("Allocated MW" projects). Settling developers may trade this Allocated MW among their own eligible projects or with other settling parties.[3]
    - Duke will use best efforts to interconnect 70 settlement projects (both Allocated MW and BAU[4]) in 2021, subject to specified criteria.
    - All other Allocated MW and BAU settlement projects will be targeted for completion in 2022.

[3] It is worthy of noting that this is, effectively, the third attempt to reach "settlement" regarding Duke's obligation to process the interconnection applications of these legacy applications—the first being House Bill 589, and the second being the MOS Settlement filed with the Commission in February 2018.

[4] It is not perfectly clear how one qualifies as a BAU, or Business-As-Usual, project, other than they appear to be projects that (a) have IRs on or before November 30, 2019, that have not received an IA (sec. 2(a)(i)) and (b) as for which the settling developer has identified the project on Attachment F (sec.4(b)(i)). BAU projects are not considered "Pending Distribution Projects" (sec. 2(a)(i)) but they are entitled to preferential construction commitments (see Part 3) and cost controls (sec. 4(b)).

- Settling parties are permitted to manage their Allocated MW by reducing project size by more than 10 percent without having to submit a new interconnection request.

- Cost overrun issues
  - For projects with an IA dated on or before January 1, 2018, interconnection costs (i.e., study, overhead, construction and commissioning) will be capped at amounts paid under the IA.
  - For projects with a delivered IA on or before July 31, 2019, costs will be capped at an amount between 130%-160% depending on the total pretax costs as stated in the IA.
  - The settlement parties release all claims related to FARs issued to the customer.

- Going-forward cost issues
  - Costs for "under construction" settlement projects are capped at 120% of the IA estimated (subject to specified exceptions).
  - Costs for BAU settlement projects are capped at 110% or 120%, depending on total project estimated costs.
  - For Allocated MW settlement projects, costs are capped at the IA estimated costs (subject to specified exceptions).

- Overhead costs[5]
  - No overhead charges are assessed for projects with an IA on or before January 2, 2018, except to the extent such charges were stated in the IA.
  - Parties agree to Study Costs, Commissioning Costs, and Administrative Overhead Costs per Attachment B.
  - Special rules the assessment of Administrative Costs are agreed-to for one named developer with projects with a capacity no larger than 2 MW AC. (Sec. 1(h))

[5] GreenGo notes that, regardless of the settlement, the assessment of Administrative Overhead Costs remains a "live" issue for resolution by the Commission. Duke has yet to substantiate its assessment of such charges, and the Commission has yet to approve any such assessment.

- Smart invertor pilot project
    - Certain specified settlement projects are eligible to participate in a smart inverter pilot project that will leverage the technical capabilities of smart inverters to permit lower cost interconnection.[6]
- Direct Transfer Trip ("DTT")
    - Settling customers that are required to install DTT may utilize a third-party communications provider in lieu of utilizing Duke's contractor. Additionally, such customers are entitled to special cost estimate payment terms relating to the portion of the DTT that involves upgrades to the substation. (Sec. 5(b))

While the Settlement Agreement addresses these myriad issues in great detail, the Petition seeks "limited" waiver of the following elements of the NC Procedures: (1) the interdependency "construct" of the NC Procedures that defers processing of a later-queued project that is deemed to be dependent on a upgrades assigned to an earlier-queued project; (2) the serial study requirements of the NC Procedures which require interconnection requests to be processed based on serial queue order; and (3) the Material Modification requirements of the NC Procedures which specify that downsizing in an amount more than 10 percent of AC output requires submission of a new IR.[7] The requested waivers speak to matters which lie at the heart of the existing interconnection processes—in particular the expectation that projects will be processed in the order in which they are received.

The waiver request is "limited" in the sense that Duke seeks permission to deviate from the NC Procedures with respect to a subset of interconnection customers. The

[6] GreenGo believes this use of smart inverter functionality is long overdue and would support the expansion of this program.

[7] Notably, Duke has not sought a waiver of NC Procedures section 6.7, which requires Duke to "use the same reasonable efforts in processing and analyzing Interconnection Requests from all Interconnection Customers." The effort Duke plans to expend on projects included in the Settlement Agreement, by all appearances, goes beyond the effort Duke has used and will use for other projects.

Interconnection Procedures, of course, exist to ensure that interconnecting customers are treated in a consistent, predictable and similar fashion—and any uncertainties, confusion or asymmetry in these rules deters market forces and the allocation of capital necessary to support new investment. Yet Duke seeks to create a set of "shadow" procedures—available only to interconnection customers that are willing to agree to subject all distribution projects to cluster-based study (i.e., Queue Reform) and to waive the right to dispute certain costs imposed by Duke. Under these shadow procedures, among other things, legacy projects that have languished for years due to alleged (but unsupported) "transmission constraints" are permitted to interconnect; other projects that have languished for years will receive contractually binding commitments to specified construction timetables; other projects will receive caps on the costs for construction of network upgrades (with excesses borne by Duke); other projects will be relieved of their obligation to pay for cost overruns (again, with the waived costs borne by Duke); and certain settling projects can participate in a special smart inverter pilot project and benefit from special rules regarding the implementation of DTT requirements.

To be clear, these are all things that Duke *should* do because they each are responsive to problems Duke has created. In this regard, GreenGo does not oppose any of the items in the Settlement Agreement, standing alone, except to the extent that they create inequities in the manner in which non-participating parties are interconnected. Similarly, GreenGo understands and appreciates the palliative and beneficial role that settlements play in avoiding unnecessary litigation and preserving the parties' and the Commission's scare resources, and these comments should not be understood as criticizing the parties' substantial efforts to reach consensus on a number of disputed issues. But Duke should

not be permitted to apply one set of rules to one group of customers and another set of rules to another, favored but similarly situated, group of customers. The simple cure, as discussed below, is to make these same benefits available to all interconnection customers.

## I. Duke's Request Has the Potential to Improperly Disadvantage Nonsettling Parties

GreenGo, like other developers, has legacy projects that have been in the queue since 2016. Some of these projects, like those of other developers, were Covered Projects under the MOS Settlement filed with the Commission in February 2018. And some of GreenGo's Covered Projects were put "on-hold" by Duke due to supposed transmission system impacts that Duke identified through an aggregate transmission system impacts study conducted by Duke in breach of the MOS Settlement. However, unlike some of the parties that have joined the Settlement Agreement thus far, six of GreenGo's Covered Projects brought a lawsuit in the North Carolina Business Court alleging that the aggregate transmission system impacts study breached the MOS Settlement and arguing that these projects should be allowed to proceed through the System Impact Study and Facilities Study to achieve interconnection without reference to the improper transmission system impacts study. In the Settlement Agreement, Duke now proposes to allow certain projects held up by the aggregate transmission system impacts study ("Transmission Interdependent Allocated MW Projects") to proceed to interconnection, with limited curtailment. To obtain interconnection without being treated as interdependent on transmission-connected projects as promised in the Settlement Agreement—essentially the relief GreenGo contends is already owed under the MOS Settlement—the present Settlement Agreement would require GreenGo to give up other rights.

The Commission, of course, has exercised its authority to waive the requirements of its rules in a variety of circumstances, including in this docket.[8] However, we have found no example where a waiver was granted under similar circumstances, and Duke has cited to no such case.

Duke, of course, is prohibited by statute from "mak[ing] or grant[ing] any unreasonable preference or advantage to any person or subject[ing] any person to any unreasonable prejudice or disadvantage." G.S. § 62-140(a). There is no indication in the statute that this prohibition does not apply equally to Duke's conduct as a provider of interconnection service as it does in its provision of retail services. While the Commission is certainly authorized under its general powers to grant waivers of its rules under appropriate circumstances, it would not be authorized, by waiver or otherwise, to approve the grant by Duke of an "unreasonable preference or advantage."[9]

This requirement often arises in the context of differential rates and, in that context, the North Carolina Supreme Court has noted, "There must be substantial difference in service or conditions to justify difference in rates. There must be no unreasonable

[8] The waiver cases in E-100, Sub 101 are discussed below. In other contexts, as examples, the Commission has waived the requirements of R8-67 to individually file REPS compliance plans for a compliance aggregator as well as R8-67(d)(1) with respect to the three-year REC purchase requirement. *See, e.g., In the Matter of Petition of N. Carolina Elec. Membership Corp. for Waivers of the Provisions of Comm'n Rule R8-67*, No. E-100, Sub 118, 2018 WL 6815309, at *2 (Dec. 17, 2018) (Order Granting Waivers). The Commission has waived the requirements of R12-11 to allow mailing of disconnection notices for disconnects that arise from broken bill extension agreements. *In Re Progress Energy Carolinas, Inc*., Docket No. M-100, Sub 61A, 2004 WL 2495662, at *1 (Apr. 1, 2004) (Order Approving Waiver).

[9] *See also,* e.g., Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 45 Fed. Reg. 12214, 12217 (noting that nondiscrimination prohibition is reflected in section 292.306(a) of the FERC's rules, which provides that interconnection costs must be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics).

discrimination between those receiving the same kind and degree of service."' *State ex rel. Utils. Comm'n v. Nello L. Teer Co*., 266 N.C. 366, 375–76, 146 S.E.2d 511, 518 (1966) (citations omitted). Here, the fact that a party has made concessions of value to Duke on other unrelated matters (e.g., support for Queue Reform, agreement to pay overhead charges, etc.) is not the sort of "substantial difference" that would justify treating similarly situated interconnection customers differently. *See Nello L. Teer Co.* (different competitive options and extra switching operation justified rate differential); *State ex rel. Utils. Comm'n v. Bird Oil Co*., 302 N.C. 14, 23, 273 S.E.2d 232, 238 (1981) (in determining whether rate differences constitute unreasonable discrimination, a number of factors should be considered: (1) quantity of use, (2) time of use, (3) manner of service, and (4) costs of rendering the two services."); *State ex rel. Utils. Comm'n v. City of Durham*, 282 N.C. 308, 314-15, 193 S.E.2d 95, 100 (1972) (other factors to be considered include "competitive conditions, consumption characteristics of the several classes and the value of service to each class, which is indicated to some extent by the cost of alternate fuels available."). The factors endorsed by the courts all relate to nature of the service being provided. By contrast, here there is no difference in the nature of the service being provided—only in the unrelated "trade-offs" the parties have been willing to make on unrelated matters.

The specific manner in which non-settling parties such as GreenGo will be disadvantaged includes the following:

- Without question, Duke is seeking to introduce differentiated treatment of interconnection customers based on their willingness to support Queue Reform. Broadly speaking, the Settlement Agreement essentially proposes to create a rush of interconnections ("Allocated MW" projects for settling developers) processed under existing rules before the gate is closed and the rest of the (non-settling) queue is forced into an entirely new study process, which will have the likely effect of killing these projects. The very fact that settling developers find following the existing rules valuable indicates the

inherent disadvantage that exists for projects that do not join the Settlement Agreement.

- Furthermore, while Duke downplays the effect of the Settlement Agreement on non-settling parties, one intended effect of the first two waivers—taken in combination—is specifically to advantage settling developers whose projects Duke contends are transmission-interdependent over non-settling developers whose projects Duke contends are transmission-interdependent. Duke has identified a subset of projects as transmission-interdependent. Effectively, these projects form a "mini" queue under section 1.8 of the NC Procedures. By ignoring the supposed transmission interdependency, settling projects within this mini queue will be able to leapfrog earlier-queued "transmission interdependent" projects that do not settle. Projects that do not settle will inarguably be worse off than the projects of settling developers that are able to move forward to interconnection.

- The requested waiver of serial review also inherently disadvantages non-settling projects because the proposal will shift resources from reviewing projects in queue order to reviewing another, different set of projects, thereby injecting further delay into the review of non-settling projects.[10]

- Finally, the waiver of the 10 percent downsizing material modification criterion also has the effect of altering the allocation of interconnection request review resources from non-settling projects to settling projects that downsize. While GreenGo certainly believes that the 10 percent material modification rule seems unreasonable in general, there seems to be no reason it should be waived in a manner that would allow certain projects to be reviewed in place of the projects that would otherwise be reviewed without implementation of this waiver.

The sum of the proposed waivers is to allow a subset of projects controlled by settling developers to achieve expedited interconnection while Duke changes the rules for every other project. Thus, the requested waivers do not address the particular circumstances of any project, but instead reward settling parties for not opposing Queue Reform. This is significantly different from, for example, the MOS Settlement Agreement,

[10] As an example, GreenGo has several projects nearing completion where Duke has recently, and unilaterally, delayed the commercial operation date. How will GreenGo be assured that Duke will not divert resources to settlement projects given the new contractual commitments that it is making to these projects?

in which Duke agreed, essentially, to stop delaying a set of projects that had repeatedly been subjected to new rules.

By contrast, the prior waivers granted in this docket protect against inequities arising from specific situations or otherwise address unique circumstances—they do not create inequities. *E.g.,* Order Granting Limited Waiver, Docket No. E-100, Sub 101 (Dec. 6, 2018) (granting waiver to two Cypress Creek projects based on inequities of application of new Milestone Payment requirements to existing project); Order Granting Further Limited Waiver, Docket No. E-100, Sub 101 (Dec. 20, 2019) (extending Cypress Creek waiver); Order Granting Limited Waiver and Authorization to Modify the North Carolina Interconnection Agreement, Docket No. E-100, Sub 101 (April 21, 2020) (approving modification of Interconnection Agreement to accommodate specific needs of U.S. Coast Guard); Order on Petition for Relief, Docket No. E-100, Sub 101 (Aug. 16, 2016) (allowing four animal waste generation projects to be studied on a priority basis in light of the need for such generation resources and the lack of opposition to the request).

In a recent waiver request relating to the establishment of a study process for energy storage, Duke itself recognized the potential for exactly this sort of improper discrimination arising in the context of its administration of the NC Procedures. *See* Duke Study Process Report for Addition of Storage at Existing Generation Sites, Docket No. E-100, Sub 101 (Sept. 30, 2019) (implementing a proposal to streamline the interconnection process for adding storage at an existing site could result in allegations of discrimination "to the extent that this process is deemed to allocate system capacity in a manner contrary to the [current] serial process."). In its comments, the Public Staff acknowledged, and agreed with, this concern: "The Public Staff agrees with the concerns raised in Duke's Report that adding

storage to existing facilities outside of the serial study process raises the potential for inequitable outcomes, including potential upgrade costs that would not have otherwise been assigned but for the addition of storage to an existing facility." Comments of the Public Staff on Duke's Proposed Expedited Study Process for Addition of Storage at Existing Generation Sites, Docket No. E-100, Sub 101, at 5 (Nov. 8, 2019). In ultimately granting the requested waiver, the Commission relied on the representations of Duke's December 6, 2019 letter, in which Duke indicated that on further consideration it had concluded that "the structure of its proposed ESS Retrofit Study Process makes it extremely unlikely, if not impossible, that a later queued project would be negatively impacted." *See* Order Granting Waiver and Requiring Report, at 6 (April 9, 2020).

Moreover, even when waiver of the NC Procedures is not in issue, the Commission has examined prior settlements to ensure that they are consistent with the then-existing interconnection procedures. For example, in evaluating the 2016 settlement agreement the Commission asked a series of questions to ensure that the agreement was consistent was consistent with legal requirements, including that non-participating parties were not disadvantaged. *See, e.g.,* Comments of the Public Staff, Docket No. E-100, Sub 101, at 3 (Sept. 22, 2016) ("[T]he parties were all positioned at the top of DEC and DEP's respective interconnection queues and were not given any form of preferential or advantageous treatment as a result of the settlement agreement.").

Waivers, in appropriate circumstances, are an efficient means of addressing certain inequities that arise in specific circumstances. The waivers granted to date by the Commission of the NC Procedures all reflect such circumstances. In this vein, if Duke had requested to waive transmission interdependency for Covered Projects under the MOS

Settlement, the waiver would have addressed a specific inequity created by Duke and would, if granted, have applied equally to all Covered Projects. A waiver of this supposed interdependency issue for Covered Projects—which the Commission specifically indicated would be appropriate for Duke to request—would have preserved the benefit of the bargain for those projects to address an issue Duke created on its own in breach of the MOS Settlement Agreement.

## II. The Commission Should Adopt Remedies that Apply Equally to all Interconnection Customers

The Settlement Agreement provides a number of benefits to interconnection customers recognizing the serious issues with Duke's interconnection practices. Duke's agreement to cost capping measures results from Duke's failures to adequately estimate project costs and to appropriately control interconnection project construction costs. Duke's "Allocated MW" plan essentially recognizes that it is unfair Duke to subject legacy distribution connected projects to the cluster study process when the projects have languished for years in the queue. Duke's agreement to allow certain "Transmission Interdependent Allocated MW Projects" to move forward despite the supposed interdependency is Duke's tacit admission that the aggregate transmission impacts analysis performed by Duke breached the MOS Settlement with respect to a number of projects. While Duke is offering these benefits to developers who have agreed not to oppose Queue Reform and have waived certain rights under the NC Procedures, GreenGo contends that these concessions should be made available to all interconnection customers.

First, as GreenGo has argued in its Comments on the Queue Reform proposal, there is no demonstrated need for Queue Reform for distribution connected projects in the first place, and the Settlement Agreement and waiver request only reinforce that conclusion.

There are fewer than 200 projects remaining in the study stage in DEC and DEP's queues. In the Settlement Agreement, Duke proposes to interconnect seventy (70) Allocated MW Projects by the end of 2021. That is, in approximately one year, Duke believes it can interconnect 70 projects. In other words, while a disappointingly large number of legacy projects remain, the queue at this point has become manageable and could be cleared if Duke were simply to process the requests under the current serial process.

Second, Duke agrees that at least a portion of the approximately 50 pending projects that Duke put on-hold for potential transmission interdependency could go forward if limited curtailment is allowed. (It is unclear if, or why, Duke cannot entirely address the supposed transmission constraints by curtailing its own generation.) This is not dependent on the implementation of Queue Reform, and in fact significantly undercuts Duke's argument that Queue Reform is needed to address distribution connected projects that are supposedly affecting the transmission system. These benefits could be made available to all interconnection customers without requiring interconnection customers to forfeit other rights under the interconnection procedures.

Third, the cost-capping measures and cost true-up provisions in the Settlement Agreement could, and should, be made equally available to all interconnection customers.

Lastly, GreenGo is aware that GreenGo and its projects can join the Settlement Agreement, and access its benefits, if GreenGo is willing to abandon certain disputes with Duke. However, GreenGo's position is that it should not have to forgo its rights under the NC Procedures in order to receive equal treatment of its projects from Duke.

These issues should be addressed in a manner that applies equally to all parties.

## CONCLUSION

For the reasons discussed above, the Commission should condition its grant of the waiver request, if at all, on extension of the same benefits to all interconnection customers regardless of whether they seek to become parties to the Settlement Agreement.

Respectfully submitted, this the 25th day of September, 2020.

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**Certificate of Service**

I hereby certify that a copy of the foregoing *Comments of GreenGo Energy US, Inc. on Petition for Limited Waiver*, has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 25th day of September, 2020.

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP

By: _____