BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 158

In the Matter of:	)	**JOINT NOTICE OF APPEAL**
Biennial Determination of Avoided Cost	)	**AND EXCEPTIONS OF THE**
Rates for Electric Utility Purchases from	)	**NORTH CAROLINA**
Qualifying Facilities – 2018	)	**SUSTAINABLE ENERGY**
	)	**ASSOCIATION AND THE**
	)	**NORTH CAROLINA CLEAN**
	)	**ENERGY BUSINESS**
	)	**ALLIANCE**

JOINT NOTICE OF APPEAL AND EXCEPTIONS OF THE NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION AND THE NORTH CAROLINA CLEAN ENERGY BUSINESS ALLIANCE

NOW COME the North Carolina Sustainable Energy Association ("NCSEA") and the North Carolina Clean Energy Business Alliance ("NCCEBA") (NCSEA and NCCEBA collectively herein the "Appellants"), by and through the undersigned counsel, pursuant to N.C. Gen. Stat. § 7A-29(b), § 62-80, § 62-90 *et al.*, and Rule 18 of the North Carolina Rules of Appellate Procedure, and hereby give Notice of Appeal to the North Carolina Court of Appeals from the 15 April 2020 Order Establishing Standard Rates and Contract Terms for Qualifying Facilities (herein the "April 15 Order") issued by the North Carolina Utilities Commission (the "Commission") in this proceeding.

Following the issuance of the April 15 Order, the Appellants filed their Joint Motion for Reconsideration and Clarification of the North Carolina Sustainable Energy Association and the North Carolina Clean Energy Business Alliance on 15 June 2020 ("Motion for Reconsideration"). The Motion for Reconsideration included a request for the Commission to reconsider the issues contained within this appeal, thereby tolling the time for Appellants to file this Notice of Appeal and Exceptions. On 21 July 2020, the

Commission issued the Order Denying Motion for Reconsideration, which denied the reconsideration and clarification requested by the Appellants including, specifically, the issues noticed on appeal herein.

N.C. Gen. Stat. § 62-90(a) states that "[a]ny party to a proceeding before the Commission may appeal from any final order or decision of the Commission [. . .] if the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decisions or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission."

Accordingly, the Appellants identify the following exception and the grounds on which they consider the Order to be unlawful, unjust, unreasonable, or unwarranted because the Commission: acted in excess of its statutory authority; made errors of law; made findings and conclusions unsupported by competent, material and substantial evidence in view of the entire record as submitted; and made determinations that are arbitrary and capricious.

Exception No. 1

The Order's Findings of Fact Nos. 49-51 and the corresponding Evidence and Conclusions for Findings of Fact Nos. 49-52 are unlawful, unjust, unreasonable, or unwarranted. These Findings and Evidence and Conclusions are affected by errors of law, are arbitrary and capricious, and are contrary to state and federal law in the following respects:

First, to the extent that the Commission findings are premised on a claim that the retroactive modification made by the Commission to existing contracts between Duke

Energy and solar developers were merely clarifying in nature, such a finding is clearly erroneous. The modification to the existing contracts substantially and improperly altered the rights and obligations of the parties under those agreements.

Second, the Commission unlawfully made *ex post facto* modifications to existing private contracts in violation of U.S. and North Carolina law. Legal precedent and policy bar any state, and including its agencies, from impairing the obligation of contracts. Here, the Commission has unlawfully impaired the contractual abilities of third-party developers to contract for the sale of wholesale electric to utilities via the Public Utility Regulatory Policies Act ("PURPA") mandated qualified facility. The fact that those contracts contained provisions, previously mandated by the Commission allowing such retroactive modifications is of no consequence, because such provisions are contrary to law and public policy and should be declared null and void.

Third, the Commission's finding that the proposed modifications to the existing contracts are reasonable and appropriate is affected by error of law, is arbitrary and capricious, and is contrary to federal and state law. Where a contract does not limit a solar developer's ability to modify its facility or output, it is unreasonable and arbitrary and capricious to prohibit such modifications after the fact simply because the developer would be allowed to sell more output at the existing contract price. Similarly, it is arbitrary and capricious to provide the utility with sole discretion to deny any modifications to a facility that is the subject of an existing contract. Such unilateral authority exceeds the terms of contracts that have already been executed, and implementation of this authority impairs the obligations of existing contracts.

Respectfully submitted this the 20th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 20th day of August, 2020.

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