

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 83

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Net Metering) ORDER DENYING MOTION

BY THE COMMISSION: On February 24, 2014, the North Carolina Sustainable Energy Association (NCSEA) filed a Motion for Disclosure and Equitable Relief (Motion) in the above-captioned proceeding. NCSEA requests that the Commission direct Duke Energy Corporation (Duke), through its two North Carolina operating companies, Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, Inc. (DEP), to:

- (1) guarantee, at a minimum, the continued availability of the current net metering terms and conditions for a period of 10 years from the customer's install date to each residential or commercial customer who installs a net metered rooftop solar system prior to issuance of a final order in any net metering proceeding initiated in the coming year; and
- (2) disclose, within a reasonable period, to NCSEA and other intervenors the analysis upon which Duke Energy Corporation is basing its messaging that net metering in North Carolina is unfair.

NCSEA further states that customer-owned generation remains the only competitive retail threat to a public electric utility; that Duke has stated that it "will seek to change the current net metering rules because the rules are unfair"; that Duke has "indicated its intent to alter the State's net metering rules"; that studies show that the benefits to customers of solar generation outweigh the costs; that Duke's messaging has created market uncertainty negatively impacting the rooftop solar market; and that the Commission can offer relief from this uncertainty, prior to a final resolution in this Docket, by directing Duke to provide the above-requested relief.

On March 3, 2014, the Commission issued an Order Requesting Comments, establishing a procedural schedule for parties to address the Motion in comments filed with the Commission.

On March 3, 2014, DEC and DEP filed comments in opposition to the Motion, requesting that the Commission deny the Motion in its entirety. DEC and DEP state that "NCSEA is asking the Commission to reapprove the Companies' [net metering] tariffs and lock such tariffs in place for 10 years in the absence of any proposal to revise them." DEC and DEP further state, in regard to the analyses at question that a motion "to compel disclosure of not-yet-complete documents that the Companies have not yet withheld from disclosure, and have communicated that they will actually provide, is disturbing and entirely disingenuous."

On March 24, 2014, and March 25, 2014, the Commission granted petitions to intervene filed by the Sierra Club and the North Carolina Waste Awareness and Reduction Network (NC WARN), respectively. All other parties that filed comments regarding this matter were already parties to this Docket.

On March 21, 2014, NC WARN and the Sierra Club filed comments in support of the Motion. NC WARN's comments focus on the value of solar and provided the Interstate Renewable Energy Council's recommendations to improve North Carolina's net metering policies. NC Warn asserts that Duke's public rhetoric regarding solar is motivated because net metering reduces the company's profits and states that Duke "should not be able to assert solar is unfair in public forums and the media without disclosing the underlying data." The Sierra Club requested that the Commission:

- 1) ensure that the public and all parties are given full access to information supporting any petition to modify the net metering rules in North Carolina;
- 2) prior to initiating any inquiry into net metering policy, establish that any changes to net metering rules which might adversely affect the opportunity to net meter behind the meter solar systems would not be applied retroactively to owners of systems who have applied for interconnection prior to the completion of any such inquiry; and,
- 3) determine that any changes in net metering rules shall occur in this (or any follow-on net metering proceeding), and not in the Avoided Cost proceeding.

Also on March 21, 2014, Virginia Electric and Power Company, d/b/a Dominion North Carolina Power (Dominion) filed comments in opposition to the Motion. Dominion states:

NCSEA's extraordinary request for relief is not founded on the traditional grounds that the relief is necessary to establish or maintain just and reasonable rates. Rather, NCSEA's request is intended to soothe the concerns of business owners who profit from net metering (and are NCSEA's trade association members) in response to alleged statements and "messaging" by Duke representatives regarding the State's net metering policy.

On April 4, 2014, both NCSEA and DEC/DEP filed Reply Comments. NCSEA argues:

Duke knows that its public messaging got ahead of its internal analysis. Duke knows that its public messaging presented unsupported allegations as facts. Duke also knows, or should know, that its singular position in the North Carolina electricity imparts a gravity to its messaging that is capable of disrupting markets and that, in this case, has disrupted the rooftop solar market.

NCSEA provides examples of Commission orders that extended or made available to already subscribed customers' rates, schedules, and plans that were subject to change. Further, NCSEA states that its Motion did not intend to "suppress Duke's free speech rights" but rather was intended to "redress the consequence of Duke's exercise of its free speech rights."

DEC/DEP, in their Reply Comments, state that the internal analyses at issue have become publicly available, and, thus, NCSEA's motion for disclosure is moot. DEC/DEP further state that no additional party's comments have provided any additional justification in support of NCSEA's requested relief and reiterate that neither DEC nor DEP has filed any petition to modify its net metering tariffs.

DISCUSSION AND CONCLUSIONS

While the Commission agrees with the Sierra Club that Docket E-100, Sub 83 is the appropriate docket in which to address any petition or request to change the Commission's net metering policy, with the exception of NCSEA's Motion, to the extent that it seeks to amend policy, there is no petition or request before the Commission to amend its net metering policy in this Docket or any other Commission proceeding.¹ Were a party to petition the Commission to amend these rules, all such filings and supporting documents filed with the Commission will be made publically available, subject to confidentiality claims, as are all documents in any Commission proceeding.

The Commission agrees with DEC/DEP that NCSEA's request for disclosure is now moot as the analyses at issue have since become public. Further, the Commission finds good cause to deny NCSEA's request that the Commission guarantee the current net metering terms and conditions for a period of 10 years from the customer's install. As noted above, there is currently no request, petition, or pending proceeding to amend the net metering policy established in the Commission's March 31, 2009 Order. NCSEA's request attempts to circumvent the established process by which the Commission amends policy based on a threat to markets caused by DEC/DEP's public statements. The Commission is not inclined to rely on public statements and their alleged market effects to amend its policy. The Commission notes that NCSEA, or any other party seeking a change to Commission policy, may file a petition to do so. Were the Commission inclined to initiate such a proceeding, issues such as the treatment of

¹ The Commission's February 25, 2014 Order, in Docket No. E-100, Sub 140, makes no mention of net metering or any possible amendments to the Commission's current net metering policy, rather, the proceeding was initiated:

To consider changes to the methodology used to calculate avoided cost payments, particularly capacity payments, including, but not limited to, whether a 2.0 PAF for run-of-river hydroelectric facilities with no storage capability should be continued, whether avoided capacity payments are more appropriately calculated based on installed capacity rather than a per-kWh capacity payment, and whether the methodologies historically relied upon by the Commission to determine avoided cost capture the full avoided costs.

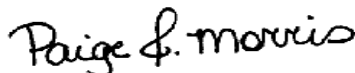
historical net metering participants that relied on Commission policy when implementing their system would undoubtedly be an item under consideration. The previous instances noted by NCSEA in which the Commission has protected the interest of parties that acted in good faith and reliance on Commission policy, and, thus, were permitted to continue under the historical policy, involved instances in which the Commission was amending a policy or eliminating the availability of a program. In the current matter, however, no amendment to net metering policy is currently under consideration; the matter is analogous to a case in which there is no actual controversy or the requested relief is not yet ripe for consideration.² The Commission finds that good cause has not been shown to preemptively amend its policy regarding current participants; such considerations are best addressed when any proposed changes to Commission policy can be considered in their totality.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of May, 2014.

NORTH CAROLINA UTILITIES COMMISSION



Paige J. Morris, Deputy Clerk

² See Miller v. Brown, 462 F.3d 312, 318-19 (4th Cir. 2007) (“The doctrine of ripeness prevents judicial consideration of issues until a controversy is presented in ‘clean-cut and concrete form’ ... A case is fit for judicial decision when the issues are purely legal and when the action in controversy is final and not dependent on future uncertainties.” (quoting Rescue Army v. Mun. Court of L.A., 331 U.S. 549, 584 (1947))).