SMITHMOORE LEATHERWOOD
ATTORNEYS AT LAW

434 Fayetteville Street
Suite 2800
Raleigh, NC 27601

August 16, 2017

Ms. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

RE: ***North Carolina Clean Energy Business Alliance***
In the matter of Rulemaking Proceeding to Implement G.S. 62-110.8
Docket No. E-100, Sub 150
INITIAL COMMENTS

Dear Ms. Jarvis:

In the above-referenced docket, please find herewith the Initial Comments of the North Carolina Clean Energy Business Alliance ("NCCEBA").

If you have any questions or comments regarding this filing, please do not hesitate to call me.

Thank you in advance for your assistance.

Very truly yours,

M. Gray Styers, Jr.

M. Gray Styers, Jr.

pbb

Enclosures

cc: Christopher J. Ayers, Esq.
David Drooz, Esq.
Dianna Downey, Esq.
Layla Cummings, Esq.
Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, Sub 150

In the Matter of: Rulemaking Proceeding to Implement G.S. 62-110.8	INITIAL COMMENTS OF NORTH CAROLINA CLEAN ENERGY BUSINESS ALLIANCE

INITIAL COMMENTS OF
NORTH CAROLINA CLEAN ENERGY BUSINESS ALLIANCE

North Carolina Clean Energy Business Alliance ("NCCEBA") submits the following initial comments, through the undersigned counsel, pursuant to the North Carolina Utilities Commission ("Commission") Order Initiating Rulemaking Proceeding to implement the requirements of the newly enacted G.S. 62-110.8 issued on July 28, 2017 in the above-referenced docket.

NCCEBA respectfully requests that the Commission consider these comments in this rulemaking proceeding.

NCCEBA AND ITS MEMBERS

NCCEBA is a non-profit trade association created to promote the common interests of clean energy businesses in North Carolina. It is comprised of and represents all types of businesses in the clean energy sector including developers, manufacturing,

engineering, construction, professional and financial services, and non-energy businesses wishing to purchase clean energy. NCCEBA members have a long track record of successful development, financing, construction, and operation of utility-scale solar assets across North America.

NCCEBA and its members were actively involved in the negotiations that led to House Bill 589 -- ultimately Session Law 2017-192 -- which will be, in part, codified as G.S. 62-110.8. In addition, many of NCCEBA's members are developers of renewable energy projects and will likely be participants in the competitive solicitation programs established pursuant to G.S. 62-110.8. Thus, NCCEBA and its members have an interest in ensuring that the statute is implemented in accordance with the intent of the legislature and consistent with the public interest. NCCEBA encourages the Commission, by implementing these rules, to create a publicly transparent procurement process that contributes to stable and efficient pricing, ultimately benefiting North Carolina ratepayers. Towards these ends, it appreciates the opportunity to participate in this docket and provide these comments on the issues identified in G.S. 62-110.8(h) and in the Commission's Order Initiating Rulemaking Proceeding and other related issues.

ISSUES ADDRESSED IN THIS DOCKET

Fundamental Principles Applicable to this Rulemaking

Several fundamental principles should characterize the rules and procedures established by the Commission in this proceeding.

First, the competitive procurement process should be a level playing field on which both utility and non-utility participants have equal opportunities. This equivalence

should be present in the Certificate of Public Convenience and Necessity ("CPCN") procurement process, in access to and utilization of otherwise non-public information, in the associated risks and cost components underlying the bids, in the criteria used by the independent evaluator and in the utilities' cost recovery. In a fair and competitive environment, the independent evaluator will need to be able to make "apples-to-apples" comparisons, and select the best, low-cost proposals to ensure the maximum benefit to the ratepayers and the public.

Second, the process should be predictable, so that stakeholders and their management and investors can make informed business decisions. Although outcomes are never guaranteed, uncertainties about the process, timing, and criteria will increase risk, cost contingencies, and the cost of capital, and accordingly the costs embedded in the bids, to the detriment of stakeholders and consumers.

Third, proposals should be legitimate and viable, and not speculative. The selection of projects that cannot or will not be constructed will neither accomplish the goals of the law nor further the public interest.

Finally, to accomplish these goals – competitive fairness, predictability of process, and viability of proposals -- the Commission should provide oversight of the process and establish specific guidelines and parameters for the bid solicitation process, bid requirements, and selection criteria, including the role of an independent third-party administrator. For example, just as the Commission's rules set forth the requirements for applications and process for CPCNs, for integrated resource planning, for cost-of-fuel recovery proceedings, and for other types of regulatory dockets, similarly detailed requirements, standards, and processes should be established for the competitive

procurement program, as mandated by statute. A number of other states have addressed some of these issues, and -- believing there is no reason to "reinvent the wheel" unless necessary -- we recommend that the Commission consider what practices and procedures have worked well elsewhere to enable renewable energy development in a competitive procurement context.

I. Oversight of the competitive procurement program.

A. Schedule / Timetable

NCCEBA encourages the Commission to establish a published schedule for competitive procurements. This is particularly important given the 45-month timeframe allocated for procurement.

The schedule for competitive procurement should include target dates for each solicitation window and volume of generation sought for each solicitation. Given that this method of procurement was not incorporated into the previous integrated resource planning process, it is even more important that there is sufficient predictability for these competitive procurements. With a published schedule for procurement, developers will benefit from predictability and develop the most competitive bids. By affording all parties the most lead time as is practically possible, a predictable and transparent procurement schedule will benefit utilities and ratepayers by improving the quality of bids and by extension leading to more stable, cost-effective and efficient utility-scale solar development. Absent the early publication of such information (which could be subject to modification with Commission approval for cause), the utilities will have a significant unfair competitive advantage over independent developers.

B. Clear and advance identification of location, allocation of amount of procurement by area, allocation of amount between distribution and transmission interconnection, and explanation of locations/areas, pursuant to considerations listed in G.S. 62-110.8(c)

New G.S. 62-110.8(c) gives electric public owned utilities in the competitive procurement process:

> the authority to determine the location and allocated amount of the competitive procurement within their respective balancing authority areas, whether located inside or outside of the geographic boundaries of the State, taking into consideration (i) the State's desire to foster diversification of siting of renewable energy resources throughout the State; (ii) the efficiency and reliability impacts of siting additional renewable energy facilities in each public utility's service territory; and (iii) the potential for increased delivered cost to a public utility's customers as a result of siting additional renewable energy facilities in a public utility's service territory, including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific renewable energy resource technology, such as nondispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs.

This authority cannot be used to deny potential bidders in a competitive procurement process the advance information necessary to plan resource additions that would effectively respond to bidding opportunities. As soon as desired locations are identified, and amounts of energy to be procured are allocated by area and between distribution and transmission interconnection, that information must be publicly available. This will ensure a more predictable and open process. Moreover, any rationale used by the electric public utilities to justify "including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific renewable energy resource technology, such as nondispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs" must be quantified, explained, and be subject to review by the

Commission.

It is crucial that location information is shared early in the process and in a comprehensive manner to provide qualified bidders sufficient lead time to secure site control and file interconnection applications in order to meet bid threshold requirements discussed below.

Finally, the Commission should address in these rules how interconnection costs should be considered in the context of competitive procurement. Interconnection costs in the procurement process must be determined in a transparent and non-discriminatory manner for both the utility and the competitive bidder. The Commission should utilize the requirements for determining interconnection costs contained in the NC Interconnection Procedures and the Facilities Study.

C. Bid Administration / Selection and Conduct of Third-Party Administrator

NCCEBA is pleased that G.S. 62-110.8(d) requires the competitive procurement process to be independently administered by a third party, approved by the Commission, and in accordance with publicly published methodology. An independent administrator or evaluator is key to providing a fair and equitable evaluation of bids received, and a published methodology maintains an additional layer of transparency for participants.

The Commission should select the administrator based on well-established criteria that have been used in other states and by the Federal Energy Regulatory Commission ("FERC"). It also should establish sufficient protocols to ensure the administrator's independence throughout the competitive solicitation process.

The importance of a truly independent third-party administrator cannot be

emphasized enough. Several other states have developed rules for assessing the independence and qualifications of independent administrators. Such third-party administrators must be financially and substantively independent from the electric public utility, its affiliates, and any potential bidder. Other essential qualifications are experience and demonstrated competence. There also should be a determination about whether previous or prospective conflicts of interest could impair the evaluator's impartiality. Prior to approving a third-party administrator, the Commission should require the public disclosure of financial interests, qualifications and potential conflicts of interest.

The evaluation methodology to be utilized by the administrator should be developed and published in advance, and the Commission should retain the authority to review, recommend changes, and ultimately approve the methodology. During this process, interested parties and members of the public should also be permitted to submit comments regarding the proposed methodology. Several states and utilities throughout the country have used third-party independent evaluators, and their experiences are instructive. Most recently, in Massachusetts and Oregon, independent evaluators have had significant involvement in the development and oversight of the Request for Proposals ("RFP") process, including bid development, bidder eligibility, benchmarking to utility resource options, bid selection, bid comparison and scoring, and preparation of a detailed closing report. *See* https://macleanenergy.files.wordpress.com/2017/03/83d-rfp-and-appendices-final.pdf and http://www.pacificorp.com/content/dam/pacificorp/doc/Suppliers/RFPs/OR%20Independent%20Evaluator%20RFP/PacifiCorp%27s_Oregon_IE_RFP_FINAL_dated_June_1_2017.pdf.

This level of involvement by an independent evaluator in the independent evaluation competitive solicitation process is especially important when electric public utilities and their affiliates are permitted to bid. It also facilitates compliance with FERC rules and procedures.

With respect to the FERC, while historically many of the qualifying facilities (QFs) in North Carolina were exempt from rate regulation by the FERC, it cannot be assumed that this will continue to be the case. In a rulemaking in 2006, in Docket No. RM05-36, the FERC eliminated certain exemptions from rate regulation that were previously available to QFs.[1] As a result, the FERC's regulations, specifically 18 C.F.R. § 292.601, were revised so that Section 205 of the Federal Power Act applies to sales of energy or capacity made by QFs with the exception of sales made by QFs 20 MW or smaller or made pursuant to a state regulatory authority's implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-1.

To the extent the FERC has jurisdiction, the participation of affiliates of Duke Energy Carolina, LLC (DEC), and Duke Energy Progress, LLC (DEP), in the competitive procurement process must meet certain restrictions and requirements. Both DEC and DEP are franchised public utilities with captive customers, and their FERC-jurisdictional affiliates do not have market-based authority inside their respective Balancing Area Authority Areas (BAAs).[2] In their merger application filed in 2011 in FERC Docket No. EC11-60-000, Duke Energy Corporation and Progress Energy, Inc. averred that no new

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[1] Prior to 2006, only QFs larger than 30 MW, with some exceptions, were subject to Section 205 of the Federal Power Act. In Order No. 671, the FERC revised its regulations and eliminated some exemptions that were previously available to QFs. *Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006).

[2] *Order on Disposition of Jurisdiction Facilities and Merger*, 136 FERC ¶(2011), ¶ 4 and ¶ 15.

contracts between any of the regulated companies and any unregulated affiliates were contemplated in the future and that, to the extent they were, the unregulated affiliates would submit bids into competitive power solicitations that would be conducted in accordance with the FERC's requirements for such solicitations. [3]

Those FERC requirements were initially established in *Allegheny Energy Supply Company*, 108 FERC ¶ 61,082 (2004). These and other standards adopted by the FERC related to affiliate abuse require that the competitive procurement process be transparent (open and fair), the product or products sought through the competitive solicitation be precisely defined, the evaluation criteria be standardized and applied equally to all bids and bidders, and an independent third party design the solicitation, administer the bidding, and evaluate the bids.[4] The Commission's oversight of the competitive procurement process should require no less.

Additional issues are raised by (1) the ability of DEC and DEP to participate in the competitive procurement process and (2) provisions in G.S. 62-110.8(g) allowing DEC and DEP to recover the authorized revenue of any utility-owned assets that are procured through the process calculated potentially on a market basis. Neither DEC nor DEP is authorized to sell power at market-based rates inside of either of their BAAs without the express approval of the FERC.[5] As is discussed in more detail in Section IV

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[3] See Exhibit M, pp. 2-3, submitted with the Applicants' Application for Authorization of Disposition of Jurisdictional Assets and Merger under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act in FERC Docket No. EC-11-60-000.

[4] *Id.*

[5] *See Duke Power, a Div. of Duke Energy Corp.*, 111 FERC ¶ 61,506, at P 61 (2005) (limitation on market-based rate sales within the Duke Energy Carolinas balancing authority area); *Florida Power Corp.*, 113 FERC ¶ 61,131 at ¶ 17 (2005) (limitations on market-based rate sales within the Progress Energy Carolinas balancing authority areas and Peninsular Florida); *see also Duke Energy Corp.*, 136 FERC ¶ 61,245 (2011); *Duke Energy Corp.*, 139 FERC ¶ 61,194 (2012).

of these comments, considerations of fairness dictate that the pricing and recovery of costs should be the same regardless of whether the utility or a small power producer owns a given facility. A transparent, well-defined, and independently administered competitive procurement process is a necessary prerequisite to such pricing and recovery being possible.

D. Bid Criteria

Before an RFP is issued for a competitive procurement, the Commission and the third-party independent evaluator must ensure that all bidding is based upon a clearly communicated common metric. This will ensure that the bids are scored fairly, and is especially important when electric public utilities and their affiliates are permitted to bid. All bidders should have to bid the same way (e.g., on a per MWh basis) and be paid the same way. All bids must include a price for energy, capacity and renewable energy certificates ("RECs") within a predictable and consistent scoring methodology. This will also ensure that although the electric public utility has the right to "dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources," under G.S. 62-110.8(b) (i.e., when and how the facilities will run), total revenues over the life of the purchase power agreement will be quantifiable and predictable.

To ensure that all bidders have access to the same cost cap information in the formulation of their bids, the electric public utility's RFP must include the public utility's current forecast of its avoided cost calculated over the term of the power purchase

agreement consistent with the Commission-approved avoided cost methodology. This is consistent with limitations for procured renewable energy capacity set forth in G.S. 62-110.8 (b)(2).

The Commission also must provide oversight and rules as to the limits and compensation for resource dispatch and curtailment in the pro forma contract required by G.S. 62-110.8 (b)(3) to ensure that the resulting rate reflects the average value of the purchases over the duration of the obligation and provides certainty and predictability of revenue streams for independent power producers. It is critical that the eventual average rate is sufficient to allow bidders to compete with any electric public utilities that participate in the bidding process.

Finally, if the RFP allows affiliate bidding or ownership options, the Commission and the third-party independent evaluator must also take into account the regulatory treatment of costs or benefits related to the actual construction costs and plant operations of the bidder. See Section IV below for a discussion of cost-recovery.

E. Bid Threshold Requirements

The Commission's rules should establish reasonable thresholds that must be met establishing a minimal level of project viability without unduly deterring market participants, including new market entrants. Examples of standard project viability metrics in utility-scale solar RFPs include the following: site control, application for an interconnection agreement ("IA"), application for a CPCN, and the posting of security assurances.

1. Site control

Requiring site control is the most essential metric for project viability when conducting an RFP for utility-scale solar. Site control helps distinguish bona fide versus speculative projects.

For this reason, NCCEBA recommends that Commission require full site control, i.e., a possessory legal interest to construct a utility-scale solar project on a specific site if awarded, as a condition of the project pre-qualification process. Site control can be established by requiring bidders to submit a copy of an executed lease, purchase or lease option, purchase agreement, or proof of title. The Commission can allow some flexibility for auction winners to adjust the final site footprint, if necessary, to contiguous property that is leased or purchased subsequent to the bid date. This provision will ensure that projects bid into the auction have passed the critical project viability milestone of securing site control, while allowing developers flexibility to adjust the project layout and accommodate environmental, geotechnical, zoning, or other unforeseen site limitations that arise after full site discovery, design and permitting have commenced.

2. Interconnection agreement application

NCCEBA recommends that all bidders be required to have submitted an application with the utility for an Interconnection Agreement (IA) prior to submitting their bid or, alternatively, be required to submit an application is within 90 days of a bid award, unless the project developer demonstrates good cause why such an application not practicable given the circumstances of the location. Moreover, this requirement must also apply to an electric public utility or its affiliate that participates in the competitive

procurement process in order to have a level playing field.

In the event that a project is selected through the competitive procurement process, the utility should be required to complete the interconnection process for the facility prior to completion of construction of the facility. How the interconnection queue should be managed so that selected facilities receive timely interconnection when needed for the commencement of operation should be an issue for further rulemaking by the Commission in this docket.

3. *CPCN Application*

NCCEBA recommends that all bidders be required to have filed, prior to submitting their bid, an application with the Commission for a Certificate of Public Convenience and Necessity ("CPCN") for any facility from which energy would be sold pursuant to a selected competitive procurement. The process and timing of consideration of these applications is discussed more below in Section III.

4. Security / assurances

All parties submitting proposals should be required to post a bid bond prior to a final determination by the evaluator. The bid bond should be sufficient to ensure bidders are submitting bona fide rather than speculative bids, but not so high as to preclude otherwise qualified bidders from participating.

NCCBA also supports rules that would require performance bonds of companies awarded bids. Such performance bonds help ensure a company will complete its obligations under the awarded contract and provide for accountability should a company

default.

Acceptable types of security to fulfill these requirement that should be allowed under the rules should include cash, letter of credit, a surety bond, sufficient collateral or parent company guarantee (if requested and if the parent company is capitalized enough to self-bond).

5. Bidder Qualifications

As with most competitive solicitation programs, bidders should have a demonstrated level of technical experience and financial wherewithal. The independent evaluator can be authorized to develop and further refine bidder qualifications with input from the utility and parties intending to participate in the competitive procurement process.

II. Provision for a waiver of regulatory conditions or code of conduct requirements, if any, that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.

The Commission has requested comments regarding the waiver of regulatory conditions or code of conduct requirements. G.S. § 62-110.8(h)(2) provides that the Commission may waive "regulatory conditions or code of conduct requirements, that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless."

The North Carolina electric public utilities all have regulatory conditions and

codes of conduct in place as ordered by prior Commission Orders. *See, e.g.* Docket No. E-2, Sub 998; Docket No. E-7, Sub 986. The Code of Conduct establishes the *minimum* guidelines and rules that apply to the relationships, transactions, and activities involving the public utility operations of a utility and its affiliates to the extent such relationships, activities, and transactions affect the operations or costs of utility service. One purpose of the Code of Conduct is to ensure a division and allocation of finances, costs, and risks so that a regulated utility is not benefiting or subsidizing an unregulated affiliate or interfering with competition and access to information to the detriment of the ratepayer. Any requested waiver of regulatory conditions or code of conduct requirements must be considered in this context and in light of those purposes.

Similarly, the FERC requires that regulated utilities abide by a Code of Conduct, or Affiliate Restrictions, to protect captive customers from the potential of affiliate abuse.[6] In Order No. 697, the FERC acknowledged the need for restrictions to provide for uniformity and consistency in a code of conduct to govern the relationship between public utilities with captive customers and their non-regulated affiliates. In recognizing the importance of such rules for consistency and the protection of consumers from potential abuse, the FERC adopted the uniform "Affiliate Restrictions" in Section 35.39 of its regulations.

The federal policy objective of ensuring uniformity of conduct requirements and

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[6] *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g and clarification*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *order on reh'g and clarification*, 124 FERC ¶ 61,055, *order on reh'g and clarification*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g and clarification*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305, *order on clarification*, 131 FERC ¶ 61,021 (2010), *reh'g denied*, 134 FERC ¶ 61,046 (2011), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012) (codified at 18 C.F.R. § 35.39).

protection from potential abuse is equally as applicable at our state level. Regulatory conditions and codes of conduct for electric utilities and their affiliates were adopted by this Commission because they are necessary to ensure the fairness of utility policies, conduct, and operations, including the procurement program. In addition, they provide for greater transparency and a level playing field in the procurement process. By way of example and consistent with these principles, G.S. 62-110.8(e) states that a public utility or its affiliate may not use nonpublic information concerning its own distribution or transmission system in preparing a proposal to a competitive procurement, without making such information available to third parties that have notified the public utility of their intention to submit a proposal to the same request for proposals.

The Commission should establish a procedural process that considers any request for a waiver to be *an exception* to the general imposition of the regulatory condition or Code provision and place the burden on the utility to prove that the waiver is necessary. To the extent the FERC has a similar restriction to the one for which a waiver is sought, the utility should be required to identify such restriction and state whether a similar waiver has been sought from the FERC. In addition, the utility should be required to articulate and explain, in a public filing, (1) the specific regulatory condition or Code of Conduct provision of which it is seeking a waiver, (2) the reason that the regulatory condition or provision "unreasonably restricts a public utility or its affiliates from participating in the competitive procurement process," (3) that the waiver would not result in an unfair competitive advantage for the utility or its affiliate, and (4) that the public utility's customers would not be harmed by such a waiver. The burden of proof on each of these elements should be on the utility requesting the waiver. Before the

Commission rules upon the waiver, the Commission should allow an opportunity for third parties to respond. Finally, any waiver granted by the Commission should be the minimum necessary to allow the public utility or its affiliates to participate in the competitive procurement process.

III. Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity, or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than 30 days after a petition for a certificate is filed by the public utility.

The CPCN rules, requirements, and timelines for both utility and non-utility facilities should be the same, in order for the playing field to be level and competitive. Moreover, NCCEBA agrees that the timely issuance of CPCN approvals – for utility and non-utility facilities alike -- will be important to meet the timelines in the procurement process and that expeditious treatment, as required by the new statute – although presenting challenges for applicants, the Public Staff, and the Commission -- is appropriate in these circumstances.

The process for CPCNs under existing Commission Rule R8-64 for qualifying small power producers as defined in 16 U.S.C. 796(17) and (18) or small power producer as defined in G.S. 62-3(27a), along with the process or registration of renewable energy facilities under Commission Rule R8-66, has seemed to work well for most solar facilities in recent years. NCCEBA believes that the requirements and procedures under Rule R8-64 and Rule R8-66 can apply to all facilities whose energy would be bid as part of the competitive procurement process.

The last part of this section of the statute appears to be in conflict with other statutory requirements of public notice and public hearings for CPCNs, which cannot be

accomplished within a 30-day timeframe, and for which there may be Constitutional due process underpinnings. NCCEBA does not believe that it was the legislative intent to abrogate the effect and requirements of G.S. 62-82 and does not recommend a procedure that would violate those requirements.

Finally, any changes to the CPCN process for the benefit of a public utility must not create an unlevel playing field for other bidders.

IV. Establishment of a methodology to allow an electric public utility to recover its costs pursuant to G.S. 62-110.8(g).

G.S. 62-110.8(g) provides as follows:

> An electric public utility shall be authorized to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured pursuant to this section through an annual rider approved by the Commission and reviewed annually. Provided it is in the public interest, the authorized revenue for any renewable energy facilities owned by an electric public utility may be calculated on a market basis in lieu of cost-of-service based recovery, using data from the applicable competitive procurement to determine the market price in accordance with the methodology established by the Commission pursuant to subsection (h) of this section.

The Commission's goal in interpreting the foregoing provision should be to create cost recovery processes that are consistent and that do not produce any benefit or perceived bias in favor of utility-owned facilities. A utility's cost recovery for a renewable facility it constructs and owns should be limited to the amount of its bid regardless of whether cost recovery is on a cost of service basis or on a market basis. Otherwise, a level playing field is not being created and the cost effectiveness of the renewable energy facilities being bid into the competitive procurement processes are not being compared on an apples-to-apples basis.

In addition, if the costs of utility-built facilities were to be treated on a cost-of-service basis, the utilities should not be able to recover any capital costs greater than the equivalent of the capacity payments made to small power producer bidders. For the competitive procurement processes to be fair and to produce cost effective results, cost considerations must be comparable for utility and non-utility facilities.

Another issue related to costs that needs to be addressed by the Commission is the language in G.S. 62-110.8(b)(2) stating that "each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement." This subsection further provides that "[t]he public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology." Because G.S. 62-110.8(b) states that compliance can occur through "the purchase of renewable energy, capacity, *and environmental and renewable attributes* from renewable energy facilities owned and operated by third parties," the Commission needs to resolve the mismatch that has been created between the cost of energy, power, and environmental and renewable attributes, on the one hand, against the cost of just energy and capacity on the other.

By Order issued October 1, 2003, in Docket No. EL03-133-000, the FERC stated that avoided cost rates are not intended to compensate the QF for more than capacity and energy and declared that contracts for the sale of QF capacity and energy entered into pursuant to PURPA do not convey environmental attributes to the purchasing utility. The Commission followed this determination in its Order *Establishing Avoided Cost Rates and Standard Contract Terms* in Docket No. E-100, Sub 100 (issued September 2005) at page 35, concluding that the payment of avoided costs does not include the value of

environmental attributes and does not convey them to the utility. Thus, NCCEBA believes that the Commission's rules need to address how the value of the environmental and renewable attributes are to be included when the bids received in response to the competitive procurements are evaluated.

V. Establishment of a procedure for the Commission to modify or delay implementation of the provisions of this section in whole or in part if the Commission determines that it is in the public interest to do so

The Commission has requested comments regarding the procedure to modify or delay implementation of the competitive procurement program pursuant to G.S. § 62-110.8(h)(5). As a starting point, modification or delay should be allowed only in exceptional circumstances. Non-utility developers of renewable energy facilities, such as NCCEBA's members, must have predictability and reasonable certainty that the utility will comply with the statutory time periods for the competitive procurement program. Variability and uncertainty will cause significant disruption in a project developer's plans, increase the risk of investments, and accordingly increase the cost of capital, to the detriment to the competitive procurement process and consumers. Therefore, it is critical that any allowed procedure in this regard impose a very high threshold of proof to demonstrate that any requested modification or delay is not the result of the utility's own action (or inaction), is necessary for operational reasons and not mere convenience, and is in the public interest.

The Commission should require the utility requesting modification of delay to demonstrate that the request is not the result of its own action (or inaction) and that it made "reasonable efforts" to avoid modification or delay. Similar to the requirements of the North Carolina Interconnection Procedures, the Commission should require the utility

issues raised in these comments be considered by the Commission in this proceeding and be addressed in any rules proposed by the Commission.

Respectfully submitted, this 16th day of August, 2017.

SMITH MOORE LEATHERWOOD LLP

BY: M. Gray Styers, Jr.

M. Gray Styers, Jr.
Karen M. Kemerait
Deborah K. Ross
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
E-mail: gray.styers@smithmoorelaw.com
Telephone: (919) 755-8741
Attorneys for: North Carolina Clean Energy Business Alliance

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Petition to Intervene has been duly served upon counsel of record for all parties to this docket by either depositing a true and exact copy of same in a depository of the United States Postal Service, first-class postage prepaid, and/or by electronic delivery as follows:

NC Public Staff
Christopher J. Ayers, Esq.
Executive Director – NC Public Staff
E-Mail: Chris.Ayers@psncuc.nc.gov

David Drooz, Esq.
Chief Counsel
NC Public Staff – Legal
4326 Mail Service Center
Raleigh, NC 27699
E-mail: David.Drooz@psncuc.nc.gov

Dianna Downey, Esq.
NC Public Staff – Legal
E-mail: Dianna.Downey@psncuc.nc.gov

Layla Cummings, Esq.
NC Public Staff – Legal
E-mail: Layla.Cummings@psncuc.nc.gov

Counsel for CIGFUR
Ralph McDonald, Esq.
Adam Olls, Esq.
Bailey & Dixon, LLP
Post Office Box 1351
Raleigh, NC 27602
E-mail: rmcdonald@bdixon.com
E-mail: aolls@bdixon.com

Counsel for NC Sustainable Energy Association (NCSEA)
Peter H. Ledford, Esq.
4800 Six Forks Road
Suite 300
Raleigh, NC 27609
E-mail: peter@energync.org

Counsel for Carolina Utility Customers Association, Inc. (CUCA)
Robert F. Page, Esq.
Crisp & Page, PLLC
4010 Barrett Drive, Suite 205
Raleigh, NC 27609
E-mail: rpage@crisppage.com

Sharon C. Miller
Executive Director
Carolina Utility Customers Association, Inc.
Trawick Professional Center
1708 Trawick Road, Suite 210
Raleigh, NC 27604
E-mail: smiller@cucainc.org

Counsel for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC
Kendrick C. Fentress, Esq.
Associate General Counsel
Duke Energy Corporation
P. O. Box 1551 / NCRH 20
Raleigh, NC 27602
E-mail: Kendrick.Fentress@duke-energy.com

Heather Smith, Esq.
Duke Energy Carolinas, LLC
526 S. Church Street
Charlotte, NC 28202
E-mail: heather.smith@duke-energy.com

Molly M. Jagannathan, Esq.
Troutman Sanders LLP
One Wells Fargo, Suite 3400
301 South College Street
Charlotte, NC 28202
E-mail: molly.jagannathan@troutmansanders.com

This the 16th day of August, 2017.

SMITH MOORE LEATHERWOOD LLP

BY: M. Gray Styers, Jr.
M. Gray Styers, Jr.