

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION:

In the Matter of:
Petition for Approval of Generator
Interconnection Standard

**REPLY COMMENTS ON
PETITION FOR LIMITED
WAIVER**

NOW COME Birdseye Renewable Energy, LLC (“Birdseye”), Carolina Solar Energy LLC (“Carolina Solar”), Cypress Creek Renewables, LLC (“CCR”), Pine Gate Renewables, LLC (“Pine Gate”), Southern Current LLC (“Southern Current”), National Renewable Energy Corporation (“NARENCO”), Strata Solar, LLC and Strata Solar Development, LLC (collectively and individually, “Strata”), DEPCOM Power, Inc. (“DEPCOM”), and Ecoplexus, Inc. (“Ecoplexus”) (Birdseye, Carolina Solar, CCR, Pine Gate, Southern Current, NARENCO, Strata, DEPCOM, and Ecoplexus collectively, the “Settling Developers”)¹, by and through counsel, and respectfully submit the following reply comments in response to the North Carolina Utilities Commission’s (“Commission”) September 14, 2020 *Order Requesting Comments on Petition to Limited Waiver*.

In support of this filing, the Settling Developers submit the following:

I. BACKGROUND

¹ The Settling Developers are composed of most of the major solar developers in North Carolina and South Carolina. To the extent that the Commission deems it necessary for the Settling Developers to be parties to this docket in order to file these Reply Comments, the Settling Developers not already parties to this docket request limited intervention for the sole purpose of participating in proceedings relating to the Settlement Agreement and Petition for Limited Waiver.

On September 3, 2020, a Joint Notice of Interconnection Settlement and Petition for Limited Waiver (“Joint Notice and Petition”) was filed by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress LLC (“DEP”, and together with DEC, “Duke”) and the Settling Developers. The Joint Notice and Petition provided notice to the Commission of a comprehensive Interconnection Settlement Agreement (“Settlement Agreement”) that has been reached regarding a number of disputes under the North Carolina Interconnection Procedures (“NCIP”), and petitioned the Commission for approval of three waivers from the NCIP necessary to efficiently implement the Settlement Agreement. The waivers include the following:

1. Limited Waiver of Interdependency Construct. The Settlement Agreement would allow interconnection of a limited number of transmission-constrained distribution projects prior to the construction of necessary transmission Upgrades. Duke has identified operating protocols that can be applied to the limited number of distribution-connected projects, such as curtailment to ensure compliance with NERC standards, that will ensure the continued reliability and safety of the transmission system without construction of the transmission Upgrades. Under the Settlement Agreement, the limited number of transmission-constrained distribution projects would be permitted to bypass the Interdependency construct and move forward to interconnection.

2. Limited Waiver of Serial Study Requirement. In a very limited and narrow set of circumstances, the Settlement Agreement would allow Interconnection Customers to be studied and potentially interconnected out of serial queue order. This limited waiver of the serial study requirement in Sections 1.4.2 and 1.7.1 of the NCIP is designed solely to allow the Settling Developers more flexibility to identify and facilitate

the interconnection of distribution generation projects most likely to be technically and economically viable on a substation or distribution circuit. Importantly, as discussed in the Joint Notice and Petition, any serial study exception would not be permitted where it would adversely affect an Interconnection Customer that is not a party to the Settlement Agreement.

3. Limited Waiver to Material Modification Indicia: Downsizing Greater than ten percent. The Settlement Agreement allows for certain Interconnection Customers to reduce the size of their proposed Generating Facilities by more than ten percent. While Sections 1.5.1.1.4 and 1.5.1.2.7 of the NCIP specify that a reduction in AC output by more than ten percent is an indicia of a Material Modification, certain Interconnection Customers will be permitted to reduce the size of their Generating Facilities by more than ten percent in order to most efficiently administer the Settlement Agreement.

On September 25, 2020, separate comments were filed by the Public Staff and GreenGo Energy US, Inc. (“GreenGo”).

II. REPLY COMMENTS

A. Settling Developer’s Support for Comprehensive Settlement Agreement

Beginning in late 2018 and early 2019, many of the Settling Developers received Final Accounting Reports with substantially increased interconnection costs over previous estimates for distribution-connected solar projects.² Upon receipt of these Final Accounting Reports, many of the Settling Developers submitted Notices of Dispute and

² In some cases, the cost increases were as high as 300% over prior estimates.

some filed Complaints³ against Duke, challenging the construction cost increases, the increased study costs, and the imposition of administrative overhead and commissioning costs.

Over the past six months, Duke and the Settling Developers have spent countless hours and resources in good-faith negotiations to try to resolve these disputes and many other outstanding disputes related to the interconnection of renewable energy facilities in North Carolina and South Carolina. While each Settling Developer was situated differently with respect to the issues impacting them and the remaining projects in the distribution interconnection queue, all Settling Developers agreed to engage in good faith negotiations to attempt to resolve these issues. Duke and the Settling Developers were ultimately able to achieve a comprehensive Settlement Agreement. The settlement resolves interconnection disputes impacting over 150 distribution projects with fair and reasonable compromises agreed to by all parties. The Settlement supports judicial and economic efficiency by avoiding protracted and complex litigation regarding the fact-specific questions at issue with respect to each Interconnection Facility. The Settling Developers reiterate their support for the Joint Notice and Petition as a just, reasonable, and successful resolution of these issues.

The settlement achieves two important objectives: (1) it resolves pending and potential disputes concerning more than 100 Final Accounting Reports for distribution-connected Interconnection Requests for which construction was completed from 2018 through 2020; and (2) it provides a clear path for interconnection for certain pending legacy distribution Interconnection Requests. While the majority of the major utility-

³ Strata filed fifteen Complaints against DEP in March and April, 2020.

scale solar developers in North Carolina and South Carolina are already parties to the Settlement Agreement, any Interconnection Customer that is not currently a party may join the Settlement Agreement and receive the same benefits and be bound by the same obligations as the Settling Developers.

The Settlement Agreement provides the following commitments and concessions, among others:

- Final Accounting Reports.
 - Duke and the Settling Developers agreed to a tiered cost capping structure. Under this cost capping structure, the Interconnection Customers are required to pay the cost exceedance up to a certain specified percentage, and Duke will accept cost responsibility for the remaining construction cost amounts over the applicable percentage.
 - Duke commits to not seek recovery of any such amounts from retail or wholesale customers.
 - The Interconnection Customers are required to pay all Administrative Overhead costs and commissioning and study costs, along with all applicable taxes.
 - The Interconnection Customer must withdraw all pending Notices of Dispute and dismiss all Complaints.
- Additional cost capping for other Interconnection Customers.
 - Interconnection Customers that have projects that received an Interconnection Agreement after July 2019 are eligible for additional cost capping benefits.
- Legacy Distribution Interconnection Requests.
 - A certain portion of each participating Interconnection Customer's legacy distribution projects will be able to interconnect according to defined timelines, while all other pending distribution-connected projects will be entered into the Transitional Cluster Study or voluntarily withdrawn.

B. Public Staff's Comments

In the Public Staff’s comments, the Public Staff confirms that the Settlement Agreement will not have an adverse impact on the ratepayers. The Public Staff pointed out that Duke will not seek recovery for any of the costs resulting from the cost-capping provisions from its retail or wholesale ratepayers, and that Duke will not seek reimbursement from its customers for any portion of the costs not recovered from the participating Interconnection Customers.⁴ The Public Staff believes that these measures are consistent with the Commission’s finding that it is appropriate that the utilities “to the greatest extent possible, to continue to seek to recover from Interconnection Customers all expenses (including reasonable overhead expenses) associated with supporting the generator interconnection process” under the NCIP.⁵

C. GreenGo’s Comments

In GreenGo’s comments, GreenGo states that it “understands and appreciates the palliative and beneficial role that settlements play in avoiding unnecessary litigation and preserving the parties’ and the Commission’s scarce resources”⁶ Nonetheless, GreenGo cites concerns that the settlement, particularly the limited waivers for which Duke and the Settling Developers seek Commission approval, will benefit Settling Developers to the detriment of Interconnection Customers who are not parties to the agreement. Specifically, GreenGo asserts that the Commission should “make these same benefits available to all interconnection customers.”⁷ While we will not respond to each

⁴ Public Staff’s comments, p. 10.

⁵ Public Staff’s comments, p. 10.

⁶ GreenGo’s comments, p. 5.

⁷ *Id.* at 6.

assertion included in GreenGo's comments, the Settling Developers provide the following responses.

First, as GreenGo expressly notes in its comments, GreenGo and its projects may join the Settlement and access its benefits.⁸ GreenGo states that the settlement is only available to interconnection customers that are willing to agree to subject all distribution projects to Queue Reform. However, nowhere in the settlement do the Settling Developers expressly endorse Queue Reform, and nothing in the Settlement prevents a Settling Developer from opposing Queue Reform if they so choose. Indeed, GreenGo, which has already filed comments opposing Queue Reform on June 25, 2020, may nonetheless join the Settlement. Although the Settlement contains multiple references to Queue Reform, the effectiveness of the settlement is not contingent upon the approval of Queue Reform or the Settling Developers' express support for Queue Reform, and GreenGo's assertions to the contrary are incorrect.⁹

GreenGo also references the 2018 MOS Settlement Agreement and argues that the relief contained in that settlement relating to transmission-constrained projects is "relief GreenGo contends is already owed under the MOS Settlement."¹⁰ The Settling Developers acknowledge the fact that GreenGo brought a lawsuit in the North Carolina Business Court alleging a breach of the MOS Settlement Agreement relating to transmission-constrained projects, and take no position on the merits of GreenGo's

⁸ *Id.* at 13.

⁹ *See, e.g.* Section 2(a)(iii): "For the avoidance of doubt, in the event that Queue Reform is not implemented on or before July 1, 2022, such remaining Pending Distribution Projects may continue through the existing interconnection process under the NCIP or SC GIP, as applicable."

¹⁰ GreenGo's Comments, p. 6.

claims. However, all parties to the MOS Settlement Agreement with projects deemed transmission-constrained were able to make a business decision regarding the resolution of those issues, and any party that chooses to litigate such issues is free to do so. The approval of the Settlement Agreement would not prevent GreenGo from pursuing its lawsuit in state court or otherwise undermine its claims.

The settlement is intended to provide an opportunity for all eligible Interconnection Customers in the distribution interconnection queue to take advantage of the agreement if they choose to do so. The settlement efficiently resolves a large number of longstanding interconnection issues and is inclusive in its application and availability. Each Settling Developer is situated differently with respect to projects that are subject to the various provisions of the settlement, and the analysis of costs and benefits of entering into the agreement was different for each party. However, the settlement is, and remains, available to any and all Interconnection Customers, and it represents a reasonable and appropriate resolution of these issues.

It should be noted that GreenGo, in effect, requests preferential treatment for itself that is afforded to no other Settling Developer – the right to receive the benefits of the settlement without being incurring any obligations. The precedent that would be set if the Commission were to confer upon GreenGo the benefits negotiated by the Settling Developers and Duke, without any concomitant obligations, would severely undermine the prospects for settlement of any similar issues arising in the future.

The Settling Developers reiterate the description of the collaborative process that resulted in the Settlement Agreement:

The Settlement Agreement is an important accomplishment that is reflective of a highly collaborative process between the Companies and

the Settling Developers and a significant investment of time and effort by both sides. While interconnection issues in North Carolina have in the past been contentious, the Settlement Agreement was crafted through the mutual, good-faith efforts on the respective parties to identify a more collaborative approach to issues that would otherwise have had the potential to result in expensive litigation and disputes.”¹¹

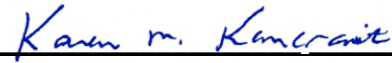
GreenGo’s complaints should not be permitted to disrupt this important accomplishment between Duke and most of the solar developers in North Carolina and South Carolina.

The Settlement Agreement is a reasonable resolution to numerous issues regarding Duke’s treatment of legacy distribution projects.

WHEREFORE, the Settling Developers fully support the Settlement Agreement, and respectfully request that the Commission approve the limited waivers of the NCIP needed to efficiently implement the Settlement Agreement by October 15, 2020.

¹¹ Joint Notice and Petition, p. 19

Respectfully submitted this 2nd day of October, 2020.



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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Reply Comments have 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:

This the 2nd day of October, 2020.

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