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October 2, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

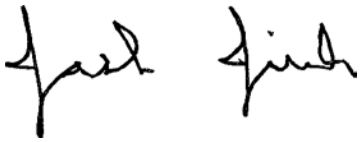
RE: Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Concerning Joint Notice of Settlement and Petition for Limited Waiver
Docket No. E-100, Sub 101

Dear Ms. Campbell:

Enclosed for filing in the above-referenced docket, please find the Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Concerning Joint Notice of Settlement and Petition for Limited Waiver. Certain information included in the Reply Comments constitutes trade secrets, and such information is being filed under seal pursuant to N.C. Gen. Stat. § 132-1.2.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,



Jack E. Jirak

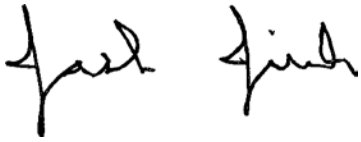
Enclosure

cc: Parties of Record

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Reply Comments Concerning Joint Notice of Settlement and Petition for Limited Waiver, in Docket No. E-100, Sub 101, has been served by electronic mail, hand delivery, or by depositing a copy in the United States mail, postage prepaid, properly addressed to parties of record.

This the 2nd day of October, 2020.



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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 101

In the Matter of	)	REPLY COMMENTS OF DUKE
	)	ENERGY CAROLINAS, LLC AND
	)	DUKE ENERGY PROGRESS, LLC
Petition for Approval of Generator	)	CONCERNING JOINT NOTICE OF
Interconnection Standards	)	INTERCONNECTION SETTLEMENT
	)	AND PETITION FOR LIMITED
	)	WAIVER

Pursuant to the North Carolina Utilities Commission's (the "Commission") September 14, 2020 *Order Requesting Comments on Petition for Limited Waiver* ("Order"), Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, "Duke" or the "Companies") provide the following reply comments ("Reply Comments") in response to the comments filed on September 25, 2020 by the Public Staff – North Carolina Utilities Commission (the "Public Staff") and GreenGo Energy US, Inc. ("GreenGo") concerning the limited waivers requested in the Joint Notice of Interconnection Settlement and Petition for Limited Waiver filed on September 3, 2020 ("Joint Petition") submitted on behalf of Duke and the Settling Developers[1] (as that term is defined in the Joint Petition).

1. Introduction and Overview

The Joint Petition provided notice of the Interconnection Settlement Agreement dated September 3, 2020 ("Settlement Agreement") and requested three limited waivers of the North Carolina Interconnection Procedures ("NC Procedures") in order to implement

[1] Birdseye Renewable Energy, LLC; Carolina Solar Energy LLC; Cypress Creek Renewables, LLC; Pine Gate Renewables, LLC; Southern Current LLC; National Renewable Energy Corporation; Strata Solar, LLC and Strata Solar Development, LLC; DEPCOM Power, Inc.; and Ecoplexus, Inc.

the Settlement Agreement. The Commission's Order requested comments concerning "the limited waivers to the NCIP requested in the Joint Notice and Petition." In its comments, the Public Staff did not oppose the requested waivers, but, instead, requested that Duke clarify and further explain various aspects of the Settlement Agreement. Section 2 provides more details in response to the Public Staff's requests but, in summary, Duke is confident that the Settlement Agreement will not adversely impact power quality, safety and reliability for all customers on the Companies' systems and has, along with the Settling Developers, intentionally designed the Settlement Agreement so as not to adversely impact any non-settling Interconnection Customers.

The only party that opposes the requested waivers is GreenGo. Through its comments, GreenGo once again affirms its position as an extreme outlier relative to other solar developers in the state of North Carolina. While the Companies and the Settling Developers rolled up their sleeves and undertook significant good faith negotiations in order to achieve a comprehensive Settlement Agreement that resolves numerous disputed issues and paved the way to a consensus approach to Queue Reform, GreenGo remains on the sidelines, holding fast to its dogmatic and largely rejected views regarding interconnection policies and procedures in North Carolina, lobbing baseless allegations and seeking to re-litigate long-settled issues while simultaneously seeking to evade the Commission's primary jurisdiction over key questions related to the interconnection process for state-jurisdictional Interconnection Requests. Much like its comments regarding Queue Reform, GreenGo's comments regarding the Settlement Agreement and requested waivers are long on rhetoric and hyperbole but short on substance and specifics.

The Commission has long encouraged the use of settlements[2] and further recognized the value of settlements in the context of the complex and technical issues involved in interconnection.[3] Under the Settlement Agreement, both Duke and the Settling Developers have given up certain rights and taken on certain obligations that would otherwise not be the case under the NC Procedures. Such gives and takes are at the heart of what it means to reach a settlement. The Settlement Agreement is a comprehensive whole, and all participating Settling Developers agreed to each and every component of the Settlement Agreement.

Contrary to GreenGo's assertions, all Interconnection Customers are being treated equally, as the Settlement Agreement is expressly made available to all similarly-situated Interconnection Customers. What GreenGo actually wants is the right to treat the Settlement Agreement like a buffet—selecting those aspects of the Settlement that it finds desirable and rejecting the others. This approach is not permitted under the terms of the Settlement Agreement and, moreover, is misguided as a matter of policy in that it would discourage future settlements.

Duke and the Settling Developers have carefully crafted the Settlement Agreement to ensure that it does not impact non-settling parties. Therefore, Interconnection Customers (and other third party developers not a part of the Settlement that own or control eligible Interconnection Customers) are being treated reasonably and fairly. Such parties are free to join the Settlement Agreement in its entirety or remain outside of the Settlement

[2] *Order Declining to Adopt Proposed Settlement Rules*, at 10 Docket No. M-100, Sub 145 (March 1, 2017).

[3] *Order Regarding Duke Settlement Agreement and Requiring Testimony in Cost Recovery Proceedings*, Docket No. E-100, Sub 101 (Aug. 27, 2018).

Agreement and continue to be processed in accordance with the NC Procedures.[4] Despite all of its rhetoric, GreenGo has failed to identify any circumstance in which grant of the requested waivers would cause GreenGo's projects (or any non-settling Interconnection Customer) to be processed in a manner that is inconsistent with the NC Procedures.

In summary, the Settlement Agreement represents a fair and balanced compromise that resolves a host of complex issues and is the product of substantial give and take between Duke and the Settling Developers. The Settlement Agreement is available to all similarly situated parties and, furthermore, has been carefully tailored to ensure that any Interconnection Customers that elect not to join continue to receive the rights granted by and be processed under the NC Procedures. The Commission should grant the requested waivers to allow the implementation of the Settlement Agreement and ignore the meritless assertions of GreenGo.

2. <u>Response to the Public Staff's Comments</u>

In its comments, the Public Staff does not indicate any particular opposition to the requested waivers and note that it "supports the informal resolution of these interconnection disputes, provided that safety and reliability of the system is maintained, non-participating customers are not burdened with additional costs, and that the settlement does not result in the discriminatory treatment of other interconnection customers."[5] Duke

[4] Because the Settlement Agreement by its terms only applies to certain state-jurisdictional, utility-scale distribution Interconnection Customers, as practical matter, not every Interconnection Customer is eligible to join the Settlement Agreement. For instance, because there are no terms in the Settlement Agreement that would impact the rights and obligation of a transmission-connected Interconnection Customer, "joining" the Settlement Agreement would have no impact on such Interconnection Customer and is therefore not contemplated. However, as stated above, a developer that owns or controls eligible Interconnection Customers may only join the Settlement Agreement if it is willing to include all eligible Interconnection Customers under its ownership or control, consistent with what was required of all current Settling Developers.

[5] Public Staff Comments, at 5.

affirms that the Settlement Agreement is consistent with all such conditions, as was explained in the Joint Petition and further clarified in these Reply Comments.

However, the Public Staff requested clarification and further information regarding certain aspects of the Settlement Agreement. The following responses to the Public Staff's requests provide additional clarity regarding the terms of, and implications of, the Settlement Agreement.

a. Impact of Interconnection of Transmission Interdependent Allocated MW Projects

First, the Public Staff raises a question related to the Transmission Interdependent Allocated MW Projects (as defined under the Settlement Agreement). As explained in the Joint Petition,[6] Section 5(a) of the Settlement Agreement would allow a limited number of such transmission-constrained distribution projects to interconnect prior to the construction of necessary transmission upgrades. Therefore, under the Settlement Agreement, such projects are being permitted to bypass the Interdependency construct and move forward to interconnect prior to construction of previously-identified and assigned transmission upgrades (pending Commission approval of the waiver).

The Public Staff indicates that it "does not take issue with this waiver provision, since it appears to be structured in a way that provides Duke's system planning and operations personnel with sufficient flexibility to operate the system in a safe, reliable fashion."[7] The Public Staff goes on to request that Duke "provide additional technical support for the 'Allocated MW' that would potentially be eligible to move forward as Transmission Interdependent Allocated MW Projects for each utility. In particular, the

[6] Joint Petition, Para 16-26.

[7] Public Staff Comments, at 7.

Public Staff notes that the majority of the Allocated MW would be in the DEP system, which already has significant solar capacity and could pose further operational challenges to the utility's system operators."[8]

With respect to this issue, Duke affirms that the Settlement Agreement was crafted in close coordination with Duke's system operations organization and Duke is confident that system operations will continue to be reliably maintained after interconnection of the Transmission Interdependent Allocated MW Projects and all other Allocated MW Projects. With the tools that Duke's system operators have in place today (*e.g.*, curtailment protocols/procedures for managing operationally excess energy[9]) coupled with the specific transmission impact protocols to be developed with the respect to the Transmission Interdependent Allocated MW Projects, any operational challenges from incremental solar added as a result of this Settlement Agreement can be effectively managed by the Companies' system operators in order to maintain reliable system operations. The amount of Allocated MW was derived through negotiation and also reflects a reasonable compromise that ensures that substantial amounts of curtailment will not be required.

The Public Staff then goes on to request that Duke "address whether the Allocated MW that would be able to move forward under the waiver proposal could potentially impact either utility's system operations or daily least cost economic dispatch stack in such a way as to reduce operational efficiencies or increase costs. The discussion by each utility on the topic of 'impacts' should cover but is not limited to the following categories: operations & maintenance; fuel utilization; increases or decreases in the cycling of

[8] Public Staff Comments, at 7-8.

[9] *See* DEC & DEP's Procedures for Non-Discriminatory Implementation of System Emergency Curtailments of QFs Docket No. E-100, Sub 148 (filed Jan. 30, 2018).

traditional thermal assets; and whether the additional capacity will drive further need for future capital investments like static VAR compensators, energy storage, or locational voltage support to account for ramp restraints and or intermittency."[10]

From a big-picture perspective, it is important to note that Session Law 2017-192 ("HB 589") established a 6,760 megawatt ("MW") target for the addition of new renewable resources,[11] and this Settlement Agreement does not expand that target. Therefore, while questions regarding the operational impacts of the intermittent generation resources have been and will continue to be considered in more detail in other contexts, the reality is that the MW of renewable projects to be interconnected under the Settlement Agreement are not incremental resources in relation to the current statutory framework. Under HB 589, additional renewable resources will be added until the 6,760 MW target is reached, and the projects interconnecting under this Settlement Agreement are simply one piece of that equation. Stated differently, even it was determined that there were particular "impacts" of these resources, Duke still remains obligated to facilitate the addition of such amount of renewable generation.

Because HB 589 already established a 6,760 MW target and the Transmission Interdependent Allocated MW Projects will simply be part of the way in which that target is met, the Companies do not believe that it is necessary in this forum and context to perform detailed analysis of the "impacts" of these particular resources, including, as requested by the Public Staff, impacts on "operations & maintenance; fuel utilization;

[10] Public Staff Comments, at 8.

[11] *See* N.C. Gen. Stat. § 62-110.8(a) (providing for 2,660 MW of new renewable energy capacity through the competitive procurement of renewable energy program); § 62-110.8(b)(1)(establishing a 3,500 MW baseline of legacy non-controllable renewable capacity); § 62-159.2(d)(providing for 600 MW of new direct renewable energy procurement for large customers). 2,660 MW + 3,500 MW + 600 MW = 6,760 MW.

increases or decreases in the cycling of traditional thermal assets." The operational challenges of increasing amounts of intermittent renewable generation have been and will continue to be explored in depth in other regulatory forums, and the Companies and the Commission should continue to take appropriate steps as needed to resolve such issues (*e.g.*, the imposition of Solar Integration Services Charge on new solar capacity). But given that, under PURPA and HB 589, these renewables resources will be added to the system one way or another, the Companies do not believe there is any benefit or need to perform such analysis at this time, particularly with respect to a relatively small slice of the overall targeted amount (i.e., approximately 300 – 400 MW of the 6,760 MW total). Over the longer-term, additional renewable resources beyond the 6,760 MW target are likely to be added. The Companies' recently-filed 2020 Integrated Resource Plan lays out a base case along with a variety of additional portfolios, all of which contemplate the addition of substantial additional renewable resources over the longer-term.

The pending waiver request is intended to resolve a host of complex interconnection challenges and disputes, and the Companies do not believe that the Commission's decision in this particular context should hinge on an analysis of important but only tangentially-related technical and policy issues regarding the impacts of intermittent renewable generation that are better considered in larger context of overall system planning, particularly where the renewable resources to be added under the Settlement Agreement are simply fulfilling existing procurement mandates. Duke looks forward to continuing to work with the Public Staff and other stakeholders to ensure that new renewable generation is added to the Companies' systems as cost-effectively and reliably as practicable.

Finally, the Companies note that the Settlement Agreement does not make any change in the manner in which Allocated MW Projects are being processed and studied from a distribution perspective. That is, all Allocated MW Projects have been or will be subject to the standard System Impact Study, and where distribution upgrades are identified as being necessary to accommodate such interconnections, such upgrades will be assigned and paid for by the Interconnection Customer. Therefore, in response to the Public Staff's questions regarding whether the interconnection of the resources will drive the need for future capital investments for local static VAR compensators, energy storage or locational voltage support, the Allocated MW Projects will be responsible for all such costs to the extent that such equipment is identified as being needed specifically to accommodate the interconnection in accordance with the NC Procedures, with the exception of the transmission upgrades associated with the Transmission Interdependent Allocated MW Projects.[12]

b. Serial Queue Waiver

The Public Staff requested that Duke "describe in greater detail the measures it will implement to ensure that the Serial Queue Waiver will not negatively impact non-participating Interconnection Customers."[13]

As noted in the Joint Petition, the Settlement Agreement only allows projects to be studied and potentially interconnected out of serial queue order in a very limited set of

[12] For the sake of clarity, those transmission upgrades that are needed may ultimately be resolved in the future, either through the interconnection process or through other policy channels. But such transmission upgrades are not required at this time to accommodate the interconnection of the Transmission Interdependent Allocated MW Projects.

[13] Public Staff Comments, at 9.

circumstances (*see* Section 3(c)(i)(2)-(3) of the Settlement Agreement).[14] Specifically, a project would only be allowed to pass over an earlier queued project (*i.e.*, "queue-jump") where the same Settling Developer owns both projects (and therefore is "jumping" its own project) or where the project being jumped is owned by another Settling Developer (under the conditions specified in Section 3(c)(i)(2) of the Settlement Agreement). Furthermore, the Settlement Agreement provisions expressly recognize that any such queue-jumping must not "disadvantage any other Interconnection Customer." Thus, according to the express terms of the Settlement Agreement, there will be no circumstance in which an Interconnection Customer is permitted to "jump" an earlier queue non-settling Interconnection Customer or otherwise disadvantage a non-settling Interconnection Customer.

c. Material Modification Waiver-Downsize by Greater than 10%

Finally, the Public Staff requested that Duke "provide further evidence supporting its position that non-participating customers would not be impacted by the waiver [of the 10% downsize limitation]."[15]

It should be noted that this waiver is designed to address a very narrow subset of projects under the Settlement Agreement and the downsize right would, at the most, only be exercised in a handful of circumstances. On top of the fact that this right is likely to be exercised in only a few situations, the likelihood of a downsize greater than 10% impacting a later-queued project in a meaningful way is extremely small. This is because the only circumstance in which a downsize could impact a later-queued project is where such

[14] Joint Petition, Para 27 – 29.

[15] Public Staff Comments, at 9.

downsize allows an earlier-queued project to avoid an upgrade that is then assigned to the later-queued project. But under the System Impact Study mitigation option process, downsizes greater than 10% are already permitted in order to avoid substantial upgrades.[16] Therefore, such a size adjustment to avoid a substantial upgrade would likely have already occurred through the mitigation option process where necessary.

In contrast, the greater than 10% downsize contemplated in the Settlement Agreement is only intended in the very narrow circumstance in which a Settling Developer does not have enough Allocated MW to support an existing project (*see* Section 2(b)(ii)(2) of the Settlement Agreement) and thus will likely only occur, at a maximum, once per Settling Developer. Thus, if this downsize right is utilized, there will only be a handful of cases in which it occurs and, moreover, it is unlikely to result in a differing assignment of upgrades to a later-queued project given that, to the extent applicable, the mitigation process will have already resolved such issues.

Nevertheless, for the avoidance of doubt and the sake of clarity, Duke has consulted with the Settling Developers and all have agreed that they will commit to not exercising the greater than 10% downsize right where it is determined that such downsize would adversely impact the upgrade costs assigned to a non-settling Interconnection Customer.

3. <u>Response to GreenGo Comments</u>

a. GreenGo's position that non-settling parties should be free to pick and choose from the Settlement Agreement is not permitted by the terms of the Settlement Agreement, is unreasonable from a practical perspective and is contrary to Commission precedent encouraging settlements.

[16] *See Order Approving Revised Interconnection Standard and Requiring Reports and Testimony*, at 64 Docket No. E-100, Sub 101 (June 14, 2019) (accepting Duke's continuation of mitigation option process during System Impact Study).

GreenGo states in its comments that it "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." GreenGo then concludes that "the simple cure…is to make these same benefits available to all interconnection customers."[17]

The reality, as was explained in the Joint Petition, is that all of the benefits of the Settlement Agreement are fully available to GreenGo and all other Interconnection Customers. However, what GreenGo really means is that it wants all of the benefits of the Settlement Agreement without taking on any of the obligations of the Settlement Agreement. GreenGo desires the right to simply pick and choose those aspects of the Settlement Agreement that it finds desirable (*i.e.*, all of those sections where Duke has given up its rights) while rejecting those it find undesirable (*i.e.*, all of those sections where the Settling Developers have given up rights or assumed additional obligations). Such a position is unreasonable in that it contradicts the terms of the Settlement Agreement itself and would substantially undermine the value of settlements in future Commission proceedings.

The Settlement Agreement, like all commercial agreements, represents a finely-tuned balance of gives and takes between parties with adverse legal positions and differing interests. The Settling Developers have agreed to give up certain rights in exchange for certain commitments from Duke. Duke has also given up certain rights in exchange for certain commitments from the Settling Developers. The Agreement therefore reflects a

[17] GreenGo Comments, at 5, 6.

balance of rights and obligations that the Settling Developers and Duke have agreed represents a reasonable and equitable outcome.

In fact, Section 6(h) of the Settlement Agreement memorializes this fact: "[t]he Parties acknowledge that reaching this Agreement involved substantial compromise on the part of each Party and, as a result, the various terms and provisions of this Agreement are interdependent and cannot be read or enforced independently without materially adversely affecting the benefit of a Party's bargain." All Settling Developers have agreed to be subject to the entirety of the terms of the Settlement Agreement, and GreenGo's unabashed request to pick and choose those portions of the Settlement Agreement is simply not permitted by the Settlement Agreement itself. In fact, the Commission itself has also recognized the validity of non-severability clauses in the context of settlements subject to Commission oversight.[18]

Putting aside the fact the Settlement Agreement prohibits the "picking and choosing" requested by GreenGo, it is helpful to consider specific aspects of the Settlement to understand the unreasonableness of GreenGo's position. For instance, Duke has made available under the Settlement Agreement cost capping commitments for certain yet to be completed projects.[19] Under the NC Procedures and Commission-approved Interconnection Agreement as they exist today, Interconnection Customers are responsible

[18] *Order Declining to Adopt Proposed Settlement Rules*, at 14-15 Docket No. M-100, Sub 145 (March 1, 2017)(explaining "a non-severability clause does not prevent the Commission from approving the settlement provisions that it concludes are in the public interest, and rejecting those that are not. Rather, it protects the parties by allowing them to decide whether the Commission's partial approval of the settlement is acceptable to them. If not, then the parties can decide to withdraw from the settlement").

[19] Settlement Agreement, Section 3(c).

for 100% of the actual costs of interconnection[20] with no cap on such costs. Thus, in a substantial departure from the allocation of risk currently reflected in the NC Procedures, Duke has given up its right to collect 100% of the actual cost of interconnection as part of the overall bargain of the Settlement Agreement for certain settling projects[21] and has therefore assumed substantial execution and construction risk on 100+ complex interconnection construction projects all across the state. This concession from Duke was made in the context of the overall Settlement Agreement in exchange for numerous concessions from the Settling Developers. GreenGo's position that it should be permitted to benefit from such a substantial shift in risk to Duke beyond the terms of the NC Procedures without giving anything in return is unreasonable on its face, even without taking into account the broader policy implications of such a request (discussed below).

To take another example, Duke has made certain commitments regarding the timeline for interconnection of certain Interconnection Customers.[22] The timeline commitments that Duke has made are not required under the NC Procedures, but Duke has made such commitments as part of the overall bargain of the Settlement. Importantly, however, the Settling Developers have also made certain commitments to Duke in connection with such projects. For instance, the Settling Developers have committed to take certain actions in a more expedited fashion than is required under the NC Procedures

[20] *See* NC Procedures § 5.2.4 (requiring pre-payment for Upgrades and prepayment and/or financial security for Interconnection Facilities); NC Procedures, Attachment 9, North Carolina Interconnection Agreement, §§ 6.1.1, 6.1.2 (assigning 100% of Upgrade and Interconnection Facilities charges to Interconnection Customer and providing for prepayment at the time of Interconnection Agreement execution as well as final accounting true up to actual costs after the Interconnection Facilities Delivery Date).

[21] Settlement Agreement, Section 4.

[22] Settlement Agreement Sections 3.

(*e.g.*, to execute the Interconnection Agreement and pay amounts due more quickly than is required under the NC Procedures).[23] All of these pieces fit together to create the overall bargain of the Settlement Agreement agreed to by all of the signatory parties, and it is unreasonable to expect Duke to meet those commitments where a party is not willing to take on all of the related obligations.

Not only is GreenGo's "pick and choose" approach not permitted by the Settlement Agreement itself and unreasonable from a practical perspective, it would also severely undermine the value of many types of settlements in the regulatory context. If a party were permitted to remain on the sidelines of settlement efforts but then, once other parties had done the work of reaching consensus, simply select those portions of the settlement that it desires while rejecting others, that would completely nullify the value of such settlements and substantially disincentivize parties from engaging in the hard work of identifying mutually acceptable compromises. Potentially settling parties would have no assurance that the carefully negotiated balance of rights and obligations would ultimately be respected and thus be unwilling to make meaningful compromises.

b. The Settlement Agreement is being applied equally to all Interconnection Customers in a reasonable manner consistent with prior settlements.

GreenGo states that the "Commission should adopt remedies that apply equally to all Interconnection Customers." Putting aside the fact that it is not accurate to characterize the set of rights and obligations in the Settlement Agreement as "remedies," GreenGo's position ignores the structure of the Settlement Agreement itself and, furthermore, would effectively prohibit future settlements related to interconnection.

[23] Settlement Agreement, Sections 3(a)(v) and 3(b)(iii).

Most importantly, the Settlement Agreement does apply equally to all Interconnection Customers. That is, every Interconnection Customer may join the Settlement Agreement and avail itself of all of the rights and obligations identified therein to the extent applicable to such Interconnection Customer. The Settlement Agreement expressly provides for the addition of other parties to the Settlement Agreement. If an Interconnection Customer (or a solar developer owning or controlling multiple Interconnection Customers) elects not to join the Settlement Agreement, such projects will continue to be processed in accordance with the terms of the NC Procedures. That is the "remedy" available under the Settlement, and it is applied equally to all Interconnection Customers.

Any settlement in the interconnection space will result in outcomes for the parties to such settlement that are different than those that would occur in the absence of a settlement—that is the entire point of a negotiated settlement. Suggesting that the Settlement Agreement should be rejected because it results in a differing outcome for settling versus non-settling parties is tantamount to saying that settlements should not be allowed unless all Interconnection Customers agree to the settlement—which would be impractical and effectively render impossible any interconnection-related settlement (given the impossibility of obtaining agreement with all of the many hundreds of Interconnection Customers in the queue at any given point in time).

GreenGo cites to N.C. Gen. Stat. § 62-140, which states: "[n]o public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage."[24] GreenGo

[24] GreenGo Comments, at 7.

then asserts that "[w]hile 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.'"[25]

There are numerous ways in which GreenGo's arguments in this respect are flawed. As an initial matter, GreenGo has identified no authority or precedent to establish that N.C. Gen. Stat. § 62-140 is applicable to the interconnection process for state-jurisdictional interconnection requests. Putting aside that foundational issue, the waivers being requested do not constitute an "unreasonable preference or advantage" because (1) the benefits of the waivers are available to all Interconnection Customers that elect to participate in the Settlement Agreement and (2) the waivers have been carefully designed so as not to adversely impact the existing rights of non-settling parties. The Settlement Agreement would only be discriminatory and unreasonable if it either offered the terms of the settlement only to the initial signatory parties and prohibited further similarly situated parties from joining or if it eroded the existing rights of non-settling parties under the NC Procedures. But that is not the case here.

Any settlement related to interconnection will, by definition, result in an outcome that is different than that contemplated under the NC Procedures. And if a different outcome will result, it is inevitably the case that those parties that choose not to take part in the settlement will thereby receive a different outcome. But that does not render such outcome unfair or unreasonable. Put another way, the disparate "treatment" occurring with respect to GreenGo arises not from Duke's unwillingness to treat GreenGo similarly to

[25] *Id.*

settling parties but instead due to GreenGo's refusal to join the Settlement Agreement. This situation is akin to a utility making a retail rate schedule available to a subset of similarly-situated customers and having one such eligible customer refuse to participate in such rate option but then accuse the utility of being discriminatory when such customer does not receive the benefits of the retail rate schedule that such customer refused to participate in.

While GreenGo references the Nameplate Settlement Agreement (sometimes referred to as the "Method of Service" or "MOS" Settlement) in its comments, the Nameplate Settlement Agreement is, in fact, an example where Duke and other Interconnection Customers (including numerous GreenGo projects) agreed to an arrangement that had a particular impact only on a subset of Interconnection Customers but did not, by its terms, apply to non-signatory parties. Specifically, only a subset of Interconnection Customers owned or under development by the named settling developers were entitled to certain exemptions from the Companies' generally applicable technical standards. Thus, contrary to GreenGo's assertions, the Nameplate Settlement Agreement actually did result in differing outcomes for Interconnection Customers—namely, those that were a party to the Nameplate Settlement (referred to as "Covered Projects") were studied using certain older technical policies, while all other Interconnection Customers that were not parties to the Nameplate Settlement were studied under the updated technical policies.[26] Numerous GreenGo projects were a part of the Nameplate Settlement

[26] *See* Letter from B. Somers filing Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Settlement Agreement dated January 30, 2018, Docket No. E-100, Sub 101 (filed Feb. 2, 2018) ("Nameplate Settlement"), (Sections 2, 3 ,4 Addressing procedures for studying "Covered Project" Interconnection Requests, modifying the distribution substation nameplate capacity limit for Covered Projects, and agreeing to other limited modifications to the Method of Service Guideline requirements for studying Covered Projects).

Agreement and have benefitted from terms of that agreement. And, similar to the current Settlement Agreement, the Nameplate Settlement established a procedure for all similarly situated Interconnection Customers to join that settlement after it was initially executed by Duke and settling developers.[27]

In sum, GreenGo's projects willingly participated with no objection in an interconnection-related settlement that resulted in differing treatment of Interconnection Customers (*i.e.*, under the interpretation of GreenGo, the "remedy" was not "applied equally to all Interconnection Customers") where it believed that it would obtain sufficient benefit. But GreenGo now objects to a similar arrangement simply because GreenGo, as the lone outlier among all of the major solar developers in North Carolina, believes that it would not receive sufficient benefit from a Settlement Agreement. GreenGo's position is not reasonable, consistent with its prior actions, or fair to the parties to the Settlement Agreement and should be rejected.

c. The heart of GreenGo's opposition is to advantage its transmission-constrained projects, for which GreenGo has sought to evade the Commission's jurisdiction.

It is also helpful to consider the bigger picture of what is being accomplished through the Settlement Agreement and how it relates to GreenGo's portfolio of projects.

[BEGIN CONFIDENTIAL] [redacted]

[27] *See* Nameplate Settlement, at § 8(i).

[redacted] **[END CONFIDENTIAL]**

The only other GreenGo projects are the six transmission-constrained projects that are currently on hold and which GreenGo references in its comments. All six projects are dependent on certain substantial transmission upgrades in Southeast DEP that have been identified and assigned to the proposed Friesian generating facility under the FERC interconnection procedures. The Commission has previously heard testimony concerning these transmission upgrades in the Friesian CPCN proceeding in Docket No. EMP-105, Sub 0. No party in the CPCN proceeding challenged the existence of such transmission constraints or the need for such upgrades. And the Companies' Queue Reform Proposal and its Queue Reform Reply Comments (filed in the above-captioned dockets on May 15, 2020 and August 31, 2020, respectively) provide substantial additional details concerning the reality and challenges of these substantial transmission constraints.[28]

GreenGo has consistently sought to escape the impacts of these transmission constraints by attempting to evade the Commission's authority and to adjudicate these complex technical questions related to the safety and reliability of the Companies' transmission system before the North Carolina Business Court.[29] In fact, GreenGo's myopic focus on these projects led to its brazen assertion in its Queue Reform comments

[28] Duke Queue Reform Proposal, at 14 – 15; Duke Queue Reform Reply Comments, at 20 – 30.

[29] Duke Queue Reform Reply Comments, at 33 – 35.

that the Commission should not act on Queue Reform lest it risk "interfering" with GreenGo's business court complaint.[30]

The challenges of the transmission constraints are well documented before the Commission and, in fact, are occurring across the nation. The practical effect of the transmission constraints occurring in DEP and DEC is that Interconnection Customers in certain parts of the state (including both transmission- and distribution-connected Interconnection Customers) are required to be placed on hold until the transmission upgrades assigned to earlier-queued Interconnection Customers can be resolved. But given the scope of such upgrades (tens and hundreds of millions of dollars), there is no easy solution and no way that a single distribution project studied in serial order can absorb such costs.[31]

However, under the Settlement Agreement, Duke and the Settling Developers identified a mutually acceptable solution whereby a portion of such transmission-constrained projects are permitted to proceed to interconnect in an orderly fashion that allows the Settling Developers to select their best projects while the remainder are entered into the Transitional Cluster study under Queue Reform or, at the developer's option, could be withdrawn. While the Settlement Agreement did not require support of Queue Reform (contrary to GreenGo's repeated assertions), the concessions reflected in the Settlement Agreement on this point was a key component in achieving consensus with NCCEBA and NCSEA regarding Queue Reform (as was described in the Companies' Queue Reform Reply Comments).[32] And just like in Queue Reform, GreenGo now stands on the outside,

[30] GreenGo Queue Reform Comments, at 10 – 11; Duke Queue Reform Reply Comments, at 34.

[31] Duke Queue Reform Reply Comments, at 24 – 25.

[32] Duke Queue Reform Reply Comments, at 23 - 24.

refusing to participate in a solution-oriented settlement deemed reasonable by virtually the entire utility-scale solar development community in North Carolina.

The point of this background is to give context to GreenGo's opposition to the requested waivers. Through the waivers, Duke and the Settling Developers will be able to implement the Settlement Agreement that will solve scores of disputes, facilitate additional solar interconnections and ease the transition to Queue Reform. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** Moreover, by electing to join the Settlement Agreement, GreenGo would be able to avail itself of the benefits of the Settlement Agreement with respect to its transmission-constrained projects. But simply because GreenGo believes that it, apart from all other major solar developers in North Carolina, is entitled to more, it now seeks to thwart this comprehensive, industry-wide settlement.

It is also worth noting that had GreenGo not sought to evade the Commission's jurisdiction by challenging the transmission constraints in the North Carolina Business Court almost a year ago, it could have more efficiently sought resolution of these interrelated issues in the context of the Queue Reform process or through another avenue before the Commission. As Duke indicated in its Queue Reform Reply Comments, the Commission, if so inclined, should take this opportunity to confirm that it has exclusive jurisdiction over the state-jurisdictional interconnection process and over any agreements affecting Duke's administration of the NC Procedures.

Finally, the Companies categorically reject the continued hyperbole and unsupported insinuations in GreenGo's comments that Duke resources will be unfairly

shifted from non-settling parties to settling parties.[33] The Companies have not and will not inappropriately allocate resources, and Duke will continue to make reasonable efforts to study all non-settling parties in accordance with process and timelines required under the NC Procedures.

d. Numerous statements in GreenGo's comments are inaccurate, misleading or irrelevant to the issues at hand.

In Sections 3(a) – (c) above, Duke has responded to the overall thrust of GreenGo's comments. Nevertheless, for the clarity of the record, it is important to address and respond to numerous statements in GreenGo's comments that are inaccurate, misleading or irrelevant to the issues at hand. For the sake of efficiency, representative examples of such statements are excerpted below along with brief responses.

- "*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.*" GreenGo Comments, at 4.

The Companies obligation to process Interconnection Requests in accordance with serial queue order will continue to be implemented. As explained in Section 2(b) of these Reply Comments, the study of projects out of queue priority order under the Settlement Agreement is only permitted under a very narrow set of circumstances—namely, where the project being jumped is either already owned by the same Settling Developer or is owned by a different Settling Developer (under the conditions specified in Section 3(c)(i)(2) of the Settlement Agreement).

- "*Yet Duke seeks to create a set of 'shadow' procedures—available only to interconnection customers that are willing to agree to subject all distribution*

[33] GreenGo Comments, at 9.

projects to cluster-based study (i.e., Queue Reform) and to waive the right to dispute certain costs imposed by Duke." GreenGo Comments, at 5.

The unsupported allegation of the existence of "shadow procedures" is consistent with the conspiratorial tone that often characterizes GreenGo's filings. To the extent that the phrase "shadow procedures" implies some sort of hidden interconnection process, this assertion is wholly inaccurate. All projects will continue to be studied and processed in accordance with the NC Procedures, with the exception of the clearly defined waivers identified in the Joint Petition. In addition, while the Settlement Agreement was an important component in obtaining full consensus with NCCEBA and NCSEA regarding Queue Reform, the Settlement Agreement is not conditioned on support of Queue Reform (*i.e.*, there is no provision in the Settlement Agreement that requires Settling Developers to support Queue Reform).

- "*To be clear, these are all things that Duke should do because they each are responsive to problems Duke has created.*" GreenGo Comments, at 5.

The blanket and baseless assertion that the Settlement Agreement is solving "problems Duke created" is not accurate. For instance, the challenges of transmission-constraints was not created by Duke, but instead is the product of the substantial amounts of interconnected generation in certain parts of the state.

- "*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.*" GreenGo Comments, at 8.

Duke has explained why the "differentiated" treatment is reasonable in this context and explained above that the Settlement Agreement is not conditioned on support of Queue Reform. Furthermore, as explained in Duke's Queue Reform Reply Comments, Duke has made commitments, at the request of NCCEBA, to ensure that all non-transmission constrained distribution projects with Interconnection Requests prior to January 1, 2018 would be able to complete the interconnection process in the Transitional Serial Study process.[34]

But this "rush" of interconnections was specifically requested by the solar development community to facilitate more interconnections under the serial study process and reflects the good-faith commitment of Duke to achieve the express desire of solar developers and, in fact, applies to numerous GreenGo projects. Yet, even beyond the commitments made in the Companies' Queue Reform Reply Comments, the Settlement Agreement facilitates even more interconnections under the serial study process (*i.e.*, in GreenGo's words, creates a "rush of interconnections") by extending that treatment to a subset of transmission-constrained distribution projects. In other words, Duke wholeheartedly affirms that, at the request of and in collaboration with virtually the entire solar development community in North Carolina, it has crafted a solution to achieve a large amount of interconnections in advance of the implementation of cluster studies—this collaborative accomplishment should be celebrated, not criticized. It is frankly perplexing that GreenGo would view any of these actions as a bad outcome and, once again, GreenGo could receive all of the benefits under the Settlement Agreement if it elects to join. Finally,

[34] Duke Queue Reform Reply Comments, at 9.

GreenGo's repeated allegation that Queue Reform is intended to "kill" remaining distribution projects is baseless and was addressed in detail in the Companies' Queue Reform Reply Comments.[35]

- "*Duke's 'Allocated MW' plan essentially recognizes that it is unfair [sic] Duke to subject legacy distribution connected projects to the cluster study process when the projects have languished for years in the queue.*" GreenGo Comments, at 12.

This statement is inaccurate in numerous respects. As explained in other proceedings, the factors causing extended interconnection timelines are largely outside of Duke's control. Furthermore, one of the key contributing factors—the challenges of solving major transmission constraints—is addressed in a compromise approach through the Settlement Agreement. Such compromise does not equate to an admission that "it is unfair [sic] Duke to subject legacy distribution connected projects to the cluster study process when the projects have languished for years in the queue." Furthermore, contrary to the assertion that being required to enter the cluster study process is "unfair," under the Settlement Agreement, a substantial portion (60%) of the remaining legacy distribution projects are voluntarily entering the Transitional Cluster Study (or may elect to withdraw). In each and every instance in which cluster studies have been implemented in other parts of the country, some subset of the legacy projects were required to enter the cluster study process. And, as highlighted in Duke's Queue Reform Proposal[36] and Queue Reform Reply Comments,[37] the consistently applied standard for allowing projects to continue in the legacy serial process has been where an Interconnection Customer has been assigned

[35] Duke Queue Reform Reply Comments, Section V.

[36] Duke Queue Reform Proposal, at 22 – 26;

[37] Duke Queue Reform Reply Comments, at 7-9.

system upgrades through System Impact Study and has executed a Facilities Study Agreement. GreenGo continues to fail to explain why its projects should be treated any differently.

- "*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.*" GreenGo Comments, at 12.

Once again, the compromise approach reflected in the Settlement Agreement does not, in any way, equate to an admission that any of Duke's historic study practices were invalid or in violation of the Nameplate Settlement.

- "*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.*" GreenGo Reply Comments, at 9.

Duke does not agree that the Settling Developers are receiving "expedited interconnection." Instead, Duke is simply providing certain assurances regarding interconnection timelines so long as the relevant Interconnection Customers meet certain criteria and the Settling Developers fulfill certain obligations to expedite the process that would not otherwise be required but for the Settlement Agreement. More importantly, Duke is not "chang[ing] the rules for every other project." Any non-settling Interconnection Customer will continue to be studied and processed in accordance with the NC Procedures.

- "*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.*" GreenGo Comments, at 12.

Duke appropriately implemented reasonable improvements to its interconnection cost estimating methodologies according to a reasonable time and has appropriately controlled interconnection project construction costs. More importantly, the cost capping under the Settlement Agreement expands far beyond the older projects that were estimated using the Companies' older methodologies and includes more than 100 projects that were estimated using the newer methodologies, many of which have not yet commenced construction.

- "*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.*" GreenGo Comments, at 13.

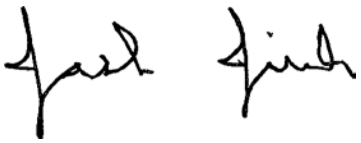
This statement rehashes GreenGo's uninformed and inaccurate comments from the Queue Reform proceeding. As explained in the Companies' Queue Reform Reply Comments, while it is true that the Companies have made extraordinary progress in studying legacy non-transmission constrained distribution projects and have committed to completing such projects prior to the Transitional Cluster Study, the remaining 700+ MW of legacy distribution projects are transmission-constrained. Being forced to study such projects in serial fashion would take years and would be an exercise in futility resulting only in a cascading series of withdrawals.[38]

[38] Duke's Queue Reform Reply Comments, at 25-26.

4. Conclusion

WHEREFORE, the Companies respectfully request that the Commission take these reply comments into account in their deliberations on the Companies' request for limited waivers and grant expedited approval of the requested waivers on or before October 15, 2020.

Respectfully submitted, this the 2nd day of October, 2020.



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