

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2 SUB 1297
DOCKET NO. E-7 SUB 1268

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---------------------------------|---|-----------------------------|
| In the Matter of |) | CLEAN POWER SUPPLIERS |
| Duke Energy Carolinas, LLC and |) | ASSOCIATION’S AND CAROLINAS |
| Duke Energy Progress, LLC 2022 |) | CLEAN ENERGY BUSINESS |
| Procurement Pursuant to Session |) | ASSOCIATION’S NOTICE |
| Law 2021-165, Section 2(c) |) | WITHDRAWING MOTION FOR |
| | | RECONSIDERATION |

Pursuant to the Commission’s Order Establishing Procedures for Motion for Reconsideration and Staying Issuance of Request for Proposals and Pro Forma Power Purchase Agreement, and in response to the concerns raised by Duke, the Public Staff, and CIGFUR in their June 15, 2022 filings, Intervenor Clean Power Suppliers Association (“CPSA”) and the Carolinas Clean Energy Business Association (“CCEBA”) (collectively, “Solar Intervenor”) hereby withdraw their Motion for Reconsideration (“Motion”) of the Commission’s June 9, 2022, Order Approving Request for Proposals and Pro Forma Power Purchase Agreement Subject to Amendments (“RFP Order”). However, in withdrawing their Motion, the Solar Intervenor believe it is appropriate to explain in further detail how a downward-only bid refresh may affect the dynamics of the upcoming procurement.

In its comments, Duke expresses concern that allowing an upward bid refresh may “create a potential for unconstrained upward price adjustments to a currently unknown procurement volume, and without the benefit of knowing how robust market participation will be.” Duke’s apparent concern is that if an upward refresh is allowed, bidders may raise their pricing beyond what would be justified by increased module costs resulting from tariffs, increasing costs to ratepayers.

Solar Intervenors submit that if the number of projects advancing to Step 2 of the RFP meaningfully exceeds the number of projects that need to be procured (i.e., there is a robust “reserve list” in the Step 2 evaluation) then competitive pressures will prevent this from happening. This is because any bidders that increase their pricing arbitrarily at the bid refresh will lose out to bidders who continue to price their projects competitively, and will not ultimately be awarded a PPA. However, Solar Intervenors acknowledge that if the RFP were under-subscribed or there were very few projects on the Step 2 reserve list, then bidders could increase their pricing arbitrarily without fear of losing out in the RFP, because there would be no cheaper alternatives. Although the Volume Adjustment mechanism would mitigate this possibility,¹ it is uncertain at this time both how robust RFP participation will be, and whether the approved procurement target will meaningfully exceed the 700 MW minimum procurement amount set by the Commission, such that the Volume Adjustment mechanism could come into play. So it is possible, if unlikely, that this situation could arise and result in additional cost to ratepayers.

There are other mechanisms to deter arbitrary price hikes even with an upward bid refresh (such as upper bound on price increases, or more complex bid structures), which should be considered in future RFPs if there is similar pricing uncertainty. However, the Solar Intervenors accept that that there is simply not enough time for the Commission and the parties to consider these alternatives, given the urgency of finalizing the RFP.

It should be noted, however, that the downward-only bid refresh has significant potential drawbacks, beyond increasing initial bid prices (as discussed in the Solar Intervenors’

¹ If there were a significant increase in pricing, the Volume Adjustment mechanism would effectively remove the top 20% of bidders from consideration. This would create competitive pressure not to be in the top quintile of bidders after the bid refresh.

Motion). As noted in Solar Intervenor's Motion, bidders will draw very different conclusions about the potential cost impacts of additional tariffs. Even assuming that tariffs are imposed, the actual impact on pricing is impossible to predict, because market participants (both module vendors and module buyers) will change their behavior in response to tariffs, and these changes in behavior will also impact module pricing.² RFP bidders will weigh these risks very differently. Some will price that risk very aggressively in the hope of getting to Step 2 of the evaluation process (perhaps betting that tariffs will not be imposed, while others will submit bids reflecting more conservative risk assessments.

Given the significant impact of panel pricing on project development, it is likely that these differences in the way developers price risk may have a bigger impact on project ranking in Step 1 of the RFP than the real economic competitiveness of the projects.³ And it is possible (depending on how many proposals are advanced to Step 2 of the evaluation process) that otherwise-competitive proposals will be eliminated from the RFP during Step 1, simply because those bidders took a more conservative approach to pricing the risk of Auxin tariffs. And if additional tariffs are ultimately not imposed, those more-competitive projects will have been eliminated from the RFP, and ratepayers will end up paying more for procured solar. There is also the possibility that if additional tariffs are imposed, those most-aggressive bidders will not be able to deliver on their bids and will drop out of the RFP without signing PPAs, undermining the success of the RFP and making timely compliance with HB 951 that much more difficult.

² For example, buyers may seek alternative suppliers located in countries not subject to tariffs (which could reduce pricing), while module suppliers in countries impacted by tariffs may reduce production or stop directing modules to U.S. markets (which would increase pricing).

³ The Solar Intervenor appreciate the Public Staff's suggestion that bidders be required "to explicitly include the expected tariff costs in their initial bids." However, because the cost impacts of action (or inaction) by the DoC are likely to be quite complex, it is not possible to include an explicit "tariff cost" in an initial bid.

In short, allowing a downward-only bid refresh reduces the risk of outsized cost increases (relative to lower initial bids), in exchange for increasing the possibility that: (a) competitive proposals will be eliminated from the RFP because those bidders take a more conservative approach to risk, leading to a less-efficient outcome; or (b) the RFP may ultimately be under-subscribed.

The risk of any of these bad outcomes will be lower if there is robust participation in the RFP, such that Duke can go into Step 2 of the RFP process with a large reserve list. For these reasons it is even more important that Duke, CRA, and the Commission take all appropriate steps to encourage robust participation in the 2022 RFP.

Respectfully submitted this the 16th day of June 2022.

FOX ROTHSCHILD LLP

/s/ Benjamin L. Snowden

Benjamin L. Snowden
North Carolina State Bar No. 51745
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
E-mail: BSnowden@foxrothschild.com

*Counsel for
Clean Power Suppliers Association*

CAROLINAS CLEAN ENERGY
BUSINESS ASSOCIATION

/s/ John D. Burns

John D. Burns
General Counsel
North Carolina State Bar No. 24152
811 Ninth Street, Suite 120-158
Durham, NC 27705
Telephone: 919-306-6906
E-mail: counsel@carolinasceba.com

CERTIFICATE OF SERVICE

I hereby certify that all persons on the Commission's docket service list have been served a true and accurate copy of the foregoing Notice Withdrawing Motion for Reconsideration by hand delivery, first class mail, deposited in the U. S. Mail, postage pre-paid, or by e-mail transmission with the party's consent.

This 16th day of June, 2022.

/s/ Benjamin L. Snowden

Benjamin L. Snowden
North Carolina State Bar No. 51745
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
E-mail: BSnowden@foxrothschild.com