

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 158

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Biennial Determination of Avoided Cost)
Rates for Electric Utility Purchases from) NOTICE OF DECISION
Qualifying Facilities – 2018)

HEARD: Tuesday, February 19, 2019, at 9:30 a.m. in Commission Hearing Room,
Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

Monday, July 15, 2019, at 1:30 p.m. in Commission Hearing Room, Dobbs
Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chair Charlotte A. Mitchell, Presiding; and Commissioners ToNola D.
Brown-Bland, Lyons Gray, and Daniel G. Clodfelter

APPEARANCES:

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BY THE COMMISSION: These are the current biennial proceedings held by the North Carolina Utilities Commission pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Energy Regulatory Commission's (FERC) regulations implementing those provisions, which delegated responsibilities in that regard to this Commission. These proceedings are also held pursuant to the responsibilities delegated to this Commission in N. C. Gen. Stat. § 62-156(b) to establish rates for small power producers as that term is defined in N.C.G.S. § 62-3(27a).

Section 210 of PURPA and the regulations promulgated thereunder by the FERC prescribe the responsibilities of the FERC and of state regulatory authorities, such as this Commission, to encourage the development of cogeneration and small power production facilities. Each electric utility is required under PURPA to offer to purchase available electric energy from cogeneration and small power production facilities that obtain qualifying facility status. PURPA provides that cogeneration and small power production facilities that meet certain standards and are not owned by persons primarily engaged in the generation or sale of electric power may become qualifying facilities (QFs), and thus become eligible for the rates and exemptions established in accordance with Section 210 of PURPA. For such purchases, electric utilities are required to pay rates which are just and reasonable to the ratepayers of the utility, are in the public interest, and do not discriminate against cogenerators or small power producers. The relevant FERC regulations require that the rates electric utilities pay to purchase electric energy and capacity from qualifying cogenerators and small power producers reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers. With respect to electric utilities subject to state regulation, the FERC delegated the implementation of these rules to state regulatory authorities. State commissions may implement these rules by the issuance of regulations, on a case-by-case basis, or by any other means reasonably designed to give effect to the FERC's rules.

The Commission has implemented Section 210 of PURPA and the related FERC regulations by holding these biennial proceedings. The instant proceeding is the latest such proceeding to be held by this Commission since the enactment of PURPA. In prior biennial proceedings, the Commission has determined separate avoided cost rates to be paid by the electric utilities subject to the Commission's jurisdiction to the QFs with whom they interconnect. The Commission has also reviewed and addressed other matters involving the relationship between the electric utilities and QFs, including terms and conditions of service, contractual arrangements, and interconnection charges.

This proceeding also results from the mandate of N.C.G.S. § 62-156, which was enacted by the General Assembly in 1979. This statute provides that, "no later than March 1, 1981, and at least every two years thereafter," the Commission shall determine the rates to be paid by electric utilities for power purchased from small power producers according to certain standards prescribed in the FERC regulations regarding factors to be considered in the determination of avoided cost rates. The General Assembly amended N.C.G.S. § 62-156 in 2017 through enactment of Session Law 2017-192 (HB 589) and again in 2019 through enactment of Session Law Session Law 2019-132 (HB 329).

On June 26, 2018, the Commission issued its Order Establishing Biennial Proceeding, Requiring Data, and Scheduling Hearing (2018 Scheduling Order). Pursuant to the 2018 Scheduling Order, Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP) (collectively, Duke or the Companies), Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC), Western Carolina University

(WCU), and New River Light and Power Company (New River) (collectively with Duke and DENC, the Utilities) were made parties to the proceeding. The 2018 Scheduling Order specifically directed DEC, DEP, and DENC to address issues as directed in Ordering Paragraph No. 16 of the Commission's October 11, 2017 Order in Docket No. E-100, Sub 148 (2016 Sub 148 Order) in proposing their avoided cost rates and terms in this proceeding. The Commission further stated that it would attempt to resolve all issues arising in this docket based on a record developed through public witness testimony, statements, exhibits, and avoided cost schedules verified by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments on the statements, exhibits, and schedules rather than a full evidentiary hearing. The 2018 Scheduling Order also established a procedural schedule for this proceeding.

The following parties filed timely petitions to intervene that were granted by the Commission: Carolina Utility Customers Association, Inc. (CUCA); Cube Yadkin Generation LLC (Cube Yadkin); Ecoplexus, Inc. (Ecoplexus); North Carolina Clean Energy Business Alliance (NCCEBA); North Carolina Small Hydro Group (NC Small Hydro Group); North Carolina Sustainable Energy Association (NCSEA); NC WARN, Inc. (NC WARN); and Southern Alliance for Clean Energy (SACE). Participation of the Public Staff is recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e). Participation of the North Carolina Attorney General's Office is recognized pursuant to N.C.G.S. § 62-20.

On November 1, 2018, Duke filed the Joint Initial Statement and Exhibits of DEC and DEP; DENC filed its Initial Statement and Exhibits; and WCU and New River jointly filed their proposed avoided cost rates. DENC subsequently revised its proposed standard offer rate schedules on March 7, 2019, and March 14, 2019.

On January 25, 2019, the Commission issued its Order on Procedural Schedule, allowing parties additional time to file reply comments; suspending the deadline for proposed orders; and requiring Duke to file a report identifying (1) issues where agreement exists or could reasonably be expected to be reached among the parties; (2) the issues in controversy that do not merit consideration at an evidentiary hearing, and (3) the issues in controversy that merit consideration at an evidentiary hearing.

On or before February 13, 2019, the following parties filed initial comments on the Utilities' Initial Statements and Exhibits: NC WARN, NC Small Hydro Group, Cube Yadkin, NCSEA, SACE, and the Public Staff.

On or before February 20, 2019, all Utilities filed Affidavits of Publication of the Notice of Hearing, and the public hearing was held on February 19, 2019, in the Commission's hearing room, as scheduled. Three public witnesses testified at the hearing.

On March 27, 2019, the following parties filed reply comments: Duke, DENC, NC Small Hydro Group, NCSEA, SACE, and the Public Staff.

On April 10, 2019, Duke filed the required report on the issues in controversy in this proceeding.

On April 18, 2019, Duke filed an Agreement and Stipulation of Partial Settlement with the Public Staff pertaining to rate design methodology (Rate Design Stipulation).

On April 24, 2019, the Commission issued an Order Scheduling Evidentiary Hearing and Establishing Procedural Schedule' scheduling an evidentiary hearing to begin July 15, 2019; identifying those issues in dispute that would be considered at the evidentiary hearing; requiring the filing of direct testimony of the Utilities on or before May 21, 2019, and of the Public Staff and intervenors on or before June 21, 2019; and requiring the filing of rebuttal testimony on or before July 3, 2019.

On May 21, 2019, DENC filed direct testimony of Bruce E. Petrie, and Duke filed the testimony and exhibits of Glen A. Snider, Steven Wheeler, David B. Johnson, and Nick Wintermantel.

Also on May 21, 2019, Duke filed the Stipulation of Partial Settlement with the Public Staff Regarding Solar Integration Services Charge (SISC Settlement).

On June 14, 2019, the Commission issued an Order Requiring Supplemental Testimony and Allowing Responsive Testimony, requiring the filing of the direct testimony of the Utilities on or before June 25, 2019, the filing of supplemental testimony of the Public Staff and intervenors on or before July 3, 2019, and the filing of supplemental rebuttal testimony on or before July 11, 2019; and requiring that parties specifically address the following question:

[W]hat avoided cost rate schedule and contract terms and conditions apply when a QF adds battery storage to a facility that has (i) established a legally enforceable obligation (LEO), (ii) executed a purchased power agreement (PPA) with the relevant utility, and/or (iii) commenced operation and sale of the facility's output to the utility pursuant to an established LEO and executed PPA.

On June 21, 2019, NCSEA filed the testimony of Ben Johnson, R. Thomas Beach, and Carson Harkrader; SACE filed the testimony of James F. Wilson and Brendan Kirby; and the Public Staff filed the testimony of Jeff Thomas and John R. Hinton.

On June 25, 2019, Duke filed the supplemental testimony of Glen Snider on the addition of storage to existing QFs, and DENC filed the supplemental testimony of James M. Billingsley.

On July 3, 2019, Duke filed the rebuttal testimony of witnesses Snider, Wheeler, Johnson, and Wintermantel; DENC filed the rebuttal testimony of witness Petrie; NCSEA filed the supplemental responsive testimony of Tyler Norris; SACE filed the supplemental responsive testimony of Devi Glick; Ecoplexus filed the supplemental responsive

testimony of Michael R. Wallace; and the Public Staff filed the supplemental responsive testimony of Dustin Metz.

On July 11, 2019, Duke filed the supplemental joint rebuttal testimony of witnesses Snider, Wheeler and Johnson. DENC filed the supplemental rebuttal testimony of witness Billingsley.

On July 12, 2019, Duke filed its letter to the NC Small Hydro Group in response to their request to extend the 2.0 performance adjustment factor beyond the term of the Hydro Stipulation,¹ which expires at the end of 2020.

On July 15, 2019, this matter came on for evidentiary hearing as scheduled.²

Other motions, filings, and orders not specifically mentioned are of record in this proceeding.

NOTICE OF DECISION

As indicated in its July 2, 2019 Order Modifying and Accepting CPRE Program Plan in Docket Nos. E-2, Sub 1159, and E-7, Sub 1156, the Commission is issuing this Notice of Decision to announce its decisions in this docket so that the CPRE Program may proceed on the timeline set forth in the July 2 Order. The Commission has made decisions in this proceeding relevant to the calculation of avoided capacity rates and avoided energy rates. As of the issuance of this Notice of Decision, the issues related to the proposed Solar Integration Service Charge (SISC) remain under consideration. The Commission nonetheless recognizes that issues related to the proposed SISC's application to the Tranche 2 CPRE RFP Solicitation have the potential to delay the Tranche 2 CPRE RFP Solicitation. To facilitate a decision on these issues, the Commission will, contemporaneous with the issuance of this Order, issue an Order in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 requesting comments from the parties to that proceeding on whether and, if so, how the SISC applies in the context of the CPRE Program.

In the interest of timely implementation of the CPRE Program, the Commission finds good cause to issue this Notice of Decision so that Duke and the Independent Administrator of the CPRE Program can calculate avoided capacity rates and avoided

¹ In the Matter of Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2014, Stipulation of Settlement Among Duke Energy Carolina, LLC, Duke Energy Progress, LLC and North Carolina Hydro Group, Docket No. E-100 Sub 140 (filed June 24, 2014) (Hydro Stipulation).

² At the hearing, the pre-filed testimony of all witnesses was received into evidence along with the witnesses' exhibits, with the exception of the pre-filed testimony of NCSEA witness Carson Harkrader. Pursuant to the ruling by the Chair made in open hearing, witness Harkrader's testimony will be treated as a consumer statement of position.

energy rates, adjust implementation of the CPRE Program, as necessary, and proceed with the evaluation of proposals submitted in the Tranche 2 CPRE RFP Solicitation.³ Therefore, the Commission hereby gives notice that it will issue an order in this docket concluding:

(1) That DEC and DEP should be required to offer long-term levelized capacity payments and energy payments for ten year periods as a standard option to all QFs contracting to sell one MW or less capacity. The standard levelized rate option of ten years should include a condition making the contracts under that option renewable for subsequent terms at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors, or (2) set by arbitration.

(2) That the proposed changes to DEC's and DEP's energy and capacity rate design, as indicated in the April 18, 2019, Rate Design Stipulation between Duke and the Public Staff, should be used in calculating DEC's and DEP's avoided energy and capacity rates in this proceeding.

(3) That DEC's proposed seasonal allocation weightings of 90% for winter and 10% for summer, and DEP's proposed seasonal allocation weighting of 100% for winter, should be used in calculating DEC's and DEP's avoided capacity rates in this proceeding.

(4) That Duke's assumptions regarding the availability of demand-side management (DSM) programs for reducing winter peak demand should be used for calculating avoided capacity rates in this proceeding, and Duke should be required to place additional emphasis on defining and implementing cost-effective DSM programs that will be available to respond to winter demands.

(5) That, as a result of changes to the on- and off-peak hours required pursuant to this Notice of Decision, the requirements of Rule R8-64(b)(6)(iii) and Rule R8-71(k)(2)(iii)(6) should be waived until amendments to those rules have been adopted, and applicants for a certificate of public convenience and necessity (CPCN) should be required to submit information regarding the projected annual hourly production profile of the proposed generating facility, until such time as revisions to the rules are finalized.

(6) That DEC and DEP's data related to the installed cost of a combustion turbine (CT) should be used in calculating avoided capacity rates in this proceeding.

³ Because the CPRE Program requirements do not apply to Virginia Electric and Power Corporation d/b/a Dominion Energy North Carolina, the Commission does not decide herein issues related to Dominion's avoided cost rates or PURPA implementation. Similarly, the Commission does not decide the numerous other issues that are in dispute in this proceeding that do not impact the calculation of rates for the CPRE Program. These issues, along with the Commission's discussion and conclusions supporting the determinations announced in this Order, will be addressed in the forthcoming full order.

(7) That DEC and DEP should be required to continue to include the line loss adjustments in their standard offer avoided energy calculations.

(8) That DEC and DEP should be required to utilize a PAF of 1.05 in their respective avoided cost calculations for all QFs, other than hydroelectric QFs without storage capability.

(9) That DEC and DEP complied with the requirements of N.C.G.S. § 62-156(b)(3) by appropriately identifying the first avoidable capacity need for each utility in their 2018 Integrated Resource Plans (IRPs).

(10) That DEC and DEP should be required to update their avoided capacity calculations to reflect any changes in the utility's first year of undesignated capacity need for the purpose of determining the first year of capacity need for negotiated contract and for the evaluation of proposals submitted in the Tranche 2 CPRE RFP Solicitation.

(11) There is insufficient evidence in this record for the Commission to find that any utility uprates shown in DEC or DEP's most recent IRPs are deferrable or avoidable for purposes of establishing a capacity rate; therefore, these uprates shall not be included in the determination of avoided capacity costs for purposes of this proceeding.

(12) That Duke should be required to recognize that a swine or poultry waste fueled generator, or a hydroelectric facility with a capacity of five MW or less in capacity that has a power purchase agreement in effect as of July 27, 2017, which commits to sell and deliver energy and capacity for a new fixed contract terms prior to the termination of the QF's existing contract term is avoiding a future capacity need for these designated resource types beginning in the first year following the QF's existing PPA, pursuant to N.C.G.S. § 62-156(b)(3), as amended.

(13) That DEC and DEP should be required to recognize that QFs that use a fuel source other than swine or poultry waste to generate electricity, and having made a commitment to sell and deliver energy and capacity over a future fixed term avoid an undesignated future capacity need beginning only in the first year when there is an avoidable capacity need identified in DEC's or DEP's most recent IRP.

(14) That Duke's current approach to the assumed January 2019 in-service date is reasonable for QFs eligible for the standard offer contract.

(15) That the approach for fuel forecasting approved in the 2018 biennial avoided cost proceeding should continue to be used in calculating DEC and DEP's respective avoided energy rates in this proceeding.

(16) That DEC and DEP should be required to recalculate their avoided energy rates to include the value of their current hedging programs using the Black-Scholes Model or a similar method that values the added fuel price stability gained through each year of the entire term of the QF power purchase agreement.

(17) That there is insufficient evidence to determine that the rates established in this proceeding should include an avoided distribution capacity cost adder applicable to all distribution or transmission connected QFs.

(18) That avoided transmission and distribution (T&D) capacity rates from the demand-side management/energy efficiency proceedings should not be used in calculating avoided T&D capacity costs.

(19) That for QFs not eligible for the standard offer contract, Duke should be required to consider site and project-specific characteristics during contract negotiations and include an avoided T&D capacity adder if a project can provide real and measureable avoided transmission capacity benefits.

(20) That Duke should not be required to include an “adder” for avoided energy costs based upon a generalized assumption that the integration of uncontrolled solar QF generating capacity, in the aggregate, suppresses or reduces prices in the wholesale power market.

This Notice of Decision is intended to advise the parties and interested persons of the Commission’s ultimate decision in this docket regarding the issues addressed herein. It does not include or provide the Commission’s findings of fact and reasoning, nor does it address all issues raised by the parties. Those components of the Commission’s decision will be set forth in the full order to be issued in this docket. The time for the filing of exceptions and notices of appeal with regard to the Commission’s decision in this docket shall run from the date of entry of the full order, not from the date of this Notice of Decision.

IT IS, THEREFORE, ORDERED as follows:

1. That within 15 days of the date of this Notice of Decision, DEC and DEP shall make a compliance filing in this docket that includes the following:
 - a. Revised schedules applicable to the purchase of power from QFs, in redline and clean versions, that comply with the rate methodologies and contract terms approved in this order;
 - b. Supporting calculations for the revised rate schedule applicable to the purchase of power from QFs; and
 - c. Revised purchase power agreements and terms and conditions, in redline and clean versions, that comply with the contract terms and conditions approved in this order for the standard offer contract for purchase of power from QFs; and

2. That the revised rate schedules, purchase power agreements, and terms and conditions required to be filed by this Notice of Decision shall become effective and be implemented 15 days after being filed unless a party files with the Commission specific objections as to the accuracy of the revisions or supporting calculations.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of October, 2019

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive style with a large initial 'K' and a distinct 'A'.

Kimberley A. Campbell, Chief Clerk