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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
DOCKET NO. E-100, SUB 194

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, Sub 194	)	
	)	
In the Matter of:	)	BRIEF OF
Biennial Determination of Avoided	)	THE ATTORNEY GENERAL'S
Cost Rates for Electric Utility	)	OFFICE
Purchases from Qualifying Facilities	)	
– 2023		

The North Carolina Attorney General's Office (AGO) respectfully submits this brief regarding the proposed avoided costs rates of Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP, together with DEC, the Companies) for purchases from qualifying facilities.

INTRODUCTION

Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), codified as 18 U.S.C. § 823a-3, and the Federal Energy Regulatory Commission's (FERC) implementing regulations, require electric utilities to purchase power from qualifying facilities (QFs). States are charged with setting the rates that the electric utilities must pay to those QFs. The rates paid to QFs must be "just and reasonable to the electric consumers of the electric utility and in the public interest," and must not "discriminate against qualifying cogenerators or qualifying small power producers."[1] However, rates may not exceed the purchasing utility's "incremental cost . . . of alternative electric energy,"[2] also known as the utility's "avoided costs."

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[1] 16 U.S.C. § 824a-3(b)(1)-(2).
[2] 16 U.S.C. § 824a-3(b).

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Avoided costs represent "the cost to the electric utility of the electric energy which, *but for* the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source."[3] Avoided cost rates should be set "at, but not above, the statutorily defined incremental or avoided cost of alternative energy"[4] in order to provide "maximum incentive for the development of cogeneration and small power production."[5]

The North Carolina Utilities Commission (Commission) is tasked with determining, at least every two years, the avoided cost rates for electric utilities in North Carolina as well as the terms and conditions under which those rates must be offered.[6] The Commission issued an order on August 7, 2023, initiating the current biennial proceeding. The Companies filed their proposed avoided cost rates on November 1, 2023. The Companies' filing also included a proposed Net Excess Energy Credit (NEEC) for net metering customers. The AGO and other parties filed their initial comments in this docket on February 21, 2024. Reply comments were filed on March 27, 2024. On April 10, 2024, the Commission issued an *Order Requiring the Filing of Proposed Orders and Briefs*.

[3] 16 U.S.C. § 824a-3(d) (emphasis added).
[4] Order No. 872, *Qualifying Facility Rates and Requirements: Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 172 F.E.R.C. ¶ 61,041, 61,056, 85 Fed. Reg. 54,638 (July 16, 2020) (Order 872); *see also Order Setting Avoided Cost Input Parameters*, Docket No. E-100, Sub 140 at 20 (Sub 140 Order on Inputs) ("[T]he goal is to make ratepayers indifferent between a utility self-build option or alternative purchase and a purchase from a QF.").
[5] Order 872 at ¶ 61,119 (quoting *Amer. Paper Inst., Inc. v. Amer. Elec. Power Serv. Co.*, 461 U.S. 402, 417-18, 103 S.Ct. 1921, 1930 (1983)).
[6] N.C.G.S. § 62-156(b).

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ARGUMENT

A. THE COMMISSION SHOULD ENSURE AVOIDED COST RATES FOR QFS, AND BY EXTENSION THE NEEC, REFLECT THE VALUE OF AVOIDED CARBON DIOXIDE EMISSIONS.

Any avoided cost rates—and by extension any NEEC—approved by the Commission must accurately reflect the value of carbon emission reductions provided by carbon-free generation. This Office's initial comments recommended that the Commission direct the Companies, in consultation with the AGO, the Public Staff, and other interested intervenors, to develop a method of deriving the value of carbon emission reductions from the CPIRP to be included in avoided cost rates for carbon-free QFs.[7] This recommendation is based off of a recognition that "N.C.G.S. § 62-110.9 and PURPA require the Commission to discontinue the use of the peaker methodology rather than approv[e] avoided cost rates that do not accurately reflect their value."[8]

The comments of the Public Staff, CCEBA, NCSEA, and SACE all agree with the central premise of the AGO's recommendation: the Companies' proposed avoided cost calculation does not reflect the fundamental change to resource planning brought about by N.C.G.S. § 62-110.9 or place an appropriate economic value on carbon-free generation. As noted by NCSEA, "many factors contribute to the Companies' ability to reduce carbon emissions from their electric generation fleet, but the contribution of electricity generated from solar resources, including QFs, is undeniable."[9] While the carbon-free resources are helping the Companies'

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[7] AGO Initial Comments at 13.
[8] AGO Initial Comments at 14-15.
[9] NCSEA Initial Comments at 2.

transition to a cleaner generating fleet, the economic value of this contribution is not reflected in the Companies' proposed avoided cost rates.

The Commission has not included a cost of carbon emission reductions in avoided cost rates in the past because those cost were not "known and verifiable."[10] The Commission has never foreclosed the possibility that it may one day be appropriate to include a cost of carbon emission reductions.[11] However, both the AGO and the Public Staff agree that "the costs for reducing carbon emissions have become more known and verifiable" due to the Commission's adoption of a carbon plan.[12] The Companies argued that the Commission should not require the inclusion of a carbon emission reduction value because "[w]hile HB 951 imposes a limit on the total CO_2 *emissions* from the Companies' generating units, it does not impose any *direct price* on CO_2 emissions."[13] This contention is inconsistent with the Commission's prior practice. The Commission has never held that "known and verifiable" costs mean a "direct price" set by statute. Indeed, as the AGO's initial comments noted, "the Companies' avoided energy costs have long included the emission allowance costs for many other air pollutants, including NO_X and SO_2."[14] Like carbon emissions, NOx and SO_2 emission allowance costs

[10] *See, e.g.* Sub 175 Order at 29.
[11] *See Order Setting Avoided Cost Input Parameters*, Docket No. E-100, Sub 140 (Dec. 31, 2014) ("The costs of carbon emissions control are not sufficiently certain to be included in avoided costs *at this time*. If in the future carbon costs become known and verifiable, *it may be appropriate for those costs to be included at that time*." (emphasis added)); Sub 175 Order at 30 ("there is no certainty regarding the resources to be developed or any future implied cost of carbon to be included in the approved Carbon Plan and, therefore, there are no real or known and verifiable costs associated with future carbon emission reductions under the Carbon Plan that are avoidable *at this time*."(emphasis added)).
[12] Public Staff Initial Comments at 7; AGO Initial Comments at 10-11.
[13] Companies Reply Comments at 10.
[14] AGO Initial Comments at 13 (citing Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, Docket No. E-100, Sub 100 (Sept. 29, 2005) (noting that Duke "currently

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are not a direct cost set by statute, but are able to be inferred from the costs necessarily incurred to avoid those emissions.

The Companies' proposed avoided cost rates fail to recognize the fundamental changes to resource planning brought about by the passage of HB 951. The AGO, the Public Staff, and CCEBA all noted that the peaker methodology has become farther divorced from the reality of the Companies' system. As an example, both the AGO and the Public Staff noted that the Companies have chosen F-frame combustion turbines (CTs) as the basis for their peaker methodology calculations, while more advanced H-Class CTs are "likely [to] replace F-frame CTs in the future as the preferred source of peaking capacity."[15] The AGO noted that despite F-frame CTs serving as the basis for the peaker methodology calculations, F-class CTs are not a selectable resource in the Companies' most recently filed CPIRP.[16] It is unquestionable that the Companies' current methodology of calculating avoided cost rates is becoming less reflective of the Companies' actual costs as more renewable, zero-energy cost resources are added to the system.

This Office took no position on the exact methodology to be employed to derive the value of carbon emission reductions. Instead, the AGO suggested a Commission-directed stakeholder process to determine that methodology. The Public Staff suggested the inclusion of "a carbon reduction benefits adder for

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includes emissions allowance costs for NO_x and SO_2 in the calculation of its avoided energy credits" in order to "reflect[] the current economic value of the environmental benefits of renewable resources under North Carolina and federal law.").

[15] Public Staff Initial Comments at 13.

[16] AGO Initial Comments at 15.

avoided energy rates" in the peaker methodology and that the Commission "direct parties to propose a calculation methodology in the next biennial avoided cost proceeding or Duke's next CPIRP filing."[17] CCEBA suggested that the Commission initiate a stakeholder process to "*fully* consider all alternatives to the peaker method" prior to the next biennial avoided cost proceeding.[18] The only distinction between these proposals is the scope and timing of the stakeholder process. While the AGO believes that time is of the essence given N.C.G.S. § 62-110.9's carbon emission reduction targets, the AGO recognizes the complexities involved and defers to the Commission to determine the appropriate scope and timing of the stakeholder process.

The Commission gave explicit instructions in its Sub 175 Order that the Companies explain "how any Commission-approved avoidable cost of carbon is factored into Duke's calculation of avoided cost rates."[19] Implicit in this directive is a recognition that the Commission has the discretion to approve an avoidable cost of carbon. Nevertheless, the Companies argue that "[b]ecause HB 951 does not legislate a direct price or tax on carbon emissions that can be avoided by purchasing energy or capacity from a QF, there is no separate avoidable cost of carbon emissions that purchasing QF power will allow the Companies to avoid." This statement ignores the "wide degree of latitude" given to the Commission to

[17] Public Staff Initial Comments at 9.
[18] CCEBA Initial Comments at 5-6.
[19] Sub 175 Order at 71.

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determine avoided cost rates so long as they are based on "an actual determination of the expected costs."[20]

While the NEEC is based on the Companies' avoided cost rates, the decision not to include the value of carbon emission reductions in the NEEC is especially concerning given the mandate of N.C.G.S. § 62-126.4 that Commission-established net metering rates reflect the costs and benefits of customer-sited generation. Without a recognition of the value of carbon emission reductions, a key benefit of distributed generation is not being valued and customers are not being fully incentivized to provide the maximum value to the system. For this reason, and the reasons stated above, the Commission should ensure that the Companies' avoided cost rates reflect the value of carbon emission reductions.

B. FUTURE AVOIDED COST RATES SHOULD BE BASED ON THE COMMISSION'S MOST RECENT CPIRP.

The AGO's initial comments suggested that the Commission alter the timing of future avoided cost proceedings by requiring the Companies to update their avoided cost rates within 90 days of the Commission's approval of a CPIRP. This recommendation was supported by NCSEA and SACE.[21]

The Companies argue against this proposal because "requiring the Companies to develop avoided cost rates based on a portfolio other than the Companies' identified IRP reference portfolio would mark an unwarranted departure from longstanding practice in avoided cost dockets." Like the

[20] *Cal. P.U.C.*, 133 F.E.R.C. 61,059, 61,266-68 (Oct. 21, 2010) (approving the CPUC's inclusion to a 10% adder to avoided cost rates in transmission-constrained areas in order to "to reflect the avoided costs of the construction of distribution and transmission upgrades that would otherwise be needed.).
[21] NCSEA Reply Comments at 5-6; SACE Reply Comments at 4.

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Companies' position regarding the inclusion of the value of carbon emission reductions in avoided cost rates, this position shows a disregard for the fundamental changes to resource planning brought about by N.C.G.S. § 62-110.9. It is true that the AGO's proposal would represent a "departure from longstanding practice," but N.C.G.S. § 62-110.9 fundamentally requires the Commission to reexamine its longstanding practices. Indeed, unlike prior resource planning processes, under N.C.G.S. § 62-110.9, the Commission itself is charged with developing a CPRIP.

The need to rely on the Commission's approved CPRIP rather than the Companies' requested reference portfolio is underscored by the Companies' resistance to the AGO's proposal to use CPIRP Portfolio P1 Fall Supplement for the basis of avoided cost rates. The AGO has concerns that the Companies' proposed reference portfolio fails to satisfy the legal requirements of N.C.G.S. § 62-110.9. The Commission cannot adequately answer these fundamental legal questions in the current, limited docket. Instead, those questions will be more fully examined in the CPIRP docket. While it is true that "the Commission has long approved the use of inputs consistent with the utility's most recently filed IRP,"[22] significant questions regarding the requirements of N.C.G.S. § 62-110.9 remain unanswered. The Commission may ultimately share the AGO's concerns with the Companies' reference portfolio. If that occurs, avoided costs rates would be based on a portfolio that the Commission ultimately deems to violate N.C.G.S. § 62-110.9—and that creates artificially low avoided costs rates—for over a year after

[22] Companies Reply Comments at 9.

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the Commission issues its CPIRP order. This potential warrants revisiting the Commission's longstanding practices. For this reason, the Commission should alter the timing of future avoided cost proceedings so that proposed avoided cost rates must be filed within 90 days of the Commission's issuance of a final CPIRP order. This change should take immediate effect to reflect the Commission's final order in the ongoing CPIRP docket.

CONCLUSION

The AGO respectfully recommends that the Commission:

1. Direct the Companies, the AGO, the Public Staff, and all interested parties to convene and develop a method for determining the avoided cost of carbon emissions to be reflected in avoided cost rates;
2. Require future avoided cost rates to be based on the most recently approved CPIRP;
3. Revise the timing of future avoided cost proceedings to more closely align with the Commission's approval of a CPIRP.

Respectfully submitted this the 20th day of May, 2024.

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CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing BRIEF OF THE ATTORNEY GENERAL'S OFFICE upon the parties of record in this proceeding by email, this the 20th day of May, 2024.

/s/ Tirrill Moore
Assistant Attorney General

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