

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 180

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:
Investigation of Proposed Net Metering) JOINT NOTICE OF APPEAL
Policy Changes) AND EXCEPTIONS

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Intervenors Environmental Working Group, 350 Triangle, 350 Charlotte, the North Carolina Alliance to Protect Our People and the Places We Live, NC WARN, North Carolina Climate Solutions Coalition, and Sunrise Movement Durham Hub, through undersigned counsel, and *pro se* intervenor Donald Oulman (collectively, “Joint Appellants”), pursuant to N.C. Gen. Stat. § 62-90 and Rule 18 of the North Carolina Rules of Appellate Procedure, hereby give Notice of Appeal to the North Carolina Court of Appeals from the N.C. Utilities Commission’s (the “Commission”) Order Approving Revised Net Metering Tariffs entered on March 23, 2023¹ in the above-referenced matter (the “Order”).

The Commission in its Order generally approved the net energy metering (“NEM”) tariffs proposed by Duke Energy Progress, LLC and Duke Energy Carolinas LLC (collectively, the “Companies”) in the present docket. For the reasons described below, the Order is unlawful, unjust, unreasonable and

¹ Pursuant to N.C. Gen. Stat. § 62-90(a), the deadline for the present Notice of Appeal and Exceptions was extended to May 22, 2023 by Order of the Commission entered on April 20, 2023.

unwarranted, because the Order is in excess of its statutory authority, affected by errors of law, unsupported by competent, material and substantial evidence, and is arbitrary and capricious.

EXCEPTION NO. 1:

The Commission erred in making its conclusion of law, pages 32-37, that the mandatory “investigation” under N.C. Gen. Stat. § 62-126.4 has been conducted. Instead, the evidence in this docket shows that there has been no “investigation of the costs and benefits of customer-sited generation” as required by N.C. Gen. Stat. § 62-126.4(b). To the contrary, section 62-126.4(b), properly interpreted, required a Commission-led analysis of the costs and benefits of customer-sited generation, including NEM solar. In reaching this conclusion, the Commission committed errors of law concerning the legal definition of the word “investigation,” and furthermore, the Commission’s conclusion that an “investigation” was performed was unsupported by competent, material and substantial evidence, and was arbitrary and capricious.

EXCEPTION NO. 2:

The Commission erred in making its conclusion of law, pages 34-35, that the following provision of N.C. Gen. Stat. § 62-126.4(b) has been satisfied: “The Commission shall establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service.” To the contrary, the Companies have not proposed, and the Commission has not established, net metering rates under “all tariff designs.” In reaching this conclusion, the Commission committed errors of law concerning the meaning of the above-

quoted provision of section 62-126.4(b), and furthermore, the Commission's conclusion was unsupported by competent, material and substantial evidence, and was arbitrary and capricious.

EXCEPTION NO. 3:

The Commission erred in making its conclusion of law, pages 35-38, that all costs *and benefits* of NEM solar were properly analyzed by the Commission. To the contrary, the applicable standard of care and other legal authorities require the consideration of several benefits which were not analyzed by the Companies or the Commission, and for which there is no evidence in the record. Hence, there has not been an analysis of the "costs and benefits of customer-sited generation," namely NEM solar, as required by N.C. Gen. Stat. § 62-126.4(b). In approving the Companies' NEM tariffs (with modest revisions), the Commission's Order committed errors of law and was unsupported by competent, material and substantial evidence, and was arbitrary and capricious.

EXCEPTION NO. 4:

In concluding that the Companies' proposed NEM tariffs should be approved (with modest revision), pages 41-42, the Commission violated the mandate of N.C. Gen. Stat. § 62-126.4(b) that "[t]he rates shall be nondiscriminatory" In fact, the Commission, in its Order, failed to conduct any analysis whatsoever concerning the fact that the proposed NEM tariffs discriminate, without any factual basis, against residential NEM customers. Therefore, the Commission's Order committed errors of law and was unsupported by competent, material and substantial evidence, and was arbitrary and capricious.

EXCEPTION NO. 5:

In concluding that the Companies' proposed NEM tariffs should be approved (with modest revision), pages 41-42, the Commission violated the Public Utility Regulatory Policies Act's ("PURPA") mandates that charges be "just and reasonable and in the public interest" and not "discriminate against any qualifying facility in comparison to the rates for sales to other customers serviced by the electric utility." 18 C.F.R. § 292.305(a)(1). Among other grounds, the Companies' proposed NEM tariffs violate these requirements of PURPA because they are not based on accurate data or consistent system wide costing principles, discriminate against residential NEM customers, and would cause a drastic reduction in the value of residential rooftop solar systems. Therefore, the Commission's Order committed errors of law and was unsupported by competent, material and substantial evidence, and was arbitrary and capricious.

EXCEPTION NO. 6:

In concluding that the Companies' proposed NEM tariffs should be approved (with modest revision), pages 41-42, the Commission approved several tariff components without any evidence supporting those components, including but not limited to the Minimum Monthly Bill, Grid Access Fee and non-bypassable charges, pages 37-38. Therefore, the Commission's Order was unsupported by competent, material and substantial evidence, and was arbitrary and capricious.

CONCLUSION

For the reasons set forth above, the Order is arbitrary and capricious; is affected by errors of law; is unsupported by competent, material, and substantial

evidence in light of the entire record; and is beyond the Commission's statutory power.

This the 18th day of May, 2023.

/s/ Matthew D. Quinn

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon all counsel of record in the above-referenced docket by email transmission, or by hand delivery, or by depositing a copy of the same in the United States Mail, postage prepaid.

This the 18th day of May, 2023.

LEWIS & ROBERTS, PLLC

/s/ Matthew D. Quinn

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