

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Implement) ORDER AMENDING
G.S. 62-110.8) COMMISSION RULE R8-71

BY THE COMMISSION: On July 28, 2017, the Commission issued an order initiating this rulemaking proceeding to adopt and modify the Commission’s rules, as necessary, to implement G.S. 62-110.8. To facilitate the Commission adopting final rules in this proceeding on or before October 16, 2017, that order set an expedited schedule for filings in this proceeding. In addition, that order made Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC) (together, Duke), parties to this proceeding and recognized the participation of the Public Staff.

On or after August 11, 2017, the Commission issued orders allowing the following to intervene in this proceeding: North Carolina Sustainable Energy Association (NCSEA), Carolina Utility Customers Association, Inc. (CUCA), Carolina Industrial Group for Fair Utility Rates II and III (collectively, CIGFUR), North Carolina Clean Energy Business Alliance (NCCEBA), North Carolina Electric Membership Corporation (NCEMC), North Carolina Pork Council (NCPC), Virginia Electric and Power Company, d/b/a, Dominion Energy North Carolina (Dominion), and SunEnergy1, LLC (SunEnergy1).

On November 6, 2017, after receiving and considering the comments and proposed rule provisions filed by the parties in this proceeding, the Commission issued an Order Adopting and Amending Rules. That Order, among other things, adopted Commission Rule R8-71. One of the more difficult issues resolved by the Commission in adopting Rule R8-71 was the structure of the process for evaluating and selecting proposals that are submitted in a CPRE RFP Solicitation. In that Order, the Commission concluded that the evaluation of proposals will occur on a single track, in two steps. The Commission adopted Commission Rule R8-71(f)(3) to implement the evaluation process. In summary, Rule R8-71(f)(3) provides that, in step one, the Independent Administrator of the CPRE Program¹ shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology, and, in step two, the electric public utility shall select the proposals as ranked by the Independent Administrator, unless the utility determines that the interconnection and operation of a proposed facility would significantly undermine the utility’s ability to provide adequate and reliable electric service to its customers.

On February 21, 2018, in Docket Nos. E-2, Sub 1159, and E-7, Sub 1156, the Commission issued an Order Modifying and Approving Joint CPRE Program (CPRE

¹ On January 9, 2018, in Docket No. E-100, Sub 151, the Commission issued an Order approving Accion Group, LLC, as the Independent Administrator of the CPRE Program.

Program Order). As relevant here, in that Order the Commission reaffirmed its conclusion that the two-step evaluation process adopted in Commission Rule R8-71(f)(3) is appropriate. More specifically, the Commission again articulated its view that preservation of the “independence” of the Independent Administrator justified implementation of the two-step evaluation and selection process that does not involve the utility in the first step of evaluating proposals submitted in response to the CPRE RFP Solicitation. However, the Commission, in recognizing the difficulty of assigning grid upgrade costs to a specific proposal, clarified its intent in structuring step two of the evaluation process by allowing the utility to incorporate consideration of grid upgrade costs and make a reasonable assignment of those costs to the proposal submitted, where possible. With this clarification, the Commission expressed its readiness to move forward with the evaluation and selection process as established in Rule R8-71(f)(3), at least for the Tranche 1 RFP, and, therefore, the Commission directed Duke to revise its CPRE Program Guidelines to be consistent with the Commission’s implementation of the evaluation and selection process. In doing so, the Commission again expressed its willingness to make improvements to the process based on the results of the Tranche 1 CPRE RFP Solicitation.

On March 29, 2018, Duke filed a petition to amend Commission Rule R8-71(f)(3), and included proposed revisions to that provision as attachments to its petition. Duke requests that the Commission adopt amendments to Rule R8-71(f)(3) that will “implement the direction recently provided in the Commission’s CPRE Program Order, further clarify the CPRE evaluation process, and incorporate certain additional changes recommended by” Accion Group, LLC, in its role as the Independent Administrator of the CPRE Program. More specifically, Duke states that its proposed amendments will clarify that the Independent Administrator will be solely responsible for ranking and cost-effectiveness determinations in step one of the evaluation process, while a subset of Duke’s Evaluation Team (a group proposed to be termed the “T&D Sub-Team”) will be responsible for identifying system impacts and assessing upgrade costs to the proposals identified by the Independent Administrator in step two of the evaluation process. In support of its request to adopt these amendments, Duke states that all of these modifications are supported by the Independent Administrator, and that the Public Staff, NCCEBA, and NCSEA support the modifications. In addition, Duke states that NCCEBA and NCSEA have requested that the Commission make clear that the modified provisions of Rule R8-71(f)(3) would control if conflicts exist between the Rule and the Commission’s CPRE Program Order. Finally, Duke requests that the Commission establish an expedited 15 day period for parties to comment on the proposed changes to Rule R8-71(f)(3), and that the Commission take action on Duke’s petition prior to May 1, 2018, to allow for finalization of Duke’s CPRE Tranche 1 RFP documents and for the Independent Administrator’s finalization of the Tranche 1 evaluation methodology.

Turning to the substance of the proposed modifications, Duke’s petition provides a summary of the proposed amendments. First, Duke states that it fully supports the basic structure of the evaluation and selection process set out in Rule R8-71(f)(3); however, upon further analysis and discussion with the Independent Administrator, Duke believes that its proposed amendments are needed to better align the provisions of the rule with the evaluation process described in the CPRE Program Order. More specifically, Duke states that the current provisions of Rule R8-71(f)(3) do not contemplate assignment of upgrade costs or consideration of system impact-related

costs, as was discussed in the CPRE Program Order. Second, Duke's proposed revisions would eliminate the provision that allows a proposal to be eliminated based on reliability concerns. Duke states that elimination on this basis would not ever be necessary and that it would not exercise such right. Instead, Duke states that if a system constraint or reliability issue is identified in step two, the T&D Sub-Team will identify the upgrades necessary to address such issue and the resulting costs will be assessed to the proposal. Third, Duke states that its proposed changes "clarify and strengthen" the role of the Independent Administrator in the evaluation process and more clearly describe the Independent Administrator's sole decision-making authority regarding the elimination of proposals for failure to adhere to any CPRE Solicitation evaluation factors. Fourth, Duke states that its proposed amendments provide greater clarity regarding the mechanics of the system impact evaluation to be undertaken during step two of the evaluation process. Fifth, Duke states that its proposed amendments establish the T&D Sub-Team as a subset of the Evaluation Team that will be responsible for assessing and assigning upgrade costs to proposals. The T&D Sub-Team will be prohibited from communication with the other members of the Evaluation Team concerning the CPRE RFP while the RFP Solicitation is open. Duke then provides an overview of the entire evaluation process under its proposed amendments.

No other parties have filed comments in response to Duke's petition or proposed amendments to Commission Rule R8-71.

The Commission has carefully reviewed Duke's proposed amendments to Commission Rule R8-71 and Duke's petition for approval thereof. Based upon this review and the entire record herein, including Duke's representations that Accion Group, LLC (in its role as Independent Administrator), NCCEBA, NCSEA, and the Public Staff have expressed support for the proposed modifications,² the Commission finds good cause to adopt Duke's proposed amendments to Commission Rule R8-71, with technical and conforming changes, on an expedited basis. The Commission agrees with Duke that the proposed amendments adopt the key determinations reached in the Commission's Order Adopting Rule R8-71 and in the CPRE Program Order, including that step one of the evaluation process should be completed solely by the Independent Administrator and that grid upgrade costs should be assigned to CPRE proposals to the extent possible to ensure that proposals selected through the CPRE RFP meet the cost-effectiveness requirement of G.S. 62-110.8(b). In addition, the Commission agrees with Duke that expedited review and decision is appropriate in this case based on Duke's representations that the parties' have requested clarifications and that there is a need to facilitate the Independent Administrator's finalization of the Tranche 1 CPRE RFP Solicitation documents.

The Commission notes that among the changes to the proposed amendments, the Commission will adopt the provision allowing the Independent Administrator the discretion to allow a market participant the opportunity to modify a proposal and to consult with the electric public utility's Evaluation Team. However, the Commission concludes that this process should be incorporated into the step 1 evaluation, making clear that the

² Collectively, NCCEBA, NCSEA, the Public Staff, and Duke represent the only parties to this proceeding that submitted comments or proposed rule provisions directed at the issues involved in structuring the process for the evaluation and selection of proposals received in response to a CPRE RFP Solicitation.

Independent Administrator is conducting the evaluation at this stage. Therefore, the Commission has adopted the substance of the proposed amendment, but reorganized the provision as Rule R8-71(f)(3)(ii). The Commission concludes that this organization is more reflective of the Commission's intent in adopting the two-step evaluation process, while incorporating the change requested by the parties and supported by the Independent Administrator.

In addition, the Commission recognizes NCCEBA and NCSEA's request, as expressed in Duke's filing, that the Commission make clear that Commission Rule R8-71, as modified herein, would control to the extent that any conflicts exist between the Rule and the CPRE Program Order. The intent of the amendments adopted in this order is to incorporate into Commission Rule R8-71 the conclusions reached in the CPRE Program Order. Thus, there should be no conflicts between the provisions of Rule R8-71 and the CPRE Program Order. To the extent that conflicts are discovered in the course of the CPRE Program, the Commission would be prepared to harmonize the provisions of Rule R8-71 and the CPRE Program Order. In short, the Commission is not prepared to make such a declaration on this record, but will be open to improvements as the Commission, the parties, and the Independent Administrator gain experience through implementation of the CPRE Program.

Finally, the Commission recognizes that not all parties to this proceeding have expressed their views on the proposed amendments. The Commission finds it appropriate to afford these parties an opportunity to file comments with the Commission prior to these amendments taking effect. However, in light of the short timeframe leading up to the Tranche 1 CPRE RFP Solicitation and the work that must take place prior to the opening of that RFP Solicitation, the Commission further finds good cause to adopt these amendments subject to the receipt of objections from the parties. If objections are filed with the Commission on or before April 20, 2018, the Commission will proceed appropriately in resolving the issues in dispute prior to May 1, 2018, or as soon after as possible. However, if no objections are received on or before April 20, 2018, then the amendments to Commission Rule R8-71 shall become effective on that date in the form reflected in the attached Appendix A.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of April, 2018.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk

Chairman Edward S. Finley, Jr., and Commissioner Charlotte A. Mitchell did not participate in this decision

Commission Rule R8-71 is amended as follows:

(b) Definitions.

...

(16) “T&D Sub-Team” means those members of the Evaluation Team responsible for assessing the impacts of proposals on the electric public utility’s transmission and distribution systems and assigning any system upgrade costs attributable to each proposal pursuant to R8-71(f)(3)(iii). The T&D Sub-Team shall be designated in writing to the Independent Administrator and shall have no communication, either directly or indirectly, with the other members of the Evaluation Team or a market participant concerning any proposal, except through the Independent Administrator, from the date on which the draft CPRE RFP Solicitation documents are issued by the Independent Administrator until the CPRE RFP Solicitation is deemed closed.

...

(f) CPRE RFP Solicitation Structure and Process

...

(3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a CPRE RFP Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission’s oversight as provided in G.S. 62-110.8 and this rule.

(i) In step one, the Independent Administrator shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the CPRE RFP Solicitation evaluation factors. As a result of the Independent Administrator’s evaluation, the Independent Administrator shall, subject to the provisions of subsection (f)(3)(ii) of this Rule, eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors and ~~shall~~ then develop and deliver to the electric public utility’s T&D Sub-Team a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals included in the list delivered to the electric public utility any information that identifies the market participant that submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.

- (ii) ~~In step two, the electric public utility shall select the proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, provided, however, that if the electric public utility determines that the interconnection and operation of a proposed facility, together with a facility or multiple facilities that were the subject of proposal(s) already selected by the utility, would significantly undermine the utility's ability to provide adequate and reliable electric service to its customers, then the electric public utility may eliminate such proposal(s) from further consideration. The electric public utility shall notify the Independent Administrator of the proposals it has selected and those it has eliminated, if any. If the electric public utility eliminates proposal(s), it shall provide to the Independent Administrator a short and plain explanation of why each proposal was eliminated at the same time that the utility notifies the Independent Administrator of the proposals it has selected. As a part of the step one evaluation, the Independent Administrator may, in its discretion, allow a market participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal, and may consult with the electric public utility's Evaluation Team to determine whether a proposal meets the CPRE RFP Solicitation Evaluation factors. In consulting with the Evaluation Team, the Independent Administrator shall maintain the anonymity of the market participant that submitted the proposal. The Independent Administrator shall document the reasons for the elimination of a proposal.~~
- (iii) ~~Upon receipt of notification of proposals selected by the electric public utility, the Independent Administrator shall provide the electric public utility with the identity of the market participants that submitted proposals selected and shall publish the list of proposals selected and the utility's explanation(s) for eliminating proposal(s), if any. Upon publication of the list of proposals selected and the utility's explanation(s), if any, the Independent Administrator shall declare the CPRE RFP Solicitation closed. In step two, the electric public utility's T&D Sub-Team shall assess the system impact of the proposals in the order ranked by the Independent Administrator and assign any system upgrade costs attributable to each proposal included in the list provided by the Independent Administrator. The T&D Sub-Team shall conduct this assessment in a reasonable manner, with oversight by the Independent Administrator, and in parallel with the Independent Administrator's allowing modification or clarification of proposals and consultation with the Evaluation Team, as provided in (f)(3)(ii), if applicable. The electric public utility's T&D Sub-Team shall provide its assessment of system upgrade costs to the Independent Administrator, who shall first determine whether such system upgrade costs have been appropriately assigned and then determine whether the original ranking of proposals needs to be modified to recognize the system upgrade costs assigned to each proposal. The Independent Administrator shall also eliminate any proposal where necessary in order to comply with G.S. 62-110.8(b)(4). If no re-ranking is needed and the Independent Administrator has concluded its~~

evaluation pursuant to (f)(3)(ii) of this Rule, if applicable, then the electric public utility shall select the winning proposals in accordance with subsection (iv) below. If the Independent Administrator modifies the original ranking as result of the assignment of system upgrade costs or the elimination of a proposal, it shall deliver to the T&D Sub-Team of the electric public utility such revised list of proposals ranked in order from most competitive to least competitive (with market participant information redacted as described in step one) and the assignment of system upgrade costs described in this subsection shall be performed again by the T&D Sub-Team and provided to the Independent Administrator, who will re-rank the proposals. This process shall continue on an iterative basis, as directed by the Independent Administrator, until the Independent Administrator determines that the total generating capacity sought in the CPRE RFP Solicitation is satisfied in the most cost-effective manner after taking into account the assignment of system upgrade costs through this step two.

- (iv) The electric public utility shall proceed to execute contracts with each of the market participants who submitted a proposal that was selected. Upon completion of step two and determination by the Independent Administrator of the final ranking of the proposals, the Independent Administrator shall deliver to the Evaluation Team of the electric public utility the final ranked list of proposals. The electric public utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, and the Independent Administrator shall provide the electric public utility with the identity of the market participants that were so selected. Upon publication of the list of proposals selected, the Independent Administrator shall declare the CPRE RFP Solicitation closed.
- (v) The electric public utility shall proceed to execute contracts (where applicable) with each of the market participants who submitted a proposal that was selected. If a market participant selected pursuant to subsection (iv) fails to execute a contract during the contracting period identified in the CPRE RFP Solicitation, the electric public utility shall provide to the Independent Administrator a short and plain explanation regarding such failure and the Independent Administrator, after consultation with the Evaluation Team, shall determine whether the next-ranked proposal or proposals should be selected in order to procure the total generating capacity sought in the CPRE RFP Solicitation. For the avoidance of doubt, the Evaluation Team shall not have access to the identifying information of any such proposals prior to the Independent Administrator's determination. If no additional proposals are selected, the capacity amount associated with the proposal of the market participant that failed to execute a contract shall be included in a subsequent CPRE RFP Solicitation; provided that if, no further CPRE RFP Solicitations are scheduled, the electric public utility shall take such action as is directed by the Commission.