STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 155

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement G.S. 62-126.8	))	ORDER ADOPTING RULE R8-72

BY THE COMMISSION: On August 30, 2017, the Commission issued an Order initiating this proceeding to adopt or modify the Commission's rules, as necessary, to implement the community solar energy facility program (Community Solar Program or Program) pursuant to G.S. 62-126.8, as enacted by House Bill 589 (S.L. 2017-192). In addition, that Order set an expedited schedule for receipt of comments and proposed rules to allow sufficient time to adopt final rules in advance of the January 23, 2018 deadline for the utilities to file with the Commission a plan to offer a Community Solar Program (Program Plan or Plan). See House Bill 589, Sec. 6.(d). Finally, that Order made Duke Energy Progress, LLP, and Duke Energy Carolinas, LLC (collectively, Companies), parties to this proceeding and recognized the participation of the Public Staff of the North Carolina Utilities Commission (Public Staff).

Consistent with G.S. 62-126.8(e), the Commission ordered that initial and reply comments and proposed rules or rule revisions should address the following requirements of a Community Solar Program:

(1) Establish uniform standards and processes for the community solar energy facilities that allow the electric public utility to recover reasonable interconnection costs, administrative costs, fixed costs, and variable costs associated with each community solar energy facility, including purchase expenses if a power purchase agreement is elected as the method of energy procurement by the offering utility.

(2) Be consistent with the public interest.

(3) Identify the information that must be provided to potential subscribers to ensure fair disclosure of future costs and benefits of subscriptions.

(4) Include a program implementation schedule.

(5) Identify all proposed rules and charges.

(6) Describe how the program will be promoted.

(7) Hold harmless customers of the electric public utility who do not subscribe to a community solar energy facility.

(8) Allow subscribers to have the option to own the renewable energy certificates produced by the community solar energy facility.

On or after October 12, 2017, the following parties were allowed to intervene in this proceeding: North Carolina Sustainable Energy Association (NCSEA), North Carolina Waste Awareness and Reduction Network, Inc. (NCWARN), and the Sierra Club.

On or after October 23, 2017, the Commission received consumer statements of position from The Honorable Esther E. Manheimer, Mayor of Asheville, and from The Honorable Jenn Weaver, a Commissioner of the Hillsborough Town Board. Both statements are substantively similar in that they express interest, on behalf of each individual's respective constituents, in participating in the Program. In addition, both statements encourage the Commission to adopt a rule that supports the following goals: economic benefits for subscribers, growth opportunities for the State's solar industry, increased participant access through low upfront cost, strategic placement of Community Solar Program facilities for the benefit of all utility customers, and affordable access for low-income individuals.

On October 25, 2017, NCWARN filed initial comments. On November 6, 2017, the Public Staff, the Sierra Club, the Companies, and NCSEA filed initial comments. On November 21, 2017, the Public Staff, the Sierra Club, the Companies, and NCSEA filed reply comments. No other parties filed initial or reply comments.

After carefully considering the initial and reply comments, consumer statements of position, proposed rules, and proposed rule revisions filed in this proceeding, the Commission adopts Rule R8-72, as set forth in Appendix A to this Order. In this Order, the Commission summarizes the positions of the parties, and discusses its conclusions with respect to the few disputed issues. Suggestions or comments not specifically discussed herein have been considered and decided as reflected in the final rule. In adopting Commission Rule R8-72, the Commission endeavored to give full effect to the intent of the General Assembly as expressed in the plain language of G.S. 62-126.8.

SUMMARY OF COMMENTS AND PROPOSED RULES

NCWARN

In its comments, NCWARN argues that the 20 megawatts (MW) of community solar capacity that the Companies each are required to provide pursuant to G.S. 62-126.8(a) is a minimum threshold, rather than a maximum limit, and that the Companies each should offer at least five times the amount of statutorily-mandated community solar capacity.

NCWARN argues that, based upon a review of existing community solar programs and model rules for such programs as published by the Interstate Renewable Energy

Council (IREC), the Community Solar Program should have the following characteristics: third-party administration and participation, methodology of allocating Program benefits such that subscribers see a financial benefit, reasonable valuation of the energy produced, strategic placement of Program facilities to meet local demand and to benefit the utility grid, and third-party solar energy facility ownership coupled with attractive financing options for subscribers.

NCWARN advocates for net metering rates, and contends that the avoided cost rate mandated by G.S. 62-126.8(d) will discourage participation in the Community Solar Program. NCWARN recommends that if an avoided cost rate is used, the Companies should be required, as part of the annual avoided cost rate proceedings before the Commission, to account for all benefits of distributed solar energy, including any value added from the following: community solar placed near to load, environmental and societal values, reduced transmission cost and demand, increased grid stability and reliability, and reduced need for higher reserve margins.

NCWARN encourages a stable and transparent financial benefit to subscribers, and takes the position that the avoided cost rates initially offered to subscribers should be subject only to increase, but not to decrease, consistent with the avoided cost rates set by the Commission. NCWARN suggests that subscription fees payable in installments over time would make the Community Solar Program more accessible to low- and moderate-income subscribers. In addition, NCWARN argues that the Community Solar Program should include both a low-income set aside and on-bill financing for subscribers. NCWARN encourages the Companies to integrate the Community Solar Program with energy efficiency and other utility programs to help reduce customers' overall electricity usage.

Finally, NCWARN encourages the Commission to consider several resources and reference materials in formulating rules for the Community Solar Program.

PUBLIC STAFF

In its filings, the Public Staff states that the Community Solar Program should be designed such that a subscription offsets the subscriber's on-site electricity use, and that the costs and benefits associated therewith are proportionately divided among subscribers. To that end, the Public Staff recommends that the Companies should include as part of their Program Plan a standard contract for subscriber payments, made as either a one-time upfront or installment-over-time basis, in exchange for a credit on the subscriber's bill in the amount of the avoided cost rate. The Public Staff recognizes that subscription payments and upfront costs to subscribers may be high as a result of the statutory mandate to avoid cross-subsidization of Program costs with non-subscribing customers. The Public Staff stresses that, consistent with the public interest and G.S. 62-126.8(e)(7), subscription payments alone must be sufficient to economically sustain the Program. If the costs of the Program exceed the revenue generated by its subscriptions, the Public Staff states that Program implementation could, and potentially should, be delayed until such time as it becomes commercially viable. The Public Staff does, however, recommend that the Commission require the utilities to file annually a report summarizing the status of the Community Solar Program implementation, including

whether the plan has been modified or delayed and the reasons for any such modification or delay.

The Public staff recommends that the Commission adopt a rule containing a list of disclosures that the offering utilities should be required to provide to subscribers, separate from and in addition to the disclosures they must file as part of their Program Plans. The Public staff argues that, at a minimum, the utilities should be required to disclose to each subscriber: all recurring and non-recurring charges to be borne by the subscriber throughout the life of the Program facility, all applicable Commission rules, and the terms and conditions of early termination of a subscription. Should the utilities use door-to-door agents to promote the Community Solar Program, the Public Staff recommends that the Commission adopt a consumer protection rule to require that employees or agents of the Companies properly identify themselves and provide accurate and complete verbal representations to customers regarding the Community Solar Program. The Public Staff also encourages the Commission to use as a resource the rule requiring certain disclosures adopted as part of Maryland's community solar pilot program.

The Public Staff further recommends that the Commission adopt a rule that would require a utility to allow a subscriber to elect one of the following options with respect to the renewable energy certificates (RECs) produced by each Community Solar Program facility: the utility will issue to the subscriber a proportionate share of the RECs produced from the facility, the utility will retire the RECs that otherwise would have been issued to the subscriber, or the subscriber will sell his or her interest in the RECs that he or she otherwise would have been issued in exchange for a proportionate reduction in upfront or subscription Program costs.

The Public Staff states that it reviewed all initial comments and proposed rules in this proceeding. The Public Staff does not object to either of the proposed rules submitted by the Companies and the Sierra Club, but has concerns about the Sierra Club's inclusion in its proposed rule of a dispute resolution provision. The Public Staff notes that there presently exists an established consumer complaint process over which the Commission has jurisdiction. As such, the Public Staff contends that the dispute resolution provision recommended by the Sierra Club is unnecessary.

SIERRA CLUB

In its initial and reply comments, the Sierra Club states that many community solar programs nationwide include financing mechanisms and incentives through which low- to moderate-income customers can participate. Many community solar programs also allow for a program duration of 20-25 years, or longer, to allow program costs to be spread over time. The Sierra Club stresses the importance of minimizing Program costs and maximizing Program benefits for subscribers through on-bill credits, strategic placement of facilities, and flexible participation terms. The Sierra Club also notes the potential benefits that could result from partnering with third parties to build facilities or to administer the Community Solar Program.

The Sierra Club contends that community solar programs elsewhere have been successful in part due to low upfront costs to subscribers, including one such program

that requires a reimbursable, one-time deposit of $50.00 for a subscription ranging from 1 kilowatt (kW) to 15 kW of community solar energy capacity. Other community solar programs, argue the Sierra Club, have been successful because they offer flexible payment options, including a monthly subscription or installment plan. The Sierra Club uses these examples in support of its position that the Commission should require the Companies to include in their Program Plan a participation option with no or minimal upfront costs to subscribers. The Sierra Club argues that if upfront costs are unavoidable, the offering utilities should have to describe and justify those costs, and forecast to the Commission whether and how the costs and payment options available to potential subscribers will impact Program participation. The Sierra Club strongly encourages that the utilities be required to provide flexible financing options, including "pay-as-you-go" on-bill financing and installment payment plans. Regardless of whether the Community Solar Program will ultimately include upfront costs, the Sierra Club states that the offering utilities should include in their Plans the anticipated costs and benefits, both economic and environmental, to subscribers.

The Sierra Club further recommends that the offering utilities should compare the costs of self-building facilities with the costs of entering into power purchase agreements for facilities to be operated and managed by a third-party developer. Similarly, the Sierra Club posits that the offering utilities should evaluate whether to retain a third party to administer and promote the Program.

To encourage low- to moderate-income subscriber participation, the Sierra Club suggests that the Commission consider adopting a rule requiring a carve-out or set-aside to ensure that some portion of the Community Solar Program, or some portion of the subscriptions offered by each Program facility, be accessible to low- to moderate-income customers. Additionally, the Sierra Club contends that small subscription size options, such as one panel or 200 watts, can help increase and enable participation by low- to moderate-income customers.

The Sierra Club argues that the Commission should ensure that Program subscriptions are both portable and transferable. In support of this position, the Sierra Club states that these program features are consistently present in successful community solar programs elsewhere. To be sufficiently portable, the Sierra Club states that a subscriber moving within the location requirements specified in G.S. 62-126.8(c) should be able to retain his or her subscription. If a subscriber moves outside of the offering utility's service area or is otherwise unable to continue participating in the Community Solar Program, however, the Sierra Club argues that there should be an option for terminating a subscription without penalty or undue hardship to the subscriber. The Sierra Club suggests that in order to accomplish this goal, a subscriber should be allowed to transfer his or her subscription to another utility customer, to the utility itself, or to any third-party entity administering the Program on behalf of the offering utility.

The Sierra Club encourages the Commission to require the offering utilities to include a plan for complying with the location and generation limitations imposed by G.S. 62-126.8(b) and (c). Additionally, the Sierra Club states that the offering utilities should be required to identify any other criteria to be used in soliciting and selecting facility locations. The Sierra Club recommends that facilities should be sited at locations that will

provide Program cost savings and grid benefits, such as siting close to load. In addition, the Sierra Club suggests that facilities should be visible and close to communities whose residents are interested in participating in the Program. Similarly, the Sierra Club suggests that the offering utilities should collaborate with communities to identify low-cost siting options. The Sierra Club encourages on-site rooftop facilities to avoid land-use and other environmental impacts sometimes associated with ground-mounted facilities. Similarly, the Sierra Club states that Program facilities also should be considered for siting on brownfields or other locations that have suffered environmental impacts from fossil fuel generation.

The Sierra Club encourages the Commission to consider several resources in promulgating rules for the Community Solar Program, including low- to moderate-income solar policy guides and principles of community engagement in developing and promoting low- to moderate-income participation in other community solar programs. The Sierra Club argues that the Commission should adopt a rule that mandates a public hearing to be held as part of the review process of the offering utilities' proposed Program Plans. In addition to its comments, the Sierra Club also submitted a proposed rule incorporating requirements from House Bill 589 and relevant provisions from IREC's Model Rules for Shared Renewable Energy Programs.

Because the Companies indicate that they intend to pursue a Program implementation schedule in stages, the Sierra Club argues that the Companies should be required to include in their Program Plan sufficient cost information and analysis supporting the economics of gradual Program implementation, including any reasonable alternatives to a gradual roll-out schedule. The Sierra Club argues that regular reporting, more often than the single report recommended by the Companies, is necessary to hold the Companies accountable for making progress toward the statutory mandate of 20 MW of community solar capacity. The Sierra Club agrees with NCSEA that the Companies should be required to obtain Commission approval before closing or suspending a Commission-approved Community Solar Program. Both the Sierra Club and NCSEA recommend that the Commission direct the Companies to clarify in their Program Plans any and all specific cost recovery mechanisms the Companies intend to seek. The Sierra Club reiterates its suggestion that the Commission adopt a rule requiring the offering utilities to include specific promotional plans aimed at making the Community Solar Program more accessible to low- to moderate-income participants.

The Sierra Club recommends that the Commission decline to adopt the Companies' proposed rule defining "avoided cost rate" on the grounds that there is uncertainty regarding when and how the avoided cost rate would be determined in the context of Program subscriptions. Furthermore, the Sierra Club recommends that the Commission decline to adopt a rule defining "avoided cost rate," but rather should require the offering utilities to submit the avoided cost rates and methodology intended to be used as part of the Companies' proposed Program Plans.

The Sierra Club recommends that the Commission use the definition of "nameplate capacity" found in North Carolina interconnection standards, as opposed to the definition contained in the Companies' proposed rule. See Order Approving Revised Interconnection Standard, Docket No. E-100, Sub 101 (May 15, 2015). The Sierra Club

agrees with the Public Staff that the offering utilities should include as part of their proposed Program Plans a standard contract for subscriber fees paid in exchange for on-bill credits. The Sierra Club agrees with NCSEA's recommendation that several payment options should be provided to subscribers, including a payment-over-time option, installment payment option, and financing for any upfront fee charged to subscribers.

NCSEA

In its initial and reply comments, NCSEA states that the Commission is tasked with rectifying the offering utilities' cost recovery ability set forth in G.S. 62-126.8(e)(1) with the arguably conflicting provisions of House Bill 589, namely, that the Community Solar Program should be in the public interest and that non-subscribing customers must be held harmless. NCSEA encourages the Commission to consider the community solar report to which NCSEA is a signatory in promulgating rules governing the Community Solar Program.

NCSEA recommends that the Commission should ensure through rulemaking that the following three participation models, which NCSEA contends have been successful in other jurisdictions, are made available to North Carolina customers: an upfront participation fee, an upfront participation fee financed across a specified timeframe, and a set monthly participation fee. NCSEA also recommends that the Commission should ensure the transferability of subscriptions and implement certain reporting requirements for the offering utilities.

NCSEA encourages the Commission to make clear in its rules that customers may retain their existing rate tariff when they opt to participate in the Community Solar Program. In support of this position, NCSEA cites to the Commission's approval of the NC GreenPower Program, which allowed participation in conjunction with any rate tariffs. See Order Approving Revised Program Plans and Utility Tariffs, Docket No. E-100, Sub 90 (June 12, 2008). Finally, NCSEA recommends that the Commission adopt in its rules a provision for a utility to apply for a waiver of the subscriber location requirement set forth in G.S. 62-126.8(c).

In its reply comments, NCSEA notes that relatively few issues are in dispute between the parties. NCSEA supports the Sierra Club's proposed rule, and would support the Companies' Proposed Rule if modified in a manner consistent with NCSEA's reply comments. NCSEA suggests that the Commission should direct the offering utilities to include in their proposed Program Plans cost information and justification supporting whether to use a third-party administrator for the Community Solar Program. NCSEA highlights the Companies' intent to recover through the fuel rider costs associated with the procurement of any energy through one or more power purchase agreements. Although the Companies' proposed rule makes no reference to this method of cost recovery, NCSEA notes that the Companies did not propose in its comments any changes to Commission Rule R8-55. As such, NCSEA recommends that the Commission direct the Companies to clarify in its Program Plan any and all specific cost recovery mechanisms the Companies intend to seek.

NCSEA notes that neither the Companies nor the Public Staff address in their initial comments proposals for encouraging participation of low- to moderate-income customers. NCSEA argues that it is in the public interest for the Commission to adopt rules that provide access to participation in the Community Solar Program for such customers. NCSEA further recommends that the Commission require the offering utilities to specify whether they intend to prescribe a particular rate tariff schedule to Program subscribers.

NCSEA notes that the Companies' proposed rule recommends that a single report be required by the rule, while the Sierra Club recommends semi-annual reporting. NCSEA supports the Sierra Club's recommendation that the offering utilities be required to file reports every six months. NCSEA does not oppose the Companies' recommendation to use the most recently approved biennial avoided cost rates, but recommends that the benefits of community solar to non-subscribing customers should be accounted for in the subscription fee analysis. NCSEA further recommends that the Commission adopt consumer protection rules if the offering utilities plan to promote the Program through door-to-door agents. NCSEA is opposed to the Companies' recommendation that they be allowed to suspend or close a Commission-approved Program without first obtaining Commission approval.

THE COMPANIES

In their filings, the Companies propose a rule that would provide for a gradual roll-out of their Community Solar Program in stages or "tranches" less than 20 MW at a time, likely 1-2 MW in size, until the 20 MW cap is achieved in each offering utility's service territory. The Companies would then be allowed to file subsequent Program Plans, potentially modifying the procedures and procurement methods for subsequent stages. In addition to reporting proposed modifications to its approved Program Plan, the Companies propose filing a single report on the status of the Community Solar Program not later than one year after the Commission approves each offering utility's Plan. The Companies' proposed rule would allow the offering utilities to recover through subscription fees the administrative costs of the Community Solar Program, as well as the cost of any power purchase agreements with third-party facilities in excess of the offering utility's avoided costs. If the offering utility chooses to build and own its own facility, rather than to procure use of a facility through a third-party power purchase agreement, the offering utility will file with the Commission a revised Program Plan that outlines the proposed recovery of costs under utility ownership.

The Companies' proposed rule would require the offering utilities to include as part of their Program Plan the following: the process for Program participation, procedures for complying with the requirement that subscribers shall have the option to own the RECs produced by a Program facility, proposed Program implementation schedule, the methodology for determining the subscription fee, and a discussion of how the offering utilities will communicate with and inform potential subscribers about the costs, rate schedules, and Program benefits. The Companies' proposed rule would require the offering utilities to file with the Commission for its review and approval the tariff, pro forma contract, or any online offer of terms and conditions that would be used to engage subscriptions.

The Companies oppose NCWARN's suggestion that the offering utilities add 200 MW of community solar generation annually over the next three years, with additional amounts added thereafter. The Companies counter this position, stating that the statutory language allows the eventual, incremental implementation of the 20 MW-per-utility mandate set forth in G.S. 62-126.8(a). In response to NCWARN's recommendation that the offering utilities use a third-party administrator for the Community Solar Program, the Companies state that G.S. 62-126.8 does not include such a requirement. The Companies further state that while it has not excluded the possibility of retaining a third-party administrator for the Community Solar Program, they still are reviewing whether the use of a third-party administrator could result in increased costs that would have to be borne by subscribers. The Companies reiterate the requirement in G.S. 62-126.8 that the implementation and administrative costs associated with the Community Solar Program must be borne solely by subscribers such that the expenses are not cross-subsidized among non-participating customers. The Companies state that in response to NCWARN's request that subscriber credits be stable and transparent, the Companies' proposal involves levelized on-bill crediting across the term of the Program subscription contract. In response to NCWARN's suggestion that the avoided cost payment to subscribers should reflect tangible and intangible benefits of distributed solar energy across customer classes, the Companies state that their proposed rule defines the avoided cost rates as the electric public utility's calculation of its avoided costs based on the methodology most recently approved or established by the Commission as of the date that a subscription commences.

The Companies also include in their comments a proposed modification to Commission Rule R8-65 to reflect potential electric utility ownership of facilities used for the Program.

The Companies generally agree with the process for review proposed by the Sierra Club, but oppose the Sierra Club's recommendation that the Commission should preemptively require a public hearing on the Program Plans. The Companies contend that a mandatory public hearing exceeds the scope of the requirements set forth in G.S. 62-126.8, and that such a provision would be unnecessary given the Commission's existing authority and discretion to order a hearing when necessary. Similarly, while the Companies do not object to the Sierra Club's recommendation for a dispute resolution provision, the Companies contend that such a provision may be unnecessary because it mirrors the Commission's current practice for adjudicating consumer complaints against public utilities.

In response to the Public Staff's recommendation that the Companies include a standard contract in their proposed Program Plans, the Companies state that their proposed rule would require the Companies to file a tariff, a standard contract, a statement of terms and conditions, or some combination of any or all of those. The Companies do not object to including the types of information requested by NCSEA and the Sierra Club in its report, but contend that semiannual reports are unnecessary because the Companies' proposed rule would allow the Commission or the Public Staff sufficient opportunity to request subsequent reports in their discretion. The Companies state that the adoption of consumer protection rules to govern door-to-door marketing and

promotion is unnecessary because the Companies do not intend to use this method of Community Solar Program promotion, and that this issue may instead be addressed in the future, as necessary, if the Companies intend to change their promotional methods to include door-to-door agents.

The Companies state that G.S. 62-126.8 does not require a low- to moderate-income component to the Community Solar Program, but that the Companies' proposed rule allowing subscription sizes as low as 200 watts will enable a wider range of customers to subscribe. The Companies argue that any additional low- to moderate-income components to the Community Solar Program are impossible due to the statutory prohibition against cross-subsidization of Program costs. Accordingly, the Companies argue that it would be inappropriate for the Commission to include a low- to moderate-income component in its rule. While the Companies state that they do not object to multiple subscriber payment options, including a single upfront payment or a monthly subscription fee, the Companies oppose the recommendation that the Commission direct them to include an on-bill financing option due to increased overhead costs resulting from credit checks and collections efforts. In response to comments regarding portability and transferability of subscriptions, the Companies suggest that the offering utilities be required to submit in their proposed Program Plans information about the transferability of subscriptions. The Companies oppose, on the basis that it would increase Program costs and complexity, the recommendation that it be required to include, as part of their Program Plans, a plan for local community engagement or other siting requirements.

The Companies disagree with the Public Staff's recommendation that the Commission require the companies to offer subscribers the option to sell their rights to RECs in exchange for a reduction in price of a subscription to the Community Solar Program. The Companies state that Duke Energy Progress, LLP currently has no need for solar RECs, and that the purchase thereof would thus exceed its compliance requirements. Furthermore, the Companies contend that it is unclear whether they could recover the cost of RECs they could be forced to purchase if a subscriber were to elect this option, due to the prohibition against cross-subsidization of Program costs with non-subscribing customers.

DISCUSSION AND CONCLUSIONS

Based upon the foregoing and the entire record in this proceeding, the Commission adopts Commission Rule R8-72, as set forth in Appendix A to this Order. The Commission carefully considered all comments, reply comments, proposed rules, and revised proposed rules filed in this proceeding. The parties' filings were helpful to the Commission in its rulemaking to implement G.S. 62-126.8.

The parties filed in this proceeding two versions of a proposed rule: one advanced by the Companies and the other advanced by the Sierra Club. In many respects, the two versions are substantively similar, and portions of both versions are supported by all parties to this proceeding. The Commission discusses below its conclusions related to the relatively few, most salient issues in dispute by the parties to this proceeding.

ISSUES NOT ADDRESSED IN RULE R8-72

As an initial matter, the Commission first determines that Rule R8-72 primarily should be a rule governing the filing requirements of the Community Solar Program. Thus, the Commission reserves judgment on a number of issues proposed and discussed by the parties in this proceeding until the Companies file proposed Program Plans, at which time those issues will become ripe for Commission review and decision. As discussed below, however, the Commission determines that it is appropriate to require the Companies to address many of these issues in their proposed Program Plans. Intervenors in this proceeding and any other interested person are encouraged to submit comments during the comment period following the filing of the Companies' proposed Program Plans, as set forth in Rule R8-72(e)(2) adopted by this Order.

The Commission also declines to address in Rule R8-72 the position taken by a number of intervenors that the 20 MW of community solar energy capacity, as required by G.S. 62-126.8, is a minimum threshold rather than a maximum limit. The Commission regulates the offering utilities only to the extent it has been delegated the requisite statutory authority by the General Assembly. The applicable statute states, in relevant part, that each "offering utility shall make its community solar energy facility program available on a first-come, first-served basis until the total nameplate generating capacity of those facilities equals 20 megawatts (MW)." G.S. 62-126.8(a) (emphasis added). Although G.S. 126.8(a) mandates only that the offering utilities make available for subscription a Community Solar Program up to 20 MW of capacity, the offering utilities at any time may elect to purchase or procure additional solar energy beyond the 20 MW required to satisfy the Program requirements. However, any decision to approve more than the 20 MW of statutorily-mandated Program capacity, subject to applicable statutes and Commission rules, would be made at that time.

The Commission further determines that the Companies' proposed revisions to Commission Rule R8-65 are more appropriately addressed in the Commission's existing rulemaking dockets initiated for the purpose of administratively amending Commission Rules to be consistent with the changes enacted by the passing of HB 589. See Order Giving Notice of Implementation of New Fees and Administrative Changes, Docket No. E-100, Subs 113, 121, and 134 (August 3, 2017). In that Order, the Commission announced, in part, its intent to amend Commission Rule R8-65 to be consistent with the changes enacted by the passing of HB 589. Rather than implementing piecemeal administrative changes to Rule R8-65 in separate dockets, the Commission will address this issue in that proceeding.

ISSUES ADDRESSED IN RULE R8-72

The two versions of the rule proposed by the parties are generally consistent with the formatting and structure of other rules in Chapter 8 of the Commission's Rules; therefore, the Commission adopts the basic structure of Rule R8-72 as proposed by the parties, with modifications tending to consolidate the filing requirements, streamline the text of the rule, and conform to the conventions of other Commission Rules. The Commission now addresses each section of Rule R8-72, as adopted herein.

1. Purpose (section (a) of the parties' proposed rules):

The parties agree that the purpose of the rule is to implement the Community Solar Program created by the enactment of G.S. 62-126.8. Reflecting the Commission's determination that Rule R8-72 primarily should be a rule governing the Program Plan filing and reporting requirements, the Commission adopts language reflective of the Sierra Club's proposed section (a), which provides that the Commission also should provide guidance related to permitted and required filings when an offering utility proposes a Program Plan. Therefore, the Commission adopts Commission Rule R8-72(a), as set forth in Appendix A, attached hereto.

2. Definitions (section (b) of the parties' proposed rules):

Both parties propose definitions to be used in the context of their proposed rules. The Sierra Club's proposed rule incorporates the terms and definitions set forth in G.S. 62-126.3, except that it also proposes one additional definition for "participant," which is not already defined by statute. The Companies, on the other hand, propose several definitions that already are defined in Chapter 62 of the North Carolina General Statutes, and suggest that the definitions proposed in the rule should control if a term is defined both in statute and in the proposed rule. Most of the Companies' proposed definitions are largely undisputed by the parties, with the exception of two proposed terms: "nameplate capacity" and "avoided cost rate."

The parties suggest in their comments and proposed rules three different approaches for defining "avoided cost rate." NCWARN advocates for "net metering rates," and contends that the avoided cost rate mandated by G.S. 62-126.8(d) will discourage participation in the Community Solar Program. In addition, NCWARN recommends that an avoided cost rate used in the Program should reflect any value added to non-subscribing customers of solar energy distributed by the Program. The Companies' proposed rule, on the other hand, includes a definition directly tying the proposed "avoided cost rate" to the Commission's biennial avoided cost proceedings. The Sierra Club objects to the Companies' proposed definition of "avoided cost rate" on the grounds that the term "avoided cost," as used in G.S. 62-126.8(d), allows more flexibility than the strict definition the Companies seek. The Sierra Club further objects on the grounds that intervenors to this proceeding have not had an opportunity to oppose the avoided cost rate and methodology to be used by the Companies in administering their respective Programs. The Sierra Club, therefore, suggests that the Commission decline to adopt the Companies' proposed definition for "avoided cost rate," and instead adopt a rule that requires the offering utilities to submit in their Plans the proposed avoided cost rates and methodology for determining said rates. The Commission agrees with the Sierra Club that this is a decision that goes more toward content of the Program itself, rather than a filing requirement for the proposed Program Plans, and should be left for consideration by the Commission during the review process of the Plans. Therefore, the Commission declines to adopt in Rule R8-72 a definition for "avoided cost rate," and instead adopts Commission Rule R8-72(c)(1)(v), which requires each offering utility to submit as part of its proposed Plan the methodology for determining the avoided cost rate at which subscribers will receive bill credits.

The Companies advance in their proposed rule a definition for "nameplate capacity," but did not include an explanation or justification for its proposed definition. The Sierra Club objects to the Companies' proposed definition for "nameplate capacity" on this basis, and suggests use of the definition for "nameplate capacity" found in the North Carolina interconnection standards. See Order Approving Revised Interconnection Standard, Docket No. E-100, Sub 101 (May 15, 2015). The Commission finds that this also is a decision that goes more toward content of the Program itself, rather than a filing requirement for the proposed Program Plans, and should be left for consideration by the Commission during the review process of the Plans. Therefore, the Commission declines to adopt in Rule R8-72 a definition for "nameplate capacity," and instead adopts Commission Rule R8-72(c)(1)(vi), which requires each offering utility to submit as part of its proposed Plan the methodology for determining the nameplate capacity of a Program facility.

In addition, the Commission finds it appropriate to ensure consistent terminology is used in Rule R8-72 and the proposed Plan filings when describing a retail customer who subscribes to the Program. The Sierra Club proposes the term "participant," while the Companies propose the term "subscriber." The definitions of the proposed terms are not substantively different. In order to ensure consistency and to minimize potential confusion, the Commission adopts Rule R8-72(b)(5), which contains a definition for "subscriber" to the Program.

3. Filing, reporting, and additional Program requirements (sections (c), (e), and (f) of the Companies' proposed rule; sections (c), (d), and (f) of the Sierra Club's proposed rule):

The Public Staff suggests, and several intervenors agree, that the Commission should adopt a rule requiring the Companies to establish a standard contract for subscriber payments in exchange for a credit on the subscriber's bill. In their reply comments, the Companies state that they include in their proposed rule the option to file as part of the Program Plan "a tariff, standard contract, statement of terms and conditions, or some combination of any or all of these." The Commission agrees with the Public Staff and intervenors that the offering utilities should be required to file as part of their Program Plans a standard contract, or its equivalent, governing the terms and conditions of a Program subscription. The Commission determines the Companies' proposed verbiage to be adequate to satisfy the oversight requirement of G.S. 62-126.8. Therefore, the Commission adopts Rule R8-72(c)(1)(viii), which requires the offering utilities to include in their proposed Plans a tariff, standard contract, statement of terms and conditions, or some combination of any or all of these, containing the following: all terms and conditions regarding costs, risks, and benefits to the subscriber, an itemized list of any one-time and ongoing subscription fees, an explanation of RECs, and when and how the subscriber will receive notifications regarding project status and performance.

The Companies' proposed rule would require them to file a single report with the Commission not later than one year after the initial Plan is approved. Thereafter, the Companies only would be required to file a report at the direction of the Commission or the Public Staff. The Sierra Club and other intervenors, however, propose a semi-annual reporting requirement. The Commission agrees with the Sierra Club that more regular

reporting is necessary to satisfy the oversight requirement mandated by G.S. 62-126.8. The primary goal of these required filings is to keep the Commission, the Public Staff, the Companies' customers, and other interested persons abreast of developments in the Community Solar Program. The Commission disagrees, however, that semiannual reporting is necessary to ensure adequate oversight of Program implementation. Therefore, the Commission adopts Rule R8-72(c)(2), which provides that the offering utility shall file annually with the Commission a report that includes updates on Program implementation progress, marketing efforts, the number of participants subscribed, and capacity subscribed. Upon receipt, the Commission shall decide whether to approve the annual report.

The Companies' proposed rule would allow each offering utility to suspend or close, by its own unilateral decision, an approved Program. The Sierra Club objects to this provision on the grounds that it would be contrary to the Commission oversight mandated by statute. The Sierra Club alternatively proposes that the offering utilities should be required to explain the reasons for wishing to suspend or close an approved Program and to first obtain Commission approval before discontinuing an approved Program. The Commission agrees with the Sierra Club that it would be inconsistent with the legislative intent and Commission oversight required by G.S. 62-126.8 if an offering utility were allowed to unilaterally close or suspend an approved Plan without first justifying its proposed action and obtaining Commission approval. Furthermore, the Commission notes that the Community Solar Program is not a permissive pilot program suggested by the General Assembly; rather, it is a statutory mandate. Therefore, the Commission adopts Rule R8-72(c)(4), which requires an offering utility to obtain Commission approval before implementing any amendment or revision to an approved Program Plan, including whether to delay, suspend, or close a Program to new subscribers.

As discussed earlier in this section, the Commission determines that Rule R8-72 primarily should govern the filing, reporting, and Program requirements of the Community Solar Program. Therefore, the Commission adopts Rule R8-72(c) and (d) as a consolidation of the parties' recommended filing, reporting, and Program requirements, which are included in sections (c), (e), and (f) of the Companies' proposed rule, and sections (c), (d), and (f) of the Sierra Club's proposed rule.

4. Review of Program Plans (section (d) of the Companies' proposed rule; section (e) of the Sierra Club's proposed rule):

Both proposed rules incorporate a section describing the Commission's procedure to review the Companies' forthcoming proposed Plans. The Commission determines that inclusion of such a section is consistent with the construct of other Commission rules in Chapter 8, and is appropriate for inclusion in Rule R8-72. Therefore, the Commission adopts Rule R8-72(e), which sets out the Commission's procedure upon receipt of proposed Plan filings.

The Sierra Club suggests as part of its proposed rule that the Commission require at least one public hearing to allow interested persons to comment on the Companies' proposed Program Plans. The Companies disagree with this suggestion on the grounds

that public input and comment will be solicited through other means and that a mandatory hearing is unnecessary because the Commission has the discretion to order a hearing if necessary to make a decision on the proposed Plans. The Commission often has public hearings as part of any number of types of dockets, and it acknowledges that public hearings provide an important means for interested persons to provide their input without the burden of intervening. However, the Commission agrees with the Companies that there will be sufficient opportunities, without a mandatory public hearing, for interested persons to provide comment. Should the Commission determine that a public hearing is needed to make a decision on the proposed Plans, it has the discretion to so order at the appropriate time. Furthermore, any party could request a hearing when responding to the Companies' proposed initial Plans or subsequent filings. The Commission's decision in this Order does not guarantee that the Commission would grant or deny such a request. While the Commission declines to adopt the public hearing mandate suggested by the Sierra Club, it has incorporated into Rule R8-72 mechanisms through which interested persons will have a meaningful opportunity to participate in the review process of the Companies' proposed Program Plans and subsequent filings.

5. Dispute resolution (section (g) of the parties' proposed rules):

The Sierra Club proposes in its rule a process for dispute resolution that appears to resemble the existing practice for consumer complaints filed with the Commission against a public utility. The Companies include a similar provision in their amended proposed rule, but note that the process seems identical to current practice. The Public Staff, on the other hand, express concern that the inclusion of a dispute resolution provision is unnecessary. Any interested person, including a subscriber to the Community Solar Program, is able to seek help informally from the Public Staff and may file with the Commission a complaint against a public utility regarding billing or service disputes. See G.S. 62-73. The Commission agrees with the Public Staff that the existing complaint process is sufficient to address complaints subscribers may have regarding the Community Solar Program. However, the Commission finds value in requiring the offering utilities to inform subscribers of the complaint resolution process available to them as a means of potential recourse in the event that the offering utility has committed an actionable violation. Accordingly, the Commission declines to adopt the dispute resolution provision proposed by the Sierra Club. However, the Commission has included in Rule R8-72(c)(1)(vii) a requirement that the Companies must disclose to Program subscribers the process by which they can file a complaint with the Commission.

Based upon the foregoing and the entire record in this proceeding, the Commission adopts Rule R8-72, as set forth in Appendix A to this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 2017.

NORTH CAROLINA UTILITIES COMMISSION

Linnetta Threatt, Deputy Clerk

Commission Rule R8-72 is adopted as follows:

Rule R8-72 COMMUNITY SOLAR PROGRAM.

(a) Purpose. The purpose of this Rule is to implement the provisions of G.S. 62-126.8 as they relate to each offering utility's implementation of a Community Solar Program for the participation of retail customers.

(b) Definitions. Unless listed below, the definitions of all terms used in this Rule shall be as set forth in G.S. Chapter 62. The following terms are defined for purposes of this Rule as:

(1) "Community solar energy facility" or "facility" means a solar photovoltaic energy system that complies with the requirements set forth in G.S. 62-126.8(b) and (c), and is used to satisfy a portion of the generating capacity required by G.S. 62-126.8(a).

(2) "Community Solar Program" or "Program" means the program offered by an offering utility for the procurement of electricity by the offering utility for the purpose of providing subscribers the opportunity to share the costs and benefits associated with the generation of electricity by the facility.

(3) "Community Solar Program Plan" or "Program Plan" means the plan for implementation of the Community Solar Program, to be filed by each offering utility for the Commission's review and approval.

(4) "Solar photovoltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.

(5) "Subscriber" means a retail customer of the offering utility who subscribes to one or more blocks of community solar energy facility generating capacity, and is located in the state of North Carolina and in the same county or county contiguous to the facility, unless subject to an exemption pursuant to G.S. 62-126.8(c) and Section (e)(4) of this Rule.

(6) "Subscription" means the individual block of community solar energy facility generating capacity, which represents 200 watts or more of such generating capacity but not more than 100% of each subscriber's maximum annual peak demand of electricity at the subscriber's premises, to be purchased by a subscriber for a set term of up to twenty-five (25) years, throughout which the subscriber receives a bill credit for the subscribed amount of electricity generated by the facility.

(7) "Subscription fee" means any charge paid by a retail customer in exchange for a subscription to an approved Program.

(c) Community Solar Program Plan Filing Requirements.

(1) Each offering utility shall file, on or before January 23, 2018, an initial proposed Program Plan, which shall meet the requirements of G.S. 62-126.8(e), and shall contain the following:

(i) the standards and processes for the offering utility to recover reasonable interconnection costs, administrative costs, fixed and variable costs associated with each facility, and any other forecasted costs and intended cost recovery mechanisms;

(ii) an explanation of how non-subscribing customers of the offering utility will be held harmless from the Program, including a description of how the offering utility intends to avoid cross-subsidization of Program costs with non-subscribing customers;

(iii) a description of and justification for Program participation options available to subscribers, including a description of any available payment plans or financing options, information on the treatment of subscriptions if a subscriber moves within or outside of the offering utility's service territory, and whether and how subscriptions may be transferred from a subscriber to another customer who is eligible to participate in the Program;

(iv) the methodology for determining the subscription fee, including whether a subscriber would retain his or her existing rate tariff, and a description and justification for any proposed upfront subscription fee and the projected impact of each such fee on overall participation in the Program;

(v) the methodology for determining the avoided cost rate at which subscribers will receive bill credits;

(vi) the methodology for determining nameplate capacity of a facility;

(vii) a discussion of how the Program will be promoted, including the projected costs associated with marketing and promotion efforts, examples of communications or marketing materials to be used, and identification of information to be provided to customers, including but not necessarily limited to: an itemized list of any and all charges composing the subscription fee and the schedule upon which the charges would be due, the process by which a subscriber can file a complaint with the Commission, and all offering utility and Commission rules governing the Program;

(viii) a tariff, pro forma contract between the subscriber and the offering utility, a statement of terms and conditions, or any or all of these, that contain all terms and conditions regarding costs, risks, and benefits to the subscriber, an itemized list of any one-time and ongoing subscription fees, an explanation of renewable energy certificates, and when and how the subscriber will receive notifications regarding project status and performance;

(ix) a description of a subscriber's option to own the renewable energy certificates produced by the facility, including how this information will be distributed to subscribers;

(x) an estimate of economic costs and benefits for an average program subscriber, estimated time period for a subscriber to receive a return on investment, and a description of any quantifiable economic or environmental benefits to non-subscribing customers;

(xi) a description of siting considerations and site selection process;

(xii) a description and analysis of how the offering utility's Program design will minimize costs and maximize benefits for each subscriber;

(xiii) a description of the offering utility's intended method for the procurement of solar energy for the Program, including a cost estimate and justification for each method proposed;

(xiv) an implementation schedule for installing 20 MW of solar energy, including a cost estimate and justification for the proposed schedule; and

(xv) a description of how the Program Plan is consistent with the public interest.

(2) The offering utility shall file annually with the Commission a report that includes any proposed amendments or revisions to its existing Program Plan and updates on Program implementation progress, marketing efforts, the number of participants subscribed, and capacity subscribed.

(3) An offering utility shall provide additional updates upon request by the Public Staff, or as required by the Commission.

(4) An offering utility shall apply for and obtain Commission approval before implementing any amendment to an existing Program Plan, including whether to delay, suspend, or close a Program to new subscribers.

(d) Minimum Program requirements and procedures.

(1) The offering utility may elect to own and operate facilities to procure energy for the Program, may procure energy for the Program through power purchase agreements with qualifying "small power production facilities" as defined in 16 U.S.C. § 796, or both.

(2) Retail customers of each offering utility may voluntarily subscribe to the Program on a first-come, first-served basis in a manner consistent with any Program Plan approved by the Commission.

(3) No single subscriber shall subscribe to more than a forty percent (40%) interest in an offering utility's Program.

(4) Subscribers may subscribe to individual blocks, sized to represent 200 watts or more, of a facility's generating capacity.

(5) Subscribers are responsible to pay the subscription fee for each block of facility capacity to which they subscribe.

(6) Subscribers may purchase multiple subscriptions consistent with G.S. 62-126.8, subject to each offering utility's cap for residential, commercial, and industrial customers limited to no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each subscriber at the subscriber's premises.

(7) A subscriber shall be notified of Program enrollment prior to first being billed and credited in accordance with his or her subscription.

(8) If enrollment exceeds availability, the offering utility shall add potential subscribers to a subscriber waiting list.

(e) Procedure for Review of Community Solar Program Plans.

(1) The Commission may approve, disapprove, or modify an offering utility's initial Program Plan, annual report, or any proposed amendments to an existing Program Plan.

(2) After the filing of an offering utility's Program Plan or request to amend an existing Program Plan, the Commission will issue a procedural order setting deadlines for intervention and comments, and will proceed as appropriate and in a manner consistent with this Rule and G.S. 62-126.8.

(3) The Commission, for good cause shown, may order any investigation, hearing, or required filings as it deems necessary and appropriate to address the issues raised in a Program Plan, annual report, or any proposed amendments to an existing Program Plan filed by an offering utility. The scope of any such investigation, hearing, or required filings shall be limited to such issues as identified by the Commission.

(4) To the extent the offering utility seeks an exemption of the requirement in G.S. 62-126.8(c) that subscribers must be located in the same county or county contiguous to where the facility is located, the offering utility shall file with the Commission a request for such an exemption. If the Commission determines the request is in the public interest, it shall approve the request, provided that the subscriber remains a resident of the State and that the facility is located no more than 75 miles from the county of the subscriber.

(5) The offering utility shall have the burden of proof to demonstrate that the offering utility's Program Plan, annual reports, and any proposed amendments to an existing Program Plan are reasonable and comply with the requirements in G.S. 62-126.8 and this Rule.