

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. M-100, SUB 154

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Consider)	ORDER ADOPTING RULE
Hire North Carolina Rule)	

BY THE COMMISSION: On April 23, 2019, the Commission issued an Order Initiating Rulemaking Proceeding and Requesting Comments in the above-captioned docket seeking comments on the proposed Hire North Carolina rule. The proposed rule, which would be adopted as Chapter 25 of the Commission's Rules and Regulations, would serve as a tool to encourage and measure public utility utilization of North Carolina resident contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses. This rule would foster utility engagement with potential North Carolina suppliers and contractors, providing ways to inform North Carolina companies of business opportunities. This rule would apply to electric, telephone, and natural gas distribution companies subject to rate regulation of the Commission and to all water and wastewater companies with annual operating revenues in excess of \$250,000. The Commission further stated, however, this rule should not be interpreted to supersede any state statute, and nothing in this rule should be construed to prevent a utility from choosing the lowest and best bidder for any project or interfering with the mandate to serve the ratepayers or adequately respond to emergencies or support outages, nor to prohibit any utility from performing services covered by this rule with its own regularly-employed workforce.

Initial comments were filed on June 7, 2019, by Duke Energy Carolinas, LLC (DEC), Duke Energy Progress, LLC (DEP), and Piedmont Natural Gas Company, Inc. (Piedmont; collectively, Duke); Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC) and Public Service Company of North Carolina, Inc. (PSNC; collectively, Dominion); Toccoa Natural Gas (Toccoa); Aqua North Carolina, Inc. (Aqua NC); Carolina Water Service, Inc. of North Carolina (CWSNC); and the Public Staff. Reply comments were filed jointly by the above utilities and the Public Staff on June 14, 2019.

One consumer statement of position letter was filed on May 13, 2019, by Gerry McCants, Co-Chair of the Greensboro Business League (GBL), a nonprofit advocacy organization focusing on public spending and eliminating racial economic disparities facing African American businesses and the voice of African American contractors and business people throughout the Triad region, in support of the proposed rule. The GBL states that if the Hire North Carolina rule is adopted, this would serve as a major economic investment and benefit for minority and women-owned contractors in North Carolina.

SUMMARY OF INITIAL COMMENTS

Duke

In its initial comments, Duke states that it currently provides significant support for economic development in North Carolina: in 2018 Duke Energy contributed \$2.4 billion and over 4,360 jobs to economic development in North Carolina. Thus, while it fully support the goal and spirit of the proposed Hire North Carolina Rule and the intent of encouraging and measuring public utility utilization of North Carolina resident contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses, Duke recommends in its comments changes to certain provisions of the proposed rule.

For example, regarding the rule's applicability, Duke recommends that the proposed rule be amended to clarify that it only applies to projects located in the State of North Carolina. Duke further recommends that the threshold for included projects be increased from \$200,000 to \$700,000, the current floor for the prime contractor subcontracting plan established by the federal government and currently incorporated in Duke's Legal Terms and Conditions templates for both diverse and local subcontractors. Duke also recommends that the rule apply only to contracts entered into after July 1, 2020, to avoid problematic retroactive application to existing contracts and to allow utilities time to implement the proposed rule. Duke further recommends that "goods, products, and materials" be removed from the scope of the proposed Rules R25-1(a) and R25-5; and that "goods" be removed from the definitions of "Local Business Enterprise," "Prime Contractor" and "Subcontractor" in Rule R25-1(c). The term "goods, products, and materials" produced or supplied in North Carolina can, as an example, include items as small as nuts, bolts and washers, which could conceivably require the Hire North Carolina List to include every independent hardware store in the State, making the list inefficient to maintain without adding significant value. Duke also recommends that Rule R25-1(b) be revised to exclude contracts for planned or unplanned outage work, to make clear that "nothing in this rule should be construed ... [as] interfering with the mandate to serve the ratepayers or adequately respond to emergencies or support outages...." Noting that a subcontractor rarely assumes a portion of the prime contractor's obligations, Duke recommends deleting the second sentence of the definition of "subcontractor" in proposed Rule R25-1(c)(5), which states, "A subcontractor shall be treated as a prime contractor hereunder to the extent the subcontractor assumes any portion of the prime contractor's obligation under any contracts with the utility." Regarding the required periodic newspaper publication, Duke recommends that the frequency be modified to be annual, rather than quarterly due to the cost and burden. Arguing that newspaper publication in the legal/classified ads is not an effective means of communicating with the target supplier audience, Duke recommends that publication of notice be provided through other media, such as through the utilities' websites or other means, and that publication not be required in newspapers. Duke also recommends that the Commission reconsider the unbundling requirement of proposed Rule R25-4, as such unbundling is typically not cost-effective. Regarding the notification requirement of proposed Rule R25-5, Duke recommends that this notification occur as bid events come to fruition. In general, the Duke would plan to

notify a reasonable number of Hire North Carolina List qualified bidders, based on geographical proximity, as bids come to fruition, electronically and via its bidding tool. Rather than the feedback mechanism proposed in Rule R25-6, which it argues would be “extremely inefficient and unproductive,” Duke recommends that the Commission consider periodic audits of bid events, which would allow the Commission to review and gain confidence in the utilities’ contract evaluation and awards processes. Regarding the annual compliance report proposed in Rule R25-7, which it characterizes as burdensome and inefficient, Duke recommend that the Commission adopt a more streamlined reporting requirement or an annual random audit process overseen by the Public Staff to provide the Commission with information about the effectiveness and compliance with the Hire North Carolina Rule.

Dominion

In its initial comments, Dominion states that it is supportive of the proposed rule’s purpose and overarching policy objectives, and believe that it is good business to expand their competitive and qualified supplier base and to invest in the communities that Dominion serves: “[Dominion] is fully committed to expanding supplier diversity and sets goals each year to continuously increase the overall spend with diverse suppliers across the enterprise.” Dominion states that it is already undertaking robust efforts to promote small and diverse businesses in the communities in which it serves and are supportive of the policy objectives of the proposed Hire North Carolina Rules. For example, at the corporate parent level, Dominion

formed an Executive Diversity Council in 2010 to promote [the utility subsidiaries’] commitment to workforce diversity and contracting with diverse suppliers, including minority-owned, women-owned, veteran-owned, LGBT-owned, disability-owned, service disabled veteran-owned, HUBZone, and small disadvantaged businesses. With oversight and guidance from the Executive Diversity Council, the Companies are committed to doing business with small, local, and diverse businesses in the States and communities in which DENC and PSNC serve. In order to facilitate the Companies’ diversity procurement goals and to foster relationships with qualified local and diverse suppliers, Dominion has also established partnerships with numerous local, regional, and national advocacy organizations.

Dominion representatives annually attend supplier diversity events that allow the utilities’ Business Units and Supply Chain Management Department to interact with local and diverse suppliers and discuss upcoming bid opportunities, and Dominion expects its prime contractors to engage in similar supplier diversity programs to encourage spend with women- and minority-owned subcontractors. Additionally, in accordance with applicable federal regulations, Dominion requires prime contractors for projects over \$700,000 to complete subcontracting plans that promote contracting opportunities for small businesses.

Dominion, however, recommends in its comments changes to certain provisions of the proposed rule. For example, consistent with federal procurement requirements, Dominion recommends that the threshold for included projects in proposed Rule R25-1 be increased from \$200,000 to \$700,000. Dominion also recommends that the rule be amended to apply only to contracts for construction, extension and/or repair of facilities located exclusively in North Carolina, particularly since the majority of DENC's operations, facilities, and customers are located in Virginia. As Duke suggested, Dominion also recommends that contracts for "goods" be removed from the scope of the rule and that the applicability section explicitly exclude planned or emergency outage work. Dominion further agrees with Duke that the newspaper publication requirement in Rule R25-3 should be amended to simply require publication on the utilities' websites as a more effective and less costly means of communication. Moreover, resident contractors should be allowed to initially self-certify their qualification to perform contracts within the relevant utility's scope of work. Dominion also agrees with Duke that unbundling contract goods and services, as required by Rule R25-4, is often an inefficient and costly process that could ultimately have a negative impact on customers' rates and service, and requests that the Commission reconsider proposed Rule R25-4. Regarding the notification requirements of proposed Rule R25-5, Dominion states that requiring an annual posting of all planned contract solicitations across its operations and inviting all potential resident contractors to bid on applicable construction work will impose excessive burdens in the competitive bidding implementation and evaluation process with little added value. Dominion believes it would be more appropriate to identify potentially qualified contractors on the Hire North Carolina List based upon their capabilities and geographic proximity to the project being bid and to notify those contractors when bids are solicited. Regarding Rule R25-6, Dominion has significant concerns with allowing an unsuccessful resident contractor bidder to seek additional competitively sensitive information after the solicitation, notes that this provision will be difficult to administer and may be used to pursue a competitive advantage in future solicitations, and recommends that it be deleted. Regarding the annual compliance report required in Rule R25-7, Dominion states that certain provisions are impractical, burdensome, and unnecessary, and recommends deleting the requirement for that information.

Toccoa

In its initial comments, Toccoa recognizes that the Hire North Carolina rule has important purposes, but notes that it is a municipal gas system mostly serving customers in Georgia. Of its approximately 90 miles of transmission main, only 17 miles are located in North Carolina, and only approximately 71 of its 418 miles of distribution main miles are in North Carolina. Toccoa argues that

compliance with the Hire North Carolina rule would be a substantial burden on Toccoa. As a municipal gas system, Toccoa does not have the amount of resources that many of the other public utilities made parties to this docket have. Compliance with the rule would require Toccoa to invest its limited resources to maintain a Hire North Carolina list, publish notice of

competitive bidding, provide feedback to unsuccessful North Carolina bidders, and prepare detailed compliance reports on an annual basis.

Lastly, Toccoa states that it is aware of other municipal gas distributors located in the state; but that it would be the only North Carolina municipal gas distributor that is potentially subject to the Hire North Carolina rule. Toccoa, therefore, requests that it be exempt from participation in the Hire North Carolina program.

Aqua NC

In its initial comments, Aqua NC states that it supports the Commission's goals and objectives that underpin the Hire North Carolina rule, but does not support adoption of the proposed rule. Aqua NC notes that its current policies regarding contractor selection already align with the proposed rule, and it does not believe that a state-mandated "outreach and assistance" program would provide the intended benefit due to: (a) the limited applicability of the proposed rule to Aqua NC's small number of eligible projects; (b) the existence of internal policies already designed to accomplish the goals of the program; and (c) its significant use already of vendors who are located in North Carolina. In particular:

out of approximately 185 specifically identifiable capital projects in 2018, excluding recurring maintenance projects that are almost 100% completed by local contractors, only 23 (or 12%) cost more than \$200,000, and thus would have been impacted by the Proposed Rule. Twenty-two of the 23 projects were either sourced to a North Carolina-based vendor, or a North Carolina vendor contributed to completion of the project.

Aqua NC notes that it has both a company-wide Purchasing and Supplier Diversity policy along with a Supplier Diversity program, which tracks and periodically reports the use of diverse and small business (local) vendors and utilizes a subscription to a data service that tracks by category small businesses, women-owned businesses, minority business enterprises, and other indicia of diversity. Aqua NC's purchasing policies and programs follow supply chain best practices as well as other utility best practices; it currently seeks bids from qualified contractors based on local ability to serve, and recognizes that local vendors are often able to provide services at less cost because of their geographic proximity to the facilities. Therefore, Aqua NC relies heavily on these local resources to provide bids and complete the necessary work. Aqua NC thus recommends rather than attempting to develop new lists of potential resident contractors, utilizing available existing resources to expand a utility's local qualified contractor pool, such as the Office of Historically Underutilized Businesses (HUB) maintained by the North Carolina Department of Administration, which promotes economic opportunities for historically underutilized businesses and includes a certification program to properly classify businesses as such. Although Aqua NC has not utilized HUB services, it intends to explore them.

CWSNC

CWSNC, in its initial comments, similarly states that it understands the Commission's intent and appreciates the objectives of the proposed rule, but does not support adoption of the Hire North Carolina rule. As Aqua NC noted, CWSNC prioritizes engaging local contractors and employees to provide safe and reliable water and wastewater services to communities across the state of North Carolina and believes its current business activities align with the objectives of the rule:

In the past three years alone, CWSNC has invested nearly \$45 million across more than 100 major projects and numerous smaller improvements. Of those projects, all were completed using prime contractors from North Carolina.

CWSNC objects to the proposed rulemaking because of three primary concerns: (1) the proposed rule will increase costs for construction; (2) the proposed rule will increase operation and maintenance costs; and (3) CWSNC's existing procurement practices already produce the results intended by the proposed rule. CWSNC specifically estimates the potential costs associated with compliance, including additional staff, costs which would ultimately be passed along to customers: "In an industry which has continued to see rising operating costs, the Proposed Rule further challenges our ability to provide quality service at a reasonable price."

CWSNC further states that the unbundling required by proposed Rule 25-4 would shift the risk of management of additional aspects of the project from the prime contractor to the utility, and ultimately to its customers, and would likely lead to higher bid costs due to the administrative burden put on the utility to manage additional project components on which bids are received, as well as the bidder feedback requirements of proposed Rule 25-6. CWSNC argues that new hurdles imposed by the rule, including the requirement for prime contractors to consult the Hire North Carolina List when choosing subcontractors for the project, could deter contractors from bidding on projects, especially in a strong construction economy where contractors have more work opportunities than they can accept. CWSNC states that it has spent many years developing strong working relationships with a diverse group of local contractors, subcontractors, vendors, and suppliers, and it is concerned the requirements of proposed Rule 25-4 will work against its desire to have readily-available contractors to bid on projects at the lowest price possible for its customers.

The Company expects the result of the burdens placed on contractors under the Proposed Rule to be a reduction of the contractor and supplier pool, rather than an expansion as intended. ... Because almost all of CWSNC's contractors are currently North Carolina-based businesses, the Proposed Rule is simply not worth the additional costs to our customers.

Public Staff

In its initial comments, the Public Staff, too, supports the goals of increasing regulated utility use of North Carolina resident contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses, and making the bid and hire opportunities of regulated utilities as widely known and accessible as reasonably possible. It cautions, however, that these goals should be harmonized with least cost principles to ensure utilities are not passing along costs to customers that are higher than reasonable. Thus, the Public Staff recommends that the annual reports of the utilities required in proposed Rule R25-7 also include (1) data on contractor and vendor hires where businesses other than the low bidder were selected, with such data to indicate all the reasons why the low bidder was not selected, and (2) information showing each utility's incremental costs and benefits of implementing the rule, relative to benchmark data from the three years prior to the rule's promulgation.

SUMMARY OF REPLY COMMENTS

In their joint reply comments, the utilities and the Public Staff stated that they had engaged in further discussions since the filing of initial comments and attached a single revised draft of the proposed rule for consideration by the Commission. Toccoa reiterated its request for an exemption from the rule, which was joined by Aqua NC and CWSNC.

DISCUSSION AND CONCLUSIONS

The Commission recognizes and appreciates the efforts to engage local North Carolina contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses, undertaken by the utilities filing comments in this docket. However, while the Commission acknowledges that the requirements of the proposed Hire North Carolina Rule will impose some additional effort and cost on the part of those utilities, it remains convinced that an additional measure of transparency, scrutiny, and accountability is necessary to encourage, as much as possible, the utilization of local businesses, including women- and minority-owned businesses, and to support the economy of this State. The Commission is persuaded, though, that the incremental benefits provided by the proposed rule may be outweighed by the cost to smaller utilities in the State. Thus, while application of the rule initially excluded water and wastewater companies with annual operating revenues in excess of \$250,000, the Commission finds good cause to amend the rule to apply only to the major electric and natural gas utilities operating in the State: DEP, DEC, DENC, Piedmont, and PSNC. Nevertheless, the Commission encourages all other jurisdictional utilities to maintain their efforts to comply with the spirit of this rule, and reserves the right, as always, to broaden the scope of the rule in the future if circumstances warrant.

The Commission further appreciates the level of review and detail provided in the comments on the actual provisions in the rule itself. The Commission finds the comments, suggestions, and recommendations extremely helpful, and encourages similar collaboration, where possible, in future rulemaking proceedings. Except as discussed

below, the Commission agrees that the rule is intended to apply only to contracts for construction, extension and/or repair of facilities or other utility projects, such as coal ash removal, located in North Carolina, and the commenters' non-repetitive suggestions will be harmonized, where possible, and incorporated into the final rule.

With regard to the suggested changes to the last two sentences of proposed Rule R25-3, the Commission is not persuaded that any change is required: a utility must at some point in order to report compliance with the rule determine for itself that the contractor applying to be included on the utility's Hire North Carolina List qualifies as a resident contractor, but the initial certification to the utility by the applicant contemplated by the rule is, in fact, a self-certification. Lastly, the joint reply comments do not include Duke's recommendation in its initial comments that the annual reporting requirement should be discarded in favor of an audit by the Public Staff. The joint reply comments also do not propose including in the annual report the additional information requested by the Public Staff in its initial comments. The Commission concurs.

Therefore, after careful consideration of and based upon the comments filed in this docket, the Commission finds good cause to adopt the revised Hire North Carolina Rule as Chapter 25 of the Commission's Rules and Regulations, attached hereto in black-lined and clean versions as Attachments A and B. The rule, as recommended by Duke in its initial comments and as provided in revised Rule R25-1(b), will be effective with contracts solicited by or on the behalf of any utility on or after July 1, 2020, and the first annual report by the utilities to which the revised rule applies will be required to be filed on or before March 1, 2021.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of June, 2019.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Janice H. Fulmore", is written over a light gray rectangular background.

Janice H. Fulmore, Deputy Clerk

Chapter 25

Hire North Carolina, Resident Contractor Utilization

Rule R25-1. Purpose; applicability; definitions

(a) Purpose. — For the purpose of promoting economic development, creating jobs, and improving the communities served by the utilities, the Commission urges utilities to maximize, consistent with law, the use of ~~goods, products, and materials produced~~resident contractors for utility projects undertaken in the State of North Carolina. This rule shall serve as a tool to encourage and measure ~~public~~ utility utilization of North Carolina resident contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses. This rule is created to foster utility engagement with potential North Carolina ~~suppliers and~~ contractors, providing ways to inform North Carolina companies of business opportunities. However, this rule shall not be interpreted to supersede any state statute, and nothing in this rule shall be construed to prevent a utility from choosing the lowest ~~and~~ best bidder for any project, ~~or interfering~~ interfere with the mandate to serve the ratepayers or adequately respond to emergencies or support outages.

(b) Applicability. — All contracts for construction, extension and/or repair of facilities or other utility projects located in North Carolina in excess of \$200,000.00~~\$700,000.00~~ solicited by or on the behalf of any utility on or after July 1, 2020, shall be governed by this rule; provided, however, this rule shall not apply to planned or unplanned outage work, and nothing contained herein shall prohibit any utility from performing services covered by this rule with its own regularly-employed work-force.

(c) Definitions. — As used in this rule, the following definitions shall apply:

(1) ~~Local Business Enterprise~~ — ~~A resident contractor determined by the utility to be qualified to furnish goods and services to the utility and placed on the utility's Hire North Carolina list pursuant to Rule R25-3 below.~~

(2) ~~Nonresident Contractor~~ contractor — A prime contractor or subcontractor, be they corporate, individual or partnership, domiciled or having its principal place of business in a location other than the State of North Carolina that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.

(32) ~~Prime Contractor~~ contractor — Any party or person (who is not an employee of the utility or its affiliated or associated companies) who directly enters into any agreement with a utility for the furnishing of ~~goods or~~ services.

(43) ~~Resident Contractor~~ contractor — A prime contractor or subcontractor, be they corporate, individual, or partnership, domiciled or having its principal place of

business in the State of North Carolina that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.

(54) Subcontractor — Any party or person, who is not an employee of the prime contractor or the utility, who directly enters into any agreement with a prime contractor: (i) for the furnishing of goods or services; or (ii) under which any portion of the prime contractor's obligation under any contracts with the utility is performed or undertaken. ~~A subcontractor shall be treated as a prime contractor hereunder to the extent the subcontractor assumes any portion of the prime contractor's obligation under any contracts with the utility.~~

(65) Utility — ~~Any electric, telephone, natural gas, water, or wastewater public utility as defined in G.S. 62-3(23) subject to rate regulation by the Commission; provided, however, that "utility" shall not mean any water or wastewater public utility with annual operating revenues of \$250,000 or less.~~The following public utilities providing electric and natural gas service in North Carolina: Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; Dominion Energy North Carolina; Public Service Company of North Carolina, Inc.; and Piedmont Natural Gas Company, Inc.

Rule R25-2. Resident Contractor Outreach and Assistance

Each utility shall actively seek out opportunities to identify and assist potential resident contractors, including women- and minority-owned businesses, in order to expand the utility's contracting source pool within the State of North Carolina. The utility shall help enable contracting relationships with resident contractors by exercising reasonable efforts to explain utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures. ~~The utility shall make available to resident contractors on its website lists of contract categories which may to assist resident contractors in determining which contract categories~~ best align with the resident contractor's stated qualifications. The utility shall develop marketing program literature to provide to resident contractors and the business community summarizing its efforts pursuant to this rule. Such summaries shall state that the resident contractor will be furnished a complete copy of this rule upon request. Such summaries shall encourage the participation of resident contractors as prime contractors and subcontractors. The utilities are encouraged to explore opportunities for outreach involving North Carolina's institutions of higher education, community colleges, and other trade and technical schools to raise awareness of career opportunities in fields utilized by the public utility sector, with special emphasis on explanation of the contract bidding process.

Rule R25- 3. Hire North Carolina List

Each utility shall maintain a Hire North Carolina list consisting of resident contractors, including women- and minority-owned businesses, determined by the utility to be qualified to perform contracts within the scope of proposed utility projects. ~~At least every 3 months, the~~The utility shall publish ~~in a newspaper in each county in the utility's certificated area,~~on its website a notice requesting names of qualified resident contractors. ~~Special attention shall be paid to counties which have no daily local paper to make reasonable efforts to reach potential contractors through cost effective available avenues which may include, without limitation, electronic communications.~~ A contractor wishing to be included on the Hire North Carolina list may certify to the utility that the contractor is a resident contractor as defined in Rule R25-1 above by any means the utility deems reasonable. Upon such certification, the utility shall add said contractor to the Hire North Carolina list.

Rule R25-4. ~~Unbundling of Contract Goods and Services~~

~~When efficient or cost effective, a utility shall unbundle and separate scopes and specifications to accommodate the inclusion of resident contractors in sourcing activities.~~

~~Rule R25-5. Publication of Competitive Bidding~~

In addition to the publication requirements of Rule R25-3 above, each utility is encouraged to pursue any additional means of publication in trade journals, ~~local newspapers,~~ social media, or any other reasonable avenue available. ~~Resident contractors who operate within the area in which the scope of goods or services will be performed under the applicable contracts and who furnish the goods and services sought, at a minimum of once per calendar year, shall be notified of any known upcoming bids for contracts containing scopes of goods or services furnished by the resident contractor via U.S. mail or electronic means, if available.~~ No contract shall be awarded to any prime contractor without the utility first providing to the prime contractor the utility's Hire North Carolina list for consideration of awarding subcontracts arising out of the prime contract.

Rule R25-~~65~~. Resident Contractor Bid Feedback

In any case in which a resident contractor is unsuccessful in a bid on a contract which is awarded to a nonresident contractor, the utility shall, at the request of any unsuccessful resident contractor bidder, and only after the contract has been executed, provide general, non-confidential information concerning the overall evaluation process between the resident contractor's bid as contrasted with the successful bid. ~~Information on additional selection criteria, such as warranty periods, maintenance costs, and delivery capability, shall be provided under confidentiality protections when requested if disclosure would not violate the proprietary nature of the specific contract element or otherwise violate contractual obligations of confidentiality.~~

Rule R25-76. Annual Report Requirements

On or before March 1 of each year, the utility shall file a report with the Commission addressing compliance with this rule during the preceding calendar year. The report shall include relevant and material information from the prior year, including ~~proofs of publication~~, a copy of the utility's most recent Hire North Carolina list, a listing of all student outreach event opportunities afforded by the utility, ~~and the number of bid feedback requests received pursuant to Rule R25-6.~~

~~Additionally, the utility shall report the total number of contracts subject to this rule awarded by the utility in the previous year, a breakdown of how many of those contracts were awarded to resident contractors, including women- and minority-owned businesses, and how many to nonresident contractors, and a brief description of each contract's scope of work or supply the type of work performed. In cases where nonresident contractors are used, the utility shall provide a brief explanation of why the nonresident contractor was chosen over a resident contractor. However, the utility shall not be required to provide confidential competitive advantage or proprietary information in these disclosures. Such explanation shall not disclose the identity of the resident contractor not chosen or the nonresident contractor in order to not harm the reputation of the resident contractor. The Commission and/or the utility reserves the right to request such information be filed confidentially when deemed necessary to fulfill the goals of this rule or to comply with contractual confidentiality obligations.~~

~~The report shall specify the percentage of each contractor's employees that are North Carolina residents to the extent reported to the utility by the contractor. If within the reporting period 75% of those employed pursuant to resident contractor contracts are North Carolina residents, the Commission shall award a certificate to the utility naming it a North Carolina Champion.~~

The utilities shall also summarize any outreach efforts undertaken pursuant to Rule R25-2 above, including the response to and perceived impact of such efforts.

Upon request of the utility or by order of the Commission, a public hearing for discussion of the annual report may be held after it has been filed by the utility. The public hearing should protect confidential information including, but not limited to, the identity of the contractors and costs.

Rule R25-87. Cost Recovery

The utilities shall be allowed to recover all prudently incurred incremental costs associated with compliance with this rule.

Chapter 25

Hire North Carolina, Resident Contractor Utilization

Rule R25-1. Purpose; applicability; definitions

(a) Purpose. — For the purpose of promoting economic development, creating jobs, and improving the communities served by the utilities, the Commission urges utilities to maximize, consistent with law, the use of resident contractors for utility projects undertaken in the State of North Carolina. This rule shall serve as a tool to encourage and measure utility utilization of North Carolina resident contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses. This rule is created to foster utility engagement with potential North Carolina contractors, providing ways to inform North Carolina companies of business opportunities. However, this rule shall not be interpreted to supersede any state statute, and nothing in this rule shall be construed to prevent a utility from choosing the lowest or best bidder for any project, or interfere with the mandate to serve the ratepayers or adequately respond to emergencies or support outages.

(b) Applicability. — All contracts for construction, extension and/or repair of facilities or other utility projects located in North Carolina in excess of \$700,000.00 solicited by or on the behalf of any utility on or after July 1, 2020, shall be governed by this rule; provided, however, this rule shall not apply to planned or unplanned outage work, and nothing contained herein shall prohibit any utility from performing services covered by this rule with its own regularly-employed workforce.

(c) Definitions. — As used in this rule, the following definitions shall apply:

(1) Nonresident contractor — A prime contractor or subcontractor, be they corporate, individual or partnership, domiciled or having its principal place of business in a location other than the State of North Carolina that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.

(2) Prime contractor — Any party or person (who is not an employee of the utility or its affiliated or associated companies) who directly enters into any agreement with a utility for the furnishing of services.

(3) Resident contractor — A prime contractor or subcontractor, be they corporate, individual, or partnership, domiciled or having its principal place of business in the State of North Carolina that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.

(4) Subcontractor — Any party or person, who is not an employee of the prime contractor or the utility, who directly enters into any agreement with a prime contractor: (i) for the furnishing of services; or (ii) under which any portion of the prime contractor's obligation under any contracts with the utility is performed or undertaken.

(5) Utility —The following public utilities providing electric and natural gas service in North Carolina: Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; Dominion Energy North Carolina; Public Service Company of North Carolina, Inc.; and Piedmont Natural Gas Company, Inc.

Rule R25-2. Resident Contractor Outreach and Assistance

Each utility shall actively seek out opportunities to identify and assist potential resident contractors, including women- and minority-owned businesses, in order to expand the utility's contracting source pool within the State of North Carolina. The utility shall help enable contracting relationships with resident contractors by exercising reasonable efforts to explain utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures. The utility shall make available on its website lists of contract categories to assist resident contractors in determining which contract categories best align with the resident contractor's stated qualifications. The utility shall develop marketing program literature to provide to resident contractors and the business community summarizing its efforts pursuant to this rule. Such summaries shall state that the resident contractor will be furnished a complete copy of this rule upon request. Such summaries shall encourage the participation of resident contractors as prime contractors and subcontractors. The utilities are encouraged to explore opportunities for outreach involving North Carolina's institutions of higher education, community colleges, and other trade and technical schools to raise awareness of career opportunities in fields utilized by the public utility sector, with special emphasis on explanation of the contract bidding process.

Rule R25- 3. Hire North Carolina List

Each utility shall maintain a Hire North Carolina list consisting of resident contractors, including women- and minority-owned businesses, determined by the utility to be qualified to perform contracts within the scope of proposed utility projects. The utility shall publish on its website a notice requesting names of qualified resident contractors. A contractor wishing to be included on the Hire North Carolina list may certify to the utility that the contractor is a resident contractor as defined in Rule R25-1 above by any means the utility deems reasonable. Upon such certification, the utility shall add said contractor to the Hire North Carolina list.

Rule R25-4. Publication of Competitive Bidding

In addition to the publication requirements of Rule R25-3 above, each utility is encouraged to pursue any additional means of publication in trade journals, social media, or any other reasonable avenue available. No contract shall be awarded to any prime contractor without the utility first providing to the prime contractor the utility's Hire North Carolina list for consideration of awarding subcontracts arising out of the prime contract.

Rule R25-5. Resident Contractor Bid Feedback

In any case in which a resident contractor is unsuccessful in a bid on a contract which is awarded to a nonresident contractor, the utility shall, at the request of any unsuccessful resident contractor bidder, and only after the contract has been executed, provide general, non-confidential information concerning the overall evaluation process between the resident contractor's bid as contrasted with the successful bid.

Rule R25-6. Annual Report

On or before March 1 of each year, the utility shall file a report with the Commission addressing compliance with this rule during the preceding calendar year. The report shall include relevant and material information from the prior year, including a copy of the utility's most recent Hire North Carolina list, a listing of all student outreach event opportunities afforded by the utility, the total number of contracts subject to this rule awarded by the utility in the previous year, a breakdown of how many of those contracts were awarded to resident contractors, including women- and minority-owned businesses, and how many to nonresident contractors, and a brief description of the type of work performed.

The utilities shall also summarize any outreach efforts undertaken pursuant to Rule R25-2 above, including the response to and perceived impact of such efforts.

Upon request of the utility or by order of the Commission, a public hearing for discussion of the annual report may be held after it has been filed by the utility. The public hearing should protect confidential information including, but not limited to, the identity of the contractors and costs.

Rule R25-7. Cost Recovery

The utilities shall be allowed to recover all prudently incurred incremental costs associated with compliance with this rule.