

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 150**

In the Matter of:)	NCSEA’S INITIAL
Rulemaking Proceeding to Implement)	COMMENTS
G.S. 62-110.8)	

NCSEA’S INITIAL COMMENTS

The North Carolina Utilities Commission (“Commission”) issued its *Order Initiating Rulemaking Proceeding* (“*Order*”) on July 28, 2017 initiating a proceeding to adopt rules to implement Part II of Session Law 2017-192. S.L. 2017-192 enacted G.S. 62-110.8, which directs the establishment of a competitive procurement program to procure energy and capacity from renewable energy facilities. In its *Order*, the Commission requested that the initial and reply comments of the parties address:

- (1) Oversight of the competitive procurement program.
- (2) To provide for a waiver of regulatory conditions or code of conduct requirements, if any, that would unreasonably restrict a public utility or its affiliates from participating in the competitive procurement process, unless the Commission finds that such a waiver would not hold the public utility's customers harmless.
- (3) Establishment of a procedure for expedited review and approval of certificates of public convenience and necessity, or the transfer thereof, for renewable energy facilities owned by the public utility and procured pursuant to this section. The Commission shall issue an order not later than 30 days after a petition for a certificate is filed by the public utility.
- (4) Establishment of a methodology to allow an electric public utility to recover its costs pursuant to G.S. 62-110.8(g).
- (5) Establishment of a procedure for the Commission to modify or delay implementation of the provisions of this section in whole or in part if the Commission determines that it is in the public interest to do so.

Pursuant to the Commission's *Order*, the North Carolina Sustainable Energy Association ("NCSEA"), an intervenor to the above-captioned docket, submits the following initial comments.

The adoption of S.L. 2017-192 creates a new paradigm for new renewable energy facilities in North Carolina. The changes to G.S. 62-156 contained in Section 1.(b) of the session law effectively leave qualifying facilities with a single path forward: the competitive procurement program. Because it is still the policy of the State of North Carolina to promote the development of new renewable energy facilities, *see*, G.S. 62-2(a)(10), it is critical that the regulatory framework adopted by the Commission to implement the competitive procurement program be conducive to the development of new renewable energy facilities.

I. OVERSIGHT OF THE COMPETITIVE PROCUREMENT PROGRAM

The Commission has first requested comments from parties regarding oversight of the competitive procurement program. While NCSEA does not propose rules in its initial comments, NCSEA wishes to bring the following issues to the Commission's attention for consideration in the rulemaking process. If necessary, NCSEA may provide proposed rules or rule revisions in its reply comments.

A. OVERARCHING PRINCIPLE OF FAIRNESS

The provisions of S.L. 2017-192, and in particular Part II adopting the competitive procurement program, make clear that the legislature was interested in creating an equitable and transparent process for all parties involved, both independent power producers and utilities. NCSEA believes that the Commission should adopt rules with these overarching principles in mind.

1. INDEPENDENT EVALUATOR

Pursuant to G.S. 62-110.8(d), the competitive procurement program is to be “independently administered by a third-party entity to be approved by the Commission.” This independent evaluator is to “develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably.” The selection of a fair and unbiased independent evaluator is key to proper implementation of S.L. 2017-192’s competitive procurement program. Whether done so in rule or by order, NCSEA urges the Commission to adopt timeframes for selecting an independent evaluator, for the development of a methodology for selection of responses by the independent evaluator, and for publication of the methodology by the independent evaluator. NCSEA also recommends the Commission adopt a procedure for the periodic review of the performance of an independent evaluator and, if necessary, replace an independent evaluator in the event poor performance. Finally, NCSEA recommends that the Commission take into account the technological capabilities of potential independent evaluators, as a well-designed electronic interface has the potential to greatly streamline the process of submitting responses to the competitive procurement, and could potentially integrate with the electronic platforms used NC-RETS and those being developed by the utilities for the submission of interconnection documentation.

G.S 62-110.8(d) further specifies that “All reasonable and prudent administrative and related expenses incurred to implement this subsection shall be recovered from market participants through administrative fees levied upon those that participate in the competitive bidding process, as approved by the Commission.” NCSEA believes that the

Commission should address in its rules how these costs will be recovered from market participants.

Lastly, as discussed further in Part I.A.3 of these comments, NCSEA believes that the rules implementing the competitive procurement program should make clear that the Commission has the authority to overrule the independent evaluator. G.S. 62-110.8(d) gives the independent evaluator the authority to *administer* the competitive procurement program; ultimately, G.S. 62-110.8(h)(1) gives the Commission *oversight* of the competitive procurement program.

2. TRANSPARENCY

The competitive procurement program is required to include transparency of data. G.S. 62-110.8(e) sets forth that “If the public utility uses nonpublicly available information concerning its own distribution or transmission system in preparing a proposal to a competitive procurement, the public utility shall make such information available to third parties that have notified the public utility of their intention to submit a proposal to the same request for proposals.” However, S.L. 2017-192 does not set forth a procedure for this data to be made available to either market participants or to the public. NCSEA suggests that the Commission’s rules implementing the competitive procurement program include review and enforcement mechanisms to ensure that, if the utilities are using nonpublicly available information when developing a response to a competitive procurement, this information is made available to other market participants and the public at the time it is used by the utility in developing a response. As discussed further in Part I.B.4 of these comments, this transparency requirement should extend to the utilities’

calculations of interconnection upgrade costs when submitting a response to a competitive procurement.

Additionally, NCSEA believes that the Commission's rules should require transparency to certain information about both selected and rejected responses to competitive procurements. Without revealing trade secrets protected by Article 24 of Chapter 66 of the General Statutes, it is NCSEA's position that market participants and the public should be able to have access to sufficient information to evaluate the market and potential for renewable energy facilities in North Carolina. Thus, NCSEA believes that the Commission's rules should provide for transparency to the pricing, location, and other characteristics of both accepted and rejected responses.

Finally, as discussed further in Section I.B.1 of these comments, it is critically important that the utilities be required in their initial competitive procurement program submittals to include detailed information about the timing, quantity, allocation, geography, and other parameters of their proposed programs. Early transparency and disclosure of this information is essential to ensuring that independent power producers are on a level playing field with the utilities and have the ability to develop projects that meet the utilities' requirements and can compete effectively in the competitive procurement program.

3. DISPUTE RESOLUTION

NCSEA believes that the Commission should be the final arbiter of any disputes that should arise related to or about the competitive procurement program. Informal dispute resolution can be appropriate under certain situations, but NCSEA firmly believes that any unresolved or contested issues should ultimately be decided by the Commission. NCSEA

urges the Commission to adopt a process that guarantees the parties to the dispute an opportunity to comment and be heard, and further believes that the process should allow for comments by other parties if the issue would have a broader impact on the competitive procurement program.

4. LEVEL PLAYING FIELD

S.L. 2017-192 goes to great lengths to ensure that independent power producers are on a level playing field with utilities. NCSEA believes that, in addition, the Commission should ensure that all renewable energy facilities are on a level playing field. This requires ensuring that new renewable energy facilities are not disadvantaged by existing facilities, and also ensuring that all independent power producers are treated equitably. To this end, bidder qualification requirements should be crafted to reflect the realities of bringing a new renewable energy facility from proposal to fruition. While small independent power producers or new market entrants may need to combine their efforts and experience to meet reasonable bidder qualification requirements, NCSEA believes that the Commission should strive to ensure that the requirements, and all rules implementing the competitive procurement program, do not unnecessarily discriminate against small independent power producers and new market participants.

B. ISSUES REQUIRING CLARIFICATION

While G.S. 62-110.8 tackles many complex issues, it does leave numerous issues unresolved or unclear. NCSEA believes that Commission clarification or guidance on the following issues is crucial to ensuring a successful competitive procurement program.

1. LOCATIONAL INFORMATION

G.S. 62-110.8(c) gives the utilities

the authority to determine the location and allocated amount of the competitive procurement within their respective balancing authority areas, whether located inside or outside the geographic boundaries of the State, taking into consideration (i) the State's desire to foster diversification of siting of renewable energy resources throughout the State; (ii) the efficiency and reliability impacts of siting of additional renewable energy facilities in each public utility's service territory; and (iii) the potential for increased delivered cost to a public utility's customers as a result of siting additional renewable energy facilities in a public utility's service territory, including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific renewable energy resource technology, such as nondispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs.

While the statutory language provides direction for how the siting of renewable energy facilities is to be determined, it does not provide direction about the level of granularity for locational characteristics that the utilities are to provide to market participants. At its broadest scope, the utilities could only be required to provide a locational breakdown between service territories; at a much narrower scope, the utilities could be required to provide a locational breakdown by county, substation, or circuit. If the utilities provide more granular locational information, market participants would be able to propose new renewable energy facilities that most align with the needs of the electric grid and create the most cost savings for ratepayers. Furthermore, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina have all recognized that distributed generation can provide benefits to the electric grid when sited at certain locations. Accordingly, NCSEA believes that the Commission direct the utilities to provide locational information early in the competitive procurement program, should provide direction to the

utilities about what level of granularity regarding location is expected, and should direct the utilities to provide information about locations where distributed generation can benefit the electric grid.

2. "POTENTIAL FOR INCREASED DELIVERED COST"

In giving utilities the authority to determine the location for renewable energy facilities, G.S. 62-110.8(c) directs the utilities to take into consideration

the potential for increased delivered cost to a public utility's customers as a result of siting additional renewable energy facilities in a public utility's service territory, including additional costs of ancillary services that may be imposed due to the operational or locational characteristics of a specific renewable energy resource technology, such as nondispatchability, unreliability of availability, and creation or exacerbation of system congestion that may increase redispatch costs.

NCSEA believes that, if the utilities' locational determinations are informed by the potential for increased delivered cost, then market participants should have visibility and access to the data used to support the conclusions that certain locations would result in increased costs. Such a policy would be consistent with the transparency requirement of G.S. 62-110.8(e), which is discussed further in Part I.A.2 of these comments.

3. LIMIT ON UTILITY PARTICIPATION

G.S. 62-110.8(b)(4) provides that

No more than thirty percent (30%) of an electric public utility's competitive procurement requirement may be satisfied through the utility's own development of renewable energy facilities offered by the electric public utility or any subsidiary of the electric public utility that is located within the electric public utility's service territory. This limitation shall not apply to any renewable energy facilities acquired by an electric public utility that are selected through the competitive procurement and are located within the electric public utility's service territory.

NCSEA believes that this provision leaves two important temporal issues unresolved.

While G.S. 62-110.8(a) sets the utilities' competitive procurement requirement at an aggregate 2,660 MW, the utilities may offer multiple competitive procurements during the 45-month period to meet this cumulative requirement. Thus, it is unclear whether the 30% limitation¹ applies to the aggregate 2,660 MW (i.e., a maximum of 798 MW, as adjusted on a pro rata basis in light of any increases or decreases in the overall competitive procurement program in accordance with G.S. 62-110.8(b)(1)) or to any individual competitive procurement. NCSEA believes that it would be counter to legislative intent for the utilities to be awarded more than 30% of any individual competitive procurement, even if that award is less than the aggregate 798 MW (as adjusted). Thus, NCSEA respectfully asks the Commission to interpret G.S. 62-110.8(b)(4) to mean that the utilities may not be awarded more than 30% of any individual competitive procurement, with their total aggregate award not to exceed 798 MW (as adjusted) over the course of the 45-month competitive procurement program.

4. COST EFFECTIVENESS

G.S. 62-110.8(b)(2) directs that "each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement." Avoided cost measures the value of energy and capacity that are avoided by a utility when purchasing power from an independent power producer. However, G.S. 62-110.8(b) states that for purchases from independent power producers,

¹ It should also be noted that G.S. 62-110.8(b)(4) contains an unintended drafting error. Although the 30% limitation applies to projects bid into the competitive procurement program by the utility or its "subsidiaries," the intent of all parties involved in legislative negotiations was for the limitation to apply to all utility-related entities – that is, to both affiliates and to subsidiaries. NCSEA believes that the Commission should recognize that the 30% limitation is meaningless unless it applies to both affiliates and subsidiaries, and should implement it accordingly.

utilities may comply through “the purchase of renewable energy, capacity, *and environmental and renewable attributes* from renewable energy facilities owned and operated by third parties[.]” (emphasis added) It is illogical for S.L. 2017-192 to set forth an apples to oranges comparison for cost effectiveness; the General Assembly could not have intended to measure the cost of energy, power, and environmental and renewable attributes against the cost of just energy and capacity. Thus, NCSEA believes that the Commission’s rules should address how to measure the cost effectiveness of these environmental and renewable attributes when examining responses to competitive procurements.

The term of a power purchase agreement will have a major impact on the valuation of responses to a competitive procurement. If there is a longer term, an independent power producer can accept a lower revenue stream while still having a reasonable opportunity to attract financing. G.S. 62-110.8(b)(3) sets forth that “The pro forma contract shall be for a term of 20 years; provided, however, the Commission may approve a contract term of a different duration if the Commission determines that it is in the public interest to do so.” In adopting its rules, the Commission must leave open the possibility that a power purchase agreement term of greater than 20 years may be in the public interest if it allows independent power producers to propose new renewable energy facilities that are financeable at rates below the utility’s avoided cost.

5. INTERCONNECTION

Delays in the interconnection process have been extremely harmful and destabilizing for North Carolina’s solar industry. In its May 15, 2015 *Order Approving Revised Interconnection Standard*, the Commission directed stakeholders to reconvene in

2017 to examine the interconnection standard. Pursuant to that order, stakeholders have been meeting to discuss how the interconnection standard has functioned between the Commission's 2015 order and today. However, S.L. 2017-192 and its competitive procurement program raise numerous issues that relate to interconnection.

NCSEA believes that the Commission should provide clear guidance to parties to this docket and to interconnection stakeholders about the interrelationship between the competitive procurement program and the interconnection procedure. Issues such as queue processing, queue priority, and other logistics about how projects move through the interconnection queue may be impacted by the creation of a competitive procurement program.

Additionally, the Commission should address the issue of interconnection upgrade costs. The creation of the competitive procurement program will have an impact on how new renewable energy facilities are proposed, and it is possible that the method of allocating interconnection upgrade costs between generation facilities may need to be reexamined. Above all else, the Commission should ensure that there is not over-recovery by the utilities for interconnection upgrade costs that may be borne by multiple new renewable energy facilities. Furthermore, G.S. 62-110.8(e) dictates that if a utility uses non-publicly available information when preparing a proposal, that information is to be made available to all market participants. This requirement would clearly include the use of any non-publicly available information used to prepare estimated interconnection upgrade costs as a part of a proposal.

6. RESPONSE REQUIREMENTS

NCSEA believes that the Commission should carefully balance the need to prevent rampant speculation with the need to ensure that the requirements for responses to competitive procurements do not prohibit or dissuade small companies from participating in the competitive procurement program. The procedures adopted should put “skin in the game” for market participants at the time a response is submitted, but should also attempt to avoid penalizing market participants for issues outside their control that may impact the ability of a project to move forward. Any sort of application fee, bid bond, or cost recovery mechanism for the independent evaluator should carefully balance these considerations.

7. CURTAILMENT AND DISPATCHABILITY

G.S. 62-110.8(b) sets forth that a competitive procurement may be satisfied by the purchase of energy, capacity, and environmental and renewable attributes from new renewable energy facilities owned by independent power producers “that commit to allow the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility’s own generating resources.” While this provision allows for improved integration of intermittent generation, it also has the potential to adversely affect revenue streams for new renewable energy facilities. It is absolutely essential to any market participant, be they an independent power producer or a utility, to have certainty about the revenue of a facility. While a utility has certainty about the revenue of a facility, regardless of how much a facility is operated, because of cost-of-service ratemaking, curtailment and dispatchability can drastically impact revenue streams for independent power producers (or for utilities or their non-regulated affiliates participating in this competitive solicitation program) by reducing the amount of energy

delivered and paid for. It is essential that independent power producers and other participants in the competitive solicitation program have certainty, at least within a limited, defined range, about the amount of revenue a facility will generate in order for their responses to be on a level playing field with utility responses. In recognition of this issue, G.S. 62-110.8(b)(3) requires that the pro forma power purchase agreement for new renewable energy facilities selected in a competitive procurement shall “define limits and compensation for resource dispatch and curtailments.” Accordingly, NCSEA recommends that the Commission address issues of curtailment and dispatchability in its rules and in the pro forma power purchase agreement in a way that ensures that all facilities developed under the competitive procurement program have reasonable certainty about contracted cash flows. Without such assurance, it is highly unlikely that there will be a meaningful level of participation in the competitive procurement program.

C. CONTENTS AND TIMING OF UTILITY FILINGS

Section 2.(c) of S.L. 2017-192 directs the utilities to file their applications for a competitive procurement program within 120 days of July 27, 2017. However, S.L. 2017-192 does not provide detail as to what should be included in the utilities’ filings. Accordingly, NCSEA recommends the Commission provide clear guidance to the utilities regarding the contents of their initial and subsequent filings, and provides these recommendations to the Commission.

1. INITIAL FILINGS

By law, the utilities are required to file their competitive procurement program with the Commission no later than November 24, 2017. However, S.L. 2017-192 does not

provide detail about what is to be included in these filings, and thus NCSEA suggests that the Commission address the contents of the program proposals in rule or by order.

Pursuant to G.S. 62-110.8(b)(2), the cost effectiveness of responses to competitive procurements is measured against “the public utility’s current forecast of its avoided cost calculated over the term of the power purchase agreement.” In order to provide market participants with sufficient information to evaluate proposals prior to submission, the Commission should require the utilities to include in their initial filing their current forecasted avoided cost rates across the 20-year power purchase agreement term set forth in G.S. 62-110.8(b)(3). Additionally, as discussed in Part I.B.1 of these comments, NCSEA strongly believes that the initial filing should include information about location and allocated amount of new renewable energy facilities, as G.S. 62-110.8(c) gives the utilities’ authority to determine these requirements.

Finally, these initial filings will set the course for the competitive procurement program over the entire 45-month period. Accordingly, the Commission should direct the utilities to include certain information about how the 2,660 MW required by G.S. 62-110.8(a) will be allocated, both geographically and temporally across the 45-months. Because G.S. 62-110.8(c) gives the utilities certain controls over the location of new renewable energy resources, NCSEA recommends that the Commission direct the utilities to include in their initial filing geographic information about how the utilities plan to divide the 2,660 MW between the Duke Energy Carolinas, LLC and Duke Energy Progress, LLC service territories, as well as between North Carolina and South Carolina. NCSEA also recommends that the Commission direct the utilities to include in their initial

filing information about the planned timing and size of subsequent competitive procurements to be issued during the 45-month competitive procurement program.

2. SUBSEQUENT FILINGS DURING THE 45-MONTH
COMPETITIVE PROCUREMENT PROGRAM

S.L. 2017-192 is silent as to whether the utilities need to make filings with the Commission beyond their initial filing. However, it is unrealistic to expect the utilities' November 24 filing to include detailed information about competitive procurements that will be made at the end of the 45-month period. Load and generation characteristics will change during the 45-month period, and not all awarded responses to competitive procurements will come to fruition. Thus, it is reasonable for the Commission to require the utilities to make subsequent filings during the 45-month competitive procurement program period.

G.S. 62-110.8(g) directs the creation of an annual rider to recover certain costs associated with the competitive procurement program. Thus, it would be logical for the Commission to require the utilities to make annual filings about their competitive procurement programs, including information about both the implementation of previous competitive procurements and plans for future competitive procurements. While different utilities have different timeframes for rider proceedings, G.S. 62-110.8 creates a single competitive procurement program that spans multiple utilities; thus, NCSEA believes that all participating utilities should be required to make their annual filings at the same time.

In addition, NCSEA recommends that the Commission require that the utility filings include the forecast of avoided costs as well as location and allocated amount of renewable energy facilities, as discussed above.

3. TRUE-UP YEAR

G.S. 62-110.8(a) directs an additional competitive procurement following the 45-month period to procure any unawarded portion of the 2,660 MW, to procure additional resources in the event that the amount of nondispatchable or curtailable renewable energy resources is less than 3,500 MW, and to procure any capacity reallocated pursuant to G.S. 62-159.2. NCSEA recommends that, in addition to the filing requirements recommended above, the Commission address in the current proceeding the procedures and requirements for the true-up of the 3,500 MW of nondispatchable resources and the reallocation of capacity pursuant to G.S. 62-159.2 in order to give both the utilities and market participants certainty about how these issues will be handled should they occur.

4. SUBSEQUENT YEARS

Pursuant to G.S. 62-110.8(a), competitive procurements in subsequent years “shall be determined by the Commission, based on a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update approved by the Commission pursuant to G.S. 62-110.1(c)” Logically, when combined with the annual rider pursuant to G.S. 62-110.8(g) discussed above, the Commission should require the utilities to make annual competitive procurement program filings on the same timeframe as during the initial 45-month period, and NCSEA recommends that the Commission require the utilities to include in their filings the same information that is required during the initial 45-month period.

Because G.S. 62-110.8(a) requires that subsequent competitive procurements be determined by the Commission based on the utilities’ integrated resource plans, NCSEA recommends that the Commission evaluate in this proceeding whether the utilities’

integrated resource plans required by G.S. 62-110.1 and Rule R8-60 provide the Commission with the proper information to determine a showing of need for new renewable energy facilities. Specifically, NCSEA believes that the Commission should consider whether it is appropriate for the utilities to evaluate resource options for meeting load in light of the adoption of G.S. 62-110.8, or if changes to procedures or filing requirements are necessary.

In addition, Section 1.(b) of S.L. 2017-192 amended G.S. 62-156(b)(3) such that the capacity portion of a utility's avoided costs are based on a need to serve system load in the utility's integrated resource plan. Relevant to this proceeding, G.S. 62-110.8(b)(2) requires the utility's avoided costs be used to measure the cost effectiveness of responses to a competitive procurement. NCSEA believes that the Commission should consider whether utility filings pursuant to Rule R8-60 provide sufficiently granular information to make a justifiable determination of need to serve system load, when that metric is also used to determine the cost effectiveness of responses to competitive procurements.

D. ISSUES NOT REQUIRING RULES BUT REQUIRING OVERSIGHT, ACTION, AND APPROVAL

Several issues surrounding the implementation of G.S. 62-110.8 do not require rules, but do necessitate Commission oversight, action, and approval. NCSEA believes that the Commission should oversee, and ultimately approve, the development of (i) bidder qualification requirements, (ii) requirements for responses to competitive procurements, and (iii) the pro forma power purchase agreement. NCSEA proposes that the Commission direct stakeholders to collaboratively craft proposals on these issues. NCSEA suggests that the Commission direct stakeholders to file proposals by a date certain that would allow the

Commission sufficient time to approve or amend the proposals before the first competitive procurement.

II. WAIVER OF REGULATORY CONDITIONS OR CODE OF CONDUCT REQUIREMENTS

At this time, NCSEA does not have any proposed rules or initial comments for the Commission regarding the waiver of regulatory conditions or code of conduct requirements. If necessary, NCSEA may provide comments on the proposals of other parties, proposed rules, or rule revisions in its reply comments.

III. EXPEDITED REVIEW AND APPROVAL OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR FACILITIES OWNED BY PUBLIC UTILITIES

At this time, NCSEA does not have any proposed rules for the Commission regarding the procedure for expedited review and approval of certificates of public convenience and necessity for renewable energy facilities owned by a public utility and procured pursuant to G.S. 62-110.8. As discussed in Part I.A, NCSEA believes that the Commission should adopt rules for the competitive procurement program with issues of equitability and fairness in mind. Thus, NCSEA believes that rules providing for an expedited review and approval of certificates of public convenience and necessity for facilities owned by utilities should not give the utilities any advantage over independent power producers. If necessary, NCSEA may provide proposed rules or rule revisions in its reply comments.

IV. COST RECOVERY

The Commission has requested comments from parties on the recovery of costs by a public utility pursuant to G.S. 62-110.8(g). While NCSEA does not propose rules in its initial comments, NCSEA wishes to bring the following issues to the Commission's

attention for consideration in the rulemaking process. If necessary, NCSEA may provide proposed rules or rule revisions in its reply comments.

Pursuant to G.S. 62-110.8(g), utilities are authorized “to recover the costs of all purchases of energy, capacity, and environmental and renewable attributes from third-party renewable energy facilities and to recover the authorized revenue of any utility-owned assets that are procured pursuant to this section through an annual rider approved by the Commission and reviewed annually.” Utilities are already authorized to recover the costs of purchases of energy and capacity from independently owned renewable energy facilities pursuant to G.S. 62-133.2, as amended by S.L. 2017-192, and Rule R8-55, and are authorized to recover the costs of purchases of renewable attributes from independently owned renewable energy facilities that are used for REPS compliance pursuant to G.S. 62-133.8(h) and Rule R8-67(e). Thus, in this proceeding, it is necessary for the Commission to address (i) the recovery of costs of purchases of environmental and renewable attributes from independent renewable energy facilities that are not used for REPS compliance and (ii) the recovery of the authorized revenue of any utility-owned assets that are procured pursuant to the competitive procurement program.

NCSEA’s comments extensively discuss issues of fairness and creating a level playing field for all market participants, including both independent power producers and the utilities. The Commission should include these considerations as it adopts rules for how the utilities will recover costs for utility-owned assets procured pursuant to the competitive procurement program. It should be the Commission’s goal to create cost recovery processes that are consistent, regardless of whether a new renewable energy facility is acquired from an independent power producer and subsequently owned by a utility, constructed, owned,

and operated a utility, or renewable energy, capacity, and environmental and renewable attributes are purchased by a utility from an independent power producer. To this end, it may also be necessary for the Commission to direct the independent evaluator to consider the ownership of a new renewable energy facility and the impact of its cost recovery on ratepayers when examining proposals.

V. PROCEDURE TO MODIFY OR DELAY IMPLEMENTATION

The Commission has requested comments from parties on the procedure to modify or delay implementation of the competitive procurement program pursuant to G.S. 62-110.8(h)(5). While NCSEA does not propose rules in its initial comments, NCSEA wishes to bring the following issues to the Commission's attention for consideration in the rulemaking process. If necessary, NCSEA may provide proposed rules or rule revisions in its reply comments.

Pursuant to G.S. 62-110.8(h)(5), the Commission may "modify or delay implementation of the provisions of [G.S. 62-110.8] in whole or in part if the Commission determines that it is in the public interest to do so." There is only one factor in G.S. 62-110.8 that could lead the Commission to a determination that it is in the public interest to modify or delay the requirements of the competitive procurement program, and that is the requirement in G.S. 62-110.8(b)(2) that the cost of new renewable energy resources must not exceed the utilities' current forecasted avoided cost calculated over the term of the power purchase agreement. Thus, NCSEA believes that the rules adopted by the Commission to govern the modification or delay of the requirements of G.S. 62-110.8 should recognize that cost effectiveness of responses to competitive procurements is the sole factor for consideration when examining the public interest.

The rules adopted by the Commission should ensure that the Commission has taken all actions and steps that it is authorized to take before allowing a waiver of a utility's obligation under a competitive procurement program. G.S. 62-110.8(b)(3) allows the Commission to modify the term of the pro forma power purchase agreement from a term of 20 years if it is in the public interest. Because the sole limiting factor for the competitive procurement program is cost, a situation may arise where a power purchase agreement term of greater than 20 years can allow new renewable energy facilities to be cost effective. The procedure adopted by the Commission should ensure that the pro forma power purchase agreements used in a competitive procurement program allow new renewable energy facilities a reasonable opportunity to attract capital before the Commission waives a utility's obligation under a competitive procurement program. A modification of the term of the pro forma power purchase agreement pursuant to G.S. 62-110.8(b)(3) may effectuate the requirements of the competitive procurement program without the need to waive a utility's obligation to comply with G.S. 62-110.8.

The authority to modify or delay a requirement is not new to the Commission. G.S. 62-133.8(i)(2) similarly allows the Commission "to modify or delay the provisions of [the Renewable Energy and Energy Efficiency Portfolio Standard ("REPS")] in whole or in part if the Commission determines that it is in the public interest to do so[,]" and the Commission has modified or delayed the REPS on previous occasions. NCSEA believes that the procedural process used by the Commission in modifying or delaying the REPS is an appropriate model for the procedural process for the competitive procurement program. However, the modification and delay of the REPS set-asides have had a devastating impact on poultry and swine waste-to-energy power producers, further increasing the difficulty of

complying with the set-aside requirements. The REPS, in G.S. 62-133.8(i)(2), directs the utilities, when seeking a modification or delay of the REPS, to “include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirement set out in this section.” While the REPS requires a showing of a “reasonable effort” to obtain a modification or delay, G.S. 62-110.8(h)(5) does not set forth a similar requirement for the utilities to show when seeking a modification or delay of the competitive procurement program. Because no other standard is set forth in G.S. 62-110.8, the baseline standard for the Commission to apply should be strict compliance with the law. Accordingly, the Commission should require a clear and convincing showing from the utilities that a delay or modification of the provisions of G.S. 62-110.8 is in the public interest.

Finally, while G.S. 62-133.8 sets forth annual REPS requirements, G.S. 62-110.8 sets forth a competitive procurement program designed to procure 2,660 MW over a period of 45-months. If the utilities seek a modification or delay of the provisions of G.S. 62-110.8, the Commission should still strive to meet the statutorily required 2,660 MW within the 45-month period. A modification or delay of the requirements does not necessarily require extending procurement outside the 45-month period; the Commission can and should attempt to readjust the allocation of procurement within the 45-month period.

CONCLUSION

While NCSEA does not propose rules in its initial comments, NCSEA hopes that the issues raised in these comments will be considered by the Commission in this proceeding and will be addressed in any rules proposed by the Commission.

Respectfully submitted, this the 16th day of August, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 16th day of August, 2017.

/s/ Peter H. Ledford
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