

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Rulemaking Proceeding to Implement     ) ORDER MODIFYING THE SWINE  
Session Law 2007-397                     ) WASTE SET-ASIDE REQUIREMENT  
   ) AND PROVIDING OTHER RELIEF

BY THE COMMISSION: On August 28, 2014, a joint motion to modify and delay the 2014 requirements of G.S. 62-133.8(e) was filed by Duke Energy Carolinas, LLC (DEC);<sup>1</sup> Duke Energy Progress, Inc. (DEP);<sup>2</sup> Virginia Electric and Power Company, d/b/a Dominion North Carolina Power (Dominion);<sup>3</sup> GreenCo Solutions, Inc. (GreenCo); Public Works Commission of the City of Fayetteville (Fayetteville); EnergyUnited Electric Membership Corporation (EnergyUnited); Halifax Electric Membership Corporation (Halifax); the Tennessee Valley Authority (TVA);<sup>4</sup> North Carolina Eastern Municipal Power Agency (NCEMPA);<sup>5</sup> and North Carolina Municipal Power Agency Number 1 (NCMPA1)<sup>6</sup> (hereinafter referred to collectively as the Joint Movants). The Joint Movants requested that the Commission relieve them of compliance with G.S. 62.133.8(e) (Compliance With [North Carolina's Renewable Energy and Energy Efficiency Portfolio Standard (REPS)] Requirement Through Use of Swine Waste Resources) by delaying their need to comply with this requirement by one year until 2015. The joint motion further requested that the Commission allow the Joint Movants to bank any swine renewable energy certificates (RECs) previously or subsequently acquired for use in future compliance years, and allow the Joint Movants to replace compliance with the swine waste requirements in 2014 with other compliance measures

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<sup>1</sup> DEC asserted that it is also acting in its capacity as REPS compliance aggregator for Blue Ridge Electric Membership Corporation (EMC), Rutherford EMC, the City of Dallas, Forest City, City of Concord, the Town of Highlands and the City of Kings Mountain.

<sup>2</sup> DEP asserted that it is also acting in its capacity as REPS compliance aggregator for the Towns of Sharpsburg, Lucama, Black Creek, and Stantonsburg, and the City of Waynesville.

<sup>3</sup> Dominion asserted that it is also acting in its capacity as REPS compliance aggregator for the Town of Windsor.

<sup>4</sup> TVA asserted that it is acting in its capacity as REPS compliance aggregator for Blue Ridge Mountain EMC, Mountain Electric Cooperative, Tri-State EMC and Murphy Electric Power Board.

<sup>5</sup> NCEMPA asserted that it is acting in its capacity as REPS compliance aggregator for its 32 member municipalities which are electric power suppliers.

<sup>6</sup> NCMPA1 asserted that it is acting in its capacity as REPS compliance aggregator for its 19 member municipalities which are electric power suppliers.

pursuant to G.S. 62-133.8(b), (c), and (d). The Joint Movants requested that the Commission consider and approve their joint motion without an evidentiary hearing.

The Joint Movants stated that they have individually and collectively made reasonable efforts to comply with the REPS swine waste resource provisions, and that the relief sought is in the public interest. The Joint Movants identified a number of actions taken to display their efforts to comply. Specifically, these actions, according to the Joint Movants, included actively engaging swine waste-to-energy developers, issuing requests for proposals, evaluating bids received, negotiating and executing long-term REC purchase agreements for these resources, processing interconnection requests from these generators, actively monitoring executed agreements, and, in some cases, further modifying REC purchase agreements to provide developers reasonable opportunity for successful project execution.

On September 17, 2014, the Commission issued an Order Requesting Comments in the above captioned docket, requesting that interested parties file comments on the Joint Movants' request on or before Friday, October 10, 2014. On October 9, 2014, Environmental Defense Fund (EDF) submitted comments. On October 10, 2014, the North Carolina Pork Council (NCPC) and the Public Staff submitted comments. No party submitted comments in opposition to the Joint Movants' request to delay the swine waste set-aside requirement.

EDF, in its comments, did not challenge the Joint Movant's request to delay the swine waste set-aside. EDF noted the increasing number of technologies by which swine waste may be converted to electricity, in particular, biogas. EDF stated that it does not support routine annual extensions and that they should not become the norm. EDF stated that the utilities should become more involved in the development of swine waste resources in future years to display that they have made a reasonable effort to comply with the swine waste set-aside requirement. EDF requested that the Commission (1) set forth enumerated milestones at which the utilities must publicly report to ensure that they remain on course for compliance and (2) require DEC and DEP to develop a stakeholder process to "scale" the requirement and establish subsequent deadlines. Finally, EDF attached to its comments an analysis completed by Duke University of options for collecting and using biogas generated from swine waste.

NCPC, in its comments, noted that this is the third straight year that the electric suppliers have asked to modify or delay compliance with the swine waste set-aside requirement. NCPC stated that it did not oppose the Joint Movants' request, however, NCPC noted that not much progress towards compliance has been made and added recommendations which it felt could help move the electric suppliers closer to achieving compliance. Specifically, NCPC requested (1) that the tri-annual reporting requirements be continued; and (2) that the Public Staff evaluate the prices offered to assess the reasonableness of efforts to comply and conduct an analysis of the relevant market, including price. NCPC also noted the Duke University study attached to EDF's comments as evidence that swine waste development, contrary to the claims of several electric power suppliers, can be done economically in North Carolina.

The Public Staff, in its comments, stated that it had reviewed the tri-annual reports as well as information obtained at stakeholder meetings. As a result of this review, the Public Staff stated its belief that the electric power suppliers, in general, are making a good faith effort to comply with the swine waste set-aside requirement. The Public Staff identified several problem areas affecting compliance including: interconnection; reluctance of farmers to sign long-term fuel supply agreements; the sunset of the federal production tax credit; uncertainty in contract fulfillment based on past lack of performance; air quality permit delays; issues in the anaerobic digestion process, including waste disposal; and the uncertainty caused by the previous delays to the swine waste set-aside requirement. The Public Staff noted potential solutions to these problems discussed at stakeholder meetings including: electric power suppliers and the public bearing more risk in swine waste facility construction and operation, and the allowance of back-up fuels to generate electricity for a period of time in which swine waste fuels may become unavailable. The Public Staff recommended that the Commission grant the Joint Movants' request to delay the swine waste set-aside requirement until 2015. The Public Staff further recommended that the Commission allow electric power suppliers to bank any swine waste RECs previously or subsequently acquired for use in future compliance years. Finally, the Public Staff recommended that the Commission proceed in this matter without a hearing.

G.S. 62-133.8(i)(2) states that the Commission, in developing rules, shall:

Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.

Commission Rule R8-67(c)(5) states:

In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions.

The Commission has previously exercised this authority and delayed compliance with the swine waste set-aside requirement on two occasions, first as delineated in its November 29, 2012 Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Granting Other Relief (2012 Delay Order), and a second time as delineated in its March 26, 2014 Final Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Providing Other Relief (2013 Delay Order), both issued in Docket No. E-100, Sub 113.

Based on the tri-annual reports submitted by the electric power suppliers in Docket No. E-100, Sub 113A, the Joint Movants' motion, the intervenors' comments, and the entire record herein, the Commission finds that the State's electric power suppliers have made a reasonable effort to comply with the 2014 statewide swine waste set-aside requirement established by G.S. 62-133.8(e), but will not be able to comply. Compliance with the set-aside requirements has been hindered by the fact that the technology of power production from swine waste continues to be in its early stages of development. Additional factors contributing to the inability to comply include interconnection issues, reluctance of farmers to sign long-term fuel supply agreements, uncertainty in contract fulfillment based on past lack of performance, and the uncertainty caused by the previous delays to the swine waste set-aside requirement, among others. No party presented evidence that the aggregate 2014 swine waste set-aside requirement could be met; nor did any party oppose the Joint Movants' request. The Commission further finds that it is in the public interest to delay required compliance by the State's electric power suppliers with the requirements of G.S. 62-133.8(e) for one year. Electric power suppliers that have acquired swine waste RECs for 2014 REPS compliance should be allowed to bank such RECs for swine waste set-aside requirement compliance in future years. Electric power suppliers should continue to make efforts to comply with the swine waste set-aside requirement as modified by this Order. In addition, all electric power suppliers subject to the tri-annual reporting requirements shall continue to file reports until the Commission orders that they be discontinued. Finally, it remains appropriate for the Public Staff to arrange and facilitate two stakeholder meetings during 2015.

The Commission does not find that good cause exists at the present time to grant EDF's request that the Commission set forth enumerated milestones at which the utilities must publicly report and that the Commission require DEC and DEP to develop a stakeholder process to "scale" the swine waste set-aside requirement. The Commission, in the 2012 Delay Order, as modified by the 2013 Delay Order, has established a tri-annual reporting requirement to track compliance efforts relative to both the swine and poultry waste set-aside requirements throughout the year. The purpose of the reports is to provide the Commission with an accurate portrayal of compliance efforts throughout the year and the reports have proven useful in this capacity. The Commission finds that the tri-annual reporting requirement has proven to be an adequate method to track compliance efforts over a given year, and, thus, EDF's request would result in unnecessary duplicative requirements.

IT IS, THEREFORE, ORDERED as follows:

1. That the 2014 requirement of G.S. 62-133.8(e), as established in the Commission's 2013 Delay Order, is delayed for one year. The electric power suppliers, in the aggregate, shall comply with the requirements of G.S. 62-133.8(e) according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Swine Waste Resources</u>
2015-2016	0.07%
2017-2019	0.14%
2020 and thereafter	0.20%

Electric power suppliers shall be allowed to bank any swine waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine waste requirements in 2014 with other compliance measures pursuant to G.S. 62-133.8(b), (c), and (d).

2. That the Public Staff is requested to arrange and facilitate two stakeholder meetings during 2015. The electric power suppliers that are subject to the triannual filing requirement (as discussed below) shall attend. Developers and other stakeholders are encouraged to participate and discuss potential obstacles to achieving the swine and poultry waste requirements and options for addressing them.

3. That the tri-annual filing requirement first required by the Commission's 2012 Delay Order and that now, pursuant to the 2013 Delay Order, applies to DEP, DEC, Dominion, GreenCo, Fayetteville, EnergyUnited, Halifax, NCEMPA and NCMPA1 shall be due to the Commission on each May 1, September 1, and January 1, until the Commission finds that they are no longer necessary. The filing requirements shall be as specified in ordering paragraph 4 of the Commission's 2012 Delay Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 13<sup>th</sup> day of November, 2014.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Chief Clerk