

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 156**

In the Matter of:)	
Rulemaking Proceeding to Implement)	NCSEA’S REPLY
G.S. 62-126.7)	COMMENTS

NCSEA’S REPLY COMMENTS

The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in this proceeding, submits these reply comments in response to the *Order Proposing Rules and Requesting Comments* (“Order”) issued by the North Carolina Utility Commission (“Commission”) in this docket on October 17, 2017. In response to the Commission’s order, initial comments were filed by NCSEA, the Fayetteville Public Works Commission (“FPWC”), the North Carolina Electric Membership Corporation (“NCEMC”), the North Carolina Waste Awareness and Reduction Network, Inc. (“NC WARN”), and the Solar Energy Industry Association (“SEIA”). In addition, letters were filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”) and the Southern Environmental Law Center (“SELC”). NCSEA provides the following reply comments in response to certain issues raised by other parties to the above-captioned docket.

I. REVIEW OF LESSOR APPLICATIONS

In their comments, “SEIA requests that the Commission clarify with more detail how the application and review process will work, in order to provide predictability to potential market entrants.” *SEIA’s Petition to Intervene and Comments* at para. 1 (“SEIA’s Comments”). NCSEA believes that predictability is a necessary prerequisite for creating a stable business environment for both lessors and lessees. Accordingly, NCSEA agrees with SEIA and recommends that the Commission include in its final order in this proceeding

clear details about how the application and review process will work. SEIA further recommends that the Commission allow lessor applicants to demonstrate fitness to conduct business in North Carolina based on a demonstrated history of offering leases and other solar products in compliance with the laws of other states. *Id.* at para. 5. NCSEA supports this recommendation, as lessors inherently cannot have a track record of complying with North Carolina’s newly-adopted leasing statutes and regulations.

II. INSURANCE

In its proposed rule, the Commission included a placeholder for required liability insurance for lessors but did not suggest a specific coverage requirement. Duke and SELC both indicated that the coverage requirement should be sufficient to protect lessees. *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Comments on Proposed Commission Rule R8-72, Applications for Certificate of Authority to Engage in Business as an Electric Generator Lessor; Transfers; and Notice* at p. 1; *SELC’s Letter re: Rulemaking Proceeding to Implement Session Law 2017-192* at p. 4 (“*SELC’s Letter*”). SELC and SEIA both noted that the coverage requirement should be crafted to balance the interest in protecting consumers with the interest in encouraging competition in the market. *SELC’s Letter* at p. 4; *SEIA’s Comments* at para. 10. NCSEA concurs with SEIA and SELC that the Commission should carefully craft the liability insurance requirement to protect consumers without creating an unnecessary or undue burden for lessors.

III. COMMISSION INVESTIGATION OF LESSORS

SEIA notes that Commission’s proposed rule “apparently makes mandatory the commencement of a full proceeding and investigation on the mere request of any of the entities mentioned in the rule[.]” *SEIA’s Comments* at para. 18. SEIA goes on to note that

“This is contrary to the language of the statute, which states that upon receipt of a complaint, ‘the Commission may review the certificate to determine whether’ the lessor is complying with the law.” *Id.* at para. 19. NCSEA expressed similar concerns in its initial comments, and concurs with SEIA’s recommendation that the Commission amend its proposed rule accordingly.

IV. PERFORMANCE GUARANTEES

SEIA notes that proposed Rule R8-72(b)(5)(v) would require that “payments made under the lease are not based upon the metered output of the leased facility.” *SEIA’s Comments* at para. 12. SEIA goes on to note that this provision appears to contravene G.S. 62-126.6(a)(4) which requires leases include “a guarantee concerning energy production output that the solar energy facility will provide over the expected life of the agreement.” *Id.* NCSEA agrees with SEIA, and recommends that the Commission amend proposed Rule R8-72(b)(5)(v) to make clear that leases may not be based exclusively on the metered output of a generating facility, but may include performance guarantees.

V. COMPETITIVE ADVANTAGE

SELC noted that “H.B. 589 allows DEC and DEP to participate in the solar leasing market but also acknowledges the potential imbalance of power between the incumbent utilities and the third-party leasing providers.” *SELC’s Letter* at p. 2. SELC further noted that “As regulated monopoly retail electricity providers, offering utilities have preexisting access to customer data that would serve as a valuable resource to the utilities if they seek to become electric generator lessors.” *Id.* at p. 3. Accordingly, SELC recommended that “the Commission should consider in its rule whether other restrictions or additional

disclosures are necessary to prevent unfair competition in the marketplace, particularly related to customer acquisition and access to customer data.” *Id.*

The issue of whether data collected by an incumbent utility offers them a competitive advantage is not new to the Commission. In fact, the issue was addressed by the Commission earlier this month in adopting rules to implement the competitive procurement of renewable energy portion of S.L. 2017-192. In that proceeding, the Commission found that it was appropriate to address the handling of non-publicly information in its rules implementing the competitive procurement of renewable energy. *Order Adopting and Amending Rules*, pp. 15-16, Docket No. E-100, Sub 150 (November 6, 2017). Accordingly the Commission adopted a rule requiring “if any non-publicly available transmission or distribution system information is used in preparing proposals by the electric public utility or Affiliate(s), such information is made available to third parties[.]” *Id.* at Appendix A, p. 5; Rule R8-71(d)(6). NCSEA strongly recommends that the Commission adopt a similar policy limiting the use of non-publicly available information for a competitive advantage for either an offering utility or an affiliate.

VI. LESSOR OPERATIONS IN MUNICIPAL ELECTRIC SERVICE PROVIDER AND COOPERATIVE SERVICE TERRITORIES

The statute governing leasing is clear that leases may not be offered in the service territory of an electric membership corporation and may only be offered in the service territory of a municipal electric service provider if such municipal electric service provider is itself a lessor. To this end, NCEMC recommended in its comments that the Commission strike the reference to electric membership corporation service territories in the proposed lessor application. *NCEMC’s Petition to Intervene and Comments* at p. 3. Similarly, FPWC recommended that the Commission add a footnote in the proposed lessor application to

make clear that lessors may only operate in the service territory of a municipal electric service provider if the municipal electric service provider is itself a lessor. *Petition to Intervene of Fayetteville Public Works Commission and Initial Comments* at p. 3. NCSEA supports these recommendations of NCEMC and FPWC and believes that they will reduce the likelihood of inadvertent violations of the laws governing lessors.

VII. REPORTING

In its letter to the Commission, SELC recommends that “The aggregated installed capacity information should be made publicly available to track progress towards the legislative cap.” *SELC’s Letter* at p. 3. SELC further notes that “Providing this information publicly will allow electric generator lessors to provide accurate information to existing and prospective customers regarding the status of the one percent leasing cap.” *Id.* NCSEA expressed a similar need for this information to be publically available.

To make this information publically available, SELC recommends that the Commission direct “the offering utilities [to] file quarterly updates reporting the current level of installed capacity in the leasing program on its system. Alternatively, an offering utility should file updates of installed capacity benchmarks on its system at increments of 0.25 percent until the one percent cap is reached.” *Id.* at pp. 3-4. NCSEA suggested a similar reporting requirement in its comments, and reiterates its desire for the Commission to adopt a reporting requirement for progress towards the statutory cap on leasing.

VIII. CONCLUSION

NCSEA respectfully submits these reply comments for the Commission’s consideration.

Respectfully submitted, this the 22nd day of November, 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 22nd day of November, 2017.

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