



NC SUSTAINABLE
ENERGY ASSOCIATION

October 25, 2013

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FILED

OCT 25 2013

Clerk's Office
N.C. Utilities Commission

Honorable Gail Mount
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Re: North Carolina Sustainable Energy Association ("NCSEA") Avoided Cost
~~Comments~~ **Response**
(Commission Docket No. E-100, Sub 136)

Dear Ms. Mount:

Enclosed for filing are:

- An original and thirty (30) copies of the **confidential** version of NCSEA's Response to Joint Motion to Strike and attachments.
- An original and two (2) copies of the **public, redacted** version of NCSEA's Response to Joint Motion to Strike.

The information redacted from the public version of the Response has been removed by NCSEA because of the confidential, business-sensitive nature of the communications involved. Any requests for the confidential versions of the Response and attachments should be directed to NCSEA and to Duke Energy Carolinas/Duke Energy Progress.

(201)
Full Comm.

Sincerely,

Michael D. Youth
Counsel & Policy Director

In the Matter of:)	[PUBLIC]
Biennial Determination of Avoided Cost Rates)	RESPONSE TO JOINT
for Electric Utility Purchases from Qualifying)	MOTION TO STRIKE
Facilities - 2012)	

NCSEA’S RESPONSE TO JOINT MOTION TO STRIKE

The North Carolina Sustainable Energy Association (“NCSEA”) opposes the joint motion to strike filed by DEC, DEP and DNCP for the reasons set out in this response.

BASIC BACKGROUND FACTS

1. On 27 September 2013, NCSEA pre-filed the testimony of Karl Rabago in this proceeding. Therein, Mr. Rabago made several statements, based on his knowledge at the time, regarding the status of solar cost-benefit studies in North Carolina.
2. On 18 October 2013, NCSEA filed a letter and attachment putting the parties to this proceeding on notice that Mr. Rabago would likely be amending his pre-filed testimony from the stand at the evidentiary hearing in order to recognize that a North Carolina solar cost benefit study now exists and supports his conclusions and recommendations made in the pre-filed testimony.
3. On 25 October 2013, DEC, DEP and DNCP filed a motion to strike NCSEA’s 18 October 2013 filing.

REASONS MOTION SHOULD BE DENIED

4. N.C. Gen. Stat. § 62-65(a) provides in pertinent part, “*Every party to a proceeding shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any*

witness regardless of which party first called such witness to testify and to rebut the evidence against him.” (Emphasis added). This statutory provision affords NCSEA the opportunity to call a witness such as Mr. Rabago and to introduce exhibits in connection with his testimony. It also affords the utilities the opportunity to cross-examine a witness like Mr. Rabago, including cross-examining him regarding his reliance on any exhibit.

5. As the utilities point out, Commission Rule R1-24(g)(2) does provide in pertinent part that “intervenors . . . shall file all testimony, exhibits and other information which is to be relied upon at the hearing 20 days in advance of the scheduled hearing.” The utilities do not, however, point out that Commission Rule R1-30 states that, “[i]n special cases, the Commission may permit deviation from [its] rules insofar as it finds compliance therewith to be impossible or impracticable.” As more fully described below, NCSEA believes its 18 October 2013 filing constitutes a special case where compliance was impracticable if not impossible.
6. The equities in this case mitigate in favor of permitting the 18 October 2013 filing to stand and, rather than striking it, permitting the utilities to cross-examine Mr. Rabago regarding his understanding of and reliance on the study.

a. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

- b. On 10 June 2013, DEC/DEP filed verified responses to Commission questions in the 2012 IRP docket – Docket E-100, Sub 137. In response to Request No. 4, DEC/DEP stated “[t]he Companies are currently initiating a comprehensive study seeking to identify and, where possible, quantify potential benefits and costs of solar generation across the entire generation, transmission and distribution systems. . . . These study results would then be incorporated into the resource planning and *avoided cost processes* in order to reach the optimal economic solution when building or procuring solar resources.” See 10 June 2013 DEC/DEP verified responses filing at pp. 6-7 (emphasis added).

- c. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

- d. Given the Companies' reference to "avoided cost processes" in the 10 June 2013 filing and the "open" status of the current proceeding, NCSEA set out diligently to have an independent study conducted as quickly as possible.
- e. NCSEA contracted with Crossborder Energy for delivery of a study as quickly as possible. However, at that point, Crossborder Energy's other obligations prevented it from beginning work immediately on a North Carolina solar cost benefit study.
- f. That a study was likely to be introduced should not have come as a surprise to DEC/DEP. Not only were DEC/DEP [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], but also, on or about 17 September 2013, DEC/DEP sent NCSEA a set of data requests with a 27 September 2013 deadline for responses. One of the data requests asked NCSEA to "identify all consultants that have performed or are expected to perform work for you regarding matters relating to Docket No. E-100, Sub 136."¹ NCSEA disclosed in its 27 September 2013 written response that Crossborder Energy was a consultant expected to perform work regarding matters relating to Docket E-100, Sub 136.² NCSEA also indicated in the data responses that it had not yet received a final report from Crossborder Energy.

¹ DNCP did not serve any data requests on NCSEA.

² DEC/DEP were actually made aware of Crossborder Energy before they received the 27 September 2013 data response. Approximately a week prior to the 27 September 2013 deadline, NCSEA orally disclosed to DEC/DEP that Crossborder was a consultant. NCSEA made this disclosure because it desired to disclose confidential information to Crossborder and needed DEC/DEP's permission under NCSEA's non-disclosure agreements with DEC/DEP. DEC/DEP required negotiation and execution of a new non-disclosure agreement. Despite NCSEA's diligence, a new non-disclosure agreement was

- g. Pursuant to its ongoing duty to supplement and in an effort to provide as much notice as possible, NCSEA filed the Crossborder Energy report under a cover letter on the day it was finalized.
- h. Despite NCSEA's 18 October 2013 filing, and DEC's/DEP's/DNCP's opportunity for discovery thereafter, NCSEA had not received any data requests from the utilities through 24 October 2013 at 5:45pm.³
- i. Finally, it should be noted that Ms. Bowman's pre-filed rebuttal testimony indicates that DEC/DEP's position is that "[f]irst and foremost, the VOS studies that [Mr. Rabago] describes are inappropriate for setting avoided cost rates and are irrelevant to the present proceeding." Rebuttal testimony of Kendal Bowman, p. 10. If irrelevance of VOS studies to the avoided cost proceeding is the utilities' primary argument to rebut Mr. Rabago's testimony, it seems that this argument can be advanced regardless of whether the Crossborder Energy study is introduced into evidence or not. In other words, introduction of the study would not materially impair the utilities from advancing their "foremost" argument – i.e., irrelevance – against Commission reliance on Mr. Rabago's conclusions and recommendations.

not executed until 25 September 2013. This slight delay also contributed to a delay in delivery of a final report.

³ DEC/DEP did send a data request on the Crossborder Study on 24 October 2013 at 5:45pm: "With regard to the Report – 'The Benefits and Costs of Solar Generation for Electric Ratepayers in North Carolina' filed in this Docket on October 18, 2013, please provide all workpapers supporting the calculations contained within the report in an excel spreadsheet. Please specifically show the work on how \$26M total benefit was calculated." While NCSEA will work to respond appropriately, it should be noted that NCSEA requires the consultant's input to respond.

ADDITIONAL CONSIDERATIONS

7. The primary goal of this proceeding is to establish rates which are just and reasonable to the ratepayers of the utility, are in the public interest, and do not discriminate against cogenerators or small power producers.
8. NCSEA believes that, at the evidentiary hearing, the intervenors will establish that even if the Commission directs the utilities to use a 2.0 performance adjustment factor for solar, the rates being paid to solar qualified facilities will still be less than they were under the 2010 approved rates. This means that, from the ratepayer perspective, their "burden" is diminishing in this proceeding because lower rates will be paid to qualified facilities regardless.
9. On the other hand, if the Crossborder Energy study is excluded from evidence and, as a direct or indirect result, the rates approved discriminate against solar qualified facilities, then the nascent solar industry in North Carolina could disappear. The harm could be irreparable.

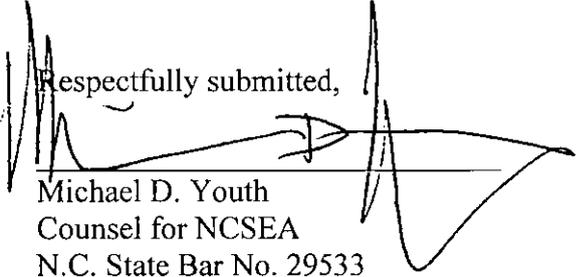
CONCLUSION

10. Under N.C. Gen. Stat. § 62-65, NCSEA has the right to call Mr. Rabago as a witness and to introduce exhibits. All witnesses have traditionally been afforded the opportunity to correct and/or update their pre-filed testimony from the stand during evidentiary hearings before the Commission. NCSEA seeks nothing more than to have Mr. Rabago do this, based on new information that has become available since the time his testimony was pre-filed. His conclusions and recommendations have not changed. Because (1) DEC's/DEP's actions contributed to the unavailability of the new information at an earlier time, (2) the availability of the new information was not

purposefully delayed to harm or impair the utilities' position in the proceeding (rather it was disclosed as soon as the report was finalized), and (3) the utilities retain the right to cross-examine Mr. Rabago and his reliance on the study, NCSEA believes the joint motion to strike should be denied.

WHEREFORE, for the reasons set forth above, NCSEA prays that the joint motion be denied.

Respectfully submitted,

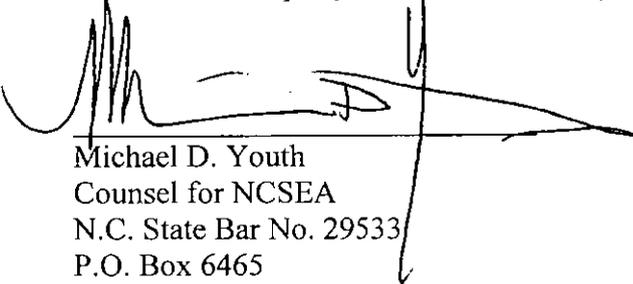


Michael D. Youth
Counsel for NCSEA
N.C. State Bar No. 29533
P.O. Box 6465
Raleigh, NC 27628
(919) 832-7601 Ext. 118
michael@energync.org

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Response 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 25th day of October, 2013.



Michael D. Youth
Counsel for NCSEA
N.C. State Bar No. 29533
P.O. Box 6465
Raleigh, NC 27628
(919) 832-7601 Ext. 118
michael@energync.org