

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156**

In the Matter of:) **NCSEA AND NCCEBA’S**
Petition for Approval of Competitive) **JOINT COMMENTS ON**
Procurement of Renewable Energy) **THE SOLAR**
Program to Implement N.C. Gen.) **INTEGRATION SERVICES**
Stat. § 62-110.8) **CHARGE**

**NCSEA AND NCCEBA’S JOINT COMMENTS ON THE SOLAR
INTEGRATION SERVICES CHARGE**

Pursuant to North Carolina Utilities Commission’s (“Commission”) October 7, 2019 *Order Requesting Comments* (“Order”) filed in the above-captioned dockets, the North Carolina Sustainable Energy Association (“NCSEA”) and the North Carolina Clean Energy Business Alliance (“NCCEBA”) offer the following comments regarding the proposed Solar Integration Services Charge (“SISC” or “Integration Services Charge”) proposed by Duke Energy Progress, LLC (“DEP”) and Duke Energy Carolinas, LLC (“DEC”) (“DEP and DEC, collectively, “Duke”) in Commission Docket E-100, Sub 158 (“Avoided Cost Docket”) and its application to the Competitive Procurement of Renewable Energy (“CPRE”) Program implemented as part of House Bill 589 (“HB589”).

Background

In the Avoided Cost Docket, Duke proposed a new charge, the SISC, applicable to solar energy facilities which, according to Duke, reflected that the value of avoided energy and capacity could properly be “lower for purchases from intermittent QFs than for purchases from firm QFs under PURPA and FERC’s implementing regulations.”¹ Duke

¹ *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Joint Initial Statement and Exhibits*, p. 30, Docket No. E-100, Sub 158 (November 1, 2018) (“Avoided Cost Initial Statement”).

went on to claim that it had “determined that the costs avoided by growing levels of solar QFs that provide intermittent, non-dispatchable power is (sic) markedly different from integrating” other sources of power such as natural gas.² The North Carolina Utilities Commission – Public Staff (“Public Staff”) ultimately came to a stipulated agreement with Duke, wherein the Public Staff was characterized as having reviewed the underlying study substantiating the SISC and “generally agree[d] that DEC and DEP face operational challenges resulting from the current and pending amount of single specific aggregate resource connected to its electrical grid’ and ‘agree[d] (sic) that intermittent and non-dispatchable resources have a direct impact on system operations, including costs.”³ NCSEA and other intervenors opposed the SISC and the Stipulation and entered testimony to that end.⁴

The Stipulation referenced the CPRE Program in two instances:

- 1) In Footnote 6, explaining what the “Transition MW” was – the approximately 3,500 MW of legacy QF solar identified in the CPRE statute, N.C. Gen. Stat. § 62-110.S(b)(1) - and substantiating the reasoning behind “Duke’s quantification of DEC’s and DEP’s respective average ancillary services costs to integrate the existing plus Transition MW of solar prescribed under HB589[;]”⁵
- 2) In the subsection entitled “Exemption of Solar Generators Committing to Sell Prior to November 1, 2018” Duke and the Public Staff stipulated that the Solar PPA proposals: “in the initial Competitive Procurement of Renewable Energy (‘CRPE’) Program request for proposals solicitation (‘Tranche 1 RFP’), are intended to be exempted from the Integration Services Charge for the initial 20-year term, as the Tranche 1 RFP guidelines and requirements were issued by the CPRE independent administrator, Accion, Inc., on July 10, 2018, preceding the Companies’ filing of the proposed SISC in

² *Id.* at 31.

³ *Stipulation of Partial Settlement Regarding Solar Integration Services Charge*, p. 3, Docket No. E-100, Sub 158 (May 21, 2019) (the “Stipulation”), *quoting Initial Statement of the Public Staff*, Docket No. E-100, Sub 158 (February 13, 2019).

⁴ *See Generally*, Docket No. E-100, Sub 158.

⁵ *Stipulation*, pp. 2-3.

this docket, and did not include any reference to the SISC. [Duke and the Public Staff] agree that it is appropriate to consider the ancillary services costs of adding incremental solar, and the potential applicability of the Integration Services Charge to solar generation solicited in CPRE Tranche 2 and other future CPRE Tranches.”

Moreover, during the evidentiary hearing in the Avoided Cost Docket, Duke stated that it expected the SISC to apply to CPRE Tranche 2⁶ and the Public Staff indicated that they thought that the SISC could apply to Tranche 2, but they were not yet certain as to the specifics of that application.⁷⁸

The question regarding *how* to apply the SISC to the CPRE Program was only partially broached both within in the evidentiary hearing and also in post-hearing filings.⁹ The SISC has not been previously discussed or applied to the CPRE Program despite the fact that it was developed concurrently with the CPRE Program’s rulemaking and implementation dockets.¹⁰ The CPRE Program is outlined in pertinent part as

a program for the competitive procurement of energy and capacity from renewable energy facilities with the purpose of adding renewable energy to the State’s generation portfolio in a manner that allows the State’s electric public utilities to continue to reliably and cost-effectively serve customers’

⁶ Docket No. E-100, Sub 158, Tr. Vol. 2, p. 290.

⁷ Docket No. E-100, Sub 158, Tr. Vol. 6., pp. 428-429.

⁸ Similarly, neither the Public Staff nor Duke knew how the SISC would apply to Green Source Advantage, another HB 589 program which utilizes the avoided cost as a bill credit cap: Duke witness Glen Snider stated that Duke has “not done any analysis” with respect to the application of the integration charge to GSA, and Public Staff witness Jeff Thomas stated that “[a]t this time we don’t have a position on . . . how that charge might be applied [to the GSA program]. We haven’t spoken internally about it.” Docket No. E-100, Sub 158, Tr. Vol. 3, p. 32 and Tr. Vol. 6, p. 430.

⁹ It should be noted that other programs, including both other House Bill 589 programs and also rider programs, would be affected with the implementation of the SISC as part of the avoided cost.

¹⁰ Duke Witness Nick Wintermantel, employed by Astrape Consulting which was commissioned by Duke to make the study which provided the basis for the SISC, testified that Astrape Consulting was engaged by Duke for this purpose in “fourth quarter 2017” (Docket No, E-100, Sub 158, Tr. Vol. 4, p. 117). The CPRE rulemaking docket, Docket No. E-100, Sub 150, was initiated by order on July 28, 2017 with an initial Order Adopting and Amending Rules entered by the Commission on November 6, 2017. Subsequently, the Rule was amended, at the request of Duke, on April 9, 2018. The current docket regarding the implementation of the CPRE Program was opened on November 27, 2017. The proposed SISC was unveiled via the Avoided Cost proposal filed on November 1, 2018.

future energy needs. Renewable energy facilities eligible to participate in the competitive procurement shall include those facilities that use renewable energy resources identified in G.S. 62-133.8(a)(8) but shall be limited to facilities with a nameplate capacity rating of 80 megawatts (MW) or less that are placed in service after the date of the electric public utility's initial competitive procurement. Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public utilities shall issue requests for proposals to procure and shall procure, energy and capacity from renewable energy facilities in the aggregate amount of 2,660 megawatts (MW), and the total amount shall be reasonably allocated over a term of 45 months beginning when the Commission approves the program.¹¹

N.C. Gen. Stat. § 62-110.8 further states, in pertinent part, that the electric public utility may bid into the program and take up to 30% of the procurement requirement.

Finally, the statute outlines the monetary payment cap:

To ensure the cost-effectiveness of procured new renewable energy resources, 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. The public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology.¹²

During the CPRE Rulemaking proceeding,¹³ the Commission adopted Rule R8-71, which did define "Avoided Cost Rates" for the purposes of the CPRE Program, which contemplates a calculation of long-term levelized avoided and energy and capacity costs:

'Avoided cost rates' – means an electric public utility's calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electric public utility's upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation. With respect to each CPRE RFP Solicitation, the electric public utility's avoided costs shall be

¹¹ N.C. Gen. Stat. § 62-110.8(a).

¹² N.C. Gen. Stat. § 62-110.8(b)(2).

¹³ Docket No. E-100, Sub 150.

calculated over the time period of the utility's pro forma contract(s) approved by the Commission.¹⁴

The *Order Modifying and Approving Joint CPRE Program* approved Duke's suggestion, supported by other parties including NCSEA, to use the peaker methodology to determine the avoided cost for the initial tranche.¹⁵ This peaker methodology matches the methodology used in the biennial avoided cost docket, at least until recently proposed SISC in Docket No. E-100, Sub 158. The *Order* allowed for some future changes, including public comment periods, to the avoided cost determination and stated specifically:

NCCEBA and NCSEA agree with Duke's approach to include DEC and DEP's respective 20-year avoided cost rates using the peaker methodology for Tranche 1, but request additional details on how this will be translated into a rate structure. They argue that if the generic production profile is different from the one used to convert the time-differentiated standard offer tariff into a single all-in PPA price, then it should be included in the guidelines and made available for comment. The Public Staff agrees with this recommendation for Tranche 1, and further suggests that, for future solicitations, the use of more detailed production profiles that fully consider the value of on-peak and off-peak generation may help promote innovative proposals from developers, such as incorporating storage or other technologies to provide more cost-effective options. Duke did not address this issue in its reply comments, but the Commission notes that in Section 3.5.1 of Duke's proposed guidelines, Duke states that for Tranche 1, the avoided costs rates "will be presented in the same rate structure as the Companies' standard avoided cost rates." The Commission agrees with the comments of the Public Staff, and NCCEBA and NCSEA. Therefore, Duke shall provide additional detail on how the Commission-approved avoided cost rates will be translated into a rate structure in its revised guidelines and in future guidelines and Program plans. Specifically, Duke shall include a similar statement as provided in Section 3.5.1 of the proposed guidelines, addressing whether the required 20-year avoided cost rates are to be presented in the same manner as in Duke's standard avoided cost rates and explain the production model used.¹⁶

¹⁴ *Order Adopting and Amending Rules*, Docket No. E-100, Sub 150, adopting Rule R8-71 in *Appendix A*, p. 2, (November 6, 2017).

¹⁵ *Order Modifying and Approving Joint CPRE Program*, Docket No. E-2, Sub 1159 & E-7, Sub 1156, (February 21, 2018).

¹⁶ *Order Modifying and Approving Joint CPRE Program*, Docket No. E-2, Sub 1159 & E-7, Sub 1156, pp. 20-21 (February 21, 2018).

Duke did provide some description of underlying costs related to the additional ancillary services needed for the CPRE Program in its CPRE Compliance Plan filed on November 27, 2017 as part of the *Petition for Approval of Competitive Procurement of Renewable Energy Program to Implement N.C. Gen. Stat. §62-110.8* (“Petition”):

(iii) Potential for Increased Delivered Cost; Ancillary Services

The Companies are still developing the modeling to quantify the increased delivered costs and additional ancillary services needed to maintain NERC Balancing Authority compliance due to siting additional renewable energy facilities in DEC or DEP. The Companies plan to provide information on how this consideration impacts the planned allocation of Renewable Energy Resource procurement in future CPRE Program Plans.¹⁷

Duke filed its CPRE Program Plans on September 5, 2018, as part of its 2018 Integrated Resource Plans (“IRP”). This CPRE Program Plans spoke in limited fashion to the ancillary services costs of the CPRE Program:

(iii) Potential for Increased Delivered Cost; Ancillary Services

The Companies have evolved and will continue to evolve the modeling necessary to quantify the increased delivered costs and additional ancillary services needed to maintain NERC Balancing Authority compliance due to siting additional renewable energy facilities in DEC or DEP. Through evaluation of the prior two factors discussed, the Companies have allocated the vast majority of MWs to be procured through CPRE to DEC and did not specifically evaluate the potential for increased delivered cost and additional ancillary services in determine the planned allocations set forth above. However, this third factor may influence future decisions to further adjust this allocation in future plans.¹⁸

Following the implementation of Tranche 1 of the CPRE Program, the Commission entered into the December 17, 2018 *Order Requiring Interim CPRE Program Reports, Allowing Interim Implementation of CPRE Program Plans and Establishing Schedule for*

¹⁷ *Petition*, Docket No. E-2, Sub 1159 & E-7, Sub 1156, November 27, 2017, CPRE Plan, p. 12.

¹⁸ *Duke Energy Progress, LLC 2018 Integrated Resource Plan and 2018 REPS Compliance Plan*, Docket No. E-100, Sub 157, Appendix II, p. 260 (September 5, 2018). The *Duke Energy Carolinas, LLC 2018 Integrated Resource Plan and 2018 REPS Compliance Plan*, filed on the same day in the same docket, contained similar comments and are available in that document on page 267 for comparison.

Filing of Comments. In response to this order requesting comments, Duke filed the *Comments of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC* on March 22, 2019, which, in footnote 10, and for the first time in the CPRE Docket, referenced the SISC and distanced the SISC from the cost-effectiveness requirement referenced by statute and rule above:

[Duke has] also proposed an Integration Services Charge in Docket No. E-100, Sub 158 that is independent of [Duke's] avoided capacity and energy cost calculations and would be applied to new generators coming on to the system (including resources procured through CPRE). If approved by the Commission, application of this charge to winning CPRE proposals would be separate and apart from [Duke's] cost-effectiveness calculation of forecasted avoided costs based upon the avoided cost methodology most recently approved by the Commission.¹⁹

Ultimately, the road above in both the avoided cost docket, the IRP Docket and, eventually, the CPRE docket, led the Commission to ask for comments in response to the following questions:

- 1) Whether the SISC should apply to the renewable energy facilities that are the subject of proposals in the CPRE Program;
- 2) If the SISC is to apply to the renewable energy facilities that are the subject of proposals in the CPRE Program, then:
 - a. how the SISC should be incorporated into the cost-effectiveness limitation set forth in N.C.G.S. § 62-110.8(b); and
 - b. how the application of the SISC to the renewable energy facilities that are the subject of proposals in the CPRE Program is consistent with the treatment of “the utility’s own generating resources;” and
- 3) If the SISC is not to apply to the renewable energy facilities that are the subject of proposals in the CPRE Program, then whether and how this approach is consistent with the provisions of N.C.G.S. § 62-110.8.

¹⁹ *Comments of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC*, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156, fn. 10 (March 22, 2019).

On October 17, 2019, the Commission issued the *Supplemental Notice of Decision* in Docket No. E-100, Sub 158, wherein the Commission indicated that the SISC was approved in limited fashion: the charge would be prospective and fixed for the life of the contract; the SISC was not approved as a separate charge but rather a portion of the utility's avoided energy cost reflecting increased ancillary services costs; would not apply to a "controlled solar generator"; the underlying methodology is subject to independent technical review and subject to potential revisions prior to the next avoided cost hearing; and the Commission deemed the HB589 programs affected by avoided cost rates will be evaluated separately.²⁰

As set forth below, the answer to question 1 is dispositive. The SISC was not contemplated to apply to the CPRE Program, by law, rule, or statute. Furthermore, the recent *Supplemental Notice of Decision* concludes that the ancillary services costs incurred by Duke due to solar generation should be included in its avoided energy rate, not as a separate charge, and is therefore will be intrinsic to the avoided cost rate and, by statute, already included in the CPRE cap limiting payment to market participants.

Duke failed to introduce the SISC concept at any point during the concurrent CPRE rulemaking, implementation, or within the CPRE Program Plan to allow for sufficient planning or a stakeholder process to tailor the proposed charge to the program. Moreover, recent case law indicates that when determining PURPA avoided cost rates, a state-mandated program renewable energy program requires the Commission to determine *actual* avoided cost by calculating avoided costs for the *same* generation source, i.e., a solar facility against another solar facility. This undercuts the necessity for a charge arising from

²⁰ *Supplemental Notice of Decision*, Docket No. E-100, Sub 158 (October 17, 2019).

alleged solar generation intermittency. Finally, the CPRE Program allows for Duke to dispatch, operate, and control the CPRE solar facilities, which also should alleviate any and all concerns related to alleged intermittency.

I. THE SISC SHOULD NOT BE APPLIED TO THE RENEWABLE ENERGY FACILITIES THAT ARE THE SUBJECT OF PROPOSALS IN THE CPRE PROGRAM

a. THE MARKET PARTICIPANTS SHOULD NOT PAY BOTH AN SISC CHARGE AND ALSO HAVE A LOWER CPRE MARKET CAP

In the October 17, 2019 *Supplemental Notice of Decision*, the Commission indicated the following pertinent conclusions will be included in the final Avoided Cost Order in Docket No. E-100, Sub 158:

- (7) That DEC and DEP's approach to designate the SISC as a separate cost or charge to be established in Schedule PP and through negotiated PPAs should not be approved; instead, DEC and DEP should be required to account for increased ancillary services costs when calculating each utility's avoided energy costs.
- (8) That DEC and DEP should not be authorized to impose the SISC on a solar QF that is a "controlled solar generator," meaning, generally, any solar QF that demonstrates that its facility is capable of operating, and contractually agrees to operate, in a manner that materially reduces or eliminates the need for additional ancillary service requirements incurred by the utility.
- (9) That DEC and DEP should be required to file with the Commission proposed guidelines for QFs to become "controlled solar generators" and thereby avoid the SISC.
- (10) That DEC and DEP should be required to calculate avoided energy rates that do not include a SISC and to include these non-SISC inclusive rates that would be available to "controlled solar generators" as a part of the tariffs and standard contracts in this proceeding.

By notice of these conclusions, the Commission is directing that the ancillary services costs, the same costs which substantiate the SISC, are to be incorporated into the avoided energy cost. This conclusion renders the discussions of an additional SISC charge

in the CPRE Program irrelevant. This is because the cost is already baked into the underlying avoided cost. For instance, if the avoided cost rate, prior to the application of charges associated with the SISC, is \$42 and the \$1.10 ancillary services cost amount is applied as a decrement, then the “net” avoided cost would be \$40.90, which would also be the cap for the purposes of the CPRE Program. Any further application of the SISC to the Market Participants would be excessive as it has already been applied via the market rate cap. Moreover, as explained further below, the fact that the CPRE facilities are controllable and dispatchable by Duke is sufficient control to allow for an ancillary services cost offset consistent with the concept outlined in Paragraphs 9 and 10 of the *Supplemental Notice of Decision*.

b. RATEPAYERS MAY STILL CARRY THE COST

Practically speaking, the implementation of the SISC in the CPRE Program will not benefit ratepayers as the charge was intended. “The Integration Services Charge is designed to recognize the impact on [Duke’s] operating reserves, or generation ancillary service requirements, of integrating existing and new variable and non-dispatchable solar capacity and to assign such costs to solar QFs whose integration is causing the increased operating costs.”²¹ The apparent intent is to assign costs to the alleged cost-causers: the solar facilities. However, the nature of the CPRE Program allows market forces to pass these costs along to ratepayers. The CPRE Program is a competitive procurement of renewable generation, to be used within Duke’s general generation mix, with a contract bidding process overseen by a third-party administrator, with a carefully designed implementation

²¹ *Stipulation*, p. 2.

program designed to allow for ratepayer savings. In fact, Tranche 1 of the CPRE Program successfully saved ratepayers considerable costs:

CPRE Tranche 1 was successful in establishing a competitive procurement process that will provide twenty years of renewable energy at pricing below Duke's Avoided Cost. In DEC, the average price per proposal is 36.93 \$/MWh. In DEP, the average price per proposal is 31.24 \$/MWh. The total nominal savings were estimated versus avoided cost over the full 20-year term. DEC is estimated to have \$290.20 million in savings, and DEP to have \$84.69 million in savings.²²

Adding a variable or uncapped SISC would reduce the cost-savings seen in CPRE Tranche 1. This is because the market participants – the solar developers – in making their bids into the program will simply increase their bids to reflect the SISC charge and, therefore, those charges will be passed-through to the rate payers via the increased bid amounts. In a “capped” or “variable” and uncapped SISC mechanism, the market participants would increase their bids to either the cap or, in the case of a variable, uncapped amount, it may render the program untenable for a developer or they will raise their bids exponentially. This will likely result in ratepayers *overpaying* for the costs associated with the SISC charge pass-through as it may not always hit the “cap” number or whatever the number is that the market participant includes in their bid. If the SISC is applied to the market cap via its incorporation into the avoided cost per the *Supplemental Notice of Decision*, it may alleviate some concerns such as ratepayer overpayment, however such a set up will not sufficiently reflect the CPRE construct which alleviates utility ancillary service cost concerns by allowing the utility control over dispatch, curtailment, and siting.

²² *Competitive Procurement of Renewable Energy Independent Administrator's Report: Conclusion of Step 2 Evaluation and Selection of Proposals*, Docket Nos. E-2, Sub 1159 & E-7, Sub 1156, p. ii, April 10, 2019.

c. DUKE HAS RIGHTS TO DISPATCH, OPERATE, AND CONTROL FACILITIES IN THE CPRE PROGRAM

According to Duke Witness Snider in the avoided cost proceeding, the purpose of the SISC is address the variable and non-dispatchable nature of intermittent solar resources.²³ Duke Witness Snider testified that the intermittent and nondispatchable power from solar is markedly different from the firm and dispatchable resources of Duke's conventional fleet resources.²⁴ However, many of these issues should be controlled or mitigated via Duke's ability to control and dispatch the CPRE projects. Specifically, N.C. Gen. Stat. § 62-110.8(b) states:

Electric public utilities may jointly or individually implement the aggregate competitive procurement requirements set forth in subsection (a) of this section and may satisfy such requirements for the procurement of renewable energy capacity to be supplied by renewable energy facilities through any of the following: (i) renewable energy facilities to be acquired from third parties and subsequently owned and operated by the soliciting public utility or utilities; (ii) renewable energy facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject to the limitations of subdivision (4) of this subsection; or (iii) the purchase of renewable energy, capacity, and environmental and renewable attributes from renewable energy facilities owned and operated by third parties *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.*²⁵

The statute clearly intends to allow for utility control of the CPRE facilities in a manner to allow for the efficient usage of those facilities in this program, and this is different from the "non-dispatchable power" that Duke Witness Glen Snider was citing when advocating for the SISC during the most recent avoided cost hearing.

²³ Docket No. E-100, Sub 158, Tr. Vol. 2, pp. 77-78.

²⁴ *Id.*

²⁵ N.C. Gen. Stat. § 62-110.8(b) (emphasis added).

There is an apparent disconnect between what the CPRE Statute allows for in terms of control and dispatch and what Duke and the Public Staff seek to cure with the SISC. As outlined in the *Supplemental Notice of Decision*, the Commission has requested a definition for what a “controlled solar generator” is with the presumption that such controlled generators will not be subject to excessive ancillary services costs. While it is understandable that ramping and volatility issues could occur at all solar facilities, including utility-owned solar facilities, there is clear intent in the CPRE statute to address these concerns. Meanwhile, the proposed SISC in the Avoided Cost proceeding was not tailored to the CPRE and, by the Duke Witness Snider’s testimony does not apply as CPRE projects are not “non-dispatchable”. PURPA projects and CPRE projects have a wholly different set of rules and requirements. This is especially frustrating and troublesome when considering the concurrent history, outlined above, of the development of the CPRE rule and implementations plans and also the development of the Astrape study to examine ancillary services costs. While NCSEA and NCCEBA believe that N.C. Gen. Stat. § 62.110.8 is explicit in explaining that the CPRE facilities are subject to the dispatch and control of Duke, we believe that if an additional ancillary services cost charge is to be incurred the underlying model should be redone with proper CPRE-focused inputs which include the control and dispatchability allowable by statute which should offset most if not all of the ancillary services costs. Furthermore, if an ancillary services cost is incorporated into the avoided energy rate, and that rate is the market cost cap for the CPRE Program, then NCSEA and NCCEBA believe that the a “controlled solar generator” as decided by the Commission should not be subject to that lowered cap and, instead, be subject to a

higher cap similar to the separate avoided cost rate discussed in paragraphs 9 and 10 of the *Supplemental Notice of Decision*.

d. DUKE IS NOT INCENTIVIZING INNOVATION ON THE GRID AND SHOULD CONSIDER ALTERNATIVE SCENARIOS

The CPRE Program is mandated by statute and, without any optionality, the across-the-board penalty to participants is just a cost-shifting mechanism that will still be bore out through ratepayers. However, NCSEA and NCCEBA would like to see the CPRE Program as a potential market for incorporation for ancillary services. PJM, for instance, provides for several ancillary services markets where both Regulation Ancillary Services Market and the Reserves Ancillary Service Market serve to balance the PJM system in times of generation deficiencies or other flux.²⁶ Given that the CPRE Program is a competitive program mandated by statute, NCSEA and NCCEBA think it is a natural fit to incorporate an ancillary service market. Therefore, rather than simply “smoothing” generation to qualify for a reduction or elimination of the SISC, market participants could feed the utility whatever ancillary services it needs at any given time, which may better reflect the needs on the grid in real-time. The market participants will then develop a mature market based upon price signals and real-world needs for the grid. This will more succinctly optimize the grid and the tools available now, rather limiting solar plus storage projects into a “smoothing” mechanism to reduce the SISC.

²⁶ See generally, <https://learn.pjm.com/three-priorities/buying-and-selling-energy/ancillary-services-market.aspx> (last viewed on October 17, 2019).

II. IF THE SISC IS APPLIED TO THE CPRE PROGRAM, THE SISC SHOULD BE LIMITED BY THE STATUTORY CONTROL AND DISPATCH PROVISIONS OF THE CPRE STATUTE

If the Commission deems it necessary and appropriate to include the SISC in the CPRE Program, then NCSEA and NCCEBA request that the Commission implement the SISC in a manner that is predictable, sensible, and forward-thinking. Unlike PURPA projects, the CPRE projects are statutory by *state* law and tailored to provide renewable energy at cost-competitive rates to North Carolina ratepayers, which is achieved through long term contracts and a competitive market. As noted above, Tranche 1 successfully began that process. If the SISC is implemented in the CPRE Tranche 2 and thereafter, the SISC should be a fixed charge, rather than a variable charge with a cap,²⁷ as this will lessen the impact on ratepayers via pass through charges.

N.C. Gen. Stat. § 62.110.8 mandates control and dispatch rights of CPRE facilities to Duke, which, as explained herein, evidences a statutory intent to offset utility concerns regarding solar intermittency. However, NCSEA and NCCEBA can appreciate there may be some difference of opinion as to what constitutes the necessary utility precautions to offset the claimed ancillary services costs. In fact, Paragraphs 9 and 10 of the *Supplemental Notice of Decision* indicate that the Commission is also looking for a definition as to what a solar facility must do to be a “controlled solar generator” so as to not incur utility ancillary services costs. However, the N.C. Gen. Stat. § 62.110.8 mandates for control and dispatch rights to the utility should count towards the calculation of any sort of solar integration charge, given that they will likely offset the potential for overgeneration or related

²⁷ The recent October 17, 2019 *Notice of Supplemental Decision* indicates that in the E-100, Sub 158 Avoided Cost Docket, the Commission is ordering a fixed charge for the life of the contract. NCSEA and NCCEBA, while maintaining their arguments against the SISC, believe that this version of an SISC-type charge is more palatable to market participants and will result in benefits to the ratepayers.

curtailment issues. Therefore, NCSEA and NCCEBA believe that, in the event that the Commission orders the SISC, or the version of that cost encapsulation such as the avoided energy rate including ancillary services costs, is applied to the CPRE, then it should be lowered to reflect the positive attributes allowable due to the statutory control and dispatch rights. Such a lowering would reflect the inherent difference between a typical PURPA project and a CPRE project with statutory utility control and dispatch rights.

Furthermore, NCSEA and NCCEBA both agree that a market participant should be able to mitigate, reduce, or eliminate the SISC in the CPRE Program through the incorporation of technologies that offset the need for utility ancillary service costs. NCSEA and NCCEBA believe paragraphs 9 and 10 of the *Supplemental Notice of Decision* should also be incorporated into the CPRE docket, if an SISC-type charge or decrement is deemed necessary, and that “controlled solar generators” should not be subject to *any* ancillary services costs through an SISC-style charge or decrement to the avoided cost market cap.

Duke’s “Solar Site Volatility Metric,”²⁸ proposed without input from NCSEA or NCCEBA, needs to be evaluated, discussed, and negotiated between Duke and the intervenors. The Metric appears to potentially limit the technologies which could bring the most benefit to the ratepayers and the grid. Notably, the Metric outlines a process of “smoothing” via paired electric storage with a solar facility as a means to avoid the SISC. However, this limits the purpose and utility of a solar plus storage facility where storage can be used in a number of ways to help the grid, such as peak-shaving, which may not reduce the SISC despite being, at times, a much more valuable grid asset than mere

²⁸ *Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Notice of Opening of CPRE Tranche 2*, Docket Nos. E-2, Sub 1159 & E-7, Sub 1156, Exhibit 11, Appendix A (October 15, 2019).

smoothing. NCSEA and NCCEBA would encourage the Commission, as they did in their post-hearing brief in the Avoided Cost Docket,²⁹ to open a broad-study, with stakeholders, to allow for the understanding of the potential benefits that a solar facility with incorporated ancillary services can bring to the grid which will offset utility costs and be a benefit to the grid.

III. IT WOULD BE CONSISTENT WITH THE INTENT AND PLAIN LANGUAGE OF N.C. GEN. STAT. § 62-110.8 FOR THE COMMISSION TO DENY THE REQUESTED APPLICATION OF THE SISC IN THE CPRE PROGRAM

- a. N.C. GEN. STAT. § 62.110.8 ALREADY ACCOUNTS FOR CONTROL AND DISPATCH SO THE SISC SHOULD NOT BE APPLIED TO THE CPRE PROGRAM AS A MATTER OF LAW

As noted extensively herein, N.C. Gen. Stat. § 62.110.8 provides specifically for utility control and dispatch rights over CPRE facilities. NCSEA and NCCEBA believe that reflects a legislative intent that no further ancillary services charges should be applied to the CPRE facility. Additionally, N.C. Gen. Stat. § 62.110.8 provides for Duke to control siting of solar facilities and take 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.

Subpoint (iii) clearly evidences the legislative intent for Duke to utilize the CPRE Program in such a way so as to limit or eliminate extra ancillary services costs. There is no

²⁹ *Post-Hearing Brief of the North Carolina Clean Energy Business Alliance and the North Carolina Sustainable Energy Association*, Docket No. E-100, Sub 158, September 4, 2019.

doubt that the General Assembly intended to allow Duke the ability to account for and reduce or eliminate ancillary services costs. For this reason, NCSEA and NCCEBA urge the Commission to deny the application of the SISC to the CPRE Program.

b. RECENT CASE LAW BARS THE APPLICATION OF AN AVOIDED COST DECREMENT TO RENEWABLE FACILITIES WHEN THOSE FACILITIES ARE MANDATED BY STATUTE

In *Californians for Renewable Energy v. Cal. PUC*, the Ninth Circuit reversed and remanded, in pertinent part, the district court’s finding that the California Public Utilities Commission was not *required* to consider the Renewables Portfolio Standard in calculating the utility’s avoided cost.³⁰ The Ninth Circuit, instead, found that PURPA requires when evaluating avoided cost in the context of a state-mandated renewables that the utility must compare a PURPA-qualifying facility with a facility that would otherwise be required to meet a state mandate. Historically, the FERC has issued orders which interpret avoided cost to include “all alternatives available to the purchasing utility . . . [and] include[s] all supply alternatives.”³¹ However, as noted by the Ninth Circuit,³² the FERC stated that “that when a state has a requirement that utilities source energy from a particular type of generator, ‘generators with those characteristics constitute the sources that are relevant to the determination of the utility’s avoided cost for that procurement requirement.’”³³ The Ninth Circuit then stated, “where a state has an RPS and the utility is using a QF’s energy to meet the RPS, the utility cannot calculate avoided costs based on energy sources that

³⁰ *Californians for Renewable Energy v. Cal. PUC*, 922 F.3d 929 (9th Cir. 2019).

³¹ *Id.* quoting *N. Little Rock Cogeneration, L.P. and Power Sys., Ltd. v. Entergy Servs., Inc.*, 72 FERC ¶ 61263, 62173, 1995 WL 556544 (Sept. 19, 1995).

³² Cal. PUC, 133 F.E.R.C. P61,059, 61261, 2010 FERC LEXIS 1886, *1 (F.E.R.C. October 21, 2010)

³³ *Californians*, 922 F.3d at 937, quoting Cal. PUC, 133 F.E.R.C. P61,059, 61267.

would not also meet the RPS.”³⁴ FERC interprets PURPA “to require an examination of the costs that a utility is *actually avoiding*.”³⁵ Thus, where a utility is procuring renewable energy pursuant to a state-mandated renewables program, then the cost avoided should reflect the same type of generation asset. “Where a utility uses energy from a QF to meet the utility’s RPS obligations, the relevant comparable energy sources are other renewable energy providers, not all energy sources that the utility might technically be capable of buying energy from.”³⁶

Here, *Californians* is persuasive in considering whether to apply the SISC, as part of the avoided cost, to the CPRE (or any state-mandated renewables program). Since there is a state-mandate in the CPRE for 2,660 megawatts of utility scale solar, and it includes both utility and third-party developed solar systems, it’s clear this is a state-mandated program for renewables. Thus, it does not make sense for the program to include a part of “avoided cost” which is not actually avoided. North Carolina law has required the construction and use of a large amount of new solar on the grid in Duke territories. Duke is not avoiding any costs through the implementation of third party solar projects here as they are required by law as it is. Therefore, as a matter of law, the SISC should not be implemented in the CPRE Program.

³⁴ *Californians*, 922 F.3d at 937

³⁵ *Id.* (emphasis in original).

³⁶ *Id.*

Respectfully submitted this the 18th day of October, 2019,

/s/ Peter H. Ledford
Peter H. Ledford
N.C. State Bar No. 42999
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 107
peter@energync.org
Counsel for NCSEA

/s/ Benjamin W. Smith
Benjamin W. Smith
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 111
ben@energync.org
Counsel for NCSEA

/s/ Karen M. Kemerait
Karen M. Kemerait
Fox Rothschild LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
919-755-8700
kkemerait@foxrothschild.com
Counsel for NCCEBA

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document 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 18th day of October, 2019.

 /s/ Benjamin W. Smith
Benjamin W. Smith
N.C. State Bar No. 48344
Regulatory Counsel
NCSEA
4800 Six Forks Road
Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 111
ben@energync.org