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January 23, 2019

Via Electronic Filing

Martha Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 North Salisbury Street
Dobbs Building
Raleigh, NC 27603-5918

RE: In the Matter of: Biennial Determination of Avoided Cost Rates for
Electric Utility Purchases from Qualifying Facilities – 2018
Docket No. E-100, Sub 158

Dear Ms. Jarvis:

Enclosed for filing in the above-referenced docket is a *Joint Response to Duke Energy's Motion to Establish Discovery Guidelines*, which is being filed on behalf of the Southern Alliance for Clean Energy and the North Carolina Sustainable Energy Association.

Please let me know if you have any questions about this filing.

Sincerely,

/s/ Peter D. Stein

Enclosures

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 158

In the Matter of:)	
Biennial Determination of Avoided)	THE SOUTHERN ALLIANCE FOR
Cost Rates for Electric Utility)	CLEAN ENERGY AND THE NORTH
Purchases from Qualifying Facilities)	CAROLINA SUSTAINABLE
– 2018)	ENERGY ASSOCIATION’S JOINT
)	RESPONSE TO DUKE ENERGY’S
)	MOTION TO ESTABLISH
)	DISCOVERY GUIDELINES
)	

NOW COME the Southern Alliance for Clean Energy (“SACE”) and the North Carolina Sustainable Energy Association (“NCSEA”), and hereby jointly respond in opposition to the Motion to Establish Discovery Guidelines, filed in the above-captioned docket on January 16, 2019 (“Discovery Motion”), by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, (collectively, the “Companies” or “Duke”) Specifically, SACE and NCSEA object to the Companies’ request to limit the number of additional discovery requests on the Companies’ November 1, 2018 Initial Statement and Exhibits (“Initial Filing”) to ten as unnecessary, inconsistent with Commission precedent, and prejudicial to SACE and NCSEA. Further, SACE and NCSEA request that if the Commission determines it is appropriate to establish discovery guidelines in this proceeding, any such guidelines allow parties a maximum of ten days to respond to formal discovery requests, consistent with the Commission typical practice in establishing discovery guidelines.

Background

The Commission's June 26, 2018 Order Establishing Biennial Proceeding, Requiring Data, and Scheduling Public Hearing ("Order") required Duke to file its Initial Statement and Exhibits by November 1, 2018 and established an intervention and initial comment deadline of January 7, 2019. Pursuant to that Order, Duke filed its Initial Filing in this proceeding on November 1, 2018. NCSEA and SACE filed Petitions to Intervene in the proceeding on July 13, 2018 and November 16, 2018, respectively, and the Commission granted NCSEA's and SACE's Petitions to Intervene on August 9, 2018 and November 29, 2018, respectively. SACE and NCSEA individually commenced and engaged in informal discovery in this proceeding in November and December of 2018 in anticipation of the January 7, 2019 initial comment deadline set forth in the Order. On January 4, 2019, the Commission issued an Order Granting Extension of Time extending the initial comment deadline to February 8, 2019.¹

On January 16, 2019 Duke filed the Discovery Motion in this proceeding asking the Commission to:

- (1) allow the Companies and Dominion Energy North Carolina ("DENC" and together with the Companies, the "Utilities") to object or respond to any further data requests on the Utilities' November 1, 2018 initial filings in this proceeding within fourteen days of delivery;
- (2) limit the total number of additional data requests that the Public Staff or another intervenor may direct to the Utilities regarding the November 1, 2018 initial filings in this proceeding to ten, including subparts;
- (3) require all parties to serve discovery on other parties' initial comments or direct testimony within seven days after the filing of that party's initial comments

¹ The Commission is also currently considering separate motions by the Public Staff and NCSEA to establish an evidentiary hearing on certain issues in the proceeding and to allow parties to file expert testimony on some or all of these issues.

or direct testimony and allow the responding party to object or respond to data requests within fourteen days of delivery;

(4) limit discovery on parties' reply comments and rebuttal testimony to any new issues introduced in the reply comments or rebuttal testimony that had not been previously raised in initial comments or direct testimony;

(5) require all parties to serve data requests on other parties' reply comments or rebuttal testimony within five days of filing and allow the responding party to object or respond to each data requests within seven days of delivery; and

(6) establish any other reasonable discovery guidelines or requirements that the Commission determines to be just and reasonable.

Duke's request—in particular, the request to limit further discovery at this stage of the proceeding to ten questions—is unnecessarily restrictive given the nature and significance of this proceeding, is not supported by Commission precedent, and has been requested without a good faith effort to resolve the discovery dispute informally before bringing it to the Commission for resolution. Therefore, Duke's requested ten-question discovery limitation should be rejected.

SACE and NCSEA are not necessarily opposed to setting other, more reasonable discovery limitations in this proceeding, but they should be limited to and consistent with the Commission's typical discovery guidelines, including a maximum of ten days for parties to object or respond to formal discovery requests, and should apply equally to all parties engaging in discovery, including any discovery that the Companies or Dominion propound on any intervenor.

Response to Duke's Motion

In its Initial Filing, Duke proposed two significant changes to its Schedule PP rates that impact avoided cost rates available to renewable energy generators in North

Carolina.² First, Duke proposed an integration services charge (“Solar Integration Charge”) applicable to intermittent qualifying facilities. The Companies’ description of its proposed Solar Integration Charge in the Initial Filing was found on pages 30-34 and included only a narrative description of the proposed charge, including references to multiple studies commissioned by the Companies. Second, Duke proposed a new rate design structure for avoided energy rates and avoided capacity rates (“Rate Design Changes”). The Companies’ description of its proposed Rate Design Changes in the Initial Filing was found on pages 25-29 and, similarly, included a narrative description of the proposed changes without any significant supporting quantitative analysis. In addition to these two proposed additions, Duke included updated avoided energy and avoided capacity calculations and proposed numerous changes to its Schedule PP contract terms and conditions. These significant changes add to the list of issues typically addressed in this biennial proceeding, including analysis of the inputs and assumptions underlying the Companies’ avoided capacity and avoided energy calculations.

In order to develop their respective cases in response to the novel and largely unsupported Solar Integration Charge and the Rate Design Changes³ – in addition to all other issues in the proceeding – SACE and NCSEA propounded discovery requests on

² The significance of Duke’s avoided cost methodology and the resulting rates should not be understated. Following the enactment of House Bill 589, avoided cost rate implications stretch far beyond qualifying facilities eligible for Schedule PP. In addition to qualifying facilities 1 megawatt (“MW”) or smaller that enter into standard offer contracts with Duke under Schedule PP, these avoided cost rates are also now directly linked to a number of other renewable energy programs in North Carolina, including the Competitive Procurement of Renewable Energy (“CPRE”), the Green Source Advantage (“GSA”) program, and the Community Solar program.

³ SACE and NCSEA note that in its Initial Filing Duke requested the opportunity to file expert testimony on the Solar Integration Charge and Rate Design Changes. However, under the existing procedural schedules that established a January 7, 2019 initial comment deadline, modified by the Commission’s January 4, 2019 Order, SACE and NCSEA worked diligently at that time to develop their respective cases based on Duke’s Initial Filings and the existing deadlines.

Duke. The extent of the discovery requests reflects the complexity and novelty of the issues at stake and the timeframe for developing comments. These requests have been proportional to the needs of the case and not unreasonable. Further, as the Companies correctly acknowledge in their Discovery Motion,⁴ SACE and NCSEA have provided the Companies significant flexibility and accommodation in the timing of their responses to SACE's and NCSEA's data requests, including agreeing to multiple requests for extensions without objection.

The Companies did not attempt to resolve informally with SACE or NCSEA their concerns about the discovery practices in this proceeding before seeking relief from the Commission. The Commission has consistently stated its preference that "parties will endeavor to resolve discovery disputes prior to submitting them for resolution." *In the Matter of Time Warner Cable Se., LLC, Complainant*, Docket No. EC-39, Sub 44 (Dec. 22, 2016); *See also In Re Carolina Tel. & Tel. Co.*, Docket Nos. P-7, Sub 825; P-10, Sub 479 (Sept. 29, 2004) ("The parties are directed to confer before any objections or responses to objections are filed with a view toward settling or mitigating any discovery disputes"); *In Re Triennial Review*, No. P-100, Sub 133s (Nov. 25, 2003); *In Re Bellsouth Telecommunications, Inc.*, No. P-55, Sub 1022 (Aug. 24, 2001).

At no time prior to filing the Discovery Motion did the Companies communicate with SACE or NCSEA their intention to file the Discovery Motion or to discuss potential resolutions to these issues. Instead of discussing these issues first with SACE and NCSEA, Duke has asked the Commission to take the unprecedented step of placing a strict ten-question limit on discovery requests in the midst of an ongoing proceeding.

⁴ Discovery Motion at 2, fn. 1.

While Duke states that it does not request a numerical limitation for future discovery in this proceeding at this time, Duke also claims to “reserve the right” to request further numerical limits on subsequent discovery.⁵

The single Commission Order that Duke cites in its Discovery Motion in support of its request did not impose a limitation on discovery in the middle of an ongoing proceeding. Rather, in the context of an investigation initiated by the Public Staff in 2010, the Commission limited total discovery questions at the beginning of the proceeding. Duke has not cited, and SACE and NCSEA are not aware of any Commission Order placing a numerical limit on discovery requests in the middle of a proceeding in which discovery is ongoing. The requested numerical limitations contained in Duke’s Discovery Motion are unfair and burdensome as they impact the strategy and litigation of an ongoing proceeding without prior notice to affected parties. As stated above, NCSEA and SACE have repeatedly worked with Duke to clarify requests and have provided extended time for Duke to respond to their existing data requests.

SACE and NCSEA, however, do not object to the establishment of general discovery guidelines, consistent with the Commission’s common practice in many proceedings. The Commission frequently includes discovery guidelines in scheduling orders for proceedings that will include an evidentiary hearing to take expert witness testimony.⁶ If the Commission determines it is appropriate to schedule an evidentiary

⁵ Discovery Motion at 5. SACE and NCSEA further object to any such so-called reservation of rights regarding numerical limitations on discovery requests.

⁶ See e.g., *In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina*, E-7, Sub 1146 (Oct. 13, 2017); *In the Matter of Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina*, E-2, Sub 1142 (June 22, 2017); *In the Matter of Application of Duke Energy Progress, LLC, for a Certificate of Public*

hearing in this proceeding, then SACE and NCSEA do not object to the establishment of discovery guidelines that are consistent with those typically included in the Commission's scheduling orders and that apply equally to all parties engaging in discovery.

SACE and NCSEA respectfully request that any such discovery guidelines include a maximum period of ten days for parties to object or respond to formal discovery requests, rather than the fourteen days Duke has requested in its Discovery Motion.⁷ This ten-day period is consistent with the Commission's typical practice to allow parties ten days to object or respond to formal discovery requests and is appropriate in light of SACE and NCSEA's demonstrated and ongoing willingness to address and accommodate reasonable requests by the Companies for extensions of time to respond to discovery requests.

WHEREFORE, SACE and NCSEA request that the Commission reject Duke's request to limit the total number of additional data requests that the Public Staff or another intervenor may direct to the Utilities regarding the November 1, 2018 initial filings in this proceeding to ten. If the Commission determines it is appropriate to establish discovery guidelines in this proceeding, SACE and NCSEA respectfully request that such discovery guidelines are consistent with those typically included in the Commission's scheduling orders, including a maximum period of ten days for parties to

Convenience and Necessity to Construct a Microgrid Solar and Battery Storage Facility in Madison County, North Carolina, E-2, Sub 1185 (Nov. 30, 2018).

⁷ Duke's Discovery Motion requests fourteen days to object or respond to (1) any remaining data requests on the Companies' November 1, 2018 Initial Filing; and (2) data requests on any Initial Comments and/or Direct Testimony.

respond to formal discovery requests and made applicable to all parties, including the Companies and Dominion.

Respectfully submitted this 23rd day of January, 2019.

/s/Peter D. Stein

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Joint Response to Duke Energy's Motion to Establish Discovery Guidelines*, as filed today in Docket No. E-100, Sub 158, was served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 23rd day of January, 2019.

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