

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1167  
DOCKET NO. E-7, SUB 1166

In the Matter of:	)	
	)	
Application of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Requesting Approval of Solar Rebate Program Pursuant to G.S. 62-155(f)	)	INITIAL COMMENTS OF SACE
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Pursuant to the North Carolina Utilities Commission’s (“Commission”) *Order Establishing Proceeding to Review Proposed Solar Rebate Program* in the above-referenced dockets, the Southern Alliance for Clean Energy (“SACE”) respectfully submits the following initial comments regarding Duke Energy’s solar rebate program filing pursuant to House Bill 589, Session Law 2017-192 (“H.B. 589”), G.S. 62-155(f).

**INTRODUCTION**

H.B. 589 requires Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (collectively “Duke”) to file with the Commission an application requesting approval of a program offering reasonable incentives to residential and nonresidential customers for the installation of small customer-owned or leased solar energy facilities participating in a public utility’s net metering tariff. G.S. 62-155(f). On January 23, 2018, Duke filed proposed “Solar Rebate Program Rider SRP-1” and proposed “Solar Rebate Rider SRR (NC)” (collectively “Solar Rebate Rider” or “Rider”).

The Solar Rebate Rider, as proposed, generally complies with the requirements of G.S. 62-155(f). However, SACE is concerned that a number of the terms and conditions included in the Solar Rebate Rider will create uncertainty for participating customers and

solar lessors; may limit customer access to solar rebates; and that any future changes to net metering rates offered to Duke’s retail customers may warrant the Commission’s re-evaluation of the Solar Rebate Rider. For these reasons, SACE respectfully offers the following comments requesting the Commission address the issues discussed below to ensure a fair, transparent, and successful implementation of Duke’s solar rebate program.

1. Compliance with G.S. 62-155(f)

G.S. 62-155(f) requires Duke to establish a solar rebate program offering “reasonable incentives” to residential customers up to 10 kilowatts (“kW”) and for non-residential customers up to 100 kW. Rebates must be limited to 10 megawatts (“MW”) annually, including 5 MW allocated to residential customers, and 5 MW allocated to non-residential customers. Of the allocation for non-residential customers, 2.5 MW must be allocated to non-profit entities, and 50 kW must be set aside for the NC Greenpower Solar Schools Pilot or a similar program. Duke’s proposed Solar Rebate Rider complies with these requirements of G.S. 62-155(f).

SACE considers the rebates Duke has proposed in the Solar Rebate Rider—\$0.60/W for residential customers; \$0.50/W for non-residential customers; and \$0.75/W for non-profit organizations—to be “reasonable incentives” under the current net metering tariff available to customers in Duke’s North Carolina service territories. However, H.B. 589 directs Duke to file revised net metering rates for electric customers at some point in the future. G.S. 62-126.4.<sup>1</sup> Although existing net metering customers may remain on existing net metering rates until January 1, 2027,<sup>2</sup> customers who apply

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<sup>1</sup> G.S. 62-126.4 does not establish a deadline by which Duke must file revised net metering rates with the Commission.

<sup>2</sup> See G.S. 62-124.4(c).

for rooftop solar rebates under revised net metering rates may face a different economic outlook with respect to their decision to install a rooftop solar facility.

For this reason, SACE requests that if Duke's revised net metering rates filed with the Commission pursuant to G.S. 62-126.4 result in altered net metering rates for customers in Duke's service territory, the Commission re-open the solar rebate proceeding to determine whether the existing rebates continue to provide "reasonable incentives" as required by G.S. 62-155(f).

## 2. Solar rebate application timeline

The Solar Rebate Rider states that a customer "must complete and submit a Solar Rebate Program Application requesting service under the Program no later than 90 days following installation of the system." Customers may also obtain a rebate reservation prior to installation, if the installation (residential customers) or interconnection agreement (non-residential customers) occurs within 365 days of the reservation. SACE recommends that the Solar Rebate Rider include 90-day program application deadline exemptions to address at least two scenarios which may prevent a customer from submitting a completed application within 90 days of system installation.

First, the Rider indicates that once the annual rebate cap is reached, "all Applications will be rejected and cancelled at year-end." A customer who applies for a rebate during one calendar year, but whose application is rejected and cancelled because the annual rebate cap is reached prior to application acceptance, may re-apply no earlier than January 1<sup>st</sup> of the following year. The Solar Rebate Rider does not address whether a customer who applies for a solar rebate in one calendar year, but who is required to re-apply in the following calendar year, will be ineligible for the rebate if the application in

the following calendar year is filed more than 90 days after system installation.<sup>3</sup> SACE recommends that the relevant application submission date for customers who must re-apply in the following year due to achievement of the annual participation limit be based upon the date of the original application submission relative to the system installation. This would address and prevent the limited scenario in which a customer, through no fault of their own, becomes ineligible for a solar rebate altogether due to annual capacity limitations.

Second, H.B. 589 states that the annual 10 MW capacity limit for solar rebates will begin on January 1, 2018 and continue to December 31, 2022. G.S. 62-155(f)(1). Depending on the date of the Commission's final order approving Duke's Solar Rebate Rider in this proceeding, it is conceivable that customers may have installed a solar facility after January 1, 2018, and that more than 90 days will have passed before they are able to submit a solar rebate application, deeming these customers ineligible for a rebate. To address this issue, SACE recommends that the date of the Commission's order approving the Solar Rebate Rider in this proceeding becomes the relevant "installation" date for otherwise-eligible solar facilities installed *prior* to the Commission's order.

3. Customer notification of annual participation progress

From January 1, 2018 to December 31, 2022, Duke will offer annual solar rebates for residential customers up to 5 MW and for non-residential customers up to 5 MW. The Solar Rebate Rider indicates that "[c]ustomers will be notified at the Company's website if the annual participation limit is achieved." Once the annual cap is reached, "all

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<sup>3</sup> For example, a customer who installs a solar facility on September 1, 2018 and submits a rebate application on October 1, 2018 would fall within the 90-day deadline. However, if the customer's application was cancelled and rejected because the annual 10 MW was filled prior to the customer's application submission, the customer would only be able to re-apply beginning January 1, 2019, more than 90 days after the system installation.

Applications will be rejected and cancelled at year-end.” SACE is concerned that the proposed Solar Rebate Rider will not ensure adequate notice to customers regarding progress towards annual participation caps.

Customers participating in the solar rebate program may substantially rely on the availability of rebates when evaluating the economics of installing a solar facility at a home or business. Because, as proposed, applications will be rejected once the annual participation limit is achieved, additional information regarding the status of the annual participation cap provided *before* the limit is achieved will assist participating customers deciding whether to apply for solar rebates during the current year or wait until the subsequent year. Further, because a solar facility eligible for a rebate may be owned by the participating customer or by a solar lessor, solar leasing companies entering into leases with customers receiving a solar rebate would similarly benefit from greater transparency regarding annual participation limits.

SACE recommends that Duke notify customers of the status of annual capacity reservations in increments of 25%, 50%, 75%, and 100% of annual capacity limits for both residential and non-residential rebates.<sup>4</sup> Alternatively, and consistent with Duke’s solar rebate program in South Carolina, Duke could “update the current customer generator capacity, in kW, on a monthly basis.”<sup>5</sup> These updates could be made available on Duke’s website, similar to Duke’s current proposal to notify customers on its website if the annual participation limit is achieved.

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<sup>4</sup> The Commission adopted a similar notice requirement for progress towards H.B. 589’s one percent solar leasing cap in Docket No. E-100, Sub 156. *See* Rule R8-73(i)(2).

<sup>5</sup> *See* South Carolina Public Service Commission, Docket No. 2015-53-E, Order No. 2015-514, Exhibit 1, p. 7 (July 15, 2015).

4. Assignment of rebate payment to solar lessors

H.B. 589 states that solar rebates will be available to either “small customer owned or leased solar energy facilities” G.S. 62-155(f). The Solar Rebate Rider states that “[t]he Customer shall receive a one-time Solar Rebate payment based upon the AC nameplate rating of Customer’s solar PV electric generating system.” Duke’s proposed Solar Rebate Program Rider SRP (NC) Application (attached to Duke’s Solar Rebate Rider as Appendix C and D) indicates that solar leasing companies will not receive a rebate payment and that “only the customer can receive the rebate check from Duke Energy.” The proposed Solar Rebate Rider does not provide customers the option to assign the applicable solar rebate to the relevant solar lessor or installer.

In a solar leasing arrangement, as contemplated by H.B. 589, licensed solar lessors may own and operate solar energy systems that the lessor may lease to an applicable customer for an agreed-upon rate. G.S. 62-126.5(b). Under this arrangement, the solar lessor, rather than the customer lessee, will own the solar panel system. Under the proposed Solar Rebate Rider, if a customer planned to lease a solar energy facility pursuant to H.B. 589, the customer, rather than the solar lessor, would receive the rebate. Although it would be possible for the customer to subsequently transfer the balance of the rebate payment to the lessor, or to incorporate the value of the rebate into the monthly lease payments, this process would add unnecessary complexity for customers and lessors and may create uncertainty in a fledgling solar leasing market.

SACE recommends that the Solar Rebate Rider expressly allow customer applicants who plan to lease a solar energy facility to assign the rebate payment to a designated solar lessor or installer. This practice is consistent with Duke’s solar rebate

program in South Carolina, which expressly permits customers to assign their solar rebate “to installers or the companies from which the customer is leasing a solar generating facility.”<sup>6</sup> While the option to assign would not require customers to assign solar rebates to a solar lessor or installer, it would provide customers and solar lessors greater flexibility in structuring solar lease agreements and would be consistent with the policy directive of H.B. 589 to “encourage the leasing of solar energy facilities for retail customers.” G.S. 62-126.2.

5. Discretion regarding customer participation and early termination

SACE is concerned that the Solar Rebate Rider grants Duke significant discretion in accepting and/or approving applications for solar rebates without providing adequate parameters defining that discretion. The Solar Rebate Rider states that “[p]articipation under the program is available on a “first-come-first-served” basis for systems installed on and after January 1, 2018, subject to the Company’s discretion.” Similarly, Duke’s Solar Rebate Program Rider SRP (NC) Application (attached to Duke’s Solar Rebate Rider as Appendix C and D) states that Duke, “in its sole and absolute discretion, may accept or reject any rebate application for good cause as determined by the Company.”<sup>7</sup>

The Solar Rebate Rider and Rider Application, as proposed, do not establish the parameters of appropriate “discretion” and “good cause” regarding customer applications and participation. SACE requests that Duke clearly delineate any narrow circumstances under which Duke may limit customer participation in order to provide customers greater

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<sup>6</sup> See South Carolina Public Service Commission, Docket No. 2015-53-E, Order No. 2015-514, Exhibit 1, p. 8 (July 15, 2015).

<sup>7</sup> Solar Rebate Rider, Appendix C and D, Solar Rebate Program Rider SRP (NC) Application, Terms and Conditions, item “D”.

transparency regarding participation in the solar rebate program and to ensure fair access to solar rebates.

The Solar Rebate Rider also includes a Contract Period of ten years from the date of initial participation. The Rider includes an early termination provision, stating:

If the system is removed, rendered inoperable, the agreement for electric service is terminated, or electric service is discontinued under a rate schedule as prescribed in availability section of this Rider prior to 120 months, the customer shall be subject to an early termination charge, *unless early termination results from good cause as determined by the Company.*

(emphasis added). Early termination results in a reduction in the customer's solar rebate payment based on the number of months since initial participation, divided by one hundred and twenty (120), and multiplied by the rebate payment amount. Duke also reserves the right to terminate service under the Rider at any time if a customer "operates the generating system in a manner which is detrimental to Company and/or its customers."

SACE is concerned that the conditions under which Duke may engage in early termination under the Solar Rebate Rider are not sufficiently clear to provide participating customers adequate notice regarding actions or circumstances that may result in a substantial reduction of the solar rebate payment. Customers facing early termination under the Rider would be subject to an early termination charge, requiring customers to pay Duke a percentage of the initial rebate payment at some point within the ten year Contract Period. Because customers will likely allocate the one-time solar rebate payment to the cost to purchase a solar energy facility at the time the customer receives the rebate, an early termination charge, potentially years after receiving the rebate payment, could create a significant and unexpected financial hardship for customers.



SACE recommends that Duke more clearly define an “event of early termination” and more specifically delineate “good cause” for Duke to exempt occurrences that would otherwise result in an event of early termination. Similarly, Duke should provide a specific description of what is considered operation of a solar energy system in a “manner which is detrimental to Company and/or its customers.”

### CONCLUSION

SACE appreciates the opportunity to comment on Duke’s proposed Solar Rebate Rider and respectfully submits these Initial Comments for the Commission’s consideration.

Respectfully submitted this 9th day of February, 2018.

s/Peter D. Stein  
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Comments of the Southern Alliance for Clean Energy, as filed today in Docket Nos. E-2, Sub 1167 and E-7, Sub 1166, has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 9th day of February, 2018.

s/ Peter D. Stein