

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement Session Law 2007-397	) ) ) ) )	ORDER MODIFYING THE SWINE AND POULTRY WASTE SET-ASIDE REQUIREMENTS AND PROVIDING OTHER RELIEF
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BY THE COMMISSION: On September 7, 2018, a verified motion to modify and delay the 2018 requirements of N.C.G.S. § 62-133.8(e) and (f) was filed jointly by Duke Energy Carolinas, LLC (DEC); Duke Energy Progress, LLC (DEP); Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (Dominion); North Carolina Electric Membership Corporation (NCEMC); Public Works Commission of the City of Fayetteville; EnergyUnited Electric Membership Corporation; Halifax Electric Membership Corporation; the Tennessee Valley Authority (TVA); the Town of Waynesville; the Town of Windsor; North Carolina Eastern Municipal Power Agency (NCEMPA); and North Carolina Municipal Power Agency Number 1 (NCMPA1) (hereinafter referred to collectively as the Joint Movants).<sup>1</sup> The Joint Movants seek Commission approval of the following requests: 1) to modify the requirements of N.C.G.S. § 62-133.8(e) (Compliance With [North Carolina’s Renewable Energy and Energy Efficiency Portfolio Standard (REPS)] Requirement Through Use of Swine Waste Resources), as those requirements apply to DEC, DEP, and Dominion, by lowering the 2018 compliance requirement to 0.02% of prior-year retail sales, delaying the scheduled increase to 0.07% of prior-year retail sales to begin in calendar year 2019, and delaying future increases by one year; 2) to modify the requirements of N.C.G.S. § 62-133.8(e), as those requirements apply to all other electric power suppliers, by delaying those requirements until calendar year 2019 and by delaying future increases in those requirements by one year; 3) to modify the requirements of N.C.G.S. § 62-133.8(f) (Compliance With REPS Requirement Through Use of Poultry Waste Resources) by lowering the 2018 requirement to 300,000 MWh and delaying subsequent increases in the requirement to 700,000 MWh in 2019 and 900,000 MWh in

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<sup>1</sup> DEC states that it is also acting in its capacity as REPS compliance aggregator for Blue Ridge Electric Membership Corporation, Rutherford Electric Membership Corporation, the City of Dallas, the Town of Forest City, the City of Concord, the Town of Highlands, and the City of Kings Mountain. TVA states that it is acting in its capacity as REPS compliance aggregator for Blue Ridge Mountain Electric Membership Corporation, Mountain Electric Cooperative, Tri-State Electric Membership Corporation and Murphy Electric Power Board. NCEMPA states that it is acting in its capacity as REPS compliance aggregator for its 32 member municipalities, which are electric power suppliers. NCMPA1 states that it is acting in its capacity as REPS compliance aggregator for its 19 member municipalities, which are electric power suppliers.

2020; 3) to allow Joint Movants to bank any swine and/or poultry renewable energy certificates (RECs) previously or subsequently acquired for use in future compliance years; and 4) to allow Joint Movants to replace compliance with the poultry and swine waste requirements in 2018 with other compliance measures in accordance with N.C.G.S. § 62-133.8(b), (c), and (d). The Joint Movants state that they have individually and collectively made reasonable efforts to comply with the swine and poultry waste set-aside requirements, and argue that the relief sought is in the public interest. Finally, the Joint Movants request that the Commission consider and approve their motion without an evidentiary hearing because they believe that through required semiannual reports and stakeholder meetings, stakeholders and regulatory staff have ample information surrounding the Joint Movants' compliance efforts.

On September 13, 2018, the Commission issued an Order Requesting Comments. Between September 27, 2018 and September 28, 2018, NC WARN, Inc. (NC WARN), the North Carolina Poultry Federation (NCPF), the North Carolina Pork Council (NCPC), the North Carolina Sustainable Energy Association (NCSEA), and the Public Staff filed comments on Joint Movants' motion. No other party filed comments on the motion.

#### SUMMARY OF THE COMMENTS

In its comments, NC WARN cites progress on the development of swine waste-to-energy projects and states that it believes that "Duke Energy will never comply because the technology is not predictable or sustainable enough to produce a significant amount of energy from hog waste." NC WARN further states that the uncertainty is why the Commission established a pilot program for directed biogas. In addition, NC WARN states that it is "important that we help eliminate the grief and suffering that local neighbors are experiencing from open hog waste lagoons." With regard to the Joint Movants' motion, NC WARN seems to agree with the Joint Movants that operational challenges in bringing swine waste-to-energy projects online has made it unlikely that the electric power suppliers will be able to comply with the swine waste set-aside requirements in 2019 and 2020. In conclusion, NC WARN argues that the Commission should "consider increasing the portion of the REPS requirement to produce energy from solar energy resources to make up for not meeting the swine waste requirement."

In its comments, NCPF states that it "does not oppose" the portion of the joint motion requesting to modify the requirements of N.C.G.S. § 62-133.8(f) by lowering the 2018 compliance requirement to 300,000 MWh and delaying the subsequent increases to 700,000 MWh in 2019 and to 900,000 MWh in 2020. NCPF limits its comments to the motion and its application to N.C.G.S. § 62-133.8(f), and takes no position with regard to banking poultry waste RECs and substituting other types of RECs for 2018 compliance purposes. In addition, NCPF stipulates and agrees that the Commission may enter an order on the motion on the basis of written submissions without the need for an evidentiary hearing. Finally, NCPF requests that the Commission "continue to monitor the process" and "continue to use its authority to motivate the parties to achieve compliance with the poultry waste set-aside as soon as practicable."

In its comments, NCPC also states that it does not oppose the Joint Movants' motion. More specifically, NCPC expresses support for the request that the swine waste set-aside requirements be modified to 0.02% of prior year sales for 2018, resulting in the first ever retirement of swine waste RECs for compliance with the requirements of N.C.G.S. § 62-133.8(e). NCPC states that it is aware of impediments to achieving compliance with the swine waste set-aside requirements and notes that the Joint Movants referenced the Commission's June 19, 2018 Order issued in Docket No. G-9, Sub 698, as introducing some uncertainty surrounding the future of swine and poultry waste-derived directed biogas projects. NCPC then expresses some concern that the electric power suppliers' collective efforts have become too reliant on DEC, DEP, and Dominion while other electric power suppliers' efforts have "stalled with the apparent expectation that waivers and modifications will be routinely issued." Thus, NCPC urges the Commission to again emphasize the importance of the set-asides and the need to see real efforts by all electric power suppliers to comply." In conclusion, NCPC expresses support for granting the Joint Movants' requests without an evidentiary hearing.

In its comments, NCSEA states that it does not object to the modifications to the swine and poultry waste set-aside requirements for 2018 as requested by the Joint Movants and commends DEC, DEP, and Dominion for seeking to partially comply with the swine waste set-aside requirements as opposed to seeking to delay the requirement entirely. NCSEA does not take a position as to the Joint Movants' requested authorization to bank RECs for future compliance. NCSEA also states that it agrees with the Joint Movants' comments regarding the uncertainty created by the Alternative Gas Order. In addition, NCSEA states that prompt implementation of the provisions of S.L. 2017-192 (requiring establishment of an expedited interconnection review process for swine and poultry waste facilities that are two MW or less in size) could also resolve some of the uncertainty surrounding future swine and poultry waste-to-energy project development. In conclusion, NCSEA requests that the Commission modify the swine and poultry waste set-aside requirements and address the issues raised in its comments.

The Public Staff, in its comments, states that the electric power suppliers' semiannual reports indicate that they are making good faith efforts to comply with the swine waste set-aside requirements, but will be unable to comply in 2018. The primary issue, in the Public Staff's view, is whether the required retirement of swine waste RECs to meet a 0.02% requirement as proposed in the Joint Motion will excessively deplete the supply of RECs and make compliance excessively difficult in subsequent years. The Public Staff then details the reasons why it believes that conditions have now changed such that the Joint Movants' request can be granted without making compliance in future years impractical.<sup>2</sup> Based upon its review of this data, the Public Staff recommends that the Commission grant the Joint Movants' requested modifications to the swine and poultry waste set-aside requirements.

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<sup>2</sup> The Public Staff's comments includes data that is of a confidential nature, and is appropriately redacted from the public version of its comments. The Public Staff also filed under seal a version of its comments that includes the data in un-redacted form.

## DISCUSSION

Pursuant to N.C.G.S. § 62-133.8(i)(2), the Commission, in developing rules implementing the REPS, shall:

Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.

Commission Rule R8-67(c)(5) states:

In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of N.C.G.S. § 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions.

The Commission has previously exercised this authority and delayed compliance with the swine and/or poultry waste set-aside requirements on several occasions by the following orders issued in this docket: the November 29, 2012 Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Granting Other Relief; the March 26, 2014 Final Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Providing Other Relief; the November 13, 2014 Order Modifying the Swine Waste Set-Aside Requirement and Providing Other Relief; the December 1, 2015 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief; the October 17, 2016 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief; and the October 16, 2017 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2017 Delay Order) (collectively, Delay Orders).

As an initial matter, the Commission considers Joint Movants' request to consider and approve their motion without the need for an evidentiary hearing. In support of this request, Joint Movants state that the compliance status for the swine and poultry waste set-aside requirements is essentially unchanged since the Commission issued its 2017 Delay Order. The motion is verified by Kendal C. Bowman, Vice President of Regulatory Affairs and Policy, North Carolina, for Duke Energy Corporation, pursuant to Commission Rule R1-7 on behalf of the Joint Movants. The Public Staff, like the Joint Movants, recommends that the Commission approve the request without an evidentiary hearing. No party filed comments opposing this portion of the motion or requesting an evidentiary hearing. Based upon the foregoing, the Commission finds that the material facts in this matter, including those contained in Joint Movants' verified motion and in the semiannual reports filed in Docket No. E-100, Sub 113A, are uncontroverted and concludes that the motion may appropriately be decided without an evidentiary hearing.

Based on the semiannual reports submitted by the electric power suppliers in Docket No. E-100, Sub 113A, the verified motion, the parties' comments, and the entire record herein, the Commission finds that the State's electric power suppliers have made a reasonable effort to comply with the 2018 statewide swine waste set-aside requirements established by N.C.G.S. § 62-133.8(e), but will not be able to comply. Compliance with the swine waste set-aside requirement has been hindered by the fact that the technology of power production from swine waste continues to be in its early stages of development, and that swine waste-to-energy projects have experienced operational difficulties. No party presented evidence that the aggregate 2018 swine waste set-aside requirement established by the 2017 Delay Order could be met. However, DEC, DEP, and Dominion argued that they are in a position to meet a modified swine waste set-aside requirement of 0.02% of prior retail sales even though the other electric power suppliers in the state are not in a similar position. The Public Staff agreed that DEC, DEP, and Dominion could meet such a modified requirement without making future compliance impractical. NCSEA and NCPD also agreed with, and expressed support for, this proposed modification.

The Commission's Delay Orders have noted the electric power suppliers' reporting encouraging developments in the technology of power production from swine waste that, combined with the availability of RECs banked from current and prior years, would increase the likelihood that compliance with the swine waste set-aside requirements will be achieved at some point. The Commission finds that the verified joint motion demonstrates that the point of achieving partial compliance with the swine waste set-aside requirements has now arrived. In addition, the Commission's Delay Orders permitted the Joint Movants to bank RECs for several consecutive years. The Commission further finds that the cumulative effect of this banking has resulted in the ability for DEC, DEP, and Dominion to comply with the modified swine waste set-aside requirement as requested by the Joint Movants. The Commission, therefore, concludes that the Joint Movants' requested modifications to the swine waste set-aside requirements, as applied to DEC, DEP, and Dominion, is in the public interest. To require the other electric power suppliers to meet a similar requirement, however, would result in wiping the slate clean for compliance purposes in future years and make these smaller electric power suppliers' future compliance difficult or impossible. Therefore, consistent with the 2017 Delay Order, the Commission determines that it is in the public interest to delay entirely the 2018 swine waste set-aside requirements for one additional year, as applied to electric power suppliers other than DEC, DEP, and Dominion. Also consistent with its Delay Orders, the Commission determines that it is in the public interest to delay future increases in the swine waste set-aside requirement as requested by the Joint Movants, and to allow electric power suppliers that have acquired swine waste RECs for 2018 REPS compliance to bank such RECs for swine waste set-aside compliance in future years. Electric power suppliers should continue to make efforts to comply with the swine waste set-aside requirement as modified by this Order.

Based on the semiannual reports submitted by the electric power suppliers in Docket No. E-100, Sub 113A, the verified motion, the parties' comments, and the entire record herein, the Commission similarly finds that the State's electric power suppliers

have made a reasonable effort to comply with the 2018 statewide poultry waste set-aside requirement established by N.C.G.S. § 62-133.8(f), but will not be able to comply. As with the swine waste set-aside requirement, compliance with the poultry waste set-aside requirement has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development and projects have experienced operational challenges. No party presented evidence that the aggregate 2018 poultry waste set-aside requirement of 700,000 MWh could be met; however, the parties agree that a modified compliance requirement of 300,000 MWh for 2018, 700,000 MWh for 2019, and 900,000 MWh for 2020 is achievable. The Commission determines that it is in the public interest to modify the requirements of N.C.G.S. § 62-133.8(f) as requested in the Joint Motion. Electric power suppliers should continue to make efforts to comply with the poultry waste set-aside requirements as modified by this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the swine waste set-aside requirements of N.C.G.S. § 62-133.8(e) for electric public utilities shall be, and are hereby, modified according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Swine Waste Resources</u>
2018	0.02%
2019-2020	0.07%
2021-2023	0.14%
2024 and thereafter	0.20%

Electric public utilities shall be allowed to bank any swine waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine waste set-aside requirement in 2018 with other compliance measures pursuant to N.C.G.S. § 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of N.C.G.S. § 62-133.8(d);

2. That the swine waste set-aside requirements of N.C.G.S. § 62-133.8(e) for electric membership corporations and municipalities shall be, and are hereby, modified according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Swine Waste Resources</u>
2018	0.00%
2019-2020	0.07%
2020-2023	0.14%
2024 and thereafter	0.20%

Electric membership corporations and municipalities shall be allowed to bank any swine waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine waste set-aside requirement in 2018 with other compliance measures pursuant to N.C.G.S. § 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of N.C.G.S. § 62-133.8(d);

3. That the poultry waste set-aside requirements of N.C.G.S. § 62-133.8(f) shall be, and are hereby, modified according to the following schedule:

<u>Calendar Year</u>	<u>Requirement for Poultry Waste Resources</u>
2018	300,000 MWh
2019	700,000 MWh
2020 and thereafter	900,000 MWh

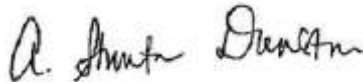
Electric power suppliers shall be allowed to bank any poultry waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the poultry waste set-aside requirement in 2018 with other compliance measures pursuant to N.C.G.S. § 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of N.C.G.S. § 62-133.8(d); and

4. That the electric power suppliers subject to the semiannual filing requirement shall continue to report on the schedule established in the 2015 Delay Order. These reports shall continue to include the information specified in Ordering Paragraph 3 of the Commission's 2015 Delay Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 8<sup>th</sup> day of October, 2018.

NORTH CAROLINA UTILITIES COMMISSION



A. Shonta Dunston, Acting Deputy Clerk