

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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))
	ORDER MODIFYING AND
	APPROVING RIDERS
	IMPLEMENTING SOLAR
	REBATE PROGRAM

BY THE COMMISSION: On July 27, 2017, House Bill 589 (S.L. 2017-192) was enacted into law. Part VIII of House Bill 589, enacted in part as G.S. 62-155(f), requires Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC) (collectively, Duke or the Companies), to file with the Commission an application requesting approval of a program that offers reasonable incentives to residential and nonresidential customers for the installation of small customer-owned or leased solar energy facilities. Pursuant to G.S. 62-155(f), participants in an approved solar rebate program also will participate in the offering utility's net metering tariff, with an incentive limited to 10 kW_{AC} for residential solar installations and 100 kW_{AC} for nonresidential solar installations.

On January 22, 2018, prior to the 180-day filing deadline imposed by Section 8.(c) of House Bill 589, DEC and DEP jointly filed an application seeking approval of the Companies' proposed solar rebate program, made available through DEC's Solar Rebate Rider SRR and DEP's Solar Rebate Program Rider SRP (collectively, Solar Rebate Rider). Also included in the filing are forms for customers to apply for service under the Solar Rebate Rider.¹

On January 26, 2018, the Commission issued an Order Establishing Proceeding to Review Duke's Proposed Solar Rebate Program. That Order recognized the participation of the Public Staff – North Carolina Utilities Commission (Public Staff), and set a schedule for receipt of petitions to intervene, initial comments, and reply comments.

Pursuant to G.S. 62-155(f), the incentives offered through a solar rebate program should comport with the following requirements:

- (1) Shall be limited to 10,000 kW of installed capacity annually starting on January 1, 2018, and continuing until December 31, 2022, and shall provide

¹ As a preliminary matter, there is no material, substantive difference between DEC's Solar Rebate Rider SRR and DEP's Solar Rebate Program Rider SRP. The Commission, therefore, refers collectively and singularly throughout this Order to Duke's proposed Solar Rebate Rider.

incentives to participating customers based upon the installed alternating current nameplate capacity of the generators.

- (2) Nonresidential installations will also be limited to 5,000 kW in aggregate for each of the years of the program.
- (3) Of the capacity for nonresidential installations, 2,500 kW shall be set aside for use by nonprofit organizations; 50 kW of the set-aside shall be allocated to the NC Greenpower Solar Schools Pilot or a similar program. Any set-aside rebates that are not used by December 31, 2022, shall be reallocated for use by any customer who otherwise qualifies. For purposes of this section, "nonprofit organization" means an organization or association recognized by the Department of Revenue as tax exempt pursuant to G.S. 105-130.11(a), or any bona fide branch, chapter, or affiliate of that organization.
- (4) If in any year a portion of the incentives goes unsubscribed, the utility may roll excess incentives over into a subsequent year's allocation.

On or after January 30, 2018, the Commission issued orders allowing North Carolina Sustainable Energy Association (NCSEA) and the Southern Alliance for Clean Energy (SACE) to intervene in this proceeding.

On February 9, 2018, the Public Staff, SACE, and NCSEA filed initial comments. On February 16, 2018, Duke and SACE filed reply comments.

On March 14, 2018, Rishipal Bansode, Ph.D., filed a consumer statement of position stating that North Carolina residents who elected to install solar panels in 2017 are disadvantaged because they neither were able to avail themselves of the North Carolina renewable energy tax credit, which expired on January 1, 2017, nor will they be eligible to apply for the Solar Rebate Rider. Dr. Bansode requests that the Commission require Duke to consider as eligible any qualifying system installed on or after January 1, 2017.

Duke's Application

Duke contends that its proposed solar rebate program, made available through its Solar Rebate Rider, offers reasonable incentives through one-time, upfront payments to eligible customers who install an approved solar energy facility. More specifically, Duke proposes that on or before April 1, 2019, and each calendar year thereafter, it will file with the Commission a report providing participation rates by customer class, the number of applications rejected, the number of applications canceled at year's end, and the program costs incurred to date. Second, Duke commits to publish on its website and file with the Commission a notice when prescribed participation levels in the Solar Rebate Rider reach capacity. Third, Duke reiterates the parameters imposed by G.S. 62-155(f)(1)-(4), as set forth above. Fourth, Duke proposes that any unsubscribed capacity, regardless of a prior set-aside requirement, will be available to any otherwise eligible customer beginning on January 1, 2023. Fifth, Duke proposes that it will retain the renewable energy certificates

for any customer receiving service under a non-time of use demand rate schedule. To receive a rebate payment following approval of a customer's application and installation of a customer-owned or leased solar photovoltaic (PV) system, the customer must submit to Duke a certificate of completion indicating that the installation is complete and confirming that billing under an eligible rate schedule and net metering rider has commenced. Duke reserves the right to inspect and verify any solar PV system installation for which a rebate has been approved. Duke further proposes the following rebate amounts for each eligible participant class: (1) nonresidential customers will receive \$0.50 per watt, (2) residential customers will receive \$0.60 per watt, and (3) non-profit customers will receive \$0.75 per watt. Sixth, Duke proposes a contract period of ten years for service under the Solar Rebate Rider, which could thereafter be renewed for successive one-year periods, unless terminated by Duke.² Absent "good cause as determined by [Duke]," early termination of service under the Solar Rebate Rider will result in a charge derived from the following calculation:

Early Termination Charge = (1 - (# of participating months / 120)) * rebate payment amount

Seventh, Duke reserves the right to terminate service under the Solar Rebate Rider at any time upon written notice to the customer if: (1) the customer violates any terms of service; (2) the service is detrimental to Duke or its customers; or (3) a customer is found to have misstated or misrepresented the information conveyed to Duke in the Solar Rebate Rider application process. Duke also reserves the right to request repayment of the solar rebate amount paid when a customer is found to have intentionally misstated or misrepresented information in the Solar Rebate Rider application process. Eighth, Duke reserves the right, at its own cost, to install, operate, and monitor any special equipment or metering necessary to record 100% of the customer's generator output.

Next, Duke proposes the following Solar Rebate Rider application criteria, rules, and restrictions: (1) previously rejected applicants are eligible to reapply, subject to all other eligibility criteria; (2) all applications that remain pending at the end of a given calendar year will be rejected and cancelled; (3) applications for a given calendar year may be submitted no earlier than January 1 of the applicable year; (4) applications for a solar PV system installed in the previous calendar year will be accepted only to the extent that the installation occurred within 90 days preceding the submission date of the current application; (5) the nameplate capacity in alternating current constitutes the determinative capacity for which the rebate can be calculated; and (6) eligibility for service under the first year of the Solar Rebate Rider is limited, subject to Duke's discretion, to those solar PV systems installed on or after January 1, 2018. Customers also may apply for a rebate reservation in advance of installation. For residential customers who reserve a rebate, installation must be completed within 365 days after the date Duke issues such reservation. For nonresidential customers who reserve a rebate, installation must be completed within 365 days after the date Duke executes the interconnection agreement. Duke's proposed application forms require the applicant to provide the following information: (1) customer name, (2) customer account number, (3) e-mail address,

² In its reply comments, Duke reports that it has agreed to strike this provision following discussions with the Public Staff.

(4) project identification, (5) facility address, (6) payment address, (7) installer name, (8) installer address, (9) projected/installed kW_{DC}/kW_{AC}, (10) kW_{AC} eligible for the solar rebate, (11) solar rebate calculation, (12) projected solar rebate payment, (13) the installer's name and dated signature, and (14) the customer's name and dated signature. Finally, the application forms contain sixteen standard contract terms and conditions, most of which already have been mentioned in this summary of proposed Solar Rebate Rider rules, but those which are specifically objected to by one or more of the intervening parties, are set forth below.

SUMMARY OF INITIAL AND REPLY COMMENTS

Public Staff

In its comments, the Public Staff states that it “agrees that [Duke’s] application generally complies with the requirements of G.S. 62-155(f),” and “that the rebate structure and amounts proposed by the utilities for residential, nonresidential, and non-profit customers are reasonable and designed to incentivize” installation of customer-owned or customer-leased solar PV systems. The Public Staff also notes that it has requested from Duke information regarding total cost recovery of the rebates issued through, and administrative costs of, the Solar Rebate Rider, and will either continue those discussions in the instant proceeding or in the respective cost recovery proceedings for each utility pursuant to G.S. 62-133.8(h).

NCSEA

In its comments, NCSEA states that it generally supports the Solar Rebate Rider. NCSEA contends, however, that there exist some areas for improvement. First, NCSEA takes exception to Duke’s proposal to “base the rebate on the nameplate capacity of the inverter and not on the generation capacity of the solar energy facility.” NCSEA expresses concern that such a policy would allow a residential customer to pair, for example, a 1-kW_{DC} solar PV system with a 10-kW_{AC} inverter and receive an artificially inflated rebate, specifically a \$6,000 instead of a \$600 rebate. To reduce the likelihood of such a scenario, NCSEA suggests that Duke should “use a fixed conversion factor for converting the DC generating capacity of installed solar panels to AC for purposes of rebate eligibility.” NCSEA concedes that Duke in its proposal reserves the right to inspect or verify the accuracy of all information provided to it by the customer, with certain available recourse in the event of a misstatement or misrepresentation, including rejection of an application, termination of existing service under the Solar Rebate Rider, or a request for repayment of the rebate amount if a customer is found to have intentionally misstated or misrepresented information to Duke. Nonetheless, NCSEA contends that these remedies are insufficient to protect customers from some solar energy facility installers whose misdeeds could result in early termination of a customer’s service under the Solar Rebate Rider, in addition to the imposition of a corresponding early termination charge.

Second, NCSEA suggests that the Solar Rebate Rider should allow for assignment to third parties of solar rebate payments. This, NCSEA contends, would put solar PV

system installers “in a better position to ‘float’ the capital investment during the period of time between when a solar energy facility is installed and when the rebate payment is issued by Duke.” NCSEA states that Duke appears to be capable of allowing such third-party assignment of rebate payments, given that Duke’s South Carolina solar rebate program allows for the same. NCSEA further argues that Duke’s proposal to remit payment of the solar rebate directly to the customer, even when the solar PV system is leased, is problematic because the lessee in such a scenario would receive the solar rebate payment, despite the lessor owning the system and having made the upfront capital expenditure. Instead, NCSEA suggests that Duke should remit the rebate payment directly to the owner of the system for which the solar rebate is issued.

Finally, NCSEA suggests that Duke’s proposed Solar Rebate Rider application forms should provide better clarity regarding the methods by which applications can be submitted, including whether applications will be accepted electronically and if any supporting documentation is needed. NCSEA further suggests that Duke should provide customers “with a realistic expectation of how quickly Duke will issue rebate payments” and “clarify whether businesses that receive electric service at multiple locations are eligible for multiple rebates if they install solar energy facilities at more than one location.” NCSEA proposes that Duke should make the rebate application process available online, preferably through its PowerClerk program that is used for interconnecting small solar energy facilities. In addition, NCSEA requests that information “about the quantity of rebates claimed and remaining on a close to real time basis” should be provided by Duke on its website on at least a monthly basis, as is the case with Duke’s solar rebate program in South Carolina. Finally, NCSEA asks the Commission to “direct Duke to include in its annual report filing an examination of whether rebate values continue to be appropriate for market conditions in future years.”

SACE

In its initial comments, SACE first takes issue with Duke’s proposed eligibility requirement that a solar PV system must have been installed no more than 90 days prior to submission of an application for service under the Solar Rebate Rider (90-Day Rule). SACE more specifically objects to this eligibility requirement as it applies to those qualifying customers who have installed an otherwise eligible solar PV system, but who are required to reapply in a subsequent calendar year due to the annual participation limit already having been reached in the year in which the application was first submitted. For such applicants, suggests SACE, Duke should use the dates of the original application submission and project completion to determine compliance with the 90-Day Rule. Second, SACE contends that Duke should use the date of this Order as the installation date for any customers who installed a solar PV system after January 1, 2018, but prior to issuance of this Order.

SACE next expresses concern regarding House Bill 589’s directive to Duke, pursuant to G.S. 62-126.4, that it shall file revised net metering rates for electric customers. SACE contends that a revision to existing net metering rates could affect the reasonableness and value of the incentives provided by Duke through the Solar Rebate

Rider. Therefore, SACE suggests that any such future changes to net metering rates may warrant the Commission's re-evaluation of the Solar Rebate Rider.

Similar to NCSEA, SACE suggests that Duke should provide information on its website regarding progress made toward annual participation caps before such caps already have been reached. Specifically, SACE recommends that the Commission should require, as it does for progress made toward the capacity limits of electric generator lessors, incremental notice of 25%, 50%, 75%, and 100% of annual participation limits reached under the Solar Rebate Rider.³ Alternatively, as NCSEA also suggests, SACE points out that Duke provides monthly status updates regarding the progress made toward participation caps as part of its administration of the South Carolina solar rebate program.

Also similar to NCSEA, SACE expresses concern regarding the inability for customers who lease a solar PV system to assign the solar rebate payment to the lessor. SACE contends that such a practice would "add unnecessary complexity" for customers and lessors, and is inconsistent with the directive of G.S. 62-126.2 to "encourage the leasing of solar energy facilities for retail customers." Like NCSEA, SACE references Duke's South Carolina solar rebate program, which allows for the assignability to third parties of solar rebate payments. SACE requests that the same be expressly allowed in Duke's proposed Solar Rebate Rider.

SACE further expresses concern that the Solar Rebate Rider terms and conditions grant Duke "significant discretion in accepting and/or approving applications for solar rebates without providing adequate parameters defining that discretion." SACE provides the following as examples: (1) "Participation under the program is available on a 'first-come-first-served' basis for systems installed on or after January 1, 2018, subject to the Company's discretion"; (2) Duke "in its sole and absolute discretion, may accept or reject any rebate application for good cause as determined by the Company"; (3) Duke's proposed imposition of an early termination charge, "unless early termination results from good cause as determined by the Company"; and (4) Duke's reservation of its right to terminate service under the Solar Rebate Rider if a customer "operates the generating system in a manner which is detrimental to the Company and/or its customers." For the purpose of ensuring fair access to and transparency surrounding participation in the Solar Rebate Rider, SACE requests that Duke more clearly delineate the narrow circumstances under which a customer's application may be rejected or service under the Solar Rebate Rider terminated. SACE further requests that Duke more specifically define "good cause," "event of early termination," and "manner which is detrimental to the Company and/or its customers," as those terms are used in Duke's Solar Rebate Rider leaflets.

In its reply comments, SACE agrees with NCSEA regarding both the concern that bad actors may abuse the system under Duke's proposed method for determining nameplate capacity, as well as the recommendation to instead use a fixed conversion factor for converting DC to AC to calculate more accurately the amount of the solar rebate to which the participant is entitled. SACE further agrees with NCSEA that Duke should be required to provide additional information regarding the application process and the

³ See Commission Rule R8-73(i)(2).

methods by which an application may be submitted to Duke. Finally, SACE supports NCSEA's recommendation that the Commission should reserve the right in the future to re-evaluate, in the context of current market trends, the reasonableness of the incentives offered under the Solar Rebate Rider, particularly when Duke's revised net metering tariffs take effect.

Duke's Reply Comments

In its reply comments, Duke states that its discussions with the Public Staff concerning cost recovery of total Solar Rebate Rider incentives are ongoing, and will continue, to the extent necessary, in the Companies' respective cost recovery proceedings pursuant to G.S. 62-133.8(h). Duke also states that, as a result of its discussions with the Public Staff, the Company agrees to eliminate the proposed one-year renewal terms, at the Company's option, upon the conclusion of the ten-year contract period for service under the Solar Rebate Rider.⁴

In response to NCSEA's suggestion that Duke should be required to include in its proposed annual report an opinion regarding whether rebate values continue to be appropriate in the context of then-current market conditions, Duke states that it is willing to "commit to a stakeholder review process should trends in customer adoption rates warrant [the same]." It disagrees, however, with the suggestion advanced by both NCSEA and SACE that certain changing circumstances in the solar market should automatically necessitate further review or modification by the Commission of the Solar Rebate Rider.

Duke disagrees with SACE's recommendation that customers should be allowed to use the dates of initial application submission and installation, for purposes of determining compliance with the 90-Day Rule, if they are required to reapply the following year due to the annual program cap already having been reached in the year that the initial application was submitted. Duke contends that such a policy would increase both customer confusion and its own administrative burdens. Duke further contends that a customer can avoid this risk entirely by availing themselves of the option to obtain a rebate reservation prior to installing a solar PV system.

Duke agrees with SACE's recommendation that the date of this Order should be considered as the installation date for otherwise eligible solar facilities that are installed after January 1, 2018, but prior to the date of this Order.

In response to the concerns of NCSEA and SACE, Duke agrees to post monthly updates on its website regarding progress made toward Solar Rebate Rider participation limits, and commits also to publishing on the Companies' websites a notice if and when the annual participation limit for any participant class is reached.

⁴ The Public Staff in its comments did not express a concern over this provision. Duke in its application did not explain the reason for its inclusion of this provision, nor did it explain in its reply comments why it agreed to strike this provision.

In response to NCSEA and SACE's arguments that rebates issued under Duke's proposed Solar Rebate Rider should be assignable to third parties, Duke contends this would not be in the best interest of customers. In addition, Duke contends that "[b]ased on high-level estimates, allowing a customer to assign the rebate payments to someone other than themselves would double the [information technology (IT)] cost, and would require IT security and legal involvement, as the Companies would be required to collect tax identification numbers and other information from third parties." Duke further contends that such a policy would lengthen the time necessary for the Companies to launch the Solar Rebate Rider.

In response to NCSEA and SACE's concerns regarding Duke's discretion in the administration of the Solar Rebate Rider, Duke states that "[a]llowing discretion in the decision-making is necessary to provide appropriate and fair service to the customer." In addition, Duke states that the Commission already has remedies through the consumer complaint process to address any instances in which someone may believe that Duke improperly asserted its discretion.

In response to NCSEA and SACE's concerns regarding the usage of the inverter's nameplate capacity to determine the rebate amount and the consequent potential for a bad actor to artificially inflate the rebate amount to which a customer is entitled, Duke states that the intervenors are asking it "to provide an anticipatory remedy in the event some participants may cheat." Duke contends that the scenario described by NCSEA is "highly uncommon," and that even if it did occur, it would not pose a risk to the Companies or the grid. Nevertheless, Duke states that it will review for future consideration any fixed conversion factor and supporting methodology provided to it by NCSEA.

With regard to the request that Duke should provide additional details about customer eligibility and the application process, Duke contends that it would not be prudent to do so until such time as the Commission first approves the Solar Rebate Rider. Duke does, however, clarify that it expects to issue solar rebate payments within 30-45 days of the later between the date of project completion and the date of application approval. Duke also clarifies that a business with multiple locations will be able to apply for multiple rebates, provided that each location has a different account number unique to it.

DISCUSSION AND CONCLUSIONS

The Commission has carefully reviewed Duke's filings, the comments of the Public Staff, NCSEA, and SACE, as well as the consumer statement of position. Based upon the foregoing and the entire record in this proceeding, the Commission agrees with the parties that Duke's proposed Solar Rebate Rider generally meets the requirements of G.S. 62-155(f). However, Duke and other parties to this proceeding have brought to the Commission's attention a number of suggestions for improvement to the Solar Rebate Rider. In addition, the Commission itself has concerns about a few terms and conditions of the Solar Rebate Rider that either were not mentioned or fully addressed by the parties. The Commission will proceed to resolve these issues, and, consistent with the

conclusions reached herein, will require Duke to modify its Solar Rebate Rider, and to make a compliance filing accordingly within ten days from the date of this Order.

Future Review and Re-Evaluation of the Solar Rebate Rider

NCSEA suggests, and SACE agrees, that Duke should be required as part of its annual report to the Commission to opine whether solar market conditions have changed such that the reasonableness of the incentives offered through the Solar Rebate Rider are affected as a result. Specifically, SACE references the requirement in House Bill 589, codified as G.S. 62-126.4, for the Companies to file for approval by the Commission revised net metering rates. There is no deadline in G.S. 62-126.4 by which the Companies must propose such revisions, but NCSEA and SACE express concern that the same could affect negatively the value and reasonableness of solar rebate payment amounts. While the Companies express a willingness to commit to “a stakeholder review process should trends in customer adoption rates warrant [the same],” the Companies “find it unnecessary” to commit to further review by the Commission.

The Commission finds that Duke, in its reply comments, implicitly agrees with NCSEA and SACE that market changes conceivably could occur between the date of this Order and the conclusion of the Solar Rebate Rider program offering. The disagreement between the parties as to this issue then lies in determining the appropriate remedy in the event that such market changes rise to the level of warranting stakeholder review or Commission action. The Commission concludes that NCSEA and SACE raise a valid concern, and agrees that the reasonableness of the incentives offered through the Solar Rebate Rider could change due to future changes in the solar market. The Commission acknowledges that Duke’s net metering rates, under which a Solar Rebate Rider participant must also receive service, will change at some future date uncertain as required by the passage of House Bill 589. However, the extent to which such revisions could affect the value of solar rebate payments remains to be seen. For reasons including the potential scenarios predicted herein, in addition to others that may not be foreseeable at present, the Commission concludes that there exists a compelling reason for it to continue to monitor the reasonableness of the incentives offered throughout the duration of the Solar Rebate Rider. Accordingly, the Commission directs Duke to include information about this issue in its annual report, as requested by NCSEA and SACE. The Commission will evaluate this issue during each proceeding to review the Companies’ annual reports. That proceeding also will be the appropriate venue through which intervening parties can raise this or other issues for the Commission’s review and decision.

Application Timeline

An applicant for service under the Solar Rebate Rider is required to apply no later than 90 days following the installation of a qualifying solar PV system (90-Day Rule). For customers who already have installed a solar PV system but are required to reapply during the next year as a result of program capacity already having been reached for the calendar year in which the application was first submitted, NCSEA and SACE object to Duke’s use of the date of installation relative to the date of the second application

submission for purposes of determining compliance with the 90-Day Rule. Instead, NCSEA and SACE suggest that for these customers, the dates of the initial application and project completion should be used. Duke contends that the method advanced by NCSEA and SACE could increase both customer confusion and the Companies' administrative costs. Duke further contends that customers are able to obtain a rebate reservation prior to installation, which would avoid the risk altogether of subsequent rebate ineligibility after the solar PV system already has been installed. The Commission agrees with Duke that its pre-installation reservation system is a sufficient safeguard for those customers whose circumstances are such that they need or want to reserve a rebate guarantee before purchasing or leasing a solar PV system. In order to ensure that prospective participants of the Solar Rebate Rider are informed of the reservation guarantee option, the Commission directs Duke to prominently display the process by which a customer can apply for such reservation on both the Companies' websites and Solar Rebate Rider leaflets.

At NCSEA and SACE's request, Duke agrees to use the date of this Order as the installation date for otherwise eligible solar facilities installed after January 1, 2018, but prior to the date of this Order. The Commission directs Duke to include this clarification in its compliance filing.

In response to Dr. Bansode's consumer statement of position asking the Commission to mandate a retroactive eligibility period for those solar PV systems installed between January 1, 2017, and December 31, 2017, the Commission refers to G.S. 62-155(f), which in part specifies that the incentives offered through the Solar Rebate Rider will be available for capacity installed "starting in January 1, 2018." Any changes to this beginning date as specified in House Bill 589 must come through legislation passed by the North Carolina General Assembly, not by Commission action. Accordingly, the Commission declines to adopt Dr. Bansode's recommendation.

Reporting

Duke proposes filing in this proceeding an annual report on April 1, 2019, and each calendar year thereafter, detailing participation rates by customer class, the number of applications rejected, the number of applications canceled at year-end, and the program costs incurred to date. Both NCSEA and SACE argue that more frequent reporting of the progress toward the annual program cap is needed, and suggest that Duke either report this progress on a monthly or an incremental basis until the cap has been fulfilled each year. In its comments, Duke agrees to publish on its website both monthly progress updates toward annual participation limits and notices when each year's annual limit is reached for any participant class. Duke also commits to file with the Commission a notice when any annual capacity limit is reached. The Commission agrees with the intervenors, and finds Duke's proposal in response sufficient to reasonably address the intervenors' concerns regarding this issue. Accordingly, the Commission directs Duke to publish on its website, in a conspicuous manner that is easy for both customers and installers to locate, the notices and monthly updates as offered in its reply comments. In addition, the

Commission directs Duke to file with the Commission a notice when each year's annual limit is reached for any participant class.

As a related matter, the Commission notes that it presently is difficult for visitors to Duke's website to access information for service territories other than the one initially selected upon first visiting Duke's website. The Commission finds that ease of access to information about the different company-specific Solar Rebate Riders is important to help improve chances of maximum program participation. Accordingly, the Commission directs Duke to provide in its compliance filing the Uniform Resource Locators (URLs) at which information about the Solar Rebate Rider can be found for both DEC and DEP's respective service territories. Visitors to either of these URLs should be able to quickly ascertain details surrounding the application process, including the details contained in Duke's application, the details contained in Duke's reply comments not otherwise found in its application, and the information Duke is directed to provide by the Commission herein.

Assignment of Rebate Payment

Both NCSEA and SACE advocate for the assignability to third parties of solar rebate payments, particularly when a customer leases the solar PV system from an installer-lessor. Duke disagrees, and cites in support of its position the need for customer protection, increased IT and legal costs, and an increased time frame between Commission approval and the launch of the Solar Rebate Rider. The Commission agrees with Duke, and notes that G.S. 62-155(f) contemplates that the incentives offered through the Solar Rebate Rider will be provided "to [] customers." From a policy perspective, the Commission finds a compelling reason to ensure that whichever party who would be liable to pay an early termination charge in the event of cancellation of service under the Solar Rebate Rider before the conclusion of the 10-year contract term, also should be the same party who receives the solar rebate payment. Because the terms and conditions as proposed would hold the customer, and not the third-party installer or lessor responsible for paying an early termination charge, the Commission finds that it would be inappropriate at this time to require Duke to allow third-party assignability of solar rebate payments. However, the Commission reserves the right to reevaluate this issue through its annual review of the Solar Rebate Rider, and directs Duke to include in its first annual report information regarding whether the inability to assign solar rebate payments to third parties caused any issues for either customers or installers during the first year of the Solar Rebate Rider.

The Commission also notes that third-party installers and lessors are able to contract and negotiate directly with customers to ensure that installer-lessors receive payment for their services and equipment. The Commission further notes that such third parties may avail themselves of legal remedies for non-payment through the general courts of justice, should the need arise.

Program Discretion

Both NCSEA and SACE contend that a number of Duke's terms and conditions are ambiguous and leave the Companies with excessive discretion in the administration of the Solar Rebate Rider. Duke, on the other hand, contends that a certain level of discretion is necessary to ensure that the Solar Rebate Rider is administered properly, and notes that the Commission already has in place procedures through which a customer may complain about Duke if he or she believes that Duke has improperly applied such discretion.

The Commission finds legitimate the concerns expressed by NCSEA and SACE as to the ambiguity of certain terms and the amount of discretion Duke proposes to retain. Although the Commission acknowledges that a customer may file a complaint if he or she believes that Duke improperly applied its discretion, the Commission concludes that it is important to increase transparency and clarity of program rules and restrictions on the front end in order to reduce the possibility that a customer may need to file a complaint in the future. Accordingly, the Commission directs Duke to remove the language preserving its discretion when there are objective, clear criteria which obviate the need for such discretion. For example, the Commission finds no compelling reason for Duke to retain discretion to reject an application for participation under the Solar Rebate Rider when the customer and solar PV system satisfy the objective application and eligibility requirements, and no otherwise disqualifying event occurs, such as an intentional misstatement or misrepresentation to Duke during the application process. Accordingly, the Commission directs Duke in its compliance filing to modify its leaflets such that the Companies retain discretion only in instances when there do not exist objective, defined criteria, such as determining whether a customer qualifies, a solar PV system is eligible, or application requirements are satisfied. In addition, the Commission directs Duke to clarify that only a material and intentional misstatement or misrepresentation will result in early termination or request for repayment of the solar rebate.

For provisions in which such clear and objective criteria may not be as discrete, such as circumstances that may lead to termination of service, the Commission directs Duke in its compliance filing to clarify ambiguous terms. For example, the Commission notes that the Solar Rebate Rider leaflets do not define what constitutes "good cause," thus exempting a customer from having to pay an early termination charge if his or her electric service is disconnected prior to the conclusion of the Solar Rebate Rider contract term. Therefore, the Commission orders Duke to modify its Solar Rebate Rider terms and conditions, as requested by the intervenors, to clarify and better define such ambiguous terms.

In addition, the Commission directs Duke to add a term to its Solar Rebate Rider leaflets that informs the customer about the complaint process available before the Commission, to include the appropriate contact information for the Public Staff. Finally, to further alleviate this concern of the intervenors, the Commission directs the Companies to include in their respective annual report filings the reasons for any rejected applications and early terminations, in addition to the number of such rejections and early terminations. For early terminations, the Commission directs Duke also to include whether or not the

customer was required to pay an early termination charge and, if so, the amount of such charge. The Commission, although not expressly disallowing the imposition of an early termination charge in this Order, hereby informs the parties that it has concerns that this charge could constitute a disincentive to participate in the Solar Rebate Rider. Accordingly, the Commission will monitor this closely during the annual review process, particularly if certain participant classes are undersubscribed in any year.

Calculation of Generating Capacity

NCSEA recommends, and SACE agrees, that the Companies should use a fixed conversion factor to convert the direct current generating capacity to alternating current for purposes of calculating the rebate amount for which the customer is eligible. Although the Companies disagree that this issue poses a large risk for abuse by installers or that it would be detrimental to the Companies or the grid in the unlikely event that it did occur, the Companies state that they are willing to review for future consideration a fixed conversion factor and supporting methodology provided to it by NCSEA. The Commission, therefore, directs Duke to include a statement in its first annual report to be filed in this proceeding on or before April 1, 2019, indicating whether NCSEA did in fact provide to Duke a conversion factor for direct current to alternating current for purposes of calculating the accurate amount of solar rebate to which the applicant is entitled. Duke also is directed in its first annual report to inform the Commission whether it proposes to use any such conversion factor provided to it and, if so, to provide any proposed revisions to the Solar Rebate Rider accordingly. Finally, the Commission expects Duke to identify and correct any potential instances of fraud in the rebate application process, and directs Duke to include a report of any such occurrences in its annual report.

Allocation of Installed Capacity Available and Differing Rebate Amounts

Although not an issue raised by the parties, the Commission notes that the Solar Rebate Rider seeks to limit to 5,000 kW both residential and nonresidential installations eligible for the rebate during any one calendar year. While G.S. 62-155(f) imposes a 5,000 kW maximum limit on nonresidential installations, there is no such limitation on residential installations. Similarly, while there are set-asides reserved in G.S. 62-155(f) for non-profit customers, there is no such set-aside for nonresidential customers in general. Duke's proposal to treat nonresidential participation as a set-aside and to impose a participation limit on residential participation, therefore, appears to be contrary to legislative intent. As a practical matter, the proposed residential cap also seems to be inconsistent with the Companies' own proposal to make the Solar Rebate Rider available on a "first-come-first-served" basis for otherwise eligible customers and solar PV systems, subject to the set-asides reserved by statute. Therefore, the Commission directs the Companies in their compliance filing to remove the proposed 5,000 kW cap on residential installations. Instead, applications should be processed in the order in which they are received by the Companies, subject only to the statutorily-mandated limitations and set-asides.

On a related note, the Commission notes that Duke proposes to include in its annual report the rates of participation by customer class. To be clear, the Commission

expects that Duke will provide information regarding the amount of reserved and approved installed capacity for each participant class, including those for which a set-aside capacity is reserved. The Commission also expects Duke to include, in its first annual report filing on or before April 1, 2019, an explanation for why it elected to offer differing solar rebate payments amounts to each participant class.

Contract Term

Although not raised by the parties, the Commission has concerns that the 10-year contract term under the Solar Rebate Rider, particularly when combined with the penalty for early termination, could be a disincentive to participation. The Commission contrasts, for example, the proposal under the Solar Rebate Rider to the one-year contract term of DEC's current net metering rider, which provides for an early termination charge limited only to actual costs to the Company of such early cancellation. While the Commission acknowledges Duke's offer, after discussions with the Public Staff, to strike the optional one-year renewal periods following the conclusion of the initial 10-year contract term, the Commission puts the parties on notice that it may reevaluate this issue in the future. The Commission will monitor closely whether additional changes to the contract term are needed, particularly if any participation class is undersubscribed in any year. In the meantime, the Commission expects Duke to ensure that its imposition of any early termination charge under the Solar Rebate Rider is consistent with its North Carolina Service Regulations.

On a related note, the Commission directs Duke in its compliance filing to strike the one-year optional renewal provisions from the Solar Rebate Rider terms.

Conclusion

The Commission notes that the Solar Rebate Rider leaflets proposed by the Companies contain a number of typographical and grammatical errors, including the incorrect titling of DEC's proposed Solar Rebate Rider SRR application. The Commission directs the Companies to proofread the leaflets and corresponding application forms, and to correct these errors in their compliance filing.

Based upon the foregoing and the entire record in this proceeding, the Commission concludes that Duke's application for approval of its solar rebate program, made available through DEC's Solar Rebate Rider SRR and DEP's Solar Rebate Rider SRP, should be modified consistent with this Order. Once modified, the Commission finds that the Solar Rebate Rider is reasonably designed to achieve the mandates and objectives of G.S. 62-155(f). Therefore, the Commission finds that Duke's application should be approved, as modified, and orders Duke to submit a compliance filing within ten (10) days of the date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke's application for approval of its solar rebate program, made available through DEC's Solar Rebate Rider SRR and DEP's Solar Rebate Program Rider SRP is granted, subject to the modifications required by the Commission in this Order;
2. That Duke, within ten days from the date of this Order, shall make a compliance filing to include redlined revisions to its leaflets and corresponding application forms in conformance with this Order;
3. That Duke shall submit an annual report on or before April 1, 2019, and every calendar year thereafter, which shall include: (1) all information offered by the Companies to be included in the report; (2) all additional information directed by the Commission in this Order; and (3) any proposed changes to the Solar Rebate Rider; and
4. That Duke shall file with the Commission and publish conspicuously on its website a notice whenever an annual participation limit under the Solar Rebate Rider is reached. Duke also shall publish conspicuously on its website monthly updates of progress made toward such annual participation limits.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of April, 2018.

NORTH CAROLINA UTILITIES COMMISSION



Linnetta Threatt, Deputy Clerk

Commissioner Charlotte A. Mitchell did not participate in this decision.