

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 113**

In the Matter of:)
Rulemaking Proceeding to) **NCSEA’S COMMENTS**
Implement Session Law 2007-397)

NCSEA’S COMMENTS

On August 11, 2016, Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”), Virginia Electric and Power Company, d/b/a Dominion North Carolina Power, GreenCo Solutions, Inc., Public Works Commission of the City of Fayetteville, EnergyUnited Electric Membership Corporation, Halifax Electric Membership Corporation, the Tennessee Valley Authority, North Carolina Eastern Municipal Power Agency, and North Carolina Municipal Power Agency Number 1 (collectively, the “electric suppliers”) filed a joint motion invoking G.S. 62-133.8(i)(2) (“Joint Motion”) and requesting that the North Carolina Utilities Commission (“Commission”) relieve them of their 2016 obligations to comply with the requirement of G.S. 62-133.8(e) (“swine waste set-aside”) and to modify their 2016 obligations to comply with the requirement of G.S. 62-133.8(f) (“poultry waste set-aside”). On August 31, 2016, the Commission issued an *Order Requesting Comments*, and subsequently on September 26, 2016 issued an *Order Granting Motion for Extension of Time*, pursuant to which the North Carolina Sustainable Energy Association (“NCSEA”) submits the following comments.

PARTIAL COMPLIANCE

NCSEA does not object to the electric suppliers request to modify the poultry waste set-aside by lowering the 2016 compliance requirement to 170,000 MWh. NCSEA believes

that retiring renewable energy certificates (“RECs”) stimulates activity, primarily because it signals to developers and other participants that there is long-term stability in the market. In its December 1, 2015 *Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief* (“2015 Set-Aside Order”) in this docket, the Commission found that “the 2014 level of the poultry waste set-aside could be maintained[,]” *Id.*, p. 6, and found “good cause to modify the poultry waste set-aside requirement established by G.S. 62-133.8(f) by adding an additional year (2015) of compliance at the 170,000 MWh threshold, prior to escalating the requirement to 700,000 MWh.” *Id.* In essence, the Commission was able to find an appropriate level of partial compliance with the poultry waste set-aside that worked for the electric suppliers, the market, and North Carolina as a whole. The Commission’s action clearly had a positive impact on the market, because one year later the electric suppliers believe they can comply with the poultry waste set-aside, albeit at a modified, lower level.

In the 2015 set-aside proceeding, NCSEA, the North Carolina Pork Council (“Pork Council”), and Optima KV, LLC advocated for the Commission to require partial compliance with the swine waste set-aside. The Commission declined to modify the swine waste set-aside, noting that “[t]o require that the Joint Movants retire their banked swine RECs would, thus, result in wiping the slate clean for compliance purposes in future years.” 2015 Set-Aside Order, p. 6. Thus, the market surrounding swine waste did not receive the same benefit as the market surrounding poultry waste because the Commission did not modify, but rather delayed, the swine waste set-aside in 2015.

NCSEA requests that the Commission consider whether it should modify, rather than delay, the swine waste set-aside to positively impact the swine waste market. As is

shown in their recent REPS Compliance Plans, both DEC and DEP¹ are well positioned generate or purchase sufficient RECs to comply with their swine waste set-aside obligations in 2017 and 2018, although they both note that their “ability to comply in 2017 and 2018 remains subject to multiple variables, particularly related to counterparty achievement of projected delivery requirements and commercial operation milestones.” *Duke Energy Carolinas, LLC 2016 Integrated Resource Plan and 2016 REPS Compliance Plan*, pp. 248, 258, Docket No. E-100, Sub 147 (September 1, 2016); *Duke Energy Progress, LLC 2016 Integrated Resource Plan and 2016 REPS Compliance Plan*, pp. 238, 250-251, Docket No. E-100, Sub 147 (September 1, 2016). Furthermore, DEC and DEP both report in their semiannual progress reports that they have banked varying numbers of swine waste RECs. *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Joint Semiannual Progress Report In Compliance With Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Granting Other Relief*, pp. 7-8, Docket No. E-100, Sub 113A (June 1, 2016). Even if requiring partial compliance in this proceeding “results in wiping the slate clean” in 2016, the integrated resource plans and semiannual reports show that DEC and DEP should be positioned to comply with the swine waste set-aside requirement in future years.²

¹ NCSEA notes that DEC and DEP are only two of the electric suppliers seeking relief; however, they are the largest of the electric suppliers and NCSEA believes it is reasonable to use their compliance positions as a measure of the ability of all the electric suppliers to meet some level of partial compliance with the swine waste set-aside.

² DEC and DEP are differently positioned for partial compliance with the swine waste set-aside and, depending on the level set by the Commission, requiring a partial level of compliance could necessitate selling or transferring swine waste RECs between electric suppliers.

RECOMMENDATIONS OF OTHER PARTIES

Compliance with the set-aside requirements has been a struggle for all stakeholders, and through its various orders the Commission has done much to advance North Carolina towards compliance. However, further incremental steps can be taken to improve transparency, which would help all stakeholders better understand what actions the electric suppliers are taking towards compliance and what problems cause set-aside projects, particularly swine waste projects, to not come to fruition. To this end, the Pork Council made several recommendations to improve transparency in its recent comments in this proceeding. *See, NCPC's Comments*, Docket No. E-100, Sub 113 (September 23, 2016). NCSEA supports and endorses the request of the Pork Council that the electric suppliers be required to provide additional information about their efforts to comply with the set-aside requirements when they petition the Commission for relief. *Id.*, p. 5-6. The Pork Council also correctly noted that the electric suppliers seek relief from the “aggregate requirement” of the set-asides, which overlooks the electric suppliers’ individual pro rata requirements. *Id.*, pp. 2-3. NCSEA supports the Pork Council’s recommendation that the electric suppliers be required to account for their individual compliance positions in future set-aside delay proceedings.

CONCLUSION

Under G.S. 62-133.8(i)(2) and Rule R8-67(c)(5), the Commission has the authority to modify or delay, in whole or in part, the set-aside requirements. The electric power suppliers have requested that the Commission exercise its authority and modify the poultry

waste set-aside requirement and delay the swine waste set-aside requirement for 2016;³ NCSEA requests that the Commission exercise its authority and modify the set-aside requirements to require partial compliance with both set-asides in 2016. NCSEA further requests that the electric suppliers be required to provide additional and individualized information in future set-aside delay proceedings, as was proposed by the Pork Council.

Respectfully submitted, this the 30th day of September, 2016.

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

³ In addition to a requesting the Commission modify the set-aside requirements, the electric suppliers requested the Commission allow the Electric Suppliers to replace compliance with such requirements in 2016 with compliance measures in accordance with N.C. Gen. Stat. §§ 62-133.8(b), (c) and (d).” Joint Petition, p. 2. NCSEA supports allowing the electric power suppliers to replace partially or fully delayed swine waste and poultry waste set-aside compliance with compliance measures in accordance with G.S. 62-133.8(b), (c), and (d).

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 30th day of September, 2016.

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