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December 20, 2016

M. L. Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603 – 5918

**Re: Motion by the North Carolina Sustainable Energy Association
NCUC Docket No. E-100, Sub 148**

Dear Ms. Jarvis:

Enclosed herewith, please find the Motion by the North Carolina Sustainable Energy Association (“NCSEA”) for filing on behalf of NCSEA in the above-referenced docket. Should you have any questions or comments, please do not hesitate to call me. Thank you in advance for your assistance and cooperation.

Regards,

/s Charlotte Mitchell

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|-----------------------------|
| In the Matter of |) | |
| Biennial Determination of Avoided Cost |) | |
| Rates for Electric Utility Purchases from |) | MOTION BY THE NORTH |
| Qualifying Facilities - 2016 |) | CAROLINA SUSTAINABLE |
| |) | ENERGY ASSOCIATION |
| |) | |

NOW COMES the North Carolina Sustainable Energy Association (“NCSEA”), having become a party to this proceeding pursuant to that order of the North Carolina Utilities Commission (“Commission”) entered in the above-captioned docket on July 8, 2016, by and through undersigned counsel and pursuant to Rule R1-7 of the Rules and Regulations of the North Carolina Utilities Commission, and hereby moves the Commission to issue an order striking as irrelevant to the proceeding convened by the Commission certain material in the proposals of Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP”), and Virginia Electric and Power Company d/b/a Dominion North Carolina Power (“DNCP”) (collectively, the “Utilities”). Specifically, NCSEA moves to strike information set forth in the respective Utilities’ initial statements and exhibits filed on November 15, 2016¹ that pertain to changes to the methodology used to calculate avoided cost payments, particularly capacity payments.

¹ On November 15, 2016, DEC and DEP filed the Joint Initial Statement Proposed Standard Avoided Cost Rate Tariffs of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC in the above captioned docket (“Duke’s Initial Proposal”). Also on November 15, 2016, DNCP filed the Initial Comments and Exhibits of Dominion North Carolina Power in the above-captioned docket (“DNCP’s Initial Proposal”).

MOTION

In accordance with Rule R1-7 of the Rules and Regulations of the North Carolina Utilities Commission NCSEA respectfully moves that the Commission strike as irrelevant or immaterial—and thereby remove from consideration during this proceeding—the following issues:

1. The proposal of DEC and DEP to alter an established parameter of the peaker methodology by changing the capacity component of the rates offered to QFs by crediting the QF with avoided capacity value only in those years in which the utility’s integrated resource plan (“IRP”) shows a capacity need² and the similar proposal of DNCP to reduce the capacity component of rates paid to QF under Schedule 19-FP to zero based on the assertion that DNCP “does not need additional North Carolina solar capacity in the 10 year planning horizon[,]” of the reduced standard contract term also proposed by DNCP;³

2. The proposal of DEC and DEP to align the performance adjustment factor (“PAF”) with the reliability of a combustion turbine (“CT”) by reducing the PAF from 1.2 to 1.05 for all QFs except for run-of-river hydro;⁴

3. The proposal of DNCP to eliminate the value of avoided line loss from the calculation of avoided energy cost;⁵

4. The proposal of DNCP to utilize locational marginal energy prices to reduce the energy component of the rates offered to QFs;⁶ and

² Duke’s Initial Proposal, Section IV.a.ii.

³ DNCP’s Initial Proposal, Section III.b.iv.

⁴ Duke’s Initial Proposal, Section IV.a.iii.

⁵ DNCP’s Initial Proposal, Section III.b.ii.

5. The proposal of DEC and DEP to add “an additional prong to the existing [legally enforceable obligation] requirement by also requiring a QF to either be exempt from or have completed the [system impact study] step of the interconnection study process under the [North Carolina Interconnection Procedures].”⁷

ARGUMENT IN SUPPORT OF MOTION

In its Order Establishing Standard Rates and Contract Terms issued on February 21, 2014 in Docket No. E-100, Sub 136 (the “2012 Order”), the Commission provided as follows:

The Commission recognizes the potential magnitude of the impacts on generation, transmission, and distribution systems of both smaller distributed and utility-scale solar photovoltaic projects that are proposed to be constructed in North Carolina. The potentially disruptive implications, both positive and negative, of this changing landscape merit further consideration – more than was provided during this proceeding – and have relevance to multiple other proceedings before the Commission, including integrated resource planning, REPS compliance, future avoided cost determinations, and others. The Commission also recognizes, as previously discussed, that it may no longer be appropriate to continue building upon the previously established PAF framework to determine avoided capacity cost rates given the new emerging QF landscape. With that in mind, the Commission will revisit its precedents, including whether a 2.0 PAF for run-of-river hydroelectric facilities with no storage capability should be continued, whether avoided capacity payments are more appropriately calculated based on installed capacity rather than a per-kWh capacity payment, and whether the methodologies historically relied upon by the Commission to determine avoided cost capture the full avoided costs.

As a result, the Commission will consider these issues in a broader context in its next biennial avoided cost proceeding in advance of the filing of proposed rates. This will allow for further consideration of the value of solar proposition proffered by NCSEA and its witness Rábago, the materials presented in the Crossborder Study, the system impact study that

⁶ DNCP’s Initial Proposal, Section III.b.iii.

⁷ Duke’s Initial Proposal, Section IV.b.

is being developed by DEC and DEP, the cap on capacity payments requested by DNCP, and other issues that the Public Staff and other parties may wish to have considered.⁸

Accordingly, the Commission issued its Order Establishing Biennial Proceeding and Scheduling Hearing on February 25, 2014 (the “2014 Order”), citing the above-referenced paragraphs from the 2012 Order and making clear that “the most efficient path forward in [the 2014] proceeding is to consider these issues prior to the filing of new proposed rates, which will be required by a subsequent Commission order in this Docket.”⁹ The Commission found good cause “to schedule an evidentiary hearing to consider changes to the methodology used to calculate avoided cost payments, particularly capacity payments, including, but not limited to, whether a 2.0 PAF for run-of-river hydroelectric facilities with no storage capability should be continued, whether avoided capacity payments are more appropriately calculated based on installed capacity rather than a per-kWh capacity payment, and whether the methodologies historically relied upon by the Commission to determine avoided cost capture the full avoided costs.”¹⁰ Thus, the 2014 biennial avoided cost proceeding was convened early for the explicit purpose of reviewing the methodology to be used to calculate avoided costs.

During this first phase of the 2014 biennial avoided cost proceeding, the Commission received hundreds of pages of expert testimony and exhibits from the electric utilities, the Public Staff and many of the twelve intervenors, most of which focused on the methodology to be used to calculate avoided costs. The Commission presided over a four-day evidentiary hearing during which sixteen expert witnesses were

⁸ 2012 Order, p. 31.

⁹ 2014 Order, p. 2.

¹⁰ 2014 Order, p. 2.

subject to cross-examination and questions from the Commission and after which the Commission issued its Order Setting Avoided Cost Input Parameters in Docket No. E-100, Sub 140 on December 31, 2014 (the “Order Setting Parameters”). Significantly, in the Order Setting Parameters, the Commission found that “the peaker method, as historically relied upon by the Commission to determine avoided cost, has captured the utilities’ avoided costs generally and should be retained.”¹¹ Also in the Order Setting Parameters, based on the volumes of expert testimony and exhibits received into evidence, the Commission established the parameters to be utilized by the electric utilities when applying the peaker method.

Unlike the 2014 Order which scheduled an evidentiary hearing for the explicit purpose of considering changes to the methodology used to calculate avoided costs and directed parties to file “testimony and exhibits regarding the proper methodology to determine avoided cost payments, particularly capacity payments,” the Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing issued by the Commission on June 22, 2016 in Docket No. E-100, Sub 148 (the “2016 Order”) initiating the 2016 biennial avoided cost proceeding did not invite the parties to propose changes to the methodology used to calculate avoided costs and rates resulting therefrom. Rather, the 2016 Order simply directed the electric utilities to file a set of proposed rates for purchases from QFs and proposed standard form contracts between the QF and the electric utility. For this reason, the issues that are the subject of the instant motion are not consistent with the Commission’s direction given in the 2016 Order, are irrelevant to this 2016 biennial avoided cost proceeding, and therefore, should not be considered.

¹¹ Order Setting Parameters, Finding of Fact 6.

Moreover, during the first phase of the 2014 biennial avoided cost proceeding, issues that are the subject of the instant motion were fully litigated and were the subject of findings and conclusions by the Commission in its Order Setting Parameters. Given that these issues were fully litigated by the parties and decided by the Commission in the 2014 biennial avoided cost proceeding, the issues that are the subject of the instant motion are irrelevant to this 2016 biennial avoided cost proceeding and should not be considered.

Specifically, in the first phase of the 2014 biennial avoided cost proceeding, DEC and DEP proposed to change the capacity component of the rates offered to QFs by crediting the QF with avoided capacity value only in those years in which the utility's IRP showed a capacity need.¹² DNCP proposed to include zero avoided capacity value for the early years when calculating avoided capacity rates.¹³ In spite of these proposals and evidence propounded by the Utilities, the Commission determined that it should not authorize as a generic principle that the avoided cost rate should be reduced as advocated by the Utilities.¹⁴

Also in the first phase of the 2014 biennial avoided cost proceeding, DEC and DEP proposed to reduce the PAF to 1.05 to align with the reliability of a natural gas CT, in response to which the Commission found as follows:

The availability of a CT is not determinative for purposes of calculating a Performance Adjustment Factor (PAF) because the fixed costs of a peaking unit in the peaker method employed by the Commission

¹² Direct Testimony of Glen A. Snider, Docket No. E-100, Sub 140, April 25, 2014, p. 25, l. 5 – p. 28, l. 23.

¹³ Direct Testimony of Roger T. Williams, Docket No. E-100, Sub 140, April 25, 2014, p. 9, ll 11-14.

¹⁴ Order Setting Parameters, Discussion and Conclusions, pp 35-36.

are a proxy for the capacity-related portion of the fixed costs of any avoided generating unit.¹⁵

Additionally, in the first phase of the 2014 biennial proceeding, the issue of avoided line loss benefits, particular in the context of solar resources, was litigated. While the Commission determined that integration of solar resources into a utility's generation mix results in both costs and benefits, many of which may be appropriate for inclusion in a utility's avoided cost calculations, the Commission found that those costs and benefits were too speculative to be included in avoided cost calculations. However, the Commission ultimately found it to be appropriate for the utilities to continue to follow their previously approved adjustments for line losses.¹⁶ DNCP now proposes to eliminate the avoided line loss adjustment from its avoided cost calculation, though, notably, DNCP did not object to the inclusion of the previously approved avoided line loss value in its avoided energy calculation in the 2014 biennial avoided cost proceeding.

DNCP's proposal to utilize locational marginal energy prices to reduce the energy component of rates offered to QFs is inconsistent with the Commission's decision to use the peaker method to calculate avoided costs. The Commission made clear in the Order Setting Parameters that the focus of the avoided cost calculation is on the total cost of capacity and energy contained in the utility's capacity expansion plan over its planning cycle with and without QF capacity and energy. Noting that it has long approved the use of the peaker method for the purpose of establishing avoided costs, the Commission pointed out that, according to the theory underlying the peaker method, if the utility's generating system is operating at the optimal point, the cost of a peaker (a CT) plus the

¹⁵ Order Setting Parameters, Finding of Fact 23 and Evidence and Conclusions for Findings of Fact 23-25, pp 54-56.

¹⁶ Order Setting Parameters, Finding of Fact 27, Discussion and Conclusion pp 60-61.

marginal running costs of the generating system will equal the avoided cost of a baseload plant and constitute the utility's avoided costs.¹⁷ As the Order Setting Parameters makes exceedingly clear, the peaker method relies on the installed cost of the CT and the marginal running cost of the system to produce the electric utility's avoided cost. Manipulating the avoided energy cost as suggested by DNCP is not consistent with the peaker method as envisioned by the Commission in the Order Setting Parameters.

Finally, the proposal of DEC and DEP to revise the standard for establishing a commitment in the context of establishing a legally enforceable obligation ("LEO"), should not be considered during this 2016 biennial proceeding. The Commission should reject this proposal outright as it is inconsistent with a declaratory order of the Federal Energy Regulatory Commission (the "FERC") issued on December 15, 2016, in which the FERC found that "a requirement for a facilities study or an interconnection agreement, given that the utility can delay the facility study or tendering an executable interconnection agreement, as a predicate for a legally enforceable obligation is inconsistent with PURPA and the [FERC]'s regulations under PURPA."¹⁸ In its recent order, the FERC explained clearly and unambiguously that the "establishment of a legally enforceable obligation turns on the QF's commitment, and not the utility's actions. . . ."¹⁹

Furthermore, the standard by which a commitment is established, for the purpose of establishing a LEO, was litigated in the first phase of the 2014 biennial avoided cost proceeding, resulting in the Commission's findings that: i) the proposal of DNCP to provide a simple form to be completed by a QF to evidence a commitment had merit; and

¹⁷ Order Setting Parameters, Discussion and Conclusion pp 29-30.

¹⁸ In re. FLS Energy, Inc., Notice of Intent Not To Act And Declaratory Order, 157 FERC ¶ 61,211, December 15, 2016, paragraphs 20, 23.

¹⁹ Id., paragraph 24.

ii) the details as to the implementation of the form should be addressed in second phase of the 2014 biennial avoided cost proceeding.²⁰ In the second phase of the 2014 biennial avoided cost proceeding, the Commission received evidence from the parties on the issue of establishing a commitment, whether and the extent to which a form could be utilized to establish a commitment to sell on the part of the QF and the implications for the LEO, including whether and when a commitment—and therefore the LEO when applying the Commission’s standard—is no longer of force and effect.²¹ Based on the evidence received, the Commission, in its order issued on December 17, 2015, approved the commitment form of DNCP, which had been revised during the course of the 2014 biennial avoided cost proceeding to reflect discussions of the parties to the proceeding. With its current proposal, DEC and DEP assert that “QF projects are not truly ‘committing’ to a proposed generating facility until the SIS process is completed.”²² At no time during the 2014 proceeding while the issue of a QF’s commitment was being litigated, did DEC or DEP raise this issue. Additionally, unlike during the 2014 proceeding when the Commission directed the parties to address the implementation of the commitment form, the Commission has not invited the parties to address the issue of establishing the commitment for the purposes of establishing a LEO in this 2016 proceeding. For these reasons, the proposal of DEC and DEP to redefine commitment to include having completed the system impact study process of the interconnection process, should not be considered by the Commission in this proceeding.

²⁰ Order Setting Parameters, Finding of Fact 29.

²¹ Order Establishing Standard Rates and Contract Terms for Qualifying Facilities, Docket No. E-100, Sub 140, December 17, 2015, Evidence and Conclusions for Findings of Fact 24-25, pp 48-51.

²² Duke’s Initial Proposal, Section IV.b.

CONCLUSION

Thus, given: i) the extensive litigation of the issues that are the subject of this motion; ii) the lack of direction from the Commission to file testimony and exhibits proposing changes to the peaker method of determining avoided cost payments, particularly capacity payments, in the 2016 Order; and the iii) clear and unambiguous direction of the Commission to the electric utilities to file a set of proposed rates and a proposed standard form of contract, NCSEA respectfully moves the Commission to strike the proposals of the Utilities that are the subject of this motion.

Notwithstanding the foregoing, NCSEA respectfully reserves the right to contest any other proposal by the Utilities in this proceeding not specifically discussed in this motion.

Submitted this the 20th day of December, 2016.

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ATTORNEY FOR NCSEA

STATE OF NORTH CAROLINA

COUNTY OF WAKE

VERIFICATION

The undersigned, being first duly sworn, deposes and says that he is Peter H. Ledford, Regulatory Counsel for the North Carolina Sustainable Energy Association. He furthers states that he has read the foregoing Motion By The North Carolina Sustainable Energy Association and that to his personal knowledge and belief, the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those, he believes them to be true; and that he verifies the attached motion on behalf of the North Carolina Sustainable Energy Association.

This the 19th day of December, 2016.

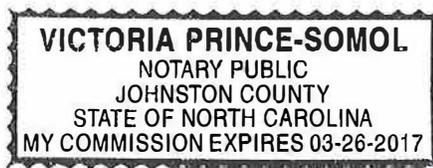


Peter H. Ledford
Regulatory Counsel, NCSEA

Sworn to and subscribed before me
this 19 day of December, 2016.


Notary Public

My Commission Expires: 3-26-2017



CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing **MOTION BY THE NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION** upon the parties of record in this proceeding, or their attorneys, by electronic mail.

This 20th day of December, 2016.

/s Charlotte A. Mitchell

4834-0440-1469, v. 6