

MAR 28 2013

Clerk's Office
Utilities Commission

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 136**

)	
In the Matter of:)	MOTION FOR
Biennial Determination of Avoided Cost Rates)	CONSIDERATION
for Electric Utility Purchases from Qualifying)	OF NEED FOR AN
Facilities - 2012)	EVIDENTIARY
)	HEARING

**MOTION FOR CONSIDERATION OF NEED FOR
AN EVIDENTIARY HEARING**

Pursuant to North Carolina Utilities Commission ("Commission") Rules R1-5, R1-7 and R1-24(h), the North Carolina Sustainable Energy Association ("NCSEA") hereby moves the Commission

- (1) to consider calendaring an evidentiary hearing in this proceeding; and
- (2) in the event a hearing is calendared,
 - (a) to issue subpoenas for the attendance of witnesses to those persons named herein, and
 - (b) to direct that Duke Energy Carolinas, LLC's ("DEC") and Dominion North Carolina Power's ("DNCP") proposed fixed long-term avoided cost rates go into effect, on a temporary basis, subject to their being trued-up based upon the Commission's final order in this matter.

In support of this motion, NCSEA states as follows:

Consideration of Need for an Evidentiary Hearing

1. The Commission earlier determined in this proceeding that
 - it will attempt to resolve all issues arising in this docket based on a record developed through public witness testimony, statements, exhibits and avoided cost schedules verified by persons who would

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otherwise be qualified to present expert testimony in a formal hearing, and written comments on the statements, exhibits and schedules, rather than a full evidentiary hearing for the purpose of receiving expert testimony.

Order Establishing Biennial Proceeding, Requiring Data, and Scheduling Public Hearing, p. 1, Commission Docket No. E-100, Sub 136 (18 June 2012).

2. The Commission based this earlier determination on its expectation that this proceeding would involve “issues and decisions which have traditionally arisen in these proceedings.” *Id.*
3. Based on the initial written comments filed by NCSEA, the Renewable Energy Group (“REG”), and the Public Staff, NCSEA believes a number of novel issues have been raised – *e.g.*, the propriety of use of a DEC/Progress Energy Carolinas, Inc. (“PEC”) “average” combustion turbine (“CT”), the appropriate MW rating for a hypothetical CT, the appropriate useful life for a hypothetical CT, and the appropriate level of consistency between the investor-owned utilities’ IRP inputs and assumptions and the inputs and assumptions used to arrive at their proposed avoided cost rates.
4. By 28 March 2013, all the parties to this proceeding will have submitted their initial filings, written comments and exhibits, as well as responsive comments and exhibits. *See Order Granting Motion for Extension of Time to File Reply Comments*, Commission Docket No. E-100, Sub 136 (25 March 2013). In other words, by 28 March 2013, all of the parties will have submitted their positions on contested issues for the Commission’s consideration in accordance with the existing 18 June 2012 scheduling order as modified.

5. Upon information and belief, by 28 March 2013, DEC, DNCP, and PEC will have filed written comments disputing some or all of the positions NCSEA, REG, and the Public Staff advocated for in their written comments.
6. “After all the issues have been vetted [by written comments], the Commission will decide what additional steps, if any, are necessary in order to permit a proper resolution of the matters at issue between the parties in this proceeding.” *Order Denying Mirek’s Motions for Extension of Time and Evidentiary Hearing*, p. 3, Commission Docket No. E-100, Sub 106 (2 March 2007) (2006 avoided cost docket). The Commission “always retain[s] the option of ordering a full evidentiary hearing after its consideration of the written comments.” *Order Scheduling Evidentiary Hearing*, p. 2, Commission Docket No. E-100, Sub 106 (8 May 2007) (2006 avoided cost docket).
7. In the past, the Commission has – after considering the written comments – determined that an evidentiary hearing should be held where “fundamental, theoretical issues . . . require a fuller examination.” *Id.* at p. 3.
8. NCSEA believes this proceeding involves fundamental, theoretical issues that are in dispute (*see* ¶3 *supra*) and may require fuller examination in an evidentiary hearing. Accordingly, NCSEA requests the Commission consider whether an evidentiary hearing is necessary in order to permit a proper resolution of the matters at issue between the parties in this proceeding.

**Issuance of Subpoenas in Connection
With Any Evidentiary Hearing**

9. In the event the Commission, after consideration of the written comments, determines that an evidentiary hearing should be held, NCSEA reminds the Commission that it has “the same power to compel the attendance of witnesses . . . as by law is conferred upon the superior courts[.]” N.C. Gen. Stat. § 62-61; and that “[a]ll subpoenas for witnesses to appear before the Commission . . . shall be issued by the Commission or its chief clerk or a deputy clerk[.]” N.C. Gen. Stat. § 62-62; *see* N.C. Gen. Stat. § 62-63.
10. Commission Rule R1-24(h) further provides that a subpoena “may be issued at the instance of a party to the proceeding upon written request therefor[.]”
11. In light of the foregoing, NCSEA conditionally requests that subpoenas be issued for the attendance at any hearing of the following DEC/PEC employees: Sumita Deshmukh, Kim Smith, Bobby McMurry, Robert Niehaus, Glen Snider, Laura Bateman, Jane McManeus, and Dan Roeder.
12. The Commission can require the applicant for a subpoena to “make a reasonable showing that the evidence of such persons . . . will be material and relevant to the issue in the proceeding.” N.C. Gen. Stat. § 62-62. To the extent the Commission desires NCSEA to make a reasonable showing, NCSEA respectfully directs the Commission to the unredacted emails attached to NCSEA’s 7 February 2013 confidential filing and pertaining to issues of the type described in ¶3, *supra*.
13. NCSEA is in a position to pay any required reasonable costs associated with the Commission’s issuance and service of subpoenas, *see* N.C. Gen. Stat. § 62-63, and believes it is also in a position to pay any required reasonable witness fees.

See N.C. Gen. Stat. § 62-300(b). If subpoenas are to be issued, NCSEA requests that the Commission inform it of any required witness fees prior to issuance of the subpoenas so that NCSEA can ensure it is in a position to pay the witness fees.

**Implementing DEC's and DNCP's Proposed Fixed
Avoided Cost Rates, on a Temporary Basis, if
Evidentiary Hearing is Scheduled**

14. NCSEA understands that DEC's and DNCP's 5-, 10-, and 15-year fixed long-term avoided cost rates are currently unavailable to qualified facilities as a result of the 1 November 2012 cut-off dates imbedded in the tariffs DEC and DNCP secured approval for in Commission Docket No. E-100, Sub 127. At the same time, PEC's *proposed* 5-, 10-, and 15-year fixed long-term avoided cost rates are available subject to true-up. See *Order on Motion to Suspend Avoided Cost Rates*, Commission Docket Nos. E-100, Sub 127 & E-100, Sub 136 (21 December 2012).¹
15. In the event the Commission, after consideration of the written comments, determines that an evidentiary hearing should be held, NCSEA requests that the Commission issue an interim order to DEC and DNCP that is similar to the Commission's 2007 order in similar circumstances:

Pending the hearing and the Commission's decisionmaking thereon, the Commission finds good cause to allow proposed avoided cost rates to go into effect, on a temporary basis, subject to their being true-up based upon the Commission's final decisions herein.

¹ This motion is not intended to alter or in any way have the Commission revisit its 21 December 2012 ruling with regard to PEC's motion to suspend availability of its fixed long-term avoided cost rates. This motion is simply intended to address the fact that DEC and DNCP do not currently have any fixed long-term avoided cost rates available, not even on a temporary "true-up" basis.

Order Scheduling Evidentiary Hearing, p. 3, Commission Docket No. E-100, Sub 106 (8 May 2007) (2006 avoided cost docket).

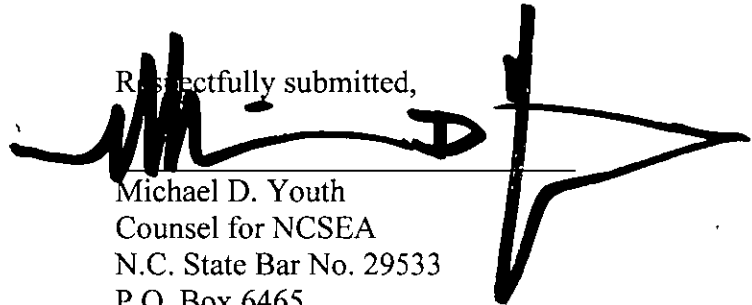
16. Such an order would be appropriate in light of NCSEA's, REG's, and the Public Staff's arguments in this proceeding against PEC's motion to suspend availability of its 2010 fixed avoided cost rates. *See, e.g., Response of the Public Staff to PEC's Motion to Suspend Long-Term Avoided Cost Rates*, p. 6 (¶ 13), Commission Docket No. E-100, Sub 136 (21 November 2012) (the Public Staff "believes that denying long-term fixed avoided cost rates to QFs even for six months is unlawful because of the resulting negative effect on the availability of financing at a crucial time[.]").²

WHEREFORE, for the reasons set forth above, NCSEA prays that the Commission (1) consider calendaring an evidentiary hearing, and (2) in the event the Commission determines that a hearing should be held, (a) issue subpoenas for the attendance of witnesses to the persons named in ¶11, *supra*, and (b) direct DEC and DNCP to implement their proposed fixed avoided cost rates, on a temporary basis, subject to their being trued-up based upon the Commission's final order in this matter.

² The affidavits of Michael Cohen and Richard Harkrader (attached respectively as Exhibits 2 and 3 to NCSEA's *Amended Brief in Opposition to PEC's Motion* filed in this proceeding on 21 November 2012) both attest to the fact that

[a] power purchase agreement evidencing a reasonably certain fixed stream of income over a term of 5-, 10-, or 15-years is critical to obtaining project financing in the current economic environment. A variable avoided cost rate term within a power purchase agreement is inadequate to enable an investor to estimate, with reasonable certainty, the expected return on a potential investment before construction of a facility.

Respectfully submitted,

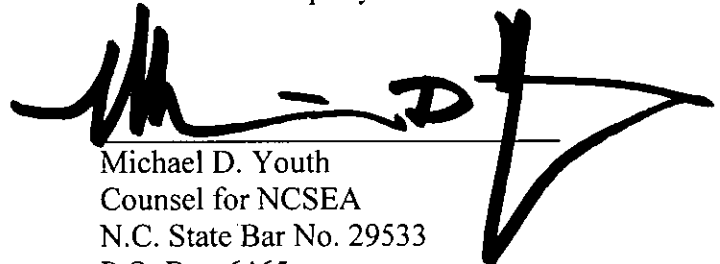


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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing motion 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 28 day of March, 2013.



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