

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 155**

| | | |
|---|---|----------------------|
| In the Matter of: |) | |
| Rulemaking Proceeding to Implement |) | NCSEA’S REPLY |
| G.S. 62-126.8 |) | COMMENTS |

NCSEA’S REPLY COMMENTS

The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in this proceeding, submits these reply comments in response to the *Order Initiating Rulemaking Proceeding* issued by the North Carolina Utility Commission (“Commission”) in this docket on August 30, 2017, as modified by the Commission’s *Order Granting Extension of Time* issued on October 24, 2017. In response to the Commission’s orders, initial comments were filed by NCSEA, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”), the North Carolina Waste Awareness and Reduction Network, Inc. (“NC WARN”), the Public Staff – North Carolina Utilities Commission (“Public Staff”), and the Sierra Club. The comments of Duke and the Sierra Club both included proposed rules.

I. INTRODUCTION

All of the parties make good recommendations to the Commission in their respective initial comments, and NCSEA notes that there are relatively few issues in dispute. NCSEA supports the Sierra Club’s proposed rule. See, *Sierra Club’s Community Solar Comments and Proposed Rule* (“Sierra Club’s Comments”) at pp. 12-15. NCSEA supports Duke’s proposed rule, if it is modified as set forth in these reply comments. See, *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Initial Comments and Proposed Rule to Implement N.C. Gen. Stat. § 62-126.8* (“Duke’s Comments”) at

Attachment A. NCSEA supports Duke's proposed revisions to Commission Rule R8-65. *Id.* at Attachment B.

In its initial comments, NC WARN notes that the requirements of G.S. 62-126.8 are a minimum requirement. *NC WARN's Initial Comments* at p. 2. NCSEA agrees that the statutory requirements of G.S. 62-126.8 are a minimum, and that the offering utilities may implement additional community solar programs outside the context of G.S. 62-126.8.

II. UNIFORM STANDARDS AND PROCESSES TO ALLOW THE OFFERING UTILITY TO RECOVER REASONABLE COSTS

NCSEA concurs with the Sierra Club's recommendation that offering utilities minimize program administration costs. Sierra Club's Comments at pp. 10-11. Duke notes that it "has not excluded the possibility of a third-party administrator[]" for the community solar program. Duke's Comments at p. 10. To this end, NCSEA recommends that the Commission direct offering utilities to include in their filings information supporting their determination of whether a third-party administrator would increase or decrease program administration costs.

NCSEA agrees with Duke that G.S. 62-126.8 allows offering utilities to utilize power purchase agreements ("PPAs") to procure resources for community solar programs, and supports the ability of offering utilities to procure resources through PPAs. Duke's Comments at pp. 4-5. NCSEA also agrees that offering utilities are clearly allowed to recover reasonable costs from subscribers. *Id.* at p. 5. However, Duke's comments indicate that, should the offering utilities opt to procure community solar resources through a PPA, they would recover these costs through the fuel rider. *Id.* ("The Companies plan to recover the avoided cost component of the PPA through G.S. § 62-133.2(a1)(10)). NCSEA notes that Duke's proposed rule makes no reference to this cost recovery arrangement and that

Duke did not propose any changes to Commission Rule R8-55 in its comments. Accordingly, NCSEA recommends that the Commission direct Duke to clarify in its January filing whether it intends to recover PPA expenses through the fuel rider or through subscription fees.

III. CONSISTENT WITH THE PUBLIC INTEREST

NCSEA concurs with the comments of all the parties that G.S. 62-126.8 requires that the offering utilities' community solar programs must be consistent with the public interest, and NCSEA notes that the parties are generally in agreement about what constitutes the public interest. However, there are two aspects where NCSEA wishes to provide specific reply comments for the Commission's consideration.

A. LOW- TO MODERATE-INCOME RATEPAYERS

In its initial comments, NCSEA recommended that the Commission consider the unique needs of low- to moderate-income ratepayers in adopting rules to implement G.S. 62-126.8. See, *NCSEA's Initial Comments* ("NCSEA's Comments") at pp. 3-4. The Sierra Club similarly notes that the public interest necessitates the creation of community solar programs that are inclusive of low- to moderate-income ratepayers. Sierra Club's Comments at pp. 2-3, 5-6. However, neither Duke nor the Public Staff address the needs of low- to moderate-income ratepayers in their initial comments. See, *Duke's Comments; Initial Comments of the Public Staff* ("Public Staff's Comments"). NCSEA reiterates its belief that the public interest dictates that the Commission adopt rules that provide access to community solar for low- to moderate-income ratepayers.

B. FLEXIBLE PAYMENT OPTIONS FOR SUBSCRIBERS

The Sierra Club notes that the public interest necessitates flexible payment plans for subscribers. Sierra Club Comments at pp. 3-5. Similarly, the Public Staff recommends that the community solar programs allow subscribers to make a single upfront payment, to make installment payments, or to pay a monthly subscription fee. Public Staff Comments at pp. 3-4. NCSEA made similar recommendations in its comments and supports the recommendations of the Public Staff and the Sierra Club. See, NCSEA's Comments at p. 3.

IV. DISCLOSURES TO SUBSCRIBERS

NCSEA is generally supportive of the comments filed regarding the disclosures that must be made to potential subscribers. However, Duke notes in its comments that "Subsections (c)(6)(h)-(i) [of Duke's proposed rule] further require the Companies to provide information in their Plan regarding . . . any rate schedule associated with the Program." Duke's Comments at p. 6; see also, *id.* at Attachment A, subdivision (c)(6)(i). NCSEA noted in its initial comments that it "encourages the Commission to make clear in its rules that subscribers may keep their existing rate tariff when they opt to participate in a community solar energy facility program." NCSEA Comments at p. 4. NCSEA emphasizes the recommendation made in its initial comments, and recommends that the Commission require that offering utilities clarify whether they intend to require subscribers participate in a particular rate tariff offering.

The Public Staff recommends that offering utilities establish a standard contract for subscriber payments in exchange for a bill credit. Public Staff's Comments at p. 3. NCSEA

supports the Public Staff's recommendation that offering utilities use a standard contract for subscribers.

V. PROGRAM IMPLEMENTATION AND REPORTING SCHEDULE

NCSEA supports Duke's proposal to implement the community solar program in tranches that would evolve based on lessons learned during implementation of the program. Duke's Comments at p. 4. The Public Staff notes its belief that it is consistent with the General Assembly's intent to delay implementation of the community solar program if projects are not commercially viable. Public Staff's Comments at p. 7. NCSEA believes that this is within the authority granted to the Commission by G.S. 62-126.8(e) to approve, disapprove, or modify a community solar energy facility program.

In their initial comments, the various parties proposed different reporting requirements for the offering utilities. Duke recommends that a single report be required by rule, with additional reports to be filed if requested by the Commission or the Public Staff. Duke's Initial Comments at Attachment A, subsection (e)(1). The Public Staff recommends annual reporting. Public Staff Comments at p. 6. The Sierra Club recommends semi-annual reporting. Sierra Club's Comments at p. 15. NCSEA supports the Sierra Club's recommendation that the offering utilities be required to file reports every six months.

VI. PROPOSED RULES AND CHARGES FOR SUBSCRIBERS

The Sierra Club recommends that offering utilities include in their disclosures to subscribers the economic and environmental benefits of participating in community solar. Sierra Club's Comments at pp. 7-8. NCSEA supports this recommendation, as some potential subscribers may be motivated by the environmental benefits of participation.

NC WARN recommends that the Commission include in its calculation of avoided cost payments to subscribers all of the benefits provided by distributed solar energy. NC WARN's Comments at p. 4. NCSEA does not oppose Duke's recommendation to use the most recently approved biennial avoided cost rates, but does believe that benefits provided by community solar facilities should be factored into setting subscription fees. While G.S. 62-126.8(e)(7) dictates that nonsubscribers should be held harmless by community solar programs, it is likewise reasonable to require that nonsubscribers not be subsidized by subscribers to community solar programs. Accordingly, NCSEA believes that the benefits provided by community solar should be factored into setting subscription fees.

VII. PROGRAM PROMOTION

Duke outlines in its comments the methods through which it plans to promote the community solar programs. Duke's Comments at p. 8. NCSEA believes these methods are reasonable, but would encourage Duke to consider additional methods in the future should new ideas arise. NCSEA is also supportive of the Public Staff's recommendation that the Commission adopt consumer protection rules if offering utilities plan to utilize door to door agents to promote community solar programs. Public Staff's Comments at p. 6.

VIII. HOLD NONPARTICIPATING CUSTOMERS HARMLESS

NCSEA does not oppose any of the parties' comments that nonparticipating customers must be held harmless by the community solar program. However, as noted in Section VI of these reply comments, NCSEA also points out that they should not be subsidized by subscribing customers.

IX. REC OWNERSHIP

In their comments, Duke proposes to file processes and procedures for customers to own their renewable energy certificates (“RECs”) with their January filing. Duke’s Comments at p. 8. NCSEA does not oppose having such processes and procedures filed in January, provided that stakeholders will have the opportunity to comment on Duke’s proposal.

X. OTHER ISSUES

NCSEA also wishes to raise two additional issues for the Commission’s consideration. First, subsection (b)(8) of Duke’s proposed rule should be amended so that the defined term reads “solar photovoltaic energy system” as the phrase “solar voltaic energy system” does not appear elsewhere in Duke’s proposed rule but “solar photovoltaic energy system” does appear. See, Duke’s Comments at Attachment A. Second, subsection (d)(2) of Duke’s proposed rule allows the offering utility to suspend or close the program “based on a determination that such suspension or closure is appropriate.” *Id.* NCSEA does not believe that it is appropriate for an offering utility to suspend or close a Commission-approved program without oversight by the Commission, and would ask that the rule be amended to require a Commission determination that suspension or closure is appropriate. NCSEA also notes that there is an inherent conflict between the geographic requirements contained in the definition of subscriber in subsection (b)(9) of Duke’s proposed rule and the waiver of certain geographic requirements in subsection (c)(10). If the Commission adopts a rule that is based on Duke’s proposed rule, NCSEA recommends that these issues be addressed. Finally, NCSEA notes that subdivision (c)(10) of Duke’s proposed rule appears to allow South Carolina customers to participate in the community solar program

required by G.S. 62-126.8 if the Commission grants a waiver of certain geographic requirements. NCSEA would propose the Commission's final rule make clear that only North Carolina customers are eligible to participate in the community solar programs implemented pursuant to G.S. 62-126.8.

XI. CONCLUSION

NCSEA respectfully submits these reply comments for the Commission's consideration.

Respectfully submitted, this the 21st day of November, 2017.

/s/ Peter H. Ledford
Peter H. Ledford
General 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

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 21st day of November, 2017.

/s/ Peter H. Ledford
Peter H. Ledford
General 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