

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1167
DOCKET NO. E-7, SUB 1166

In the Matter of:)
Application of Duke Energy Progress, LLC) NCSEA’S REPLY
and Duke Energy Carolinas, LLC) COMMENTS
Requesting Approval of Solar Rebate)
Program Pursuant to N.C. Gen. Stat. § 62-)
155(f))

NCSEA’S REPLY COMMENTS

Pursuant to the North Carolina Utilities Commission’s (“Commission”) *Order Allowing Comments on 2019 Annual Report* issued on April 7, 2020 in the above-captioned docket, the North Carolina Sustainable Energy Association (“NCSEA”) offers the following reply to the initial comments of the Public Staff – North Carolina Utilities Commission (“Public Staff’s Initial Comments”) and the initial comments of the Southern Alliance for Clean Energy (“SACE”) (“SACE Initial’s Comments”) regarding Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC’s (“DEP”) (collectively, “Duke”) April 1, 2020 *Duke Energy Progress, LLC’s and Duke Energy Carolinas, LLC’s Joint Annual Solar Rebate Program Report and Request to Amend Program Application Periods* (“Annual Report”).

I. REVISITING SUPPLY AND DEMAND

In its initial comments, NCSEA discussed the fact that demand for rooftop solar rebates has consistently exceeded supply in each year of the program.¹ The Public Staff makes a similar observation, noting “that the demand for the solar rebates at their current

¹ NCSEA’s *Initial Comments and Request for Limited Expedited Review*, pp. 1-2, Docket Nos. E-2, Sub 1167 and E-7, Sub 1166 (June 5, 2020) (“NCSEA’s Initial Comments”).

incentive amounts is extraordinary, vastly outstripping the available supply, for all customer classes but non-profits.”² While NCSEA’s Initial Comments advocate that the Commission should seek to address this situation by increasing the supply of rooftop solar rebates, by decreasing the maximum system size eligible for a rebate for the residential and commercial classes, while maintaining the same annual cost of the program, the Public Staff takes the opposite approach, instead requesting that the Commission adopt policies to decrease demand.

The Public Staff’s arguments are contrary to the legislative intent of House Bill 589.³ NCSEA disagrees with the Public Staff’s interpretation of *In re Estate of Kirkman*, which attempts to bootstrap a completely independent statute, N.C. Gen. Stat. § 62-126.4, into N.C. Gen. Stat. § 62-155(f).⁴ *Kirkman* states clearly that:

In attempting to ascertain the legislative intent, courts resort first to the words of the statute. Legislative intent may also be ascertained from the nature and purpose of the statute and the consequences which would follow from a construction one way or another. “A construction which operates to defeat or impair the object of the statute must be avoided if that can reasonably be done without violence to the legislative language.”⁵

NCSEA believes that the Commission should be mindful of the distinction between a statute, in this case N.C. Gen. Stat. § 62-155, and a session law, in this case S.L. 2017-192 which adopted both N.C. Gen. Stat. § 62-155(f) and N.C. Gen. Stat. § 62-126.4. To the extent that the Commission believes that it should read N.C. Gen. Stat. § 62-155(f) in the context of the entirety of S.L. 2017-192, as the Public Staff advocates, NCSEA would note that more than half of the bill was dedicated to creating programs that would increase

² Public Staff’s Initial Comments, pp. 2-3.

³ S.L. 2017-192.

⁴ *In re Estate of Kirkman*, 302 N.C. 164, 167, 273 S.E.2d 712, 715 (1981) (“*Kirkman*”).

⁵ *Id.* (cleaned up).

customer access to clean energy, whether through a green tariff, rooftop solar leasing, community solar, or, the subject of this docket, rooftop solar rebates. Under the Public Staff’s argument, the Commission should read N.C. Gen. Stat. § 62-155(f) *in pari materia* with these other provisions that were designed to increase customer access to clean energy.

The General Assembly chose to use the word “incentive” throughout the text of N.C. Gen. Stat. § 62-155(f). By choosing the word “incentive,” the General Assembly intended for N.C. Gen. Stat. § 62-155(f) to encourage a specific behavior – the adoption of rooftop solar. In implementing N.C. Gen. Stat. § 62-155(f), the Commission should consider this legislative intent to encourage and expand the adoption of rooftop solar. As the Commission is now faced with a decision to either adopt NCSEA’s proposal to improve the program or the Public Staff’s proposal to limit its effectiveness, the Commission should recognize the legislature’s intent that the rooftop solar rebate program should encourage customers to adopt rooftop solar.

Numerous studies have shown that rooftop solar lowers costs for all ratepayers. In 2014, NCSEA presented a study to the Commission that demonstrated that the benefits of distributed generation exceeded the costs.⁶ More recent studies in other states have confirmed the findings of NCSEA’s study.⁷ Under NCSEA’s proposal, ratepayers would pay the same for the rebate program, but would receive a larger amount of beneficial

⁶ *Direct Testimony of R. Thomas Beach on Behalf of North Carolina Sustainable Energy Association*, Exhibit 2, p. 3, Docket No. E-100, Sub 140 (April 25, 2014).

⁷ *See, In the Matter of Net Metering and the Implementation of Act 827 of 2015*, Order No. 28, Arkansas Public Service Commission Docket No. 16-027-R (June 1, 2020), available at http://www.apscservices.info/pdf/16/16-027-R_423_1.pdf. *See also, Corrected Public Direct Testimony and Exhibits of William D. Kenworthy, Kevin Lucas, Claudine Y. Custodio, Dr. Gabriel Chan, Karl R. Rábago, and Ronny Sandoval on behalf of the Ecology Center, the Environmental Law & Policy Center, Great Lakes Renewable Energy Association, the Solar Energy Industries Association and Vote Solar*, Michigan Public Service Commission Case No. U-20697 (June 25, 2020), available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000CJA1ZAAX>.

distributed generation; under the Public Staff's proposal, ratepayers would pay the same, but would receive less.

II. ADJUSTING REBATE AMOUNTS

1. THE NONPROFIT PURCHASING CYCLE

In its initial comments, the Public Staff states its belief that increasing the nonprofit rebate amount and lowering the residential and non-residential rebate amounts will result in higher nonprofit participation.⁸ However, it is notable that the Public Staff does not explain how it formulated this belief. In comparison, over the course of numerous conversations with its solar installer members, NCSEA has learned that slow uptake of rebates by nonprofits does not indicate a lack of demand; rather, it evidences a different purchasing cycle. While a homeowner or a commercial facility manager may be able to quickly make a decision about whether to install solar on a residence or a business, a nonprofit that is governed by a volunteer board of directors takes significantly more time. Similarly, government agencies, which are eligible for the nonprofit rebate, need to comply with various procurement requirements.

Further evidence for the fact that slow uptake in nonprofit rebates is due to a different purchasing cycle, and not the value of the rebates, is perhaps best shown by the fact that Buncombe County and the City of Asheville have jointly issued a request for proposals ("RFP") for 44 rooftop solar projects totaling 8 MW of capacity.⁹ If all of these

⁸ Public Staff's Initial Comments, p. 3.

⁹ See, *Onsite Solar for Public Facilities*, The City of Asheville, <https://www.ashevollenc.gov/department/sustainability/sustainability-initiatives/onsite-solar-for-public-facilities/> and *Buncombe Solar Invitation for Construction Bids*, Buncombe County, <https://www.buncombecounty.org/governing/depts/purchasing/bid-detail.aspx?id=18600>.

projects are constructed, this single RFP would represent 64% of DEP’s nonprofit rebate allocation for the *entire 5-year rebate program*.

2. THE IMPACT OF INCREASING NONPROFIT REBATES ON OTHER CUSTOMER CLASSES

While NCSEA conceptually supports increasing the nonprofit rebate amount, it is not willing to do so to the detriment of residential and commercial customers, especially given that it does not appear that the Public Staff’s proposal will have its desired effect of increasing rooftop solar for nonprofit customers. Under the Public Staff’s proposal, an 8 kW residential solar installation would receive a rebate of \$4,000, less some amount for administrative costs, as discussed below; under NCSEA’s “Option 1” proposal, which provides for a maximum rebate of 5 kW for residential systems, an 8 kW residential solar installation would receive a rebate of \$3,000; under NCSEA’s “Option 2” proposal, which requires a 1:1 ration of rebate-eligible and rebate-ineligible solar, an 8 kW residential solar installation would receive a rebate of \$2,400.¹⁰ Under the Public Staff’s proposal, such a residential customer would receive a \$800 smaller rebate relative to the current paradigm, but no additional customers would be able to participate. Under either of NCSEA’s proposals, such a customer would receive a smaller rebate relative to the current paradigm, but significantly more residential customers would be able to participate in the rebate program. NCSEA fails to see any upside to the Public Staff’s proposal, especially since the federal Solar Investment Tax Credit (“ITC”) is slated to sunset completely for residential systems in 2022 and decline to 10% for commercial and utility scale systems. By proposing to merely reduce the rebate amounts for customers with tax liabilities right before the ITC

¹⁰ See, NCSEA’s Initial Comments, pp. 4-7.

expires without allowing for additional customers to participate, the Public Staff is proposing to weaken the market for residential and commercial clean energy right when the market will be recovering from our current economic downturn and also dealing with the expiration of the ITC.

3. TRACKING THE SUN

In its initial comments, the Public Staff “notes that the Lawrence Berkeley National Lab (LBNL) estimates that over the 2017-2018 period, residential and small nonresidential solar installations dropped *across the country* by a median of \$0.2 per watt, which was consistent with trends over the prior five years.”¹¹ The Public Staff goes on to state that these estimates “point to continued declines in solar installation costs across the country, including in North Carolina, although at a slower rate than from 2009-2014.”¹² What the Public Staff fails to point out is that, as shown in **Figure 1**, despite price decreases both nationally and in North Carolina, the Tracking the Sun report determines that the price of residential solar in North Carolina remains more expensive than in other states, in no small part due to regulatory uncertainty leading to slower consumer adoption than in neighboring states such as South Carolina.

¹¹ Public Staff’s Initial Comments, p. 2 (internal footnotes omitted) (emphasis added). NCSEA notes that it provided the North Carolina-specific data that was analyzed in the Tracking the Sun report. Galen Barbose and Naim Darghouth, *Tracking the Sun: Pricing and Design Trends for Distributed Photovoltaic Systems in the United States*, Appendix A, Lawrence Berkeley National Laboratory (October 2019) (“Tracking the Sun”).

¹² Public Staff’s Initial Comments, p. 2.

Figure 1. Residential Solar Pricing in North Carolina Relative to Other States¹³



Notes: A number of states contained within the larger data sample were omitted from the multi-variate regression analysis if missing one or more key data fields

Figure 33. State Fixed-Effects from Regression Analysis Compared to Descriptive Analysis

4. THE NEED FOR CERTAINTY

Finally, NCSEA is greatly concerned by the uncertainty of the rebate values under the Public Staff’s proposal. The Public Staff proposes that Duke further reduce the residential and commercial rebate amounts in order to cover any increased administrative costs for the Public Staff’s proposed lottery program.¹⁴ The Public Staff also proposes to reduce the nonprofit rebate amount in order to cover any increased marketing expenses.¹⁵ However, the vague nature of the Public Staff’s proposal to reduce rebate amounts is extremely problematic. As an initial matter, the uncertainty of the rebate values is likely to prove problematic for both solar installers and customers, as the value of a rebate may be unclear or difficult to calculate. Furthermore, the Public Staff’s proposed use of estimated costs is problematic; what happens if Duke’s administrative costs are later found to be unreasonable or imprudent, or otherwise disallowed in a cost recovery proceeding? Will

¹³ Tracking the Sun, Figure 33, p. 47.

¹⁴ Public Staff’s Initial Comments, p. 4.

¹⁵ *Id.* at 3-4.

the amount of the disallowance be rolled into a new rebate program? NCSEA believes that these unanswered questions leave the Public Staff's unnecessarily complicated proposal with an unacceptable amount of regulatory uncertainty.

III. THE DANGERS OF A LOTTERY

Author Fran Lebowitz is generally reputed to have said "I figure you have the same chance of winning the lottery whether you play or not." Again, the Public Staff appears uninterested in making the rebate available to more customers. Instead, the Public Staff seeks to find a more equitable method of denying rebates to customers who are interested in adopting rooftop solar.¹⁶

In their initial comments, the Public Staff proposes that, rather than having two enrollment windows per year, "a more appropriate solution at this time would be for Duke to change the way it awards solar rebates entirely, moving from a first-come-first-served program to a lottery program."¹⁷ The Public Staff asserts that such a change would make the program more equitable,¹⁸ but utterly fails to explain how or why this is more equitable than a first-come, first-served program. For the reasons set forth below, NCSEA and its members believe that a lottery system would actually be more unfair for customers by doing away with what limited control they currently have over whether they will receive a rebate.

First, moving to a lottery system removes what little control customers have over the rebate process. The Public Staff notes that it "has raised the lottery approach with solar developers"¹⁹ but fails to note how solar installers reacted to the proposal. When NCSEA

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 4-5.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

raised the Public Staff's lottery proposal with its members, solar installers were universally opposed to the measure. Under the current first-come, first-served paradigm, solar installers can work with their customers to ensure they have the greatest chance of receiving a rebate. For this reason, several of NCSEA's members are willing to bear the additional financial risk of offering to pay part of, or refund the value of, the rebate to a customer if they are unsuccessful in their application. By increasing the risk by moving from a first-come, first-served system to a lottery system, it may become untenable for installers to continue offering this benefit, causing prices to rise for all rooftop solar adopters. NCSEA and its members believe that moving to a lottery system will not drive customer participation or increase rooftop solar adoption.

Second, the fact remains that technological problems with Duke's website and back-end software led to a flawed enrollment period in 2020, which led to over 200 consumer statements of position being filed with the Commission. Adding a new technological wrinkle – requiring Duke to utilize a lottery – would only increase the likelihood of further technological issues, and with no benefit. Simply put, NCSEA's members and their customers are not confident that Duke can implement a lottery system, especially in the time before NCSEA's proposed October 2020 opening for applications for the 2021 rebate program. Should the Commission agree with the Public Staff's proposal to utilize a lottery system, NCSEA respectfully requests that the Commission (1) direct Duke to start utilizing such a system not for the initial 2021 application period, but for the mid-year 2021 or 2022 application windows and (2) direct Duke to file, and for the Commission to approve, its plan for how such a lottery system would be implemented, including the costs associated with its implementation to demonstrate that the lottery

approach costs less to implement than the current first-come, first-served system with which installers and customers are already familiar.

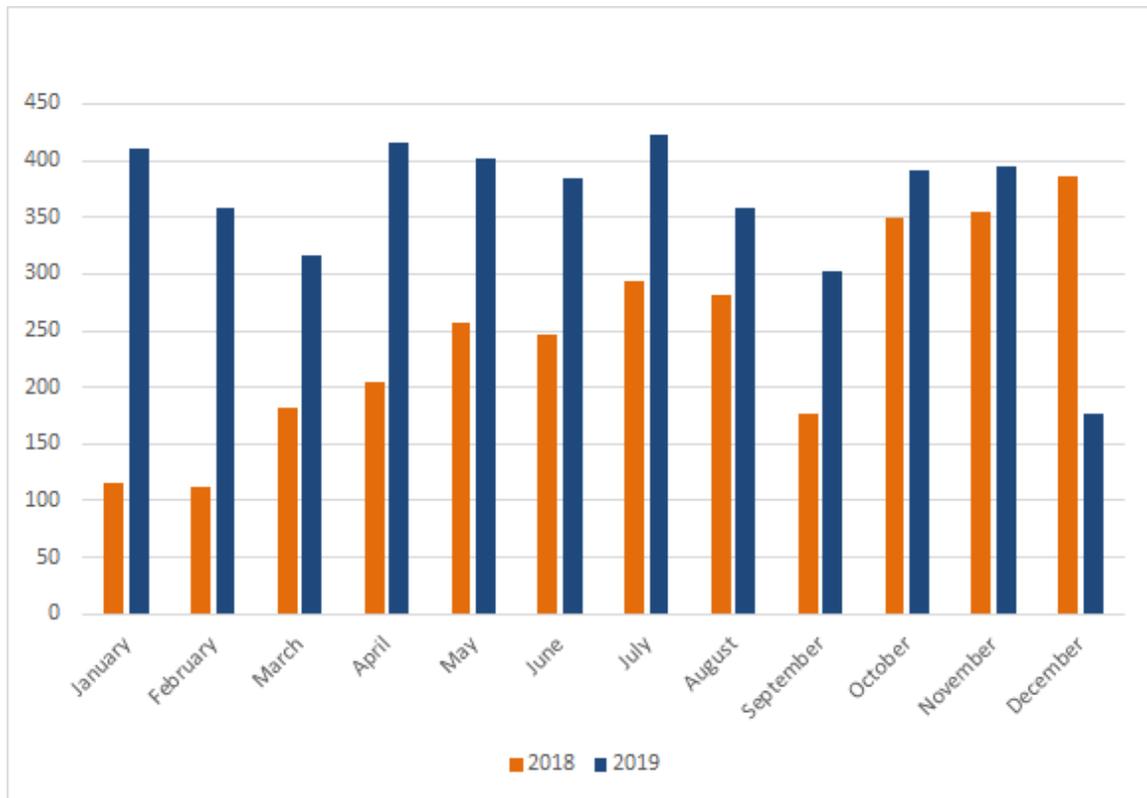
IV. ENROLLMENT WINDOWS

In its Annual Report, Duke proposed moving from a single application window per year, opening in January, to two application windows per year, opening in January and July. In its initial comments, NCSEA did not object to two application windows per year but, owing to the realities of the COVID-19 pandemic, requested that the application window for the 2021 rebate program open in October 2020. SACE's Initial Comments also supported opening the 2021 rebate program in October 2020. The Public Staff recommends maintaining a single application period, but utilizing a lottery instead of a first-come, first-served system.

While NCSEA does not oppose the Public Staff's desire to have a single enrollment window per year, their argument is belied by the data. The Public Staff posits its expectation that, under biennial enrollment windows, "the solar industry would still experience a drop off of installations in the period between when the subscription limit is reached and the beginning of the 90-day window for the next enrollment period – similar to the current drop off experienced today."²⁰ However, the drop-off of installations discussed by the Public Staff simply is not supported by evidence. As shown below in **Figure 2**, in 2019 the month with the greatest number of interconnections was July, as far away from the solar rebate application window as possible. In fact, the month with the lowest installations in 2019 was December, well within the 90-day window for the next enrollment period.

²⁰ *Id.* at 4.

Figure 2. Net Metering Interconnections by Month²¹



V. CONCLUSION

The recommendations contained in the Public Staff’s Initial Comments do not appear to be based on conversations with ratepayers, potential rooftop solar adopters, or rooftop solar installers. More troubling is that some of the Public Staff’s proposals do not appear to be supported by the evidence. In a recent hearing, Commissioner Clodfelter wondered “whether we made the wrong bet in North Carolina by betting so heavily on grid connected renewable energy rather than taking the California route and putting the load --

²¹ Compiled from DEC and DEP’s small generator interconnection reports filed in Docket No. E-100, Sub 113B.

putting the resource right where the load is on the rooftop.”²² The proposals contained in NCSEA’s Initial Comments would expand the amount of rooftop solar in North Carolina, without increasing costs to ratepayers.

The Public Staff is supposed to represent the using and consuming public, but has acknowledged that the interests of its clients and the general public interest may diverge.²³ The using and consuming public has consistently supported the expansion of rooftop solar in North Carolina,²⁴ and NCSEA’s Initial Comments propose a way to expand access to rooftop solar without increasing the cost of the rooftop solar rebate program. In contrast, the Public Staff’s Initial Comments would reduce the amount of rooftop solar installed under the rebate program without decreasing costs. NCSEA respectfully requests that the Commission adopt the recommendations contained in NCSEA’s Initial Comments and reject those contained in the Public Staff’s Initial Comments.

²² *Transcript of Testimony Heard in Raleigh on December 18, 2019, Volume 3*, p. 69, Docket No. EMP-105, Sub 0 (January 8, 2020).

²³ *Transcript of Testimony Heard in Raleigh on December 19, 2019, Volume 4*, p. 40, Docket No. EMP-105, Sub 0 (January 9, 2020):

Q. So would you agree that in this proceeding we have an instance where the interest of the Using and Consuming Public who the Public Staff is charged to represent and the interest of the general public in terms of clean energy, carbon reductions, and other things may diverge?

A. (Dustin Metz) Yes, they may diverge.

²⁴ See, John Downey, *Poll Sheds Light on How NC Voters View Renewable Energy, Climate Change and Other Hot-Button Topics*, CHARLOTTE BUSINESS JOURNAL (April 12, 2019), <https://www.bizjournals.com/charlotte/news/2019/04/12/poll-sheds-light-on-how-nc-voters-view-renewable.html>. See also, *Emerging Energy Issues and North Carolina Trends*, Conservatives for Clean Energy and Strategic Partners Solutions, LLC (April 3, 2019), available at <https://www.cleanenergyconservatives.com/wp-content/uploads/2019/02/Clean-Energy-March-Presentation-Final.pdf>.

Respectfully submitted, this the 6th day of July, 2020.

/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 Reply 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 6th day of July, 2020.

/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