NOW COME Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke Energy" or the "Company"), and hereby submit these Initial Comments pursuant to the North Carolina Utilities Commission's (the "Commission") August 13, 2015 Order Requesting Comments, which sought comments regarding North Carolina Sustainable Energy Association's ("NCSEA") Request for Declaratory Ruling.

INTRODUCTION

NCSEA has requested that the Commission consider whether a new topping cycle combined heat and power ("topping cycle CHP") system, including such a system that uses nonrenewable energy resources, constitutes an "energy efficiency measure" for purposes of N.C. Gen. Stat. § 62-133.9 and Commission Rule R8-67. Duke Energy believes that it is reasonable for the Commission to rule on this question; however, Duke Energy disagrees with NCSEA's position on what components of CHP should qualify as energy efficiency. Therefore, the Company
requests that the Commission find that a topping cycle CHP system may be found to constitute an energy efficiency measure under N.C. Gen. Stat. § 62-133.9 or Commission Rule R8-67 only to the extent that it uses waste heat to produce electricity or useful, measurable thermal or mechanical energy. In the case that the Commission agrees with NCSEA’s position, the Company believes that the Commission should do so only after including certain measures described more fully below that would prevent any possible “gaming the system” or circumvention of the energy efficiency-based intent of Commission Rule R8-67.

INITIAL COMMENTS

Duke Energy recognizes the potential value that can be realized through topping cycle CHP systems. This value and the ancillary benefits of topping cycle CHP, however, do not hinge on topping cycle CHP systems being categorized as energy efficiency measures. Topping cycle CHP systems located close to load resources can result in carbon dioxide reduction, improved reliability, and a reduction in transmission and distribution losses.

The Company’s reading of N.C. Gen. Stat. § 62-133.9 is that combined heat and power systems use waste heat to generate electricity. Specifically, pursuant to N.C. Gen. Stat. § 62-133.8(a), a “combined heat and power system” is defined as “a system that uses waste heat to produce electricity or useful, measurable, thermal or mechanical energy at a retail electric customer’s facility.” N.C. Gen. Stat. § 62-133.9, which governs the cost recovery for demand-side management and energy efficiency measures, expressly states in subsection (a) that “[t]he definitions set out in
G.S. 62-133.8 apply to this section.” Thus, for the purposes of our analysis, the combined heat and power system definition contained in § 62-133.8 is controlling.

Additionally, N.C. Gen. Stat. § 62-133.8(a) defines “energy efficiency measure” as follows:

(4) “Energy efficiency measure” means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. “Energy efficiency measure” includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. “Energy efficiency measure” does not include demand-side management.

Further, Commission Rule R8-68, which governs approval of energy efficiency incentive programs, states that all terms used in that rule shall be defined as they are in Rule R8-67(a). Pursuant to Commission Rule R8-67(a)(3), an “energy efficiency measure” is more particularly defined as follows:

(3) “Energy efficiency measure” means an equipment, physical, or program change that when implemented results in less use of energy to perform the same function or provide the same level of service. “Energy efficiency measure” does not include demand-side management. It includes energy produced from a combined heat and power system that uses nonrenewable resources to the extent the system:
   (i) Uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer’s facility; and
   (ii) Results in less energy used to perform the same function or provide the same level of service at a retail electric customer’s facility.

Commission Rule R8-67(a)(3).

Topping cycle CHP systems do not use waste heat to produce electricity. As a result, based on that reading, DEC and DEP do not consider the electricity from the primary component of topping cycle CHP systems as an “energy efficiency measure"
to be included in their respective non-residential energy efficiency incentive programs. Therefore, Duke Energy requests that the Commission find that topping cycle CHP systems do not qualify as energy efficiency measures under N.C. Gen. Stat. § 62-133.8(a)(4), except to the extent that they use waste heat to produce electricity or useful, measurable thermal or mechanical energy.

That said, if the Commission considers NCSEA's proposal, it should not do so without implementing certain requirements that will safeguard against customers installing inefficient systems, yet still attempting to claim them as energy efficiency measures per Commission Rule R8-67. The Revised Regulations Governing Small Power Production and Cogeneration Facilities, issued by the Federal Energy Regulatory Commission, provide that a new qualifying cogeneration facility must show:

1. The thermal energy output of the cogeneration facility is used in a productive and beneficial manner; and

2. The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

3. Fundamental Use Test. For purposes of satisfying [paragraph (2) above], the electrical, thermal, chemical and mechanical output of the cogeneration facility will be considered used fundamentally for industrial, commercial, or institutional purposes and not intended fundamentally for sale to an electric utility if at least 50 percent of the aggregate of such output, on an annual basis, is used for industrial, commercial, residential or institutional purposes. In addition, applicants for facilities that do not meet this safe harbor standard may present evidence to the Commission that the facilities should nevertheless be certified given state laws applicable to sales of electric
energy or unique technological, efficiency, economic, and variable thermal energy requirements.

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION 18 CFR Parts 131 and 292 (Docket No. RM05-36-000; Order No. 671, Issued on February 2, 2006, at p. 72).

Although Duke Energy does not believe that topping cycle CHP systems qualify as energy efficiency measures under N.C. Gen. Stat. § 61-133.8(a)(4), if the Commission determines otherwise, then Duke Energy recommends that the Commission prevent “gaming of the system” by implementing language similar to the FERC’s revised rules on cogeneration. Specifically, if all the net energy from topping cycle CHP systems is allowed to qualify as energy efficiency, these systems should meet the following requirements:

(1) the standard efficiency of a topping cycle CHP system must be greater than 60 percent to ensure that the system is developed in the optimum manner. This would help prevent customers from installing a system that is extremely inefficient and being able to claim that it nevertheless is an energy efficiency measure and eligible for an incentive under a utility program; and

(2) the system must be sized to not exceed the site’s electric load.

CONCLUSION

For all the foregoing reasons, Duke Energy respectfully supports NCSEA’s request of the Commission to evaluate whether topping cycle CHP systems should be considered an energy efficiency measure, and requests that the Commission find that topping cycle CHP systems do not qualify as energy efficiency measures under N.C. Gen. Stat. § 62-133.8(a)(4), except to the extent that they use waste heat to produce electricity or useful, measurable thermal or mechanical energy, or should the
Commission determine otherwise, ensure that topping cycle CHP systems comply with the above recommendations.

This the 28th day of September 2015.

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ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC and DUKE ENERGY PROGRESS, LLC
NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and submits these Comments pursuant to the Commission’s August 13, 2015, Order Requesting Comments in the above-captioned docket.

1. Beginning with a filing on June 1, 2015, the North Carolina Sustainable Energy Association (NCSEA) has requested that the Commission issue a ruling under the Declaratory Judgment Act, and/or its rulemaking authority, to the effect that a new topping cycle combined heat and power (CHP) system could qualify as an “energy efficiency” (EE) measure for purposes of G.S. 62-133.9 and Commission Rule R8-67.

2. The Commission’s Order Requesting Comments sought comments from interested parties regarding the NCSEA petition. The Commission also asked for comments on whether NCSEA’s petition involves an actual dispute between a CHP operator and an electric utility, or is more in the nature of a request for an advisory opinion, and if the latter, whether the matter is justiciable under the Declaratory Judgment Act.
3. The Public Staff has no comment on whether the NCSEA petition is more appropriately considered a request for declaratory judgment or an advisory opinion; however, it does appear that the NCSEA petition could be addressed through a rulemaking proceeding. Regardless of the procedural path, the Public Staff believes it would be in the public interest to have a Commission ruling on the statutory interpretation question raised by NCSEA. The resolution of this question — whether all the electricity or useful measurable thermal or mechanical energy produced by a topping cycle CHP system qualifies as EE — would end some regulatory uncertainty. An end to this regulatory uncertainty would allow electric utilities to know the extent to which EE savings could be obtained from topping cycle CHP systems and would allow potential CHP operators to make business decisions on whether to deploy topping cycle CHP systems.

4. Topping cycle CHP consists of burning fuel first to generate electricity (the primary component), and then using the thermal energy left after that process for other useful purposes (the secondary component). On the merits of the NCSEA petition, the Public Staff believes that in a topping cycle CHP system, only the electricity or useful measurable thermal or mechanical energy produced from waste heat — the secondary component of the system — should be eligible for consideration as EE.

   a. The Public Staff’s position is consistent with the Nonresidential Smart Saver program approved by the Commission on October 29, 2013, in Docket No. E-7, Sub 1032. The tariff for that EE program, filed on December 31, 2013, provides in relevant part:
Electric generation, from either non-renewable or renewable sources, is not considered an energy efficiency measure and therefore does not qualify for payments; however, bottoming-cycle Combined Heat and Power (“CHP”) systems or the waste heat recovery components of topping-cycle CHP may be eligible for payments.

(Emphasis added.) Thus the Commission has already ruled once that only the secondary waste heat component of topping cycle CHP — and not energy from the primary component — qualifies as EE.

b. The statutory language is ambiguous as to what component(s) of topping cycle might qualify as EE. G.S. 62-133.8(a)(4) provides that “energy efficiency measure” includes energy produced from a CHP system that uses nonrenewable fuel. G.S. 62-133.8(a)(1) defines CHP as “a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer’s facility.” This could mean that all energy from a topping cycle CHP system qualifies as EE if any of the energy — even less than one percent — comes from the waste heat component. Or it could mean that only the electricity (or measurable useful mechanical or thermal energy) produced by the waste heat can qualify as EE.

c. An interpretation that allows only electricity or measurable useful energy from the waste heat component of topping cycle CHP would better conform to the policy and concept behind EE. The burning of nonrenewable fuel in the primary component of a topping cycle CHP at a utility customer’s site merely displaces the
burning of fuel at a utility generating station. There is no efficiency
gain in that primary component of topping cycle CHP. However, use
of the waste heat from the secondary component to produce
additional electricity or useful measurable energy is an efficiency
gain: no additional fuel is burned to obtain the additional power from
the secondary component of a CHP system. Therefore it is the
secondary (waste heat) component—and only that component—that
meets the definition of EE in G.S. 62-133.8(a)(4): “less energy used
to perform the same function” (or the same energy used to perform
a greater function).

5. The Public Staff understands that Duke Energy Progress,
LLC, and Duke Energy Carolinas, LLC, (DEP and DEC, respectively) share
a similar position with the Public Staff on the merits of the NCSEA. The
Public Staff further understands DEP and DEC are requesting that if the
Commission adopts the NCSEA interpretation that all components of
topping cycle qualify as EE, then the Commission should impose as
minimum requirements that such topping cycle CHP systems must be
greater than 60 percent efficient and must be sized not to exceed the site’s
electric load. The Public Staff supports this alternative position as proposed
by DEP and DEC.
Respectfully submitted this the 30th day of September, 2015.

PUBLIC STAFF
Christopher J. Ayers
Executive Director
Antoinette R. Wike
Chief Counsel

Electronically submitted
/s/ David T. Drooz
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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing PUBLIC STAFF COMMENTS on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 30th day of September, 2015.

Electronically submitted
/s/ David T. Drooz
September 30, 2015

VIA ELECTRONIC FILING

Mrs. Gail Mount, Chief Clerk
North Carolina Utilities Commission
430 North Salisbury Street
Raleigh, North Carolina 27603

Re:  Dominion North Carolina Power’s Position on NCSEA
Request for Declaratory Ruling
Docket No. E-100, Sub 113

Dear Mrs. Mount:

Virginia Electric and Power Company d/b/a Dominion North Carolina Power (“DNCPP” or the “Company”) has reviewed the June 1, 2015, Request for Declaratory Ruling filed by the North Carolina Sustainable Energy Association (“NCSEA”) in the above-captioned docket, as well as subsequent filings pertaining to NCSEA’s request, including the September 28, 2015, Joint Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (“Duke Comments”). The Company has also participated in informal discussions with counsel for the Duke companies and the Public Staff regarding the issues underlying NCSEA’s request. The Company generally supports the positions set forth in the Duke Comments, and, accordingly, is filing this letter in lieu of formal comments in this proceeding.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours,

/s/ E. Brett Breitschwerdt

cc: Service List
NCSEA’S REPLY COMMENTS

On 1 June 2015, the North Carolina Sustainable Energy Association (“NCSEA”) filed Requests for Declaratory Ruling on Meaning of N.C.G.S. § 62-133.9 and NCUC Rule R8-67 and, if Necessary and Appropriate, a Rulemaking to Clarify Rule R8-67 (“Requests”). The North Carolina Utilities Commission (“Commission”) thereafter issued an order providing interested parties to file comments by 30 September 2015 and reply comments by 15 October 2015. Various parties, identified below, filed comments by the 30 September deadline. NCSEA files these reply comments to respond to various arguments and assertions made in the parties’ comments.

In general, NCSEA would have the Commission note that the electric utilities and the Public Staff have two very different interpretations of the statutory language at issue, both of which selectively disregard key phraseology within the statutory language. NCSEA’s construction, on the other hand, takes all of the statutory language into account and thus yields no “surplusage” of language. Furthermore, the electric utilities and the Public Staff both appear to concede that NCSEA’s construction of the statute can be operationalized through rules — akin to federal rules that are already in place — such that the threat of “gaming” can be minimized if not eliminated completely.
I. **NCSEA Reply to DEC/DEP Joint Initial Comments**

On 28 September 2015, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") filed joint initial comments. Therein, DEC/DEP do not raise any jurisdictional objection to NCSEA’s requests; instead, DEC/DEP state that they “believe[] that it is reasonable for the Commission to rule on this question[].” *DEC/DEP Joint Initial Comments* at 1.

As to the merits, DEC/DEP argue that topping cycle CHP systems do not fall within the statutory definition of “energy efficiency measure.” Their argument boils down to the following two statements excerpted from their comments:

> The Company’s reading of N.C. Gen. Stat. § 62-133.9 is that combined heat and power systems use waste heat to generate electricity. Specifically, pursuant to N.C. Gen. Stat. § 62-133.8(a), a “combined heat and power system” is defined as “a system that uses waste heat to produce electricity or useful, measurable, thermal or mechanical energy at a retail electric customer’s facility.”

> Topping cycle CHP systems do not use waste heat to produce electricity. As a result, based on that reading, DEC and DEP do not consider the electricity from the primary component of topping cycle CHP systems as an “energy efficiency measure” to be included in their respective non-residential energy efficiency incentive programs.

*DEC/DEP Joint Initial Comments* at 2-4 (emphasis added).

DEC’s/DEP’s argument contains an obvious flaw from a statutory construction perspective. N.C. Gen. Stat. § 62-133.8 – which contains a number of statutory definitions applicable to N.C. Gen. Stat. § 62-133.9, the statute at issue – provides that "['c]ombined heat and power system’ means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric

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1 As Dominion North Carolina Power ("DNCP") has, by letter filing, essentially adopted DEC’s/DEP’s joint comments, this section serves as a reply to DNCP as well.
customer's facility." N.C. Gen. Stat. § 62-133.8(a)(1) (emphasis added). DEC/DEP effectively argue that the statutory clause following the disjunctive "or" in the definition of CHP (bolded above) should be read out of the statute. In other words, DEC/DEP argue that the statutory definition should be read to state: A CHP system is "a system that uses waste heat to produce electricity ... at a retail electric customer's facility." The Commission cannot sanction such a construction for the reasons set forth in Paragraph 35 of NCSEA's 1 June 2015 Requests.2

NCSEA, on the other hand, is proposing a construction of the statutory definition that recognizes the disjunctive "or" and does not create surplusage. In other words, NCSEA asserts the statute should be construed to state, in effect: A CHP system is "a system that uses waste heat [somewhere in its configuration] to produce electricity ... at a retail electric customer's facility" or "a system that uses waste heat [somewhere in its configuration] to produce ... useful, measurable thermal or mechanical energy at a retail electric customer's facility." As topping cycle CHP systems are unquestionably configured to use waste heat to produce useful, measurable thermal or mechanical energy, there should be no question that topping cycle CHP systems can qualify as energy efficiency measures. To the extent the Commission is concerned about "gaming," it should not address the concern by resorting to a tortured statutory interpretation; it

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2 As NCSEA set out in Paragraph 35 of its Requests, this Commission does not have unlimited power to construe a statute. See, e.g., State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 11, 220 S.E.2d 409, 412 (1975) ("An administrative agency has no power to promulgate rules and regulations which alter or add to the law it was set up to administer or which have the effect of substantive law."); see also, In re Town of Smithfield, 749 S.E.2d 293, 296 (N.C. Ct. App. 2013) (Where a party's interpretation would "give[e] to the statutory phraseology a distorted meaning at complete variance with the language used[,]" a court is "powerless to construe away [or create a] limitation just because [the court] feel[s] that the legislative purpose behind the requirement can be more fully achieved in its absence [or presence].")
should instead implement “Fundamental Use” and “Efficiency standard” rules in line with relevant Federal Energy Regulatory Commission (“FERC”) regulations mentioned by NCSEA and DEC/DEP in their earlier filings.\(^3\)

II. NCSEA REPLY TO PUBLIC STAFF COMMENTS

On 30 September 2015, the Public Staff filed comments. Therein, the Public Staff did not raise any jurisdictional objection to NCSEA’s requests; instead, the Public Staff stated that it “believes it would be in the public interest to have a Commission ruling on the statutory interpretation question raised by NCSBA.” Public Staff Comments at 2.

As to the merits, the Public Staff makes several assertions with which NCSEA disagrees. First, eschewing DEC’s/DEP’s must-use-waste-heat-to-generate-electricity approach, the Public Staff takes a different tack, asserting that the statute should be construed to require a component approach. Specifically, the Public Staff asserts that “only the electricity or useful measurable thermal or mechanical energy produced from waste heat -- the secondary component of the system -- should be eligible for consideration as EE.” Public Staff Comments at 2. The Public Staff argues, at least in part, that the Commission should implement such an approach because the statute is “ambiguous.” Id. at 3. NCSEA disagrees; NCSEA believes the statute is clear -- it says “system.” As NCSEA pointed out in footnote 7 of its 1 June 2015 Requests, both the Internal Revenue Code and the North Carolina Revenue Act also use the word “system” in the CHP context and neither adopts the Public Staff’s component approach. Nor do the FERC’s CHP regulations take the component approach being advocated by the Public

\(^3\) N.C. Gen. Stat. § 62-133.9(h) provides “[t]he Commission shall adopt rules to implement this section.” NCSEA’s 1 June 2015 Requests contain the relevant FERC rules at pages 22-23.
Staff. As with the North Carolina statute at issue, these laws are clear and use the word "system" to mean "system."

To support its component approach argument, the Public Staff asserts that “[t]he burning of nonrenewable fuel in the primary component of a topping cycle CHP at a utility customer’s site merely displaces the burning of fuel at a utility generating station. There is no efficiency gain in that primary component of topping cycle CHP.”

Public Staff Comments at 3-4. The Public Staff appears to be assuming that a large commercial or industrial customer interested in replacing two separate heat and power generators with a topping cycle CHP system will replace the existing power generator with a primary component that is of equal efficiency. NCSEA believes this is a poor assumption given technological advancements. A large commercial or industrial customer considering replacing older, less efficient, separate generators of heat and power most likely will seek out a more efficient primary component at the same time that it is investigating combining its heat and power generation into one system. Installation of a primary component that uses less energy to perform the same function unquestionably yields an efficiency gain, aside and apart from any waste heat efficiencies achieved. On this point, NCSEA would have the Commission note that, in their recently filed IRP updates, DEC and DEP acknowledge that replacement of two separate heat and power generators with a single CHP system can yield such efficiencies: “CHP incorporating a CT and heat recovery steam generator (HRSG) is more efficient than the conventional method of producing usable heat and power separately via a gas package boiler.” See, e.g., DEC’s North Carolina 2015 IRP Update Report, p. 11, Commission Docket No. E-100, Sub 141 (1 September 2015).
Next, the Public Staff erroneously asserts that "the Commission has already ruled once that only the secondary waste heat component of topping cycle CHP — and not energy from the primary component — qualifies as EE." Public Staff Comments at 3 (citing the Commission's 29 October 2013 order in Docket No. E-7, Sub 1032). In actuality, the Commission's 29 October 2013 order in Docket No. E-7, Sub 1032 contained no such ruling. With regard to CHP, the Commission's 29 October 2013 order simply ratified the parties' stipulated settlement agreement, which had been filed with the Commission on 19 August 2013. The stipulated settlement contained DEC's agreement to "clarify that its ... Non-Residential Smart-Saver Custom Program and Non-Residential Smart-Saver® Custom Energy Assessments Program do not exclude bottoming-cycling CHP or the waste heat recovery components of topping-cycle CHP" and, at the same time, DEC's agreement to continue discussing the extent to which topping cycle CHP qualifies as an energy efficiency measure regardless of the settled eligibility parameters of the two programs. Stipulation and Agreement, pp. 4, 7, Commission Docket No. E-7, Sub 1032 (19 August 2013); see Transcript of Testimony Heard June 3, 2014, Raleigh, pp. 125-126, Commission Docket No. E-7, Sub 1050 (6 June 2014) (testimony of Isaac Panzarella highlighting that topping cycle CHP's status as an energy efficiency measure continued to be discussed at the DEC Collaborative, which would have been unnecessary if the Commission had truly "ruled" in Docket E-7, Sub 1032 as the Public Staff asserts).

Ultimately, if the Commission construes the statute so as to implement the Public Staff's component approach, the Commission will have to violate the rules of statutory construction by creating surplusage (i.e., reading operative language out of the statute).4

4See footnote 2 supra.
N.C. Gen. Stat. § 62-133.8 provides in relevant part that "'Energy efficiency measure' includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources." If the General Assembly intended only the secondary waste heat component of topping cycle CHP to qualify as an energy efficiency measure, it would have been unnecessary to include this sentence because the fuel choice for the primary component (and whether it is renewable or not) would have been irrelevant. NCSEA's proffered construction does not make surplusage of this sentence. Under NCSEA’s proposed construction, this sentence sends a clear message that -- within the context of Senate Bill 3 -- replacement of existing, older, less efficient, separate generators of heat and power with a single more efficient CHP system -- even a system whose primary component is fueled by a fossil fuel, for example, natural gas -- can constitute an energy efficiency measure so long as the other statutory requirements (e.g., customer-sited and using less to perform the same) are met and so long as the system meets whatever FERC-like "Efficiency standard" and "Fundamental Use" test the Commission chooses to put in place under its express rulemaking authority.

III. NCSEA REPLY TO THE 60% EFFICIENCY FIGURE/SYSTEM SIZING PROPOSAL IN DEC/DEP JOINT INITIAL COMMENTS AND IN PUBLIC STAFF COMMENTS

The Public Staff comments that it:

understands DEP and DEC are requesting that if the Commission adopts the NCSEA interpretation that all components of topping cycle qualify as EE, then the Commission should impose as minimum requirements that such topping cycle CHP systems must be greater than 60% efficient and must be sized not to exceed the site’s load. The Public Staff supports this alternative position as proposed by DEP and DEC.

Public Staff Comments at 4.
If the Commission agrees with NCSEA's construction of the statute, the Commission should direct the commenting parties to (a) work to draft a proposed rule and (b) present a proposed rule to the Commission within 90 days. As the FERC regulations demonstrate, a workable rule is imminently achievable, but it is not as simple as saying a topping cycle CHP system has to be 60% efficient and must be sized not to exceed the site's load. For example, in response to the comments filed by DEC/DEP, NCSEA has already been informed by one engineer that

'[the] request for the PUC to issue the language sounds reasonable. ... The one caveat with request to the minimum efficiency requirement is that this efficiency level is not really achievable using wet biomass fuels, so perhaps add an exemption for systems operating on that fuel.

Similarly, a second engineer has indicated that

60% can be an issue for biomass (although not always), so the nuances of this value and how it is discussed should be understood while thinking to future use of the language in NC. ... Regarding the size of the CHP system in comparison to a site's electric load, the group may want to consider commenting on this issue. If there is a thermal load to be met, and that allows you to generate more power than needed at a facility while applying all the heat to a useful purpose, then this would be more efficient generation than a stand-alone power plant where the heat is wasted. ... [F]rom a common sense technical perspective, this power generation would provide efficiency benefits.

Given this type of initial feedback, NCSEA recommends that the Commission direct the commenting parties to draft and submit a proposed rule within 90 days, so that considerations such as those being raised by these two engineers can be discussed and taken into account as appropriate.
CONCLUSION

For the reasons set out herein, NCSEA continues to believe it appropriate for the Commission to clarify that

- A new topping cycle CHP system — including such a system that uses nonrenewable energy resources — that both (a) produces electricity or useful, measurable thermal or mechanical energy at a retail electric customer’s facility and (b) results in less energy being used to perform the same function or provide the same level of service at the retail electric customer’s facility constitutes an “energy efficiency measure” for purposes of N.C. Gen. Stat. § 62-133.9 and Commission Rule RS-67.

- It is inconsistent with the clear and unambiguous language of N.C. Gen. Stat. §§ 62-133.8 and 62-133.9 to recognize only the heat recovery component of a new topping cycle CHP system as an “energy efficiency measure.”

Respectfully submitted,

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Implement Session Law 2007-397

ORDER ON NCSEA’S REQUEST

BY THE COMMISSION: On June 1, 2015, the North Carolina Sustainable Energy Association (NCSEA) filed a Request for Declaratory Ruling on Meaning of N.C.G.S. 62-133.9 and NCUC Rule R8-67 and, if Necessary and Appropriate, a Rulemaking to Clarify NCUC Rule R8-67 (Request) in the above-captioned docket. In summary, NCSEA requests that the Commission issue a declaratory ruling that:

A new topping cycle combined heat and power (“CHP”) system - including such a system that uses nonrenewable energy resources - that both (a) produces electricity or useful, measureable thermal or mechanical energy at a retail electric customer’s facility and (b) results in less energy being used to perform the same function or provide the same level of service at the retail electric customer’s facility constitutes an “energy efficiency measure” for purposes of [G.S.] 62-133.9 and Commission Rule R8-67.

In addition, if necessary, NCSEA requests that the Commission issue a complimentary declaratory ruling that:

It is inconsistent with the clear and unambiguous language of [G.S.] 62-133.8 and 62-133.9 to recognize only the heat recovery component of a new topping cycle CHP system as an “energy efficiency measure.” [Emphasis in original.]

Finally, NCSEA requests that, in the event that one or both of the requested declaratory rulings are issued, the Commission initiate a rulemaking to make clarifying changes to Commission Rule R8-67.

On June 2, 2015, and on June 18, 2015, NCSEA filed a compilation of letters of support for NCSEA’s position from business and academic interests.

On August 13, 2015, the Chairman issued an Order Requesting Comments allowing all parties to file initial comments on or before September 30, 2015, and reply comments on or before October 15, 2015. In addition to requesting comments on NCSEA’s Request, the Chairman sought comment on whether an actual dispute exists between a CHP...
operator and an electric utility or whether NCSEA’s petition is more in the nature of an advisory opinion. If the latter, the Chairman sought comment on whether a controversy exists justiciable under the Declaratory Judgement Act.

On August 24, 2015, NCSEA filed its initial comments. On September 28, 2015, Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (collectively Duke), filed joint initial comments. On September 30, 2015, Dominion submitted a letter in lieu of formal comments generally supporting Duke’s comments. On September 30, 2015, the Public Staff – North Carolina Utilities Commission (Public Staff) filed initial comments.

On October 14, 2015, NCSEA filed reply comments.

REQUEST OF NCSEA

As outlined above, NCSEA seeks a ruling as to whether new topping cycle CHP systems constitute energy efficiency measures under G.S. 62-133.9 and Commission Rule R8-67. NCSEA claims jurisdiction under G.S. 62-60, contending that the Commission may exercise the powers under the Declaratory Judgment Act with respect to all subjects over which the Commission has jurisdiction.

NCSEA, through the testimony of Isaac Panzella, explains that CHP, also known as cogeneration, is an energy efficient approach to generating electricity and useful thermal energy from a single fuel source at the point of use. Panzella states that an on-site CHP system can provide both electricity and thermal energy at an efficiency of 75% versus the combined efficiency of the conventional method of providing electricity and thermal requirements via separate systems.

Panzella explains there are two types of CHP systems, a topping cycle CHP system and a bottoming cycle CHP system. In a topping cycle CHP system the fuel is first combusted in a prime mover, such as a gas turbine, for purposes of generating electricity. The thermal energy, or waste heat, that would otherwise be lost is recovered to provide process or space heating, cooling, and/or dehumidification. These systems are sized to meet a facility’s baseload thermal demand. In a bottoming cycle CHP system, also called a waste heat to power system, the waste heat, that is generated as part of an industrial process and that would normally be lost, is used to produce high-grade steam through a heat recovery process that feeds into a steam turbine to generate electricity.

Panzella indicates that North Carolina has 66 CHP systems totaling 1,540 MW of capacity, of which 62 are topping cycle systems. Further, there is great potential for CHP systems in North Carolina. ICF, International and Southeast Clean Energy Application Center (SE-CEAC) estimate approximately 6,428 MW of new topping cycle technical potential in North Carolina, with 4,667 MW in the industrial sector and 1,761 MW in the commercial sector.

NCSEA argues that topping cycle CHP meets the definition of energy efficiency.
Pursuant to the statute, "energy efficiency measure" means, in relevant part:

An equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources.

G.S. 62-133.8(a)(4). The phrase "combined heat and power system," as used in the statutory definition, is itself defined as "a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility." G.S. 62-133.8(a)(1).

NCSEA argues that read together, the statutes clearly and unambiguously state that "energy produced from a combined heat and power system that uses nonrenewable energy resources" is an energy efficiency measure. "Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must give it its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein." In re Town of Smithfield, 230 N.C. App 252, 749 S.E.2d 293, 296 (2013). Further, the relevant statutes do not state that energy produced from only the waste heat recovery component of a CHP system that uses nonrenewable energy resources is an energy efficiency measure. Nor do the relevant statutes state that a waste heat recovery component, standing alone and apart from a prime mover and a generator, shall constitute an entire CHP system. Instead, the relevant statutes refer to a "system," clearly meaning all the components of the system, including not only the waste heat recovery component but also the prime mover and generator components. This reading of the statute supports the argument that the entire topping cycle CHP system meets the definition of energy efficiency measure.

NCSEA posits that Duke's (and possibly the Public Staff's) current understanding(s) may be the result of a strict reading of a three-word phrase in the Commission's definition of "energy efficiency measure" in Commission Rule R8-67(a)(3). Commission Rule R8-67 contains the following administrative definition of "energy efficiency measure," in relevant part:

"Energy efficiency measure"... includes energy produced from a combined heat and power system that uses nonrenewable resources to the extent the system: (i) Uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility; and (ii) Results in less energy used to perform the same function or provide the same level of service at a retail electric customer's facility. Commission Rule R8-67(a)(3).

NCSEA states that the "to the extent" phrase included in the Commission's definition was merely intended to introduce the Commission's restatement of the two legislative prerequisites for a new CHP system to qualify as an energy efficiency measure and was intended to be read as "so long as."
In the event the Commission intended the "to the extent" phrase to limit an electric utility's ability to recognize more than the heat recovery component of a new topping cycle CHP system as an "energy efficiency measure," NCSEA contends that the Commission exceeded its delegated authority by effectively re-writing a clear and unambiguous statute to include a limitation that does not exist in the statute. See, e.g., State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 11, 220 S.E.2d 409, 412 (1975) ("An administrative agency has no power to promulgate rules and regulations which alter or add to the law it was set up to administer or which have the effect of substantive law."); see also, In re Town of Smithfield, 230 N.C. App. 252, 749 S.E.2d 293, 296 (2013) (Where a party's interpretation would "give[e] to the statutory phraseology a distorted meaning at complete variance with the language used[,]" a court is "powerless to construe away [or create a] limitation just because [the court] feel[s] that the legislative purpose behind the requirement can be more fully achieved in its absence [or presence]."). In such an event, NCSEA urges the Commission to revisit, pursuant to G.S. 62-31 and 62-80, and revise its earlier ruling promulgating the administrative definition.

Lastly, NCSEA argues that recognizing topping cycle CHP as an energy efficiency measure will accomplish several goals, such as to further enable the use of low-cost natural gas to advance the systemic efficiency of the electric suppliers' grids, confirm that electric suppliers have a powerful tool for use in attracting opt-out eligible customers to opt in, and further enable such systems to be strategically deployed to enhance the reliability and resiliency of the grid.

INITIAL COMMENTS OF THE PARTIES

NCSEA

On August 24, 2015, NCSEA filed initial comments addressing the jurisdictional question posed by the Chairman in the Order Requesting Comments dated August 13, 2015. NCSEA argued that although NCSEA contends that a justiciable controversy exists under the Declaratory Judgment Act, the Commission does have jurisdiction under its quasi-legislative authority.

Joint Comments of DEC and DEP

As to the jurisdictional issue, Duke finds it reasonable for the Commission to rule on this question. Duke disagrees with NCSEA’s position on what components of a CHP system should qualify as energy efficiency and requests that the Commission find that a topping cycle CHP system may be found to constitute an energy efficiency measure under G.S. 62-133.9 or Commission Rule R8-67 only to the extent that it uses waste heat to produce electricity or useful, measurable thermal or mechanical energy. If the Commission agrees with NCSEA’s interpretation of the statute, Duke requests that the Commission institute certain requirements to prevent gaming of the system.
Duke opines that the proper reading of G.S. 62-133.9 is that CHP systems eligible as energy efficiency measures are only those that use waste heat to generate electricity. Specifically, pursuant to G.S. 62-133.8(a), a "combined heat and power system" is defined as "a system that uses waste heat to produce electricity or useful, measurable, thermal or mechanical energy at a retail electric customer's facility." Section 62-133.9, which governs the cost recovery for demand-side management and energy efficiency measures, expressly states in subsection (a) that "[t]he definitions set out in G.S. 62-133.8 apply to this section." Thus, the combined heat and power system definition contained in G.S. 62-133.8 is controlling. Section 62-133.8(a) defines "energy efficiency measure" as follows:

(4) "Energy efficiency measure" means an equipment, physical, or program change implemented after January 1, 2007, that results in less energy used to perform the same function. "Energy efficiency measure" includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. "Energy efficiency measure" does not include demand-side management.

Further, Commission Rule R8-68, which governs approval of energy efficiency incentive programs, states that all terms used in that rule shall be defined as they are in Rule R8-67(a). Pursuant to Commission Rule R8-67(a)(3), an "energy efficiency measure" is more particularly defined as follows:

(3) "Energy efficiency measure" means an equipment, physical, or program change that when implemented results in less use of energy to perform the same function or provide the same level of service. "Energy efficiency measure" does not include demand-side management. It includes energy produced from a combined heat and power system that uses nonrenewable resources to the extent the system:

(i) Uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility; and

(ii) Results in less energy used to perform the same function or provide the same level of service at a retail electric customer's facility.

Commission Rule R8-67(a)(3).

Duke argues that topping cycle CHP systems do not use waste heat to produce electricity. As a result, based on that reading, Duke contends that the electricity from the primary component of a topping cycle CHP system is not an "energy efficiency measure" to be included in Duke's respective non-residential energy efficiency incentive programs. Therefore, Duke requests that the Commission find that topping cycle CHP systems do not qualify as energy efficiency measures under G.S. 62-133.8(a)(4), except to the extent that they use waste heat to produce electricity or useful, measurable thermal or mechanical energy.
Duke argues that if the Commission determines that topping cycle CHP systems qualify as energy efficiency measures under G.S. 62-133.8(a)(4), then Duke recommends that the Commission prevent “gaming of the system” by implementing language similar to the FERC’s revised rules on cogeneration. Specifically, if all of the net energy from topping cycle CHP systems is allowed to qualify as energy efficiency, these systems should meet the following requirements:

1. the standard efficiency of a topping cycle CHP system must be greater than 60 percent to ensure that the system is developed in the optimum manner. This would help prevent customers from installing a system that is extremely inefficient and being able to claim that it nevertheless is an energy efficiency measure and eligible for an incentive under a utility program; and

2. the system must be sized to not exceed the site’s electric load.

Public Staff

The Public Staff states that it has no comment on whether NCSEA’s petition is more appropriately considered a request for declaratory judgment or an advisory opinion. The Public Staff opines that the petition can be addressed through a rulemaking proceeding and states that it would be in the public interest for the Commission to rule on NCSEA’s request as it would end some regulatory uncertainty.

The Public Staff explains that “topping cycle CHP consists of burning fuel first to generate electricity (the primary component), and then using the thermal energy left after that process for other useful purposes (the secondary component).” Based upon how topping cycle CHP works, the Public Staff opines that in a topping cycle CHP system, only the electricity or useful measurable thermal or mechanical energy produced from waste heat, the secondary component of the system, should be eligible for consideration as energy efficiency.

The Public Staff indicates that this position is consistent with the Commission’s October 29, 2013 Order in the Nonresidential Smart Saver docket, Docket No. E-7, Sub 1032, in which the Commission held:

Electric generation, from either non-renewable or renewable sources, is not considered an energy efficiency measure and therefore does not qualify for payments; however, bottoming-cycle Combined Heat and Power (“CHP”) systems or the waste heat recovery components of topping-cycle CHP may be eligible for payments.

The Public Staff further states that the statutory language is ambiguous as to what components of a topping cycle CHP system might qualify as energy efficiency. Two possible interpretations of the statutory language exist, either as allowing all energy from a topping cycle CHP system to qualify as energy efficiency even if less than one percent comes from waste heat, or as allowing only the electricity (or measurable useful
mechanical or thermal energy) produced by the waste heat to qualify as energy efficiency. The Public Staff supports the latter interpretation that only allows electricity or measurable useful energy from the waste heat component of a topping cycle CHP to qualify for energy efficiency. The Public Staff states the burning of nonrenewable fuel in the primary component of a topping cycle CHP at a utility customer’s site merely displaces the burning of fuel at a utility generating station. There is no efficiency gain in that primary component of topping cycle CHP. However, use of the waste heat from the secondary component to produce additional electricity or useful measurable energy is an efficiency gain: no additional fuel is burned to obtain the additional power from the secondary component of a CHP system. Therefore, it is the secondary (waste heat) component – and only that component – that meets the definition of energy efficiency in G.S. 62-133.8(a)(4): “less energy used to perform the same function.” Lastly, the Public Staff states that if the Commission adopts NCSEA’s interpretation, then the Commission should impose as minimum requirements that such topping cycle CHP systems must be greater than 60 percent efficient and must be sized not to exceed the site’s electric load, as requested by Duke.

REPLY COMMENTS

On October 14, 2015, NCSEA filed reply comments. NCSEA argues that even though the electric utilities and the Public Staff have two very different interpretations of the statutory language at issue, both selectively disregard key phrases within the statutory language. NCSEA’s construction, on the other hand, takes all of the statutory language into account and, thus, yields no “surplusage” of language. NCSEA argues that the electric utilities and the Public Staff both appear to concede that NCSEA’s construction of the statute can be operationalized through rules similar to the federal rules already in place to reduce or eliminate the threat of “gaming.”

NCSEA first responds to Duke’s comments. NCSEA states that Duke’s argument boils down to the following two statements excerpted from their comments:

The Company’s reading of G.S. 62-133.9 is that combined heat and power systems use waste heat to generate electricity. Specifically, pursuant to G.S. 62-133.8(a), a “combined heat and power system” is defined as “a system that uses waste heat to produce electricity or useful, measurable, thermal or mechanical energy at a retail electric customer’s facility.”

Topping cycle CHP systems do not use waste heat to produce electricity. As a result, based on that reading, DEC and DEP do not consider the electricity from the primary component of topping cycle CHP systems as an “energy efficiency measure” to be included in their respective non-residential energy efficiency incentive programs.

NCSEA states that Duke’s argument is flawed in that G.S. 62-133.8(a)(1) provides that “[c]ombined heat and power system means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric
customer’s facility.” (Emphasis added.) NCSEA argues that Duke’s argument ignores the phrase “or useful, measurable thermal or mechanical energy.”

NCSEA’s construction of the statutory definition recognizes the disjunctive “or” and does not create surplusage. In other words, NCSEA asserts the statute should be construed to state, in effect: A CHP system is “a system that uses waste heat [somewhere in its configuration] to produce electricity ... at a retail electric customer’s facility” or “a system that uses waste heat [somewhere in its configuration] to produce ... useful, measurable thermal or mechanical energy at a retail electric customer’s facility.” NCSEA concludes that because topping cycle CHP systems are unquestionably configured to use waste heat to produce useful, measurable thermal or mechanical energy, there should be no question that topping cycle CHP systems can qualify as energy efficiency measures.

NCSEA next responds to the Public Staff’s comments. NCSEA argues that the Public Staff takes a different tack from Duke, asserting that the statute should be construed to require a component approach. Specifically, the Public Staff asserts that “only the electricity or useful measurable thermal or mechanical energy produced from waste heat - the secondary component of the system - should be eligible for consideration as EE[.]” The Public Staff argues, at least in part, that the Commission should implement such an approach because the statute is “ambiguous.” NCSEA disagrees that the statute is ambiguous. NCSEA argues that the statute is clear and uses the word “system,” not “component.” NCSEA states that FERC, the Internal Revenue Code and the North Carolina Revenue Code all use the word “system” in the CHP context as opposed to the Public Staff’s component approach.

NCSEA states that in support of its interpretation of the statute, the Public Staff asserts that “[t]he burning of nonrenewable fuel in the primary component of a topping cycle CHP at a utility customer’s site merely displaces the burning of fuel at a utility generating station. There is no efficiency gain in that primary component of topping cycle CHP.” NCSEA argues that the Public Staff appears to be assuming that a large commercial or industrial customer interested in replacing two separate heat and power generators with a topping cycle CHP system will replace the existing power generator with a primary component that is of equal efficiency. NCSEA believes this is a poor assumption given technological advancements. A large commercial or industrial customer considering replacing older, less efficient, separate generators of heat and power most likely will seek out a more efficient primary component at the same time that it is investigating combining its heat and power generation into one system. Installation of a primary component that uses less energy to perform the same function unquestionably yields an efficiency gain, aside and apart from any waste heat efficiencies achieved. On this point, NCSEA would have the Commission note that, in their recently filed IRP updates, DEC and DEP acknowledge that replacement of two separate heat and power generators with a single CHP system can yield such efficiencies: “CHP incorporating a CT and heat recovery steam generator (HRSG) is more efficient than the conventional method of producing usable heat and power separately via a gas package boiler.”
NCSEA disagrees with the Public Staff’s assertion that “the Commission has already ruled once that only the secondary waste heat component of topping cycle CHP and not energy from the primary component - qualifies as EE.” NCSEA argues that the Commission’s October 29, 2013 order merely ratified the parties’ stipulated settlement agreement in the case. The stipulated settlement contained DEC’s agreement to “clarify that its … Non-Residential Smart-Saver Custom Program and Non-Residential Smart-Saver® Custom Energy Assessments Program do not exclude bottoming-cycling CHP or the waste heat recovery components of topping-cycle CHP” and, at the same time, DEC’s agreement to continue discussing the extent to which topping cycle CHP qualifies as an energy efficiency measure regardless of the settled eligibility parameters of the two programs.

NCSEA states that if the Commission agrees with the Public Staff’s component approach, the Commission will violate the rules of statutory construction by creating surplusage (i.e., reading operative language out of the statute). NCSEA clarifies that G.S. 62-133.8 provides, in relevant part, that “‘Energy efficiency measure’ includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources.” If the General Assembly intended only the secondary waste heat component of topping cycle CHP to qualify as an energy efficiency measure, it would have been unnecessary to include this sentence because the fuel choice for the primary component (and whether it is renewable or not) would have been irrelevant. NCSEA’s proffered construction does not make surplusage of this sentence. Under NCSEA’s proposed construction, this sentence sends a clear message that, within the context of Senate Bill 3, replacement of existing, older, less efficient, separate generators of heat and power with a single more efficient CHP system, even a system whose primary component is fueled by a fossil fuel, for example, natural gas can constitute an energy efficiency measure so long as the other statutory requirements (e.g., customer-sited and using less to perform the same) are met and so long as the system meets whatever FERC-like “Efficiency standard” and “Fundamental Use” test the Commission chooses to put in place under its express rulemaking authority to avoid gaming.

DISCUSSION AND CONCLUSIONS

None of the parties disagree that the Commission has jurisdiction under its rulemaking authority to issue a ruling in this matter. The Commission finds it has jurisdiction in this matter pursuant to its rulemaking authority.

As to NCSEA’s request, the Commission has reviewed the submissions of the parties and is not persuaded by NCSEA’s arguments. The Commission agrees with Duke and the Public Staff that only the electricity or useful measurable thermal or mechanical energy produced from waste heat from a topping cycle CHP should be considered an energy efficiency measure pursuant to the statute. The statutory definition of combined heat and power system is clear that the electricity or useful measurable thermal or mechanical energy must be produced from waste heat. G.S. 133.8(a)(1).
NCSEA argues that if the Commission reads the statute to not include the electricity not created by waste heat in a topping cycle CHP system, the Commission is violating the rules of statutory construction by creating surplusage. NCSEA argues that its interpretation of the statute does not create surplusage in the definition of energy efficiency measure. Pursuant to the statutory definition, energy efficiency measure “includes, but is not limited to, energy produced from a combined heat and power system that uses no renewable energy resources.” G.S. 133.8(a)(4). NCSEA argues that if the General Assembly intended only energy derived from the waste heat of a topping cycle CHP system to qualify as an energy efficiency measure, this sentence would have been unnecessary and surplusage. The Commission disagrees. Statutory provisions must be read “in para materia.” State ex rel. Hunt v. North Carolina Reinsurance Facility, 302 N.C. 274, 288, 275 S.E.2d 399, 405 (1981). The Commission, in reading the statute as a whole, finds that this sentence in the definition of energy efficiency measure was inserted to clarify that energy from a CHP being used as an energy efficiency measure does not need to use waste heat derived from a renewable energy resource, as opposed to language in other portions of the statute that discuss waste heat from a renewable energy resource. For example, the definition of a renewable energy resource includes waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility. G.S. 133.8(a)(8). Further, under G.S. 133.8(b)(2)(b), an electric public utility may meet its renewable energy and energy efficiency standards (REPS) by using a renewable energy resource to generate power other than electric power from waste heat derived from the combustion of fossil fuel. The language within the definition of energy efficiency measure is clarifying that the waste heat from a CHP system does not need to derive from a renewable energy resource for the electricity or useful measurable thermal or mechanical energy produced from it to qualify as an energy efficiency measure. Therefore, under the Commission's interpretation of the statute regarding topping cycle CHP systems, the sentence in the definition of energy efficiency measure is not surplusage.

The definition of CHP system is clear that for purposes of Senate Bill 3, and for purposes of being deemed an energy efficiency measure, the electricity or useful, measurable thermal or mechanical energy must be produced from waste heat. In a bottoming cycle CHP, the waste heat from an industrial process is used to create electricity and potentially thermal energy. In a topping cycle CHP system, the electricity is not produced from waste heat, but rather is produced from a resource like natural gas, which also produces waste heat that is used to produce thermal or mechanical energy. It is only the secondary thermal or mechanical energy that is produced from the waste heat that qualifies as an energy efficiency measure under the statute.

NCSEA argues that if the Commission solely relies upon the language of Commission Rule R8-67(a)(3), then the Commission has erred in adding requirements to the statute and creating a limit that does not exist in the statute. The Commission's decision in this matter relies on its interpretation of the statute, thus making responding to this argument unnecessary. However, the Commission will note that it is NCSEA, not the Commission, which seems to be adding words to the statute to fit its interpretation of it. In its reply comments, NCSEA states that the statute should be construed to state a
CHP system is a system that uses waste heat somewhere in its configuration to produce electricity. The words "somewhere in its configuration" is not language within the statute.

IT IS, THEREFORE, ORDERED as follows:

1. That a topping cycle CHP system does not constitute an energy efficiency measure under G.S. 62-133.8(a)(4), except to the extent that the secondary component, the waste heat component is used and meets the definition of energy efficiency measure in G.S. 62-133.8(a)(4); and

2. That the Commission has jurisdiction under its rulemaking authority to determine and clarify this issue.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of June, 2016.

NORTH CAROLINA UTILITIES COMMISSION

Paige J. Morris, Deputy Clerk
NOW COMES the North Carolina Sustainable Energy Association ("NCSEA"), pursuant to N.C. Gen. Stat. § 62-90 and Rule 18 of the North Carolina Rules of Appellate Procedure, and gives Notice of Appeal to the North Carolina Court of Appeals from the 6 June 2016 Order on NCSEA's Request ("Order") issued by the North Carolina Utilities Commission ("Commission") in the above-captioned proceeding. For purposes of N.C. Gen. Stat. § 62-90(a), the Order is unlawful, unjust, unreasonable and unwarranted for the reasons set out below and, as such, the Order should be reversed or remanded pursuant to N.C. Gen. Stat. § 62-94(b).

EXCEPTIONS

NCSEA specifically sets forth the following ground(s) on which it considers the Order to be unlawful, unjust, unreasonable and unwarranted. In the Order, the Commission stated, "The Commission’s decision in this matter relies on its interpretation of the statute ... ." Order at p. 10. Accordingly, the focus of this appeal is on the Commission’s interpretation of the statutory language set out in N.C. Gen. Stat. § 62-133.8(a)(1). N.C. Gen. Stat. § 62-133.8(a)(1) provides:

"Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer’s facility.
The Commission erroneously interpreted the statute. The Commission concluded that "the statutory definition of combined heat and power system ("CHP") is clear that the electricity or useful measurable thermal or mechanical energy must be produced from waste heat." Order at p. 9. The Commission went on to elaborate:

The definition of CHP system is clear that for purposes of Senate Bill 3, and for purposes of being deemed an energy efficiency measure, the electricity or useful, measurable thermal or mechanical energy must be produced from waste heat. In a bottoming cycle CHP, the waste heat from an industrial process is used to create electricity and potentially thermal energy. In a topping cycle CHP system, the electricity is not produced from waste heat, but rather is produced from a resource like natural gas, which also produces waste heat that is used to produce thermal or mechanical energy. It is only the secondary thermal or mechanical energy that is produced from the waste heat that qualifies as an energy efficiency measure.

Order at p. 10 (emphasis added). Based on these statements, the Commission entered an ordering paragraph holding:

[that a topping cycle CHP system does not constitute an energy efficiency measure under G.S. 62-133.8(a)(4), except to the extent that the secondary component, the waste heat component[,] is used and meets the definition of energy efficiency measure in G.S. 62-133.8(a)(4).]

Order at p. 11.

At the heart of this appeal is the fact that the italicized language quoted above, upon which the Commission based its ordering paragraph, does not logically flow from a plain reading of the statutory language at issue.

An analogy best illustrates the flaw in the Commission's reasoning. One can imagine a statutory definition of "radio" that reads: "Radio means a device that uses a speaker to produce sound." Reasonable readers of this definition will focus on the word "device," with the understanding that use of a speaker is required for the device to constitute a radio but that a radio is a complicated device that is comprised of more than
just the speaker used to produce sound. Similarly, reasonable readers of this definition will reject any interpretation that holds that a radio is nothing more than the speaker used to produce sound.

In the CHP context, the Commission has ordered that “a radio is nothing more than the speaker used to produce sound.” It is worth repeating that N.C. Gen. Stat. § 62-133.8(a)(1) reads:

“Combined heat and power system” means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer’s facility.

(Emphasis added.) A plain reading of the definition ought to focus on the word “system” emphasized above, with the understanding that use of captured waste heat is required for a system to constitute a CHP system but also the understanding that a CHP system is more than just capturing waste heat to produce electricity or useful, measurable thermal or mechanical energy. Further, a plain reading ought to yield rejection of any interpretation that holds that a CHP system is nothing more than the waste heat capturing component of a complicated system. (Indeed, the very phrase “combined heat and power system” serves to emphasize how counter-intuitive it is to hold that the waste heat capturing component of a topping cycle CHP system, de-combined from its associated power component, is a CHP system unto itself.)

The Order explains that, “[i]n a topping cycle CHP system, the electricity is not produced from waste heat, but rather is produced from a resource like natural gas, which also produces waste heat that is used to produce thermal or mechanical energy.” Order at p. 10. With this statement, the Commission acknowledged that a topping cycle CHP system is (1) a system that (2) uses captured waste heat to produce thermal or mechanical
energy. In other words, the Commission effectively conceded that a topping cycle CHP system qualifies as a "CHP system" under any reasonable reading of the plain language of the statutory definition.

Despite the foregoing, the Commission concluded that, in connection with topping cycle CHP systems, "[i]t is only the secondary thermal or mechanical energy that is produced from the waste heat that qualifies as [a CHP system and thus as] an energy efficiency measure." Given the plain language of the statutory definition, this Commission conclusion was ultra vires and represents an unlawful, unjust, unreasonable and unwarranted Commission interpretation of the statutory definition. See, e.g., *State ex rel. Commissioner of Ins. v. Integon Life Ins. Co.*, 28 N.C. App. 7, 11, 220 S.E.2d 409, 412 (1975) ("An administrative agency has no power to promulgate rules and regulations which alter or add to the law it was set up to administer or which have the effect of substantive law."); see also, *In re Town of Smithfield*, 749 S.E.2d 293, 296 (N.C. Ct. App. 2013) (Where a party’s interpretation would “giv[e] to the statutory phraseology a distorted meaning at complete variance with the language used[,]” a court is “powerless to construe away [or create a] limitation just because [the court] feel[s] that the legislative purpose behind the requirement can be more fully achieved in its absence [or presence].”).

**CONCLUSION**

For the reasons set out in the foregoing exceptions, the Order is unlawful, unjust, unreasonable and unwarranted and, as such, the Order should be reversed or remanded pursuant to N.C. Gen. Stat. § 62-94(b).
CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing filing, 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, 2016.

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STIPULATION SETTLING RECORD ON APPEAL

Counsel for Appellant NCSEA, Appellee Duke Energy Carolinas, LLC, Appellee Duke Energy Progress, LLC, Appellee Public Staff – North Carolina Utilities Commission, and Appellee Southern Alliance for Clean Energy stipulate as follows:

1. At all times, the North Carolina Utilities Commission was properly constituted and organized; and all notices, affidavits, orders, testimony, evidence, motions, exceptions and notice of appeal were timely and properly filed with the Commission and served upon all parties to the appeal.


3. The documents listed in the Index to this Record on appeal, as well as those documentary exhibits specified herein, constitute the Record in this proceeding for purposes of appeal and all documents included in the record are deemed genuine, true, and accurate copies (or partial copies) of the original documents from which they were copied.

5. The parties participating in the appeal to the North Carolina Court of Appeals, NCSEA, the Public Staff – North Carolina Utilities Commission, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and the Southern Alliance for Clean Energy agree that the proposed record on appeal was timely served and a certificate showing service of the proposed record may be omitted from the settled record.

6. Amendments to the proposed record were timely served and resolved informally by agreement.

7. The parties on appeal came to an agreement as to which documents would be included in the printed record, which exhibits would be filed with the Court, and which parts of the transcript would be filed. No party moved for judicial settlement, and the record on appeal was deemed settled on 9 September 2016. The parties reserve the right to supplement the record on appeal with any items that could otherwise have been included under Rules 9 and 18, provided that such supplement is served and filed pursuant to the provisions of Rule 9(b)(5).

8. The parties on appeal have agreed to include in the Record on Appeal Letters to the Utilities Commission [filed 2 June 2015] and Further Letters to the Utilities Commission [filed 18 June 2015]. The parties on appeal stipulate that these letters are not pleadings, the businesses and academic entities submitting the letters are not parties to the proceeding, and the letters have not been admitted as evidence by the Commission.

9. Any party to this appeal may make reference in any brief, pleading, or other document filed in connection with this appeal to the duly promulgated and issued Rules and Regulations of the North Carolina Utilities Commission without such rules and regulations being reprinted in the Record on Appeal.
10. The parties to this appeal have omitted transmittal letters, verifications, certificates of service, and certain letters, motions, responses, orders, and other documents which are not necessary to understand any of the errors assigned except as required by Rule 9 of the Rules of Appellate Procedure.

11. The parties stipulate that this printed record on appeal, consisting of pages 1 to 179, constitutes the agreed-upon Record on Appeal to be filed with the Clerk of the Court of Appeals.
This, the 9th day of September, 2016.

For Appellant
NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION

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North Carolina Sustainable Energy Association
4800 Six Forks Road, Suite 300
Raleigh, North Carolina 27609
(919) 832-7601
peter@energync.org
For Appellee
DUKE ENERGY CAROLINAS, LLC

Molly McIntosh Jagannathan
N.C. State Bar No. 36931
Troutman Sanders LLP
301 South College Street, 34th Floor
Charlotte, North Carolina 28202
(704) 998-4074
molly.jagannathan@troutmansanders.com
For Appellee
DUKE ENERGY PROGRESS, LLC

Molly McIntosh Jagannathan
N.C. State Bar No. 36931
Troutman Sanders LLP
301 South College Street, 34th Floor
Charlotte, North Carolina 28202
(704) 998-4074
molly.jagannathan@troutmansanders.com
For Appellee
PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

David Drooz
N.C. State Bar No. 10310
Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, North Carolina 27699
(919) 733-6110
david.drooz@psncuc.nc.gov
For Appellee
SOUTHERN ALLIANCE FOR CLEAN ENERGY

Qudrun Thompson
N.C. State Bar No. 28829
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, North Carolina 27516
(919) 967-1450
gthompson@selnc.org
I am sure that the following companies will not be participating:

- Acciona Energy North America Corporation
- CPV Renewable Energy Company, LLC
- Recovered Energy Investors I, LLC
- Tucker Engineering Associates, Inc.

You can take them off the service list.

I doubt that

- CPI USA North Carolina, LLC
- Poultry Power USA

Will be participating, but I am currently checking.

M. Gray Styers, Jr.
Smith Moore Leatherwood LLP
434 Fayetteville Street, Ste 2800
Raleigh, NC 27601
Direct: 919.755.8741
www.smithmoorelaw.com
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

Blue Ridge Environmental Defense League, Inc., Citizens Alliance for a Clean, Healthy Economy, Citizens for a Safe Environment, Sampson County Citizens for a Safe Environment, and NC WARN were parties to the abovementioned docket before the North Carolina Court of Appeals but will not participate in the appeal.

Date: July 27, 2016

/s/ JOHN D. RUNKLE

John D. Runkle, Attorney at law

On behalf of Blue Ridge Environmental Defense League, Inc., Citizens Alliance for a Clean, Healthy Economy, Citizens for a Safe Environment, Sampson County Citizens for a Safe Environment, and NC WARN
Coastal Carolina Clean Power in E-100 Sub 113

Dan Higgins <dhiggins@bdppa.com>
To: "Ledford, Peter" <peter@energync.org>

Peter
They will not be participating.
Dan

Sent from my iPhone

On Aug 18, 2016, at 8:29 AM, Ledford, Peter <peter@energync.org> wrote:

Dan,

I'm trying to tie up loose ends regarding NCSEA's appeal regarding CHP in E-100 Sub 113. It looks like you're the attorney of record for Coastal Carolina Clean Power. Will they be participating in the appeal?

If you no longer represent CCCP, do you have an address or contact information for the company (if they're still in business)?

Thanks,

Peter

---

Peter H. Ledford
Regulatory Counsel
NC Sustainable Energy Association
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 ext. 107
peter@energync.org

<Notice of Non-Participation.docx>
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

CIGFUR I, II, and III and Domtar Paper Company, LLC were parties to the abovementioned docket before the North Carolina Court of Appeals but will not participate in the appeal.

Date: August 3, 2016

Ralph McDonald

On behalf of CIGFUR I, II, and III
and Domtar Paper Company, LLC (Party)
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA's Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

Carolina Utility Customers Association, Inc. ("CUCA") was a party to the abovementioned
docket before the North Carolina Utilities Commission but will not participate in the appeal.

Date: July 29, 2016

[Signature]
Robert F. Page, Attorney
On behalf of CUCA (Party)
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

The North Carolina Department of Environmental Quality (formerly named Department
of Environment and Natural Resources), Division of Water Resources was a party to the
abovementioned docket before the North Carolina Utilities Commission but will not participate
in the appeal.

Date: August 18, 2016

[Signature]
Kathleen M. Waylett
Senior Deputy Attorney General
N.C. Department of Justice
Environmental Division
P.O. Box 629
Raleigh, NC 27602
(919) 716-6600

On behalf of N.C. Department of
Environmental Quality,
Division of Water Resources
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

EnerVision, Inc. was a party to the abovementioned docket before the North Carolina Utilities Commission but will not participate in the appeal.

Date: 2/15/2016

Joshua W. Worswick
On behalf of EnerVision, Inc. (Party)
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

North Carolina Municipal Power Agency I

was a party to the abovementioned docket before the North
Carolina Utilities Commission but will not participate in the appeal.

Date: 8/16/16

On behalf of

North Carolina Municipal Power
Agency Number 1

[Signature]
Chief Legal Affairs Office
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA's Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

The North Carolina Pork Council was a party to the abovementioned docket before the North Carolina Utilities Commission but will not participate in the appeal.

Date: 8/3/16

[Signature]

On behalf of the N.C. Pork Council
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

Optima KV, LLC was a party to the abovementioned docket before
the North Carolina Utilities Commission but will not participate in the appeal.

Date: 8/19/16 Mark Maloney

On behalf of Optima KV, LLC (Party)
NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

To: "Ledford, Peter" <peter@energync.org>

Thu, Aug 18, 2016 9:25 AM

Henry is out of pocket. He should return by first of next week. I don’t think we will participate on this.
Here you go.

Ms. Grigg,

PSNC is a party to Docket No. E-100 Sub 113 (Implementation of REPS) at the North Carolina Utilities Commission. NCSEA is appealing the Commission's Order on NCSEA's Request regarding combined heat and power in that docket. I am writing to determine whether PSNC plans on being a party to the appeal.

If PSNC plans on being a party, please let me know and I will send you the proposed record on appeal. If not, could you please fill out the attached "Notice of Non-Participation" and return it to me so that we may include it in the record on appeal.

Please don't hesitate to email or call if you have any questions. Thanks,

Peter Ledford

--
Peter H. Ledford
Regulatory Counsel
NC Sustainable Energy Association
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7801 ext. 107
peter@energync.org
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2 attachments

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NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA's Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

Sampson County, North Carolina was a party to the abovementioned docket before the
North Carolina Court of Appeals but will not participate in the appeal.

Date: August 4, 2016

W. Joel Stirling, Jr.
County Attorney for Sampson County
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA's Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

Surr County was a party to the abovementioned docket before the North Carolina Court of Appeals but will not participate in the appeal.

Date: 7/29/16
On behalf of Surr County (Party)
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

EnergyUnited EMC was a party to the abovementioned docket before the North Carolina Utilities Commission, but will not participate in the appeal.

Date: July 29, 2016

On behalf of EnergyUnited EMC
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

Environmental Defense Fund was a party to the abovementioned docket before the North Carolina Court of Appeals but will not participate in the appeal.

Date: August 3, 2016

/s/ John Finnigan

On behalf of Environmental Defense Fund
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

GreenCo Solutions, Inc. is a party to the abovementioned docket before the North Carolina Court of Appeals but will not participate in the appeal.

Date: August 1, 2016

Richard M. Feathers
Vice President, Associate General Counsel

On behalf of GreenCo Solutions, Inc.
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

NORTH CAROLINA FARM BUREAU FEDERATION, INC., was a party to the
abovementioned docket before the North Carolina Utilities Commission but will not participate
in the appeal.

Date: August 3, 2016

NORTH CAROLINA FARM BUREAU FEDERATION, INC.

By: ________________
   Julian Philpott, Jr.
   Secretary and General Counsel
   P.O. Box 27766
   Raleigh, NC 27611
   Phone: (919) 782-1705
   State Bar No.: 8458
NOTICE OF NON-PARTICIPATION

RE: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA's Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

Nucor Steel – Hertford was, and is a party to the abovementioned docket before the North Carolina Utilities Commission, but will not participate in the referenced appeal of the Order of June 6, 2016.

This the 29th day of July, 2016.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: [Signature]

Joseph W. Eason, Esq.
4140 ParkLake Ave., Suite 200
Post Office Box 30519
Raleigh, NC 27622-0519
joe.eason@nelsonmullins.com

On behalf of Nucor Steel - Hertford
I've never had to complete a form before Peter -- is there some new rule regarding the necessity of a form to which you can direct me? FPWC does not plan on participating in the appeal.

James P. West
West Law Offices, P.C.
434 Fayetteville Street, Suite 2325
Raleigh, NC 27601
Telephone: (919) 856-8800
Facsimile: (919) 856-8801
Mobile: (919) 621-9007
Website: westlawpc.com

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Bob Kingery
To: Peter Ledford <peter@energync.org>
Cc: Maria Kingery <mkingery@southern-energy.com>

SEM does not plan to be a party to this docket

Best to you.

Thanks,

Bob Kingery
Southern Energy Management
1-919-815-5345

[Quoted text hidden]
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

The Southern Environmental Law Center was a party to the abovementioned docket before the North Carolina Court of Appeals but will not participate in the appeal.

Date: 8/3/16

On behalf of Southern Environmental Law Center
NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

Calvert, Mark S <mscalvert@tva.gov>   Fri, Jul 29, 2016 at 9:24 AM
To: "Ledford, Peter" <peter@energync.org>
Cc: "Bolton, Kimberly Anita" <kabolton@tva.gov>, "Wells, William B III" <wbwells@tva.gov>

Mark S. Calvert
Senior Attorney & Alternate DAEO
TVA Office of the General Counsel
400 West Summit Hill Drive, WT 6A-K
Knoxville, TN 37902-1401
865-632-7315 (office)
865-809-4223 (cell)
mscalvert@tva.gov

Mr. Ledford,

Thanks for your email. Although TVA is a party to NCUC docket no. E-100, sub 113, as you know that docket encompasses a wide range of issues. My understanding is that this particular appeal to the N.C. Court of Appeals involves issues relating to combined heat and power systems that were raised by your client in this docket. At present, those issues have not had an impact on TVA or its local power distributors that serve customers in North Carolina. Accordingly, I am not recommending to TVA management that TVA take part in this appeal.

-Mark
Good morning Peter,

After conferring with in-house counsel, Horace Payne, this email serves as notice that Dominion North Carolina Power does not plan to participate in NCSEA’s appeal of the Order described below.

Please contact me with any questions.

Thanks,

E. Brett Breitschwerdt
T: +1 919 755 6563 | M: +1 828 279 8726
NOTICE

Re: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA’s Requests for Declaratory Ruling and, If Necessary and Appropriate, A Rulemaking

WESTERN CAROLINA UNIVERSITY was a party to the abovementioned docket before the North Carolina Utilities Commission but will not participate in the appeal.

Date: Aug 4, 2016

On behalf of
WESTERN CAROLINA UNIVERSITY

Mary Ann Licheri
GENERAL COUNSEL
**SENDERS COMPLETE THIS SECTION**

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<td>Mr. Martin Truong</td>
<td>SunEdison LLC 13736 Riverport Dr.</td>
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<td>Mr. Christopher Cook</td>
<td>Solar Alliance C/O SafeSolar LLC 12800 Baltimore Avenue Beltville, MD 20705</td>
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<td></td>
<td>Mr. Richard D. Tucker</td>
<td>Bio-Energy Conversion, LLC P.O. Box 326 Locust, NC 28097</td>
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1. Article Addressed to:
   - Mr. Rick Chamberlain
   - Behrens, Taylor, Wheeler & Chamberlain
   - 6 N.E. 63rd Street
   - Suite 400
   - Oklahoma City, OK 73102

2. Article Number 1 (Transfer from service label)
   - 7016 0910 0001 3970 1357

3. Service Type
   - Adult Signature
   - Adult Signature Restricted Delivery
   - Certified Mail
   - Certified Mail Restricted Delivery
   - Collect on Delivery
   - Collect on Delivery Restricted Delivery
   - Restricted Delivery

4. Date of Delivery
   - 9/16

5. C. Date of Delivery
   - 9/16

6. Agent
   - William Lee

7. B. Received by (Printed Name)
   - William Lee

8. A. Signature
   - William Lee

9. Return Receipt
   - Domestic Return Receipt

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1. Article Addressed to:
   - Fibrowatt, LLC
   - Coldstream Park
   - 1168 S. River Road
   - Bedford, NH 03110

2. Article Number 2 (Transfer from service label)
   - 7016 0910 0001 3970 1357

3. Service Type
   - Certified Mail
   - Certified Mail Restricted Delivery
   - Collect on Delivery
   - Collect on Delivery Restricted Delivery
   - Restricted Delivery

4. Date of Delivery
   - 9/16

5. C. Date of Delivery
   - 9/16

6. Agent
   - William Lee

7. B. Received by (Printed Name)
   - William Lee

8. A. Signature
   - William Lee

9. Return Receipt
   - Domestic Return Receipt

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1. Article Addressed to:
   - Mr. Joshua Warmack
   - Enervision, Inc.
   - 4173 Ashford Dunwoody Road
   - Suite 550
   - Atlanta, GA 30319-1428

2. Article Number 3 (Transfer from service label)
   - 7016 0910 0001 3970 1425

3. Service Type
   - Certified Mail
   - Certified Mail Restricted Delivery
   - Collect on Delivery
   - Collect on Delivery Restricted Delivery
   - Restricted Delivery

4. Date of Delivery
   - 9/16

5. C. Date of Delivery
   - 9/16

6. Agent
   - William Lee

7. B. Received by (Printed Name)
   - William Lee

8. A. Signature
   - William Lee

9. Return Receipt
   - Domestic Return Receipt
1. Article Addressed to: Mr. Kance Metzler
   County of Montgomery
   P.O. Box 425
   Troy, NC 27371

2. Article Number (Transfer from service label)
   7016 0910 0001 3970 1463

3. Service Type
   D Priority Mail Express
   D Certified Mail
   D Return Receipt for Merchandise
   D Signature Confirmation

• Complete Items 1, 2, and 3.
• Print your name and address on the reverse so that we can return the card to you.
• Attach this card to the back of the mailpiece, or on the front if space permits.

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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INTERVENOR-APPELLANT NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION’S PROPOSED ISSUES ON APPEAL

Pursuant to Rules 10(b), Appellant NCSEA intends to present the following proposed issues on appeal:

1. Whether the Order is unlawful, unjust, unreasonable, and unwarranted.

2. Whether the Commission’s interpretation of the statute is erroneous.
IDENTIFICATION OF COUNSEL FOR THE APPEAL

For Duke Energy Carolinas, LLC:

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(919) 832-7601  
peter@energync.org

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Southern Environmental Law Center  
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Chapel Hill, North Carolina 27516  
(919) 967-1450  
gthompson@selenc.org
CERTIFICATE OF SERVICE OF FINAL RECORD ON APPEAL

I HEREBY CERTIFY that I have this day served the foregoing RECORD ON APPEAL upon all parties to the appeal by placing a copy of same in the United States Mail, first class postage prepaid, addressed to their ATTORNEY OF RECORD as follows:

This the 9th day of September, 2016.

[Signature]

Peter H. Ledford
Regulatory Counsel
NCSEA