

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 113

| | | |
|------------------------------------|---|---------------------------|
| In the Matter of |) | |
| Rulemaking Proceeding to Implement |) | JOINT INITIAL COMMENTS OF |
| Session Law 2007-397 |) | DUKE ENERGY CAROLINAS, |
| |) | LLC AND DUKE ENERGY |
| |) | PROGRESS, LLC |
| |) | |

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

OFFICIAL COPY

Sep 28 2015

OFFICIAL COPY

Sep 09 2016

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

OFFICIAL COPY

Sep 28 2015

OFFICIAL COPY

Sep 09 2016

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”

OFFICIAL COPY

Sep 28 2015

OFFICIAL COPY

Sep 09 2016

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.



Brian L. Franklin
Associate General Counsel
Duke Energy Corporation
DEC45A/550 South Tryon St.
Charlotte, NC 28202
Telephone: 980.373.4465
Brian.Franklin@duke-energy.com

Molly L. McIntosh
Troutman Sanders LLP
One Wells Fargo, Suite 3400
301 South College Street
Charlotte, North Carolina 28202
Telephone: 704-998-4074
molly.mcintosh@troutmansanders.com

ATTORNEYS FOR DUKE ENERGY
CAROLINAS, LLC and DUKE ENERGY
PROGRESS, LLC

OFFICIAL COPY

Sep 28 2015

OFFICIAL COPY

Sep 09 2016

**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) PUBLIC STAFF COMMENTS
Session Law 2007-397)

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.

OFFICIAL COPY

Sep 30 2015

OFFICIAL COPY

Sep 09 2016

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:

OFFICIAL COPY

Sep 30 2015

OFFICIAL COPY

Sep 09 2016

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
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4326
Telephone: (919) 733-6110
Email: david.drooz@psncuc.nc.gov

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

OFFICIAL COPY

Sep 30 2015

OFFICIAL COPY

Sep 09 2016

McGuireWoods LLP
434 Fayetteville Street
Suite 2600
PO Box 27507 (27611)
Raleigh, NC 27601
Phone: 919.755.6600
Fax: 919.755.6699
www.mcguirewoods.com

E. Brett Breitschwerdt
Direct: 919.755.6563

McGUIREWOODS

bbreitschwerdt@mcguirewoods.com

OFFICIAL COPY

Sep 30 2015

OFFICIAL COPY

Sep 09 2016

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 ("DNCP" 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

OFFICIAL COPY

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 113

FILED

OCT 14 2015

Clerk's Office
N.C. Utilities Commission

In the Matter of:)
Requests for Declaratory Ruling and,)
if Necessary and Appropriate, a)
Rulemaking by the North Carolina)
Sustainable Energy Association)
)

REPLY COMMENTS

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 COMMENTS¹

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

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

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 "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].").

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 NCSEA.” *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

⁴ See 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

[t]he 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.

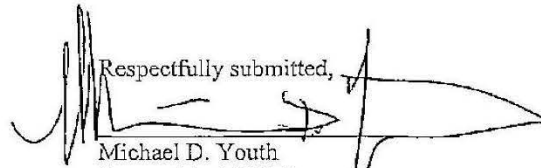
Given this type of initial feedback, NCSEA recommends that the Commission direct the commenting parties to draft and submit a proposed rule within 90 days, so that considerations such as those being raised by these two engineers can be discussed and taken into account as appropriate.

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, 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 N.C. Gen. Stat. § 62-133.9 and Commission Rule R8-67.
- 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,



Michael D. Youth
Counsel for NCSEA
N.C. State Bar No. 29533
4800 Six Forks Rd., Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 118
michael@energync.org

DOCKET NO. E-100, SUB 113

In the Matter of)
Rulemaking Proceeding to Implement) ORDER ON NCSEA'S REQUEST
Session Law 2007-397)

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.

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.]

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 Judgment 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, measureable 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 "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]."). 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 6th day of June, 2016.

NORTH CAROLINA UTILITIES COMMISSION

Paige J. Morris

Paige J. Morris, Deputy Clerk

“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 “[t]he 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

[t]hat 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

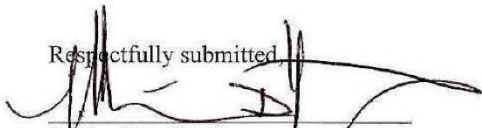
energy. In other words, the Commission effectively conceded that a topping cycle CHP system qualifies as a “CHP system” under any reasonable reading of the plain language of the statutory definition.

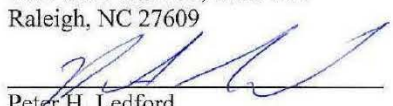
Despite the foregoing, the Commission concluded that, in connection with topping cycle CHP systems, “[i]t is only the secondary thermal or mechanical energy that is produced from the waste heat that qualifies as [a CHP system and thus as] an energy efficiency measure.” Given the plain language of the 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).

Respectfully submitted,

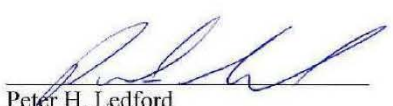

Michael D. Youth
Counsel for NCSEA
N.C. State Bar No. 29533
4800 Six Forks Rd., Suite 300
Raleigh, NC 27609


Peter H. Ledford
Counsel for NCSEA
N.C. State Bar No. 42999
4800 Six Forks Rd., Suite 300
Raleigh, NC 27609

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.


Peter H. Ledford
Counsel for NCSEA
N.C. State Bar No. 42999
4800 Six Forks Rd., Suite 300
Raleigh, NC 27609
(919) 832-7601 Ext. 107
peter@energync.org

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.

2. The Commission made Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. (now Duke Energy Progress, LLC), Duke Power Company, LLC d/b/a Duke Energy Carolinas, LLC (now Duke Energy Carolinas, LLC); Virginia Electric and Power Company d/b/a Dominion North Carolina Power; North Carolina Electric Membership Corporation; and ElectriCities of North Carolina, Inc. parties in its Order Initiating Rulemaking Proceeding. The Commission entered orders allowing the petitions to intervene of Acciona Energy North America Corporation, Appalachian Energy, LLC, Appalachian State University d/b/a/ New River Light & Power Company, Bio-Energy Conversion, LLC, Blue Ridge Environmental Defense League, Inc., Carolina Industrial Group for Fair Utility Rates I, II, and III, Carolina Utility Customers Association, Inc., Citizens Alliance for a Clean, Healthy Economy, Citizens for a Safe Environment, Coastal Carolina Clean Power, LLC, County of Montgomery, County of Sampson, County of Surry, CPI USA North Carolina, LLC, CPV Renewable Energy Company, LLC, Domtar Paper Company, LLC, Ecoplus, Inc., Elster Integrated Solutions, EnergyUnited Electric Membership Corporation, Environmental Defense Fund, Fibrowatt, LLC, Green Energy Solutions NV, Inc., Halifax Electric Membership Corporation, North Carolina Association of Electric Cooperatives, North Carolina Department of Environment and Natural Resources Division of Water Resources, North Carolina Farm Bureau Federation, Inc., North Carolina Pork Council, Inc., North Carolina Poultry Federation, Inc., North Carolina Small Hydro Group, North Carolina Sustainable Energy Association, North Carolina Waste Awareness and Reduction Network, Inc., North Carolina Wildlife Resources Commission, Nucor Steel-Hertford, Optima KV, LLC, Organic Recycling Systems, Inc., Peregrine Biomass Development Company, LLC, Piedmont Natural Gas Company, Poultry Power USA, Public Service Company of North Carolina, Public Works Commission of the City of Fayetteville, Recovered Energy Investors I, LLC, Sampson County Citizens for a Safe Environment, Solar Alliance, Southern Alliance for Clean Energy, Southern Energy Management, Southern Environmental Law Center, Sun Edison LLC, Tennessee Valley Authority, Tucker Engineering Associates, Inc., Wal-Mart Stores East, LP, and William H. Lee. The intervention of the Public Staff – North Carolina Utilities Commission is recognized pursuant to N.C.G.S. § 62-15(d) and Rule R1-19. The Attorney General's intervention is recognized pursuant to N.C.G.S. § 62-20. All parties were properly before the Commission.

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.

4. All parties to the docket at the Commission were given an opportunity to review the proposed record on appeal. Some parties in the Commission proceedings will not participate on appeal and have declined to be listed as parties on appeal, as documented by the attached notices from Acciona Energy North America Corporation, Blue Ridge Environmental Defense League, Inc., Carolina Industrial Group for Fair Utility Rates I, II, and III, Carolina Utility Customers Association, Inc., Citizens Alliance for a Clean, Healthy Economy, Citizens for a Safe Environment, Coastal Carolina Clean Power, LLC, County of Sampson, County of Surry, CPV Renewable Energy Company, LLC, EnergyUnited Electric Membership Corporation, EnerVision, Inc., Environmental Defense Fund, GreenCo Solutions, Inc., North Carolina Department of Environmental Quality (formerly named Department of Environment and Natural Resources), Division of Water Resources, North Carolina Farm Bureau Federation, Inc., North Carolina Municipal Power Agency 1, North Carolina Pork Council, Inc., North Carolina Poultry Federation, Inc., North Carolina Waste Awareness and Reduction Network, Inc., Nucor Steel-Hertford, Optima KV, LLC, Public Service Company of North Carolina, Public Works Commission of the City of Fayetteville, Recovered Energy Investors I, LLC, Sampson County Citizens for a Safe Environment, Southern Energy Management, Southern Environmental Law Center, Tennessee Valley Authority, Tucker Engineering Associates, Inc., Virginia Electric and Power Company d/b/a Dominion North Carolina Power, and Western Carolina University. Parties not listed in this paragraph or in Paragraph 5 did not indicate whether they would participate in the appeal.

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.

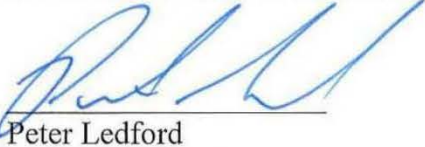
10. The parties to this appeal have omitted transmittal letters, verifications, certificates of service, and certain letters, motions, responses, orders, and other documents which are not necessary to understand any of the errors assigned except as required by Rule 9 of the Rules of Appellate Procedure.

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 SUSTAINBLE ENERGY ASSOCIATION



Peter Ledford

N.C. State Bar No. 42999

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

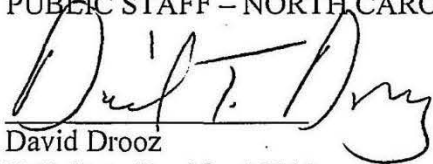
Charlotte, North Carolina 28202

(704) 998-4074

molly.jagannathan@troutmansanders.com

For Appellee

PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "David T. Drooz", is written over a horizontal line.

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


Gudrun 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@selcnc.org

8/4/2016

NCSEA Mail - NCSEA's CHP Appeal in NCUC Docket E-100 Sub 113



Ledford, Peter <peter@energync.org>

NCSEA's CHP Appeal in NCUC Docket E-100 Sub 113

Gray Styers <Gray.Styers@smithmoorelaw.com>
To: "Ledford, Peter" <peter@energync.org>

Tue, Aug 2, 2016 at 11:56 AM

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



From: Ledford, Peter [mailto:peter@energync.org]
Sent: Tuesday, August 02, 2016 9:46 AM
To: Gray Styers
Subject: Re: NCSEA's CHP Appeal in NCUC Docket E-100 Sub 113

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[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

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

8/18/2016

NCSEA Mail - Coastal Carolina Clean Power in E-100 Sub 113



Ledford, Peter <peter@energync.org>

Coastal Carolina Clean Power in E-100 Sub 113

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

Thu, Aug 18, 2016 at 8:36 AM

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



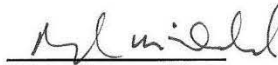
<Notice of Non-Participation.docx>

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

were parties
CIGFUR I, II, and III and Domtar Paper Company, LLC ~~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


Ralph McDonald

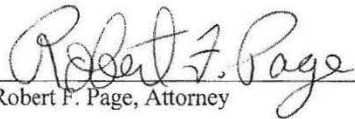
On behalf of CIGFUR I, II, and III
and Domtar Paper Company, LLC (Party)

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


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


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

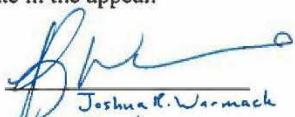
On behalf of N.C. Department of
Environmental Quality,
Division of Water Resources

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: 8/15/2016


Joshua R. Wermach
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 1
was a party to the abovementioned docket before the North
Carolina Utilities Commission but will not participate in the appeal.

Date: 8/16/16

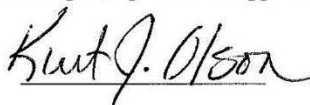
Timothy B. Boman
Chief Legal Ethics Officer
On behalf of _____ (Party)
North Carolina Municipal Power
Agency Number 1

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

A handwritten signature in black ink, reading "Kurt J. Olson". The signature is written in a cursive style with a horizontal line underneath the name.

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)

8/22/2016

NCSEA Mail - NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)



Ledford, Peter <peter@energync.org>

NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

Robert L. Ford <rlford@ncpoultry.org>
To: "Ledford, Peter" <peter@energync.org>

Thu, Aug 18, 2016 at 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.

From: Ledford, Peter [mailto:peter@energync.org]
Sent: Thursday, August 18, 2016 8:14 AM
To: Robert L. Ford
Cc: Henry Jones
Subject: NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

[Quoted text hidden]

This email message is intended only for the addressee(s) and contain information that may be confidential and/or copyrighted. If you are not the intended recipient, please notify the sender by reply email and immediately delete this email. Use, disclosure or reproduction of this email by anyone other than the intended recipient(s) is strictly prohibited. No representation is made that this email or any attachments are free of viruses. Virus scanning is recommended and is the responsibility of the recipient.

This email message is intended only for the addressee(s) and contain information that may be confidential and/or copyrighted. If you are not the intended recipient, please notify the sender by reply email and immediately delete this email. Use, disclosure or reproduction of this email by anyone other than the intended recipient(s) is strictly prohibited. No representation is made that this email or any attachments are free of viruses. Virus scanning is recommended and is the responsibility of the recipient.

8/23/2016

NCSEA Mail - PSNC in NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)



Ledford, Peter <peter@energync.org>

PSNC in NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

Grigg, Mary Lynne <MGrigg@mcguirewoods.com>
To: "Ledford, Peter" <peter@energync.org>

Fri, Aug 12, 2016 at 1:12 PM

Here you go.

From: Ledford, Peter [mailto:peter@energync.org]
Sent: Friday, August 12, 2016 12:04 PM
To: Grigg, Mary Lynne
Subject: PSNC in NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

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,

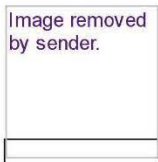
Peter Ledford

—

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

8/23/2016


NCSEA Mail - PSNC in NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)



This e-mail from McGuireWoods may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

2 attachments

~WRD395.jpg
1K

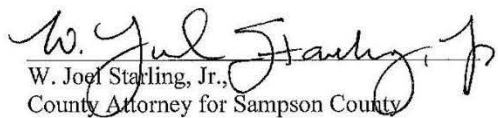
 **Notice of Non-Participation.docx**
11K

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 Starling, 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

Surry 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 Surry 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

A handwritten signature in black ink, appearing to read "Dana M. Mundy", is written over a horizontal line.

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.

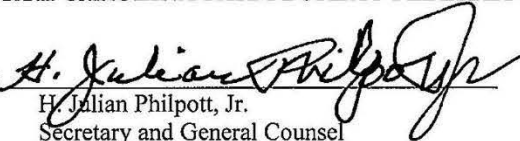
NOTICE

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: 
H. 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

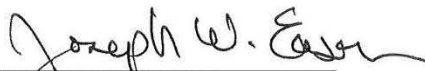
RE: Appeal to the North Carolina Court of Appeals
NCUC Docket No. E-100, Sub 113
NCSEA's Requests for Declaratory Ruling and, If Necessary and Appropriate, A
Rulemaking

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:



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

8/1/2016

NCSEA Mail - NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)



Ledford, Peter <peter@energync.org>

NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

James West <jpwest@westlawpc.com>
To: "Ledford, Peter" <peter@energync.org>

Sat, Jul 30, 2016 at 12:56 AM

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.

[Quoted text hidden]

—
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

The preceding E-mail message contains information that is confidential, may be protected by the attorney-client or other applicable privileges, and may constitute non-public information. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at 919-856-8800. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. Federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

8/1/2016

NCSEA Mail - NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)



Ledford, Peter <peter@energync.org>

NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

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

Mon, Aug 1, 2016 at 9:02 AM

SEM does not plan to be a party to this docket

Best to you.

Thanks,

Bob Kingery
Southern Energy Management
[1-919-815-5345](tel: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

7/29/2016

NCSEA Mail - NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)



Ledford, Peter <peter@energync.org>

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>

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

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

From: Ledford, Peter [<mailto:peter@energync.org>]

Sent: Friday, July 29, 2016 8:46 AM

To: David DeHart; Calvert, Mark S

Subject: NCSEA's Appeal re: CHP (NCUC Docket No. E-100 Sub 113)

TVA External Message. Please use caution when opening.

[Quoted text hidden]

8/9/2016

NCSEA Mail - CHP Appeal & Record on Appeal (E-100 Sub 113)



Ledford, Peter <peter@energync.org>

CHP Appeal & Record on Appeal (E-100 Sub 113)

Breitschwerdt, E. Brett <bbreitschwerdt@mcguirewoods.com>

Fri, Jul 22, 2016 at 9:53 AM

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

Cc: "Horace P. Payne" <horace.p.payne@dom.com>

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

From: Ledford, Peter [mailto:peter@energync.org]

Sent: Tuesday, July 19, 2016 2:17 PM

To: Breitschwerdt, E. Brett

Subject: CHP Appeal & Record on Appeal (E-100 Sub 113)

Brett,

[Quoted text hidden]

This e-mail from McGuireWoods may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

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

Mary Ann Lochner
GENERAL COUNSEL
On behalf of WESTERN (Party)
CAROLINA
UNIVERSITY



NC SUSTAINABLE
ENERGY ASSOCIATION

4800 Six Forks Road, Suite 300
Raleigh, NC 27609

CERTIFIED MAIL



7016 0910 0001 3970 1487

RALEIGH
NC 275
18 AUG
2016



1000



28608

U.S. POSTAGE
PAID
RALEIGH, NC
27609
AUG 18 16
AMOUNT

\$6.47

R2303S104037-16

Mr. John Earwood
Appalachian State University d/b/a/ New
River Light & Power Company
ASU Box 32126
Boone, NC 28608-2126

*Del
8-20*

*RTS
Refused*

NIXIE 274 5C 1 0008/24/16

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 27609524575 *0680-03116-18-38

27609524575

CERTIFIED MAIL



7016 0910 0001 3970 1432

RALEIGH
NC 275
18 AUG 16
2016



1000



29601

U.S. POSTAGE
PAID
RALEIGH, NC
27609
AUG 18 16
AMOUNT

\$6.47

R2303S104037-16



NC SUSTAINABLE
ENERGY ASSOCIATION

4800 Six Forks Road, Suite 300
Raleigh, NC 27609

S

Mr. Ralph Walker
Peregrine Biomass Development Company
220 North Main Street
6th Floor
Greenville, SC 29601

NIXIE 296 7E 1 0008/25/16

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 27609524575 *0680-03215-15-38

29601-511405
27609524575



NC SUSTAINABLE
ENERGY ASSOCIATION

4800 Six Forks Road, Suite 300
Raleigh, NC 27609

CERTIFIED MAIL®



7016 0910 0001 3970 1395

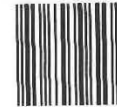
RALEIGH, NC 27609

18 AUG

PM 3 L



1000



32250

U.S. POSTAGE
PAID
RALEIGH, NC
27609
AUG 18, 16
AMOUNT

\$6.47

R2303S104037-16

Mr. George Erickson
Poultry Power USA
4300 Marsh Landing Parkway
Suite 201
Jacksonville Beach, FL 32250

NIXIE 322 7E 1 0008/30/16

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

02 AUG 18 2016

01: 27609524571 *0000-M1146-13-16

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|---|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Martin Truong SunEdison LLC 13736 Riverport Dr. Maryland Heights, MO 63043</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>8/22/16</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1371</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Richard Tucker Bio-Energy Conversion, LLC P.O. Box 326 Locust, NC 28097</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Richard D. Tucker</i> C. Date of Delivery <i>Aug 26, 16</i></p> <p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1470</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|---|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Christopher Cook Solar Alliance C/O SunEdison LLC 12500 Baltimore Avenue Beltsville, MD 20705</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>8/22/16</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1388</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Domtar Paper Company, LLC P.O. Box 1351 Raleigh, NC 27602-1351</p> | | <p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Jeremy Bucher</i> C. Date of Delivery <i>8/19/16</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1326</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Sun Edison LLC 12500 Baltimore Avenue Beltsville, MD 20705</p> | | <p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>8-23-16</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1333</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| <p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p> | | | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Michael Washburn Brown, Crump, Vanore & Tierney 421 Fayetteville Street Mail Suite 1203 Raleigh, NC 27601</p> | | <p>A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery <i>8/23/16</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1364</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| <p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p> | | | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Green Energy Solutions NV, Inc. 3225 McLeod Road Las Vegas, NV 89121</p> | | <p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1302</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| <p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p> | | | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Jeffrey Owen Appalachian Energy, LLC P.O. Box 3180 Asheville, NC 28802</p> | | <p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1494</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| <p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p> | | | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|--|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Rick Chamberlain Behrens, Taylor, Wheeler & Chamberlain 6 N.E. 63rd Street Suite 400 Oklahoma City, OK 73102</p> | | <p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Rick Chamberlain</p> <p>C. Date of Delivery 8-21-16</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1357</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| 9590 9402 2064 6132 5755 53 | | 9590 9402 2064 6132 5754 54 | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. William Lee Lee Hydropower P.O. Box 1459 Asheboro, NC 27204</p> | | <p>A. Signature </p> <p><input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) William Lee</p> <p>C. Date of Delivery 8-23-16</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1401</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| 9590 9402 2064 6132 5755 08 | | 9590 9402 2064 6132 5754 85 | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|---|--|
| <p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: Mr. Joshua Warmack Enervision, Inc. 4170 Ashford Dunwoody Road Suite 550 Atlanta, GA 30319-1428</p> | | <p>A. Signature </p> <p><input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Joshua Warmack</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | |
| <p>2. Article Number (Transfer from service label) 7016 0910 0001 3970 1425</p> | | <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p> | |
| 9590 9402 2064 6132 5754 85 | | 9590 9402 2064 6132 5754 85 | |
| PS Form 3811, July 2015 PSN 7530-02-000-9053 | | Domestic Return Receipt | |

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:
Mr. Phillip Hicks
Ecoplus, Inc.
P.O. Box 126
Iron Station, NC 28080-0126



9590 9402 2064 6132 5754 78

2. Article Number (Transfer from service label)
7016 0910 0001 3970 1449

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Marilyn M. Hicks* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Marilyn M. Hicks

C. Date of Delivery
8/22/16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

- 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.

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



9590 9402 2064 6132 5754 23

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

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Beth Dunn* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Beth Dunn

C. Date of Delivery
8/22/16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:
Mr. Charles Guerry
Halifax Electric Membership Corp.
P.O. Box 567
Enfield, NC 27823-0667



9590 9402 2064 6132 5754 92

2. Article Number (Transfer from service label)
7016 0910 0001 3970 1418

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *M.C. Guerry* ☐ Agent ☐ Addressee

B. Received by (Printed Name)
M.C. Guerry

C. Date of Delivery
AUG 22 2016

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

**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:

Brian L. Franklin, Associate General Counsel
N.C. State Bar. No. 35075
Duke Energy Corporation
DEC45/P.O. Box 1321
550 South Tryon Street
Charlotte, North Carolina 28201
(980) 373-4465
Brian.Franklin@duke.energy.com

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 Duke Energy Progress, LLC:

Brian L. Franklin, Associate General Counsel
N.C. State Bar. No. 35075
Duke Energy Corporation
DEC45/P.O. Box 1321
550 South Tryon Street
Charlotte, North Carolina 28201
(980) 373-4465
Brian.Franklin@duke.energy.com

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 the North Carolina Sustainable Energy Association:

Peter Ledford
N.C. State Bar No. 42999
North Carolina Sustainable Energy Association
4800 Six Forks Road, Suite 300
Raleigh, North Carolina 27609
(919) 832-7601
peter@energync.org

For the 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

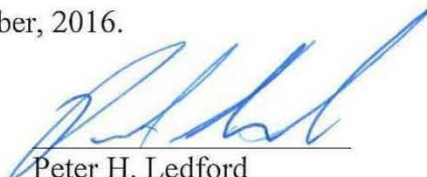
For the Southern Alliance for Clean Energy:

Gudrun 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@sencnc.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.



Peter H. Ledford
Regulatory Counsel
NCSEA