

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-13695, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Petition for Relief of Orion Renewable Resources LLC)	ORDER DENYING MOTION
)	TO STRIKE AND REOPENING
)	RECORD, ALLOWING
)	TESTIMONY OR COMMENTS
)	ON LATE-FILED EXHIBIT,
)	AND SCHEDULING FURTHER
)	HEARING

BY THE PRESIDING COMMISSIONER: On March 9, 2020, Orion Renewable Resources LLC (Orion), filed a Verified Petition for Relief in this docket (Petition) seeking the Commission's review of the Competitive Procurement of Renewable Energy (CPRE) Program Independent Administrator, Accion Group, Inc.'s (IA or Accion), disqualification of Orion's Proposal 129-01 (Proposal or Bid) for an 80-megawatt solar project (Project) in Duke Energy Carolinas, LLC's (DEC) CPRE Program Tranche 1.

On October 21, 2020, the Commission issued an Order Scheduling Hearing setting this matter for remote hearing on November 2, 2020, for the purpose of receiving expert witness testimony regarding the facts and circumstances of the evaluation of the Proposal following the time it was submitted by the IA for Step 2 evaluation, and further granting the Public Staff's Motion for Leave to File Comment and accepting its comments, finding that Orion's Petition was timely made, and ordering joinder of DEC as party to the docket.

This matter came for remote hearing as scheduled on November 2, 2020. Accion presented the testimony and exhibits of witnesses Judd, Ball, Layfield, Monsalvatge, and Rozier; DEC presented the testimony of witness Piper; and Orion presented the testimony of witness Lasocki. The testimony and exhibits were accepted into evidence. During the hearing the Presiding Commissioner requested a Late-Filed Exhibit from the IA disclosing information about two proposals which were higher ranked than Orion's but which were likewise eliminated during Step 1 of the Tranche 1 evaluation process due to the IA's determination that they had negative net economic benefit. Tr. 80:19-82:18.¹ The Presiding Commissioner further requested that the IA collaborate with DEC to prepare the Late-Filed Exhibit since certain information needed for the exhibit would be in the possession of DEC or would require further analysis by DEC. Tr. 91:12-92:7.

¹ The form of the transcript reference in this Order for the November 2, 2020 evidence is, for example, "Tr. 1:1," with the number prior to the colon representing the page of the transcript and the number after the colon representing the line number.

On November 24, 2020, DEC filed a Late-Filed Exhibit in the above-captioned matter. And on November, 25, 2020, DEC filed a Corrected Late-Filed Exhibit.

On January 4, 2021, Orion filed a post-hearing brief and proposed order, and Accion and DEC each filed post-hearing briefs.

On January 25, 2021, Orion filed a Motion to Strike or in the Alternative Reopen Hearing (Motion). Orion objects to the Late-Filed Exhibit, contending that Items 3, 4, 5, and 6 of the Late-Filed Exhibit, and corresponding portions of DEC's post-hearing brief, introduce "factual considerations never raised in this docket, without providing sufficient detail to allow Orion to respond or the Commission to make an informed decision." Motion at 5.

On February 15, 2021, DEC and Accion each filed responses in opposition to Orion's Motion.

On February 22, 2021, Orion filed a reply in support of its Motion.

The North Carolina Supreme Court has held that where the Commission permits a late-filed exhibit opposing parties have the right to demand that the hearing be reopened to allow for (1) cross-examination of witnesses regarding the information presented by the late-filed exhibit and (2) presentation of rebuttal evidence. *State ex rel. Utilities Com. v. Carolina Tel. & Tel. Co.*, 267 N.C. 257, 269, 148 S.E.2d 100, 109-110 (1966). Based on this precedent, Orion's Motion, and the record in this docket, the Presiding Commissioner finds good cause to reopen the record to accept into evidence the Late-Filed Exhibit and to receive supporting and rebuttal testimony related to the facts and circumstances underlying the Late-Filed Exhibit and the information contained therein.

IT IS, THEREFORE, ORDERED as follows:

1. That Orion's Motion to Strike is hereby denied;
2. That Orion's Motion to Reopen Hearing is hereby allowed;
3. That on or before Wednesday, April 28, 2021, DEC and Accion may file written testimony limited to facts and matters contained in the Late-Filed Exhibit;
4. That on or before Wednesday May 12, 2021, Orion may file written rebuttal testimony limited to facts and matters contained in the Late-Filed Exhibit;
5. That a remote hearing shall be held via Webex on Thursday, June 3, 2021, at 10 a.m., for the purpose of receiving expert witness testimony regarding the facts and circumstances underlying the Late-Filed Exhibit and the information contained therein. A link to view the hearing will be available at www.ncuc.net;

6. That the remote hearing shall be subject to the following conditions:

- (1) On or before Thursday, May 20, 2021, all parties shall file a statement consenting to holding the expert witness hearing by remote means, or a statement objecting to same;
- (2) On or before Thursday, May 20, 2021, each party shall send the name, phone number, and email address of each attorney and witness that will participate in the hearing on the party's behalf directly to the Commission via email at ncucwebex@ncuc.net;
- (3) On or before Thursday, May 27, 2021, parties shall file a list of potential cross-examination exhibits and provide copies of the exhibits labeled with the party name and numbered sequentially to the other parties and to the Commission via email at ncucexhibits@ncuc.net;
- (4) On or before Tuesday, June 1, 2021, the parties shall file a list of potential redirect examination exhibits and provide copies of the exhibits labeled with the party name and numbered sequentially to the other parties and the Commission via email at ncucexhibits@ncuc.net;
- (5) On or before Tuesday, June 1, 2021, the parties shall provide a copy of witness testimony summaries to the other parties and the Commission via email at ncucexhibits@ncuc.net;
- (6) Within two business days after the hearing, parties shall file their cross-examination and redirect exhibits used in the hearing marked as indicated during the hearing; and
- (7) Parties and witnesses will be required to refrain from disclosing confidential information during the hearing, including during direct examination, cross examination, and redirect examination. If a party believes that this requirement will materially affect the party's presentation of evidence or examination of a witness, the party shall bring this to the attention of the Presiding Commissioner at the beginning of the hearing.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of April, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Joann R. Snyder, Deputy Clerk