

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Petition of Duke Energy Carolinas,)
LLC, and Duke Energy Progress, LLC, for)
Approval of Competitive Procurement of)
Renewable Energy Program)

**COMMENTS OF THE
PUBLIC STAFF
REGARDING CPRE BID
REFRESH PROCEDURE**

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following comments in response to the Commission’s May 1, 2019, *Order Postponing Tranche 2 CPRE RFP Solicitation and Scheduling Technical Conference* in the above-referenced dockets allowing comments and/or proposed revisions to Commission Rule R8-71(f)(3) to accomplish the incorporation of a bid refresh procedure.

Background

On July 28, 2017, in Docket No. E-100, Sub 150, the Commission issued an *Order Initiating Rulemaking to Adopt Rules to Implement the CPRE Program*. In response to that Order, Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (collectively, “Duke”) filed reply comments and a draft revised Rule R8-71 on September 8, 2017, that, among other things, proposed the development of a two-track process by which the Independent Administrator (IA) of the CPRE Program and Duke would each evaluate projects and develop

separate “competitive tiers” of projects that would be consolidated into a single, “Combined Competitive Tier.” The rule also included an opportunity for parties to refresh their bids upon being selected for inclusion in the Combined Competitive Tier, characterizing the refresh as an opportunity for the bidders to “better their bids as final best offers” prior to the establishment of a final Combined Competitive Tier from which the utility would select the capacity to meet the solicitation goal. The Public Staff filed comments indicating their general support for the rule revisions proposed by Duke.

The North Carolina Clean Energy Business Alliance (NCCEBA) and the North Carolina Sustainable Energy Association (NCSEA) also filed joint reply comments with proposed Rule R8-71 that called for the opportunity for bidders in the Competitive Tier to have an opportunity to “better their bids as final best offers” before the IA made its final evaluation and determination of the winning bids.

In its November 6, 2017, *Order Adopting and Amending Rules*, the Commission adopted Commission Rule R8-71, that among others things, modified the approach proposed by the parties to include an evaluation process that occurred on a single track, in two steps with no opportunity for a bid refresh. Rule R8-71(f)(3) provides that, in step one, the IA shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology, and, in step two, the electric public utility shall select the proposals as ranked by the IA. In its Order, the Commission held that:

The Commission determines that this evaluation and selection process strikes an appropriate balance between retaining traditional utility authority for the provision of adequate and reliable service and fostering the independence in the CPRE Program that the General

Assembly intended. The Commission acknowledges that in adopting this process for evaluation and selection of proposals, the opportunity for refreshed bids by making a best and final offer has been eliminated. The Commission, in its discretion, determines that the better approach is to incentivize market participants to make their best offer in their proposal and to eliminate this additional step in the selection process. In addition, the approach the Commission adopts may shorten the time required to complete the evaluation and selection process, which, in the context of the 45-month CPRE Program Procurement Period, is important to the success of the CPRE Program. Finally, in adopting this evaluation and selection process, the Commission recognizes that opportunities for improvements may arise or become apparent after there is a sufficient historical record of working through the process. Therefore, the Commission will remain open to these opportunities in the future.¹

In its February 21, 2018, *Order Modifying and Approving Joint CPRE Program*, in these dockets, the Commission approved Duke's use of a "grouping study" approach to evaluating "grid upgrade" costs, which Duke and the Commission defined to include Transmission Network Upgrades and Distribution Upgrades, but not Interconnection Facilities.² In addition, the Commission authorized Duke, for Tranche 1 purposes, to segregate the grid upgrade costs assigned to winning bidders and recover those costs through future general rate case proceedings.

On May 1, 2019, the Commission issued an *Order Postponing Tranche 2 CPRE RFP Solicitation and Scheduling Technical Conference* directing the parties to address, among other things, how to structure a "bid refresh" procedure and

¹ November 6, 2017 Order, at 17.

² Transmission Network Upgrades, Distribution Upgrades, and Interconnection Facilities are defined terms in the North Carolina Interconnection Procedures (NCIP). For purposes of Rule R8-71, the Public Staff uses the term "System Upgrades" for consistency. The Public Staff uses the terms "system upgrades" and "grid upgrades" to mean the same thing, which includes Transmission Network Upgrades and Distribution Upgrades.

what amendments need to be made to Commission Rule R8-71(f)(3) to authorize that procedure. In that Order, the Commission further provided that the parties who desire to provide comments on, and/or propose revisions to Commission Rule R8-71(f)(3) to accomplish the incorporation of a bid refresh procedure shall file their comments on or before May 16, 2019.

Modifying Commission Rule R8-71(f)(3) to add a Bid Refresh

The Public Staff provides the following comments and proposed revisions to Commission Rule R8-71(f)(3) which, assuming the Commission authorizes Duke to continue to utilize a grouping study approach for Tranche 2 purposes, would allow bidders to refresh their bids solely for the purposes of incorporating grid upgrade costs that are assigned or imputed to their projects. The Public Staff believes that if the Commission finds it appropriate to add a bid refresh to allow the inclusion of grid upgrade costs, that the language added in underline to the rule below would provide the appropriate rule changes necessary.

The rule change proposed below would create a new definition for “System Upgrade Cost Formula.” The formula is designed to allow the IA to update the bid price taking into account only the grid upgrade costs assigned to the bid. The formula would be developed by the market participant and would be specific to the project, allowing the market participant to create a formula that takes into account the grid upgrade cost estimates included in the bid price and any specific financing costs for those costs added. This proposed rule change prevents the market participant from refreshing its bids to take into account changing market conditions. The Public Staff believes that limiting the refresh to the grid upgrade costs and the

specific financing costs associated with the system upgrade costs addresses the Commission's concern about the potential for escalating grid upgrade costs,³ while also limiting the opportunity for market participants to "game" the bidding process by submitting an artificially low price to get into the competitive tier, and then refreshing broad components of the bid price. The Public Staff also believes that limiting the refresh to only grid upgrade costs will also limit the potential withdrawal of bids that might otherwise result in multiple iterations of grouping studies, which could potentially delay the bid evaluation and selection process.

Rule R8-71. COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY.

(b) Definitions.

[. . .]

- (17) "System Upgrade Cost Formula" means a formula which takes as an input the assigned system upgrade costs (in dollars) and generates an output (in dollars per MWh) that can be added to the applicable bid price to account for system upgrade costs. This formula shall be provided in the initial bid package of each proposal.

[. . .]

(f) CPRE RFP Solicitation Structure and Process.

[. . .]

- (3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a CPRE RFP Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission's oversight as provided in G.S. 62-110.8 and this rule.

³ In its *Order Approving Interim Modifications to the North Carolina Interconnection Procedures for Tranche 1 of CPRE RFP*, dated October 5, 2018, the Commission stated that it would consider potential revisions to the CPRE rules prior to Tranche 2 and noted that several parties stated in the September 24, 2018 oral argument that grid upgrade costs may increase after system impact study sometimes more than 20%.

- i. In step one, the Independent Administrator shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the CPRE RFP Solicitation evaluation factors. As a result of the Independent Administrator's evaluation, the Independent Administrator shall, subject to the provisions of subsection (f)(3)(ii) of this Rule, eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors and then develop and deliver to the electric public utility's T&D Sub-Team a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals included in the list delivered to the electric public utility any information that identifies the market participant that submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.
- ii. As a part of the step one evaluation, the Independent Administrator may, in its discretion, allow a market participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal, and may consult with the electric public utility's Evaluation Team to determine whether a proposal meets the CPRE RFP Solicitation Evaluation factors. In consulting with the Evaluation Team, the Independent Administrator shall maintain the anonymity of the market participant that submitted the proposal. The Independent Administrator shall document the reasons for the elimination of a proposal.
- iii. In step two, the electric public utility's T&D Sub-Team shall assess the system impact of the proposals in the order ranked by the Independent Administrator and assign any system upgrade costs attributable to each proposal included in the list provided by the Independent Administrator. The T&D Sub-Team shall conduct this assessment in a reasonable manner, with oversight by the Independent Administrator, and in parallel with the Independent Administrator's allowing modification or clarification of proposals and consultation with the Evaluation Team, as provided in (f)(3)(ii), if applicable. The electric public utility's T&D Sub-Team shall provide its

assessment of system upgrade costs to the Independent Administrator, who shall first determine whether such system upgrade costs have been appropriately assigned and then determine whether the original ranking of proposals needs to be modified to recognize the system upgrade costs assigned to each proposal. The Independent Administrator shall also eliminate any proposal where necessary in order to comply with G.S. 62-110.8(b)(4).

If no reranking is needed and the Independent Administrator has concluded its evaluation pursuant to (f)(3)(ii) of this Rule, if applicable, then the electric public utility shall select the winning proposals in accordance with subsection (iv) below.

- iv. If the Independent Administrator modifies the original ranking as result of the assignment of system upgrade costs or the elimination of a proposal, it shall deliver to the T&D SubTeam of the electric public utility such revised list of proposals ranked in order from most competitive to least competitive (with market participant information redacted as described in step one) and the assignment of system upgrade costs described in this subsection shall be performed again by the T&D Sub-Team and provided to the Independent Administrator, who will re-rank the proposals. If costs for system upgrades have been assigned to the bids, the Independent Administrator shall calculate the appropriate system upgrade bid price for each project using the bid-specific System Upgrade Cost Formula, which converts assigned system upgrade costs into a dollars per MWh adder. This process shall continue on an iterative basis, as directed by the Independent Administrator, until the Independent Administrator determines that the total generating capacity sought in the CPRE RFP Solicitation is satisfied in the most cost-effective manner after taking into account the assignment of system upgrade costs through this step two.
- v. Upon completion of step two and determination by the Independent Administrator of the final ranking of the proposals, the Independent Administrator shall deliver to the Evaluation Team of the electric public utility the final ranked list of proposals. The electric public utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, and the Independent Administrator shall provide the electric public utility with the identity of the market participants that were

so selected. Upon publication of the list of proposals selected, the Independent Administrator shall declare the CPRE RFP Solicitation closed.

- vi. The electric public utility shall proceed to execute contracts (where applicable) with each of the market participants who submitted a proposal that was selected. If a market participant selected pursuant to subsection (iv) fails to execute a contract during the contracting period identified in the CPRE RFP Solicitation, the electric public utility shall provide to the Independent Administrator a short and plain explanation regarding such failure and the Independent Administrator, after consultation with the Evaluation Team, shall determine whether the next-ranked proposal or proposals should be selected in order to procure the total generating capacity sought in the CPRE RFP Solicitation. For the avoidance of doubt, the Evaluation Team shall not have access to the identifying information of any such proposals prior to the Independent Administrator's determination. If no additional proposals are selected, the capacity amount associated with the proposal of the market participant that failed to execute a contract shall be included in a subsequent CPRE RFP Solicitation; provided that if, no further CPRE RFP Solicitations are scheduled, the electric public utility shall take such action as is directed by the Commission.

WHEREFORE, the Public Staff respectfully requests that the Commission take the foregoing comments and recommendations into consideration.

Respectfully submitted this the 16th day of May, 2019.

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CERTIFICATE OF SERVICE

I certify that a copy of these comments have been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 16th day of May, 2019.

Electronically submitted
/s/ Layla Cummings