

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 127
DOCKET NO. E-100, SUB 136

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-100, SUB 127)	
)	
In the Matter of)	
Biennial Determination of Avoided Cost)	
Rates for Electric Utility Purchases from)	
Qualifying Facilities – 2010)	
)	ORDER ON MOTION TO
DOCKET NO. E-100, SUB 136)	SUSPEND AVOIDED COST
)	RATES
)	
In the Matter of)	
Biennial Determination of Avoided Cost)	
Rates for Electric Utility Purchases from)	
Qualifying Facilities – 2012)	

BY THE COMMISSION: On November 1, 2012, in Docket No. E-100, Subs 127 and 136, Progress Energy Carolinas, Inc. (PEC), filed a Motion to Suspend the Availability of Previously Approved CSP-27 Long Term Rates (Motion). PEC argued that because its proposed long-term rates, filed in Docket No. E-100, Sub 136 on November 1, 2012, in PEC's Initial Statement and Exhibits as Rate Schedule CSP-29 (Proposed Long-term Rates), are lower than the existing Schedule CSP-27 long-term rates, qualifying facilities (QFs) may try to "lock in" the higher rate before the Commission approves new long-term rates. PEC requested in its Motion that the Commission authorize PEC to suspend the long-term rates in its currently approved Schedule CSP-27 effective December 1, 2012. PEC proposed that its currently approved variable rates, reflected in Schedule CSP-27, remain available (to eligible QFs seeking to contract with PEC) between December 1, 2012, and the date that the Commission issues an Order approving new long-term rates. PEC did not request any additional relief for QFs that had applied for, or had obtained, a certificate of public convenience and necessity (CPCN) prior to December 1, 2012, but had yet to establish a power purchase agreement with PEC.

On November 6, 2012, the North Carolina Sustainable Energy Association (NCSEA) filed a brief in opposition to PEC's Motion, requesting that the Commission deny the Motion, or in the alternative, that if the Commission were to approve a suspension, certain conditions be placed upon the suspension of rates. In its filing, NCSEA requested that the Motion be set for oral argument, or alternatively, that the Commission request interested parties to file comments on the Motion.

On November 8, 2012, the Commission issued an Order Requesting Comments on Motion to Suspend Avoided Cost Rates, requesting that interested parties file

comments no later than November 21, 2012, and that PEC and all other parties file reply comments on or before December 5, 2012.

On November 21, 2012, the Public Staff filed comments recommending that the Commission grant PEC's Motion with the condition that QFs with filed applications for a CPCN prior to November 1, 2012, that receive their CPCN prior to January 16, 2013, be eligible to select current Schedule CSP-27 long-term rates. The Public Staff recommended that a QF that filed its application for a CPCN after November 1, 2012, should select long-term rates from PEC's Proposed Long-term Rates, subject to an upward adjustment if the Commission ultimately approves higher avoided cost rates than PEC's Proposed Long-term Rates. The Public Staff also noted that for QFs smaller than 2 MW, for which there is no CPCN requirement, the same applicability of rates should apply if the QF filed its report of proposed construction (RPC) prior to November 1, 2012. The Commission notes that QFs constructed by a person primarily for that person's own use are also exempt from the CPCN requirement, but must file an RPC.

On November 21, 2012, NCSEA filed comments on the Motion stating that the Motion should be denied, arguing that an approved rate should remain in effect until a new rate is approved and that a suspension of rates may cause harm to QFs that had reasonably relied on the availability of current Schedule CSP-27 long-term rates when evaluating the financial feasibility of a project. NCSEA recommended that, were the Commission not to deny the Motion, in the alternative, the Commission require that all QFs with applications for a CPCN filed prior to February 13, 2013, be eligible to select current Schedule CSP-27 long-term rates.

On November 21, 2012, Renewable Energy Group (REG) filed comments on the Motion, requesting that the Commission deny the Motion. In the alternative, REG requested that the Commission require that the current Schedule CSP-27 long-term rates be made available to a QF that had filed its application for a CPCN as of the date of any Commission Order on the Motion. REG requested similar treatment for QFs smaller than 2 MW that filed an RPC prior to the date of any Commission Order on the Motion. REG recommended that a QF that files its application for a CPCN after the date of a Commission Order on the Motion should select from PEC's Proposed Long-term Rates, subject to an upward adjustment if the Commission ultimately approves higher avoided cost rates than PEC's Proposed Long-term Rates.

On November 21, 2012, EWP LLC (EWP) filed comments on the Motion, also requesting that the Commission deny the Motion. EWP stated that it relied upon the current Schedule CSP-27 long-term rates when performing its financial analysis and that PEC's Motion fails to provide sufficient notice to affected parties.

On December 5, 2012, Duke Energy Carolinas, LLC (Duke), and PEC, filed joint reply comments. Duke and PEC stated that the majority of contested issues could be resolved were the Commission to adopt the Public Staff's proposal from its November 21, 2012 comments described above. Duke and PEC also noted they would be amenable to a December 1, 2012, cutoff date by which an application for a CPCN or an RPC must have been filed for a QF to remain eligible for the current Schedule CSP-27 long-term rates, rather than the November 1, 2012, cutoff date proposed in the Public Staff's November 21, 2012 comments.

On December 5, 2012, the Public Staff filed reply comments. The Public Staff echoed the reply comments submitted by Duke and PEC, and also noted that, were the Commission to set a cutoff date at December 1, 2012, rather than November 1, 2012, the second cutoff date in the proposal, the date by which a CPCN must be received, would also need to be pushed back.

On December 5, 2012, REG and NCSEA both filed reply comments. REG suggested that, if the Commission were inclined to approve a suspension of rates, the Commission adopt the Public Staff's recommended framework amended for December 1, 2012, and March 1, 2013, cutoffs. NCSEA reiterated its previously stated position that the Commission should deny the Motion, or alternatively set a February 13, 2013, cutoff date for a QF to file an application for a CPCN and be eligible to select current Schedule CSP-27 long-term rates.

The Commission notes that it has ruled on similar requests to suspend approved long-term rates in Docket No. E-100, Subs 74 and 79. At issue are the competing interests of QFs that may have relied upon the approved long-term rates when determining the financial feasibility of a project and ratepayers who would bear the cost of long-term contracts at the higher rates. Additionally, the Commission must consider when a QF has established a legally enforceable obligation that its output be purchased at a given rate. The Commission previously ruled, in its January 26, 2011 Order on Arbitration, in Docket No. E-2, Sub 966, that a legally enforceable obligation exists when a QF has received a CPCN and the QF has committed to sell its generation.

After careful consideration the Commission finds that, as a fair and reasonable balance of these competing interests, PEC's Motion should be allowed, effective December 1, 2012, subject to the following conditions:

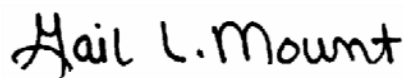
- 1) The suspension applies only to current Schedule CSP-27 long-term contract rates, not the variable rates. PEC's Proposed Long-term Rates will be applicable during the suspension period, subject to a true-up if the Commission approves rates higher than PEC's Proposed Long-term Rates.
- 2) QFs that had filed an application for a CPCN, or had filed an RPC, on or before December 1, 2012, and that establish a legally enforceable obligation with PEC prior to the issuance of an Order approving new long-term rates in Docket No. E-100, Sub 136, shall remain eligible to enter into contracts at the current Schedule CSP-27 long-term rates.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 2012.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Chief Clerk