

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-13695, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Orion Renewable Resources LLC

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**PROPOSED ORDER GRANTING
PETITION OF
ORION RENEWABLE
RESOURCES LLC**

BY THE Commission: On March 9, 2020, Orion filed a Verified Petition for Relief (“Petition”) in Docket No. SP-13695, Sub 1. On April 9, 2020, Accion filed a response in opposition to Orion’s petition, and on May 26, 2020, Orion filed a reply in support of the petition (“Orion Reply”). On May 29, 2020, the Public Staff filed a Motion for Leave to File Comments and Comments (“Public Staff Comments”), and on June 12, 2020, Accion filed an additional response to Orion’s reply comments.

On October 21, 2020, this Commission issued an *Order Scheduling Hearing* (“Hearing Order”) which scheduled a remote hearing on November 2, 2020. In the Hearing Order, the Commission also granted the Public Staff’s Motion for Leave to File Comment and found that Orion had been timely in bringing its petition before the Commission.

The Hearing was held on November 2, 2020, with Commissioner Clodfelter presiding. At the Hearing, Accion presented the testimony of witnesses Harold T. Judd, Phillip Layfield, Ralph Montsalvatge, David Ball, and Garey Rozier; Duke presented the testimony of witness Orvane Piper; and Orion presented the testimony of witness Timothy Lasocki.

At the Hearing, the Commission accepted the filings and attachments of the parties into the evidentiary record. The Commission also stated that it would take judicial notice of the following documents: (1) the Tranche 1 RFP, which was filed in Docket SP-9590, Sub 0 as Attachment A to a pleading filed March 13th, 2020 by Stanly Solar; (2) the Independent Administrator's April 9, 2019 Conclusion Report on the Conclusion of the Step 2 Evaluation in Tranche 1, filed in Docket E-7, Sub 1156 ("Step 2 Report"); and (3) the Independent Administrator's Final Updated Report filed on July 23rd, 2019, on the results of Tranche 1 of the CPRE Program, also filed in Docket E-7, Sub 1156 ("Tranche 1 Final Report").

During the course of the Hearing, the Panel requested that Duke provide a Late-Filed Exhibit addressing certain factual issues raised at the Hearing. Duke filed its Late-Filed Exhibit on November 24, 2020, with a corrected version filed on November 25.

Based upon consideration of the pleadings, testimony, and exhibits received into evidence and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Petitioner Orion submitted a third-party PPA proposal ("the Proposal") for a solar project located in Stanly County, North Carolina ("the Project") into Tranche 1 of the Competitive Procurement of Renewable Energy ("CPRE") program run by DEC. Orion's Proposal was advanced to Step 2 of the Tranche 1 process and was required to post Proposal Security. The Independent Administrator released Orion's Proposal from consideration on April 9, 2019, after concluding that the "Net Benefit" of the Proposal was negative. The Independent Administrator did not analyze whether the Proposal's pricing, inclusive of the cost of Upgrades, was at or below the Avoided Cost rates published in the Tranche 1 RFP.

2. DEC did not meet its 600 MW procurement target in Tranche 1 of CPRE. At the conclusion of the Tranche 1 contracting period, DEC had contracted with only 464.5 MW of projects.

3. North Carolina HB 589, which authorizes the CPRE Program, provides that each utility's procurement obligation is "capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement." The statute further provides that the utility's current forecast of its avoided cost for these purposes "shall be consistent with the Commission-approved avoided cost methodology." For purposes of administering the CPRE Program, this means that the pricing of a given proposal, inclusive of the cost of any Upgrades to DEC or DEP's System, shall not exceed the 20-year levelized avoided cost rates published in the operative RFP document and provided to CPRE Market Participants ("MPs").

4. In each Tranche of CPRE, Duke is required under the terms of N.C. Gen. Stat. 62-110.8(b)(2) to contract with Proposals that bid at or below the 20 year levelized Avoided Cost (in each pricing period) identified in the RFP, notwithstanding any determination of Net Benefit under the Independent Administrator's Evaluation Methodology, if doing so is necessary to achieve the procurement targets established for that Tranche. Consequently, it is inappropriate to eliminate from consideration any Proposal that is priced under the Avoided Cost rate, inclusive of the cost of Upgrades.

5. Orion's Proposal was below the Avoided Cost cap provided for in HB 589, the Commission's CPRE Rules and Orders, and the Tranche 1 RFP, even after considering the cost of any required Transmission and Distribution System Upgrades required for the Project.

6. Had CPRE Tranche 1 been administered in accordance with the cost-effectiveness criteria specified by HB 589, the Commission's CPRE Rules and Orders, and the provisions of the

Tranche 1 RFP, Orion's Proposal would not have been eliminated from consideration, but would instead have been offered a PPA incorporating its Tranche 1 proposal pricing.

7. Two other proposals were also eliminated in Step 1 of Tranche 1 based on having a negative Net Benefit. These proposals were priced lower than Orion's Proposal. The existence of these other proposals does not affect Orion's claim for relief, because even if they had not been eliminated but had been offered and executed PPAs, the total capacity of these projects and Orion's Project was only 127 MW. DEC fell short of its Tranche 1 procurement goal by 135.5 MW, meaning that all three projects could have signed Tranche 1 PPAs without DEC exceeding its Tranche 1 procurement target.

8. Although there is a remote possibility that there may have been Tranche 1 proposals that were below Avoided Cost but were eliminated in Step 2 based on a negative Net Benefit, the existence of such projects is merely speculative and does not impact Orion's request for relief.

9. Orion's Project participated in a CPRE Tranche 2 and was awarded a PPA. However, this does not make Orion whole or remedy the improper elimination of its Proposal from Tranche 1.

10. Under the circumstances of this case, and in order to remedy the improper elimination of Orion's Proposal from Tranche 1, it is appropriate to Order that the rate schedules in the Project's Tranche 2 PPA be revised to reflect the pricing of its Tranche 1 Proposal.

11. Although Duke has determined that, as of Tranche 2, POI Switching Equipment for CPRE Projects must be classified as Upgrades in the projects' Interconnection Agreements, Duke had not adequately provided a basis for its assertion that it is impermissible for this equipment to be classified as Interconnection Facilities in Orion's Interconnection Agreement, especially where Orion consents to such classification. It is therefore appropriate, solely in the unique

circumstances of this case, to Order that the Interconnection Agreement for the Project classify POI Switching Equipment as Interconnection Facilities, consistent with the approach taken by Duke in Tranche 1.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-2

These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not in dispute. These findings are supported by the Verified Petition and Attachments, and by the testimony of Orion Witness Timothy Lasocki and Accion Witness Harold Judd.

Orion's Petition (as incorporated into the testimony of Mr. Lasocki) states that Orion is the developer of the Misenheimer Solar project (the "Project"), a proposed 80 MW solar photovoltaic generating facility to be located in Stanly County, North Carolina. This Commission granted a Certificate of Public Convenience and Necessity for the Project on January 24, 2020, in Docket No. SP-13695, Sub 0. The Project seeks interconnection to the DEC transmission grid. Orion submitted its Proposal for the Project (Proposal DEC_129-01) into the DEC Tranche 1 RFP on October 9, 2018. The bid price in Orion's Proposal is below DEC's Avoided Cost Rates published prior to the issuance of the Tranche 1 RFP.

Orion was notified on January 9, 2019, that the Proposal had been placed on the "Competitive Tier Reserve" list, and on February 21, 2019, the IA identified the Proposal for additional Step 2 evaluation in the "Primary Competitive Tier." Before proceeding to Step 2, Orion was required to post Proposal Security of \$1,488,000, and the IA confirmed receipt of the required security on March 1, 2019.

On April 9, 2019, Orion received Final Notification from Accion, stating that Accion had completed the evaluation of its proposals in Tranche 1, and had determined that Orion's proposal was not selected and had been released from consideration. Accion did not explain at that time

why Orion's Proposal was disqualified. Orion requested additional information from Accion regarding the reasons for the release of its petition. After substantial discussion with Accion and consultation with the Public Staff, Orion ultimately learned from Accion that its Proposal had been released from consideration because Accion had determined that the "Net Benefit" of the project was negative. Accion had not analyzed whether the Proposal pricing, inclusive of the cost of Upgrades required by the Project, exceeded the Avoided Cost rate published in DEC's Tranche 1 RFP. Mr. Judd confirmed in his testimony that Accion had released the Proposal from consideration based on its conclusion that the Proposal had a negative Net Benefit.

The CPRE Tranche 1 selection and contracting process concluded on July 8, 2019. On July 18, 2019, Accion published a Final Report on Tranche 1 which stated that DEC had procured only 465.5 MW of its 600 MW Tranche 1 goal. It also reported that all proposals that were priced below DEC's published Avoided Cost Rates had been offered a Tranche 1 PPA.¹

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3-4

These findings are supported by the Verified Petition and Attachments, and by the testimony of Orion Witness Timothy Lasocki and Accion Witness Harold Judd.

Orion's Petition and Reply raise legal arguments, rooted in H.B. 589, the Commission's Orders and Rules implementing CPRE, and the Tranche 1 RFP, that an individual Proposal's compliance with this "Avoided Cost cap" must be determined by reference to whether the Proposal's pricing, plus the cost of any Upgrades required for the interconnection of the Project (levelized over 20 years) exceeds the 20-year levelized Avoided Cost rates published in the RFP document.

¹ Tranche 1 Final Report at 60.

Orion also provided a February 28, 2020, Memorandum published by Accion to CPRE Tranche 2 participants (“Tranche 2 Memo”). This memo purports to respond to requests from participants in the Tranche 2 Stakeholder process that Accion provide additional information regarding the CPRE evaluation process.

The Tranche 2 Memo states that disqualification of proposals based on a Net Benefit analysis is not appropriate. It specifically states that in Tranche 2, “No Proposal will be eliminated from further consideration if the assigned upgrade costs do not exceed the maximum allowable T&D upgrade costs, even if it has a negative benefit in the IA evaluation.” It further states that “All Proposals will be considered for inclusion in the Step 2 evaluation based on their net benefit ranking, provided that the Tranche procurement targets are not met with better ranked Proposals[.]”

The Tranche 2 Memo also indicates that Duke agrees with this interpretation of state law, even as to Tranche 1, stating:

Duke evaluation personnel believe that the Company is required under the terms of N.C. Gen. Stat. 62-110.8(b)(2) to contract with Proposals that bid at or below the 20 year levelized Avoided Cost (in each pricing period) identified in the RFP, notwithstanding a determination of net benefit under the IA Evaluation Methodology, if doing so is necessary to achieve the procurement targets established *for each tranche* during the 45 month CPRE procurement period.

In its Comments, the Public Staff concurs with Orion’s position that the cost-effectiveness of CPRE proposals must be judged by reference to published 20-year Avoided Cost rates, and not by reference to the results of Accion’s Net Benefit analysis.

Accion takes a contrary position, arguing in its filings that the Independent Administrator has “latitude” to reject a CPRE proposal outright based on a conclusion that it is not cost-effective, even if the price of the Proposal does not exceed avoided cost. Accion witness Mr. Judd explained that Accion determines cost-effectiveness using a “Net Benefit” analysis, based on a comparison

of the projected cost impacts of the project on an hourly (8760 hours a year) basis over the entire 20-year term of the PPA. Mr. Judd testified that Accion views its “Net Benefit” analysis as being “synonymous” with Avoided Cost.

Commission Discussion and Conclusions

The Commission is persuaded by Orion’s and the Public Staff’s arguments that HB 589, the Commission’s Orders and Rules, and the Tranche 1 RFP, all require cost-effectiveness to be determined by reference to published Avoided Cost rates. Whatever the merits of the Net Benefit analysis for ranking the competitiveness of proposals,² a negative Net Benefit is not an appropriate basis for eliminating a CPRE proposal that otherwise complies with the Avoided Cost cap.

HB 589 created the CPRE program, which obligates Duke Energy Progress, LLC (“DEP”) and DEC to competitively procure energy and capacity from renewable energy facilities. The purpose of CPRE is to “add[] renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs.”

Under the Commission’s Rules implementing CPRE, evaluation and selection of proposals proceed in a two-step process. In Step 1, the Independent Administrator appointed by the Commission evaluates all proposals based upon factors set forth in the published CPRE solicitation.³ The IA eliminates proposals that “fail to meet the CPRE RFP Solicitation evaluation factors,” and then delivers to the utility’s “T&D Sub-Team” a list of proposals ranked in order from most competitive to least competitive.

² No party challenges, and the Commission does not herein address, the appropriateness of using Net Benefit to rank CPRE proposals.

³ Rule R8-71(f)(3)(i).

In Step 2, the utility's T&D Sub-Team assesses the system impact of eligible proposals in the order ranked by the IA and assigns any System Upgrade costs attributable to each proposal on the list.⁴ After determining whether System Upgrade costs have been appropriately assigned and whether the list of projects needs to be re-ranked based on System Upgrade costs, the IA establishes a final ranking and DEC selects proposals in the order ranked by the IA until the total generating capacity sought in the CPRE RFP Solicitation is satisfied.⁵

To ensure the cost-effectiveness of energy resources procured under CPRE, HB 589 provides that each utility's procurement obligation is "capped by the public utility's current forecast of its avoided cost calculated over the term of the power purchase agreement." The statute further provides that the utility's current forecast of its avoided cost for these purposes "shall be consistent with the Commission-approved avoided cost methodology."⁶

Under Commission rules, compliance with the avoided cost cap is determined by comparing a proposal's total bid price (inclusive of any System Upgrade costs) to the utility's calculation of its long-term, levelized avoided cost rates for energy and capacity ("Avoided Cost

⁴ Rule R8-71(f)(3)(iii).

⁵ Rule R8-71(f)(3)(iv).

⁶ G.S. § 62-110.8(b)(2).

Rates”).⁷ The utility is required publish the Avoided Cost Rates against which proposals will be evaluated.⁸

DEC’s petition to the Commission for approval of its CPRE Program, as well as the Commission’s Order approving and modifying DEC’s proposal, confirm that each bid’s compliance with the avoided cost cap is judged solely by reference to DEC’s published Avoided Cost Rates.⁹ This is reiterated in other filings and Commission Orders relating to CPRE.¹⁰ Submittals and reports of the IA, Accion Power (“Accion”), also confirm this understanding.¹¹

In the case of the Tranche 1 RFP, DEC informed bidders or Market Participants (“MPs”) that their bid prices were required to be at or below DEC’s Avoided Cost Rates, which were

⁷ “Avoided cost rates” are defined in Commission Rule R8-71(b)(2) as “an electric public utility’s calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electric public utility’s upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility’s avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation.”

⁸ R8-71(f)(1)(ii).

⁹ Docket Nos. E-2 Sub 1159 and E-7 Sub 1156, *Order Modifying and Approving Joint CPRE Program* (Feb. 21, 2018) at 3, 17, 20-21; *Duke Energy Carolinas, LLC’s & Duke Energy Progress, LLC’s Competitive Procurement of Renewable Energy Program Guidelines* (Nov. 27, 2017) at 6.

¹⁰ See, e.g., Docket No. E-100 Sub 151, *Order Adopting and Amending Rules* (Nov 2017) at 21 (“all prices in proposals must be compared to avoided cost rates, which are expressed in \$/MWh”); Docket Nos. E-2 Sub 1156 and E-7 Sub 1159, *Comments of Duke Energy Progress, LLC And Duke Energy Carolinas, LLC* (Mar. 22, 2019) at 9, 12-13 (“the CPRE Program statute provides that the cost-effectiveness cap on bids is to be based upon the ‘public utility’s current forecast of its avoided cost [and] shall be consistent with the Commission-approved avoided cost methodology.’”).

¹¹ Docket Nos. E-2 Sub 1156 and E-7 Sub 1159, *CPRE IA Second Status Report* (Dec. 21, 2018) at 3; Docket No. E-100 Sub 151, *Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Initial Comments And Independent Administrator Recommendation, Proposal To Duke Energy In Response To Bid Event #75103: CPRE Program Independent Administrator* (Dec. 8, 2017) (“Accion understands that the Commission and Duke have in place a methodology for determining avoided cost that will be reviewed for credibility in the instant solicitation, and then employed as a benchmark against which bids will be measured.”).

described in the Tranche 1 RFP as “the applicable 20-year dollar per megawatt-hour (\$/MWh) avoided cost specified in the tables” provided in the Tranche 1 RFP, after consideration of the cost of System Upgrades required for proposed projects.¹² Bidders were required to provide pricing for their Proposals in the form of a single price decrement to DEC’s published Avoided Cost Rates. For purposes of this comparison of total proposal costs to Avoided Cost Rates, the cost of System Upgrades for each proposal was determined via a “grouping study” conducted by the utility’s T&D Sub-team in Step 2 of the CPRE process.¹³

For purposes of ranking the economic competitiveness of each eligible bid, the Tranche 1 RFP established a quantitative measure referred to as “Net Benefit.” Although the Tranche 1 RFP does not describe in detail how Net Benefit would be calculated, at a high level it describes the calculation as follows:

In order to assess a Proposal’s net benefit, the evaluation must determine both the Proposal’s cost and the Proposal’s benefit to the DEC/DEP system. The cost of the Proposal is determined by taking the MP submitted \$/MWh rate and applying the rate to the Facility’s projected output (8760 hours x 20 years). The benefit to the DEC/DEP system is determined using two metrics: (1) the Proposal’s output contributes toward the ability to defer future DEC/DEP generating unit capacity and (2) the Proposal’s energy output replaces energy that would have been supplied at DEC/DEP system cost for that particular hour.¹⁴

Unlike compliance with the avoided cost cap, which is based only on the utility’s published, levelized Avoided Cost Rates,¹⁵ the Net Benefit analysis compares the proposal’s total cost (bid

¹² Tranche 1 RFP at 11-12, 14.

¹³ Tranche 1 Final Report at 24; R8-71(f)(3)(iii).

¹⁴ Tranche 1 RFP at 13.

¹⁵ For purposes of determining compliance with the avoided cost cap, the IA converted the System Upgrade costs determined by the T&D Sub-Team to 20-year \$/MWh pricing and added them to the bid price. Tranche 1 RFP at 13.

price plus System Upgrade costs) against the utility's ability to defer future generating unit capacity and its projected cost of energy that would have been supplied, for each hour over the entire 20-year term of the CPRE PPA. The Net Benefit calculation differs significantly from published Avoided Cost Rates, and a proposal that complies with the avoided cost cap may nonetheless have a negative Net Benefit.

Neither the Tranche 1 RFP, nor any filing or order in the CPRE dockets, nor any guidance provided by DEC or the IA in Tranche 1, suggested that the Net Benefit analysis would be used to determine whether a bidder's proposal complied with the avoided cost cap. Instead, the Tranche 1 RFP states that the "Net Benefit" analysis will be used only to rank proposals for purposes of selection. All guidance provided to Tranche 1 bidders indicated that the Net Benefit analysis was not relevant to a determination of whether a proposal's cost exceeded the avoided cost cap.

In view of the foregoing, the Commission is persuaded that the sole "cost-effectiveness" criterion by which a proposal may be eliminated outright from consideration in CPRE is the proposal's compliance with the Avoided Cost rate published in the RFP. If contracting with a project is necessary to achieve DEC or DEP's procurement target for a particular CPRE Tranche, then that project, if it is (inclusive of Upgrade costs) at or below avoided cost, may not be eliminated from consideration based on a finding that the "Net Benefit" of the proposal is negative.

The Commission does not address herein whether it is appropriate to rank proposals based on Net Benefit, and it is anticipated that in most instances projects with a negative net benefit will not be selected simply because they are not competitive. But where there is a shortfall, Duke is required under the terms of N.C. Gen. Stat. 62-110.8(b)(2) to contract with Proposals that bid at or below the 20 year levelized Avoided Cost (in each pricing period) identified in the RFP,

notwithstanding a determination of net benefit under the IA Evaluation Methodology, if doing so is necessary to achieve the procurement targets established for that Tranche.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-6

These findings are supported by the testimony of Duke Witness Orvane Piper and Accion Witness David Ball, and by DEC's Late-Filed Exhibit.

Witnesses from Accion and Duke testified that DEC's T&D Team, which is responsible for calculating the Upgrade costs of CPRE projects, calculated that Upgrades for the Project would cost approximately \$450,000. Duke's witness Mr. Piper further testified that the T&D Team had determined that there were no interconnection interdependencies associated with the Project, meaning that the interconnection of the Project would not affect the Upgrades required for any other project, and vice versa. The extent of Upgrades required for the Project has not changed since Duke's original analysis during Tranche 1. Late-Filed Ex. at 2. Accion's witness Mr. Ball testified that based on Duke's analysis of Upgrade costs for the Project, the total cost of Orion's Proposal was below the applicable Avoided Cost rate for Tranche 1.

Commission Discussion and Conclusions

Evidence presented at the Hearing confirmed that the pricing of Orion's Proposal, plus the cost of Upgrades for the Project, was below the applicable Avoided Cost rate for Tranche 1. Consequently, the Proposal met the "cost-effectiveness" criteria for CPRE projects established by the General Assembly and by this Commission. Given that DEC was well short of its procurement target in Tranche 1, if Orion's Proposal had not been improperly eliminated it would have been awarded a PPA.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-8

These findings are supported by the testimony of Duke Witness Orvane Piper and Accion Witness David Ball, and by DEC's Late-Filed Exhibit.

There was discussion at the Hearing and in DEC's Late-Filed Exhibit relating to other projects eliminated from Tranche 1 based on the Net Benefit analysis. At the Hearing, Accion's and Duke's witnesses testified that two other Tranche 1 proposals were also disqualified by Accion in Step 1 based on a Net Benefit analysis, and that these proposals were more favorably ranked than Orion's. However, according to Accion's Report at the conclusion of Step 2 and DEC's Late-Filed Exhibit, the total capacity of those two projects plus the Misenheimer Project was only 127 MW.

At the Hearing, Accion's witness Mr. Ball testified that additional projects were eliminated in Step 2 based on a Net Benefit analysis, and that there might be a "really narrow category" of proposals that were "negative on net benefit" considering Upgrade costs, while still being below Avoided Cost. Hearing Tr. at 89:10-15. In its Late-Filed Exhibit, Duke speculates that there might be Tranche 1 proposals that were eliminated in Step 2 because they were found to have a negative Net Benefit after consideration of their Upgrade costs but which might have been under the Avoided Cost threshold for Tranche 1. However, Duke does not identify any such projects and states that "extensive further analysis" would be required to determine if any actually exist.

Commission Discussion and Conclusions

The fact that two other higher-ranked proposals were improperly eliminated in Step 1 based on the Net Benefit analysis does not undermine Orion's claim for relief. In the first place, these other projects are not before the Commission. More importantly, DEC's capacity shortfall at the conclusion of Tranche 1 was over 135 MW – meaning that even if these projects had not been improperly eliminated, but had been awarded Tranche 1 PPAs along with Orion's Proposal, DEC

would still have been below its 600 MW procurement goal. Step 2 Report at 5 (127 MW of Proposals found to be “Above avoided cost” in Step 1); Final Report at Attachment 1; CPRE Program Update at 6.

The fact that Accion eliminated additional projects in Step 2 based on a Net Benefit analysis also does not impact Orion’s claims. While Duke theorizes that there *might* be additional, higher-ranked projects that were also improperly disqualified based a Net Benefit analysis but which would still have been below Avoided Cost, no such projects are known to exist and the only testimony offered at the Hearing tends to show that their existence is doubtful. Such a speculative possibility does not undermine Orion’s entitlement to relief.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-10

These findings are supported by the parties’ filings and the testimony of the witnesses. Orion stated in its Petition that it intended to participate in CPRE Tranche 2, but argued that even if its Tranche 2 proposal were to be awarded a PPA, this would not make Orion whole for the improper disqualification of its Proposal from Tranche 1. Petition ¶ 35. After conclusion of briefing on the Petition, the Project was selected as a winner in CPRE Tranche 2. On October 15, 2020, the Project signed a PPA with DEC using the Tranche 2 pro forma PPA. The Project posted security as required by the Tranche 2 PPA and arranged for financing dependent on the terms and conditions of the Tranche 2 PPA. Under the circumstances, Orion submits that the appropriate

remedy now would be to amend the rate schedule in the Project's Tranche 2 PPA to correspond to its Tranche 1 proposal pricing.

In its Late-Filed Exhibit, Duke appears to argue that awarding a PPA to Orion based on its Tranche 1 Proposal "would be detrimental to customers." Duke did not make this argument in any prior filing or at the Hearing.

Commission Discussion and Conclusions

The Commission concludes that Orion was improperly denied a PPA in CPRE Tranche 1, and that it is not made whole by having been selected for a PPA in Tranche 2. The Commission concludes that under the unique circumstances presented in this matter, the appropriate remedy is to Order that the rate schedules in Orion's Tranche 2 PPA be amended to reflect Orion's Tranche 1 proposal pricing.

This would be administratively simpler, less disruptive, and fairer than rescinding the current Tranche 2 PPA and replacing it with a Tranche 1 pro forma PPA. Such a remedy would be consistent with the rules and guidance for Tranche 1, and would give ratepayers the "deal" they would have gotten if Tranche 1 had been properly administered. It would also be consistent with the approach that Duke, the Public Staff, and the Independent Administrator have agreed is appropriate going forward – *i.e.*, that in each CPRE Tranche, the utility must offer PPAs to all proposals that are below Avoided Cost, until it has satisfied its procurement target for that tranche. *See* Tranche 2 Memorandum at 2.

The Commission rejects any contention by Duke that awarding such a remedy would be "detrimental to ratepayers." As discussed in this Order, the General Assembly has established the standard by which the "the cost-effectiveness of procured new renewable energy resources" under CPRE must be measured – the utility's Avoided Cost. G.S. § 62-110.8(b)(2). Duke itself agrees

that it “is required under the terms of N.C. Gen. Stat. 62-110.8(b)(2) to contract with Proposals that bid at or below the 20 year levelized Avoided Cost (in each pricing period) identified in the RFP, notwithstanding a determination of net benefit under the IA Evaluation Methodology, if doing so is necessary to achieve the procurement targets established for each tranche during the 45 month CPRE procurement period.” To now claim that compliance with this statutory directive is “detrimental to customers” is nonsensical.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 11

These findings are supported by Duke’s Late-Filed Exhibit and the entire record of the case.

In its Late-Filed Exhibit, DEC states that after the conclusion of Tranche 1, it changed the classification of POI Switching Equipment from Interconnection Facilities (the costs of which are borne by CPRE participants) to Upgrades (the costs of which are borne by the utility). According to DEC, this change in classification has increased the cost of the “standard Upgrade package” by approximately \$1 million to \$1.25 million, although a portion of that increase is offset by a reduced estimate for the cost of relaying equipment. This issue was not raised at the Hearing or in any prior filing, and so there has been no opportunity for factual development on this issue.

DEC notes that as a Tranche 2 winner, the Project is currently being studied for the cost of Upgrades and DEC’s Interconnection Agreement with the Project will classify POI Switching Equipment as Upgrades, consistent with DEC’s revised policy. DEC claims that this change in equipment classification raises two issues: (1) whether Orion would receive a “windfall” if it were awarded a Tranche 1 PPA, since the Interconnection Agreement will use the revised equipment classification; and (2) whether a Tranche 1 bidder’s compliance with the Avoided Cost cap

established for Tranche 1 should be assessed based on the equipment classification in effect at the time of the bid or under the current equipment classification policy.

Commission Discussion and Conclusions

It would be inconsistent with CPRE Rules and the Tranche 1 RFP, not to mention unfair, to assess a Tranche 1 project's compliance with the Avoided Cost cap using a different set of Upgrade cost assumptions than the ones MPs were given when formulating their bids. Had Orion known it would not be required to bear the cost of POI Switching Equipment, it would have calculated its Tranche 1 proposal pricing differently. Duke has already concluded that Orion's Proposal was below Avoided Cost, and DEC's change in policy does not provide any reason to revisit that conclusion.

Any potential windfall to Orion due to the change in DEC's classification policy can easily be addressed by requiring the Project's Interconnection Agreement to follow the Tranche 1 policy and classify POI Switching Equipment as Interconnection Facilities rather than Upgrades, so that the Project would bear this cost. Although DEC claims that it "is not permitted to retroactively issue Interconnection Agreements for Tranche 1 Proposals that classify POI Switching Equipment as Interconnection Facilities since FERC guidance has now rendered that improper," it does not explain why more recent, unspecified guidance from FERC would prevent DEC from entering into the same Interconnection Agreement with this Project as all other Tranche 1 Interconnection Agreements, or why general FERC guidance should constrain this Commission's ability either to administer its state-jurisdictional interconnection procedures or to fashion an appropriate remedy in this proceeding. Orion also states in its Post-Hearing Brief that it would consent to this classification. Under the unique circumstances of this case, and in the absence of a persuasive explanation by Duke as to why this is improper, the Commission will not allow Duke's

unexplained concerns regarding the classification of POI Switching Equipment to prevent it from providing appropriate relief to Petitioner.

IT IS, THEREFORE, ORDERED as follows:

1. That the rate schedule in Orion's existing Tranche 2 CPRE PPA shall be revised to reflect the proposal pricing provided in Orion's Tranche 1 Proposal (Proposal DEC_129-01); and
2. That the Interconnection Agreement for the Project shall classify POI Switching Equipment as Interconnection Facilities.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2021.

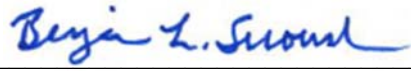
NORTH CAROLINA UTILITIES COMMISSION

Kimberley A. Campbell, Chief Clerk

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **PROPOSED**
ORDER GRANTING PETITION OF ORION RENEWABLE RESOURCES LLC upon all
parties of record by electronic mail and/or first-class United States mail.

This the 4th day of January 2021.



Benjamin L. Snowden