

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 101
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION:

In the Matter of:

Petition for Approval of Revisions to
Generator Interconnection Standards

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**MOTION TO STAY BY CYPRESS
CREEK RENEWABLES**

MOTION TO STAY

NOW COMES putative intervenor Cypress Creek Renewables (“Cypress Creek”), pursuant to Commission Rule R1-7 and respectfully moves the Commission for a stay of (i) Ordering Paragraph 2 of its *Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1 of CPRE RFP* entered in this docket on October 5 (the “October 5 Order”), and (ii) the associated last two sentences of the Commission’s modification of Section 4.3.9 of the North Carolina Interconnection Procedures (“NCIP”), as to two specific solar projects owned and under development by Cypress Creek. Those projects are uniquely and adversely affected by these aspects of the October 5 Order and the NCIP, a consequence that Cypress Creek submits, and intends to establish in a subsequent filing, is unjust and unreasonable and involves facts and considerations that Cypress Creek, which was not a party to this proceeding, did not have an opportunity to present to the Commission prior to entry of the October 5 Order.

The purpose of this requested stay is to preserve the status quo as to Cypress Creek’s two projects so that Cypress Creek, in consultation with the Public Staff and other parties, may request appropriate relief from the severe adverse consequences on its two projects that will result, without

any corresponding public benefit, if it were required to comply with the elements of the October 5 Order and the modified NCIP at issue here.

In support of this Motion, Cypress Creek states the following:

1. On July 30, 2018, DEC and DEP (“Duke”) filed in this docket a *Motion for Approval of CPRE-Related Modifications to North Carolina Interconnection Procedures*. At Duke’s request, the Commission considered the motion on an expedited basis because of impending deadlines in the Competitive Procurement of Renewable Energy (“CPRE”) program mandated under Session Law 2017-192.¹

2. Among other changes to the NCIP, Duke requested that the Commission amend Section 4.3.9 of the NCIP to require Interconnection Customers that have been identified through the System Impact Study process as triggering Network Upgrades to provide either a nonrefundable prepayment for those Network Upgrades or Financial Security reasonably acceptable to the Utility (“the Milestone Payment”) prior to entering the Facilities Study stage of the interconnection process. Duke’s proposal did not require an Interconnection Customer that was already in, or had proceeded through, the Facilities Study process to provide such prepayment or Financial Security prior to signing an Interconnection Agreement.

3. Parties to this proceeding, including Duke, NCSEA, NCCEBA, IREC, First Solar, and the North Carolina Pork Council provided comments on Duke’s proposed revisions. No party specifically objected to Duke’s proposed amendment to Section 4.3.9 as represented in its filings.² Cypress Creek was not a party to this docket at that time and consequently did not submit

¹ Duke had previously proposed these changes in its *Additional Reply Comments* filed on March 12, 2018.

² NCCEBA did request that the Commission approve language clarifying that a revocable surety bond would be deemed an “acceptable form of security” for purposes of Section 4.3.9.

comments in its own right, but was aware of and supportive of the comments made by its trade association, NCCEBA.

4. Oral argument was held on September 24, 2018. The issue of “retroactive” application of Section 4.3.9—*i.e.*, a requirement that a project already in Facilities Study might be required to make the nonrefundable Milestone Payment prior to signing an Interconnection Agreement—was not discussed (just as it had not been discussed in Duke’s proposal or any written filings made in this proceeding). In its *Response To Request For Clarification Of Statements Made During Oral Argument* on October 1, 2018, the Public Staff stated that the revision to Section 4.3.9 “would not apply retroactively to interconnection customers who have already signed a Facilities Study Agreement, but rather to any customers who, following Commission approval of the modified provision, receive a completed System Impact Study Report and Facilities Study Agreement.” In post-hearing communications filed on this docket on October 5, the Commission Staff also questioned whether the application of the Milestone Payment would be inconsistent with the language of Duke’s proposed revisions to Section 4.3.9 and result in the retroactive application. *Commission Questions With Responses (Public Version)* (Oct. 5, 2018). In their response to Commission Question #2, Duke and the Public Staff stated that “For the avoidance of doubt, the Parties support requiring Interconnection Customers in Facilities Study today to make the Milestone Commitment and do not view this as improper or ‘retroactive’ application of this provision.”³

5. The October 5 Order called for application of the Milestone Payment requirement to Interconnection Customers in the Facilities Study stage, stating in Ordering Paragraph 2:

That Interconnection Customers affected by Section 4.3.9 that are currently in the facilities study stage of the NCIP shall have 30 business days from the date

³ Cypress Creek believes that “Parties” in this sentence referred to Duke and the Public Staff.

of this Order to submit a prepayment for Network Upgrades. For a given Interconnection Request, if no such payment is received, the Interconnection Request shall be removed from the interconnection queue.

6. Cypress Creek is the developer of two solar projects that are uniquely and negatively impacted by this aspect of the October 5 Order. Fair Bluff Solar, LLC, and Homer Solar, LLC (collectively, “the Cypress Projects”) are transmission-interconnected solar projects that signed Facilities Study Agreements on February 27, 2018, and September 18, 2017, respectively.

7. The Cypress Projects were identified in System Impact Study as being interdependent with an earlier-queued FERC-jurisdictional Interconnection Customer, Friesian Solar LLC (“Friesian”), that is under development by another company. The Friesian project has triggered multiple significant Network Upgrades and is currently engaged in construction planning and negotiations with Duke.

8. The Cypress Projects both require substantial Network Upgrades (“the interdependent upgrades”) that are also required by Friesian. As the earlier-queued project, Friesian is responsible for paying for those upgrades, the estimated cost of which exceeds \$100 million. Those Network Upgrades represent significant improvements to the transmission grid that will greatly increase the capacity of the grid in that area.

9. The Cypress Projects also requires other Network Upgrades (“the independent upgrades”) that are independent of the upgrades required for Friesian. The total estimated cost of these Network Upgrades, which will be borne solely by the Cypress Projects, is approximately \$9.6 million.

10. Because it requires retroactive application of the nonrefundable Milestone Payment requirement, the October 5 Order would require the Cypress Projects to prepay or post

nonrefundable Financial Security of approximately \$9.6 million within 30 business days after entry of the Order (*i.e.*, by November 20).

11. However, the Friesian project—which is not subject to the FERC Large Generator Interconnection Procedures and is therefore not required to make the Milestone Payment—has not yet made an irrevocable commitment to fund the interdependent upgrades and will not do so before November 20. If Friesian ultimately does not commit to paying for its Network Upgrades, and thus is forced out of the queue, the Cypress Projects will become responsible for funding those interdependent Network Upgrades. That additional cost, which will be well in excess of \$100 million, would make the Cypress Projects non-viable and cause them to exit the queue. In that event, the Cypress Projects would forfeit to Duke the \$9.6 million Milestone Payment for Network Upgrades that would never be constructed.

12. Given the financial uncertainty that arises from this situation, it is likely that the Cypress Projects will be unable to make the \$9.6 Milestone Payment on November 20 and will be forced to withdraw from the queue, resulting in the loss of all investment and existing economic value in those projects. This will result in irreparable harm to Cypress Creek, which this Commission could not adequately or appropriately address.

13. The revisions to Section 4.3.9 of the NCIP requested by Duke did not require Interconnection Customers similarly situated to the Cypress Projects to make the early Milestone Payment. No notice that the Commission was contemplating such a change, or opportunity to comment on the possible consequences of such a change, was provided to all parties to the proceeding. Nor did Cypress Creek, based on the record in the case, have any reason to think that such an action, severely affecting its projects, might be taken in this proceeding and that it might need to intervene in this docket to protect its unique interests. Cypress Creek first became aware

that the Homer and Fair Bluff projects might be impacted when it received a notice from Duke regarding the Milestone Payments for these projects.

14. Cypress Creek has been in discussions with the other parties to this docket in an effort to reach agreement as to relief that may be appropriate for Cypress Creek to seek from the severe and unjust impacts that the October 5 Order, and intends to seek such relief from the Commission in the very near future. However, the parties have not yet reached agreement regarding this relief, and it is not clear how much time will be required for the Commission to rule on the requested relief.

15. Cypress Creek therefore asks the Commission to preserve the status quo as to its Homer Solar and Fair Bluff Solar projects, by staying the effectiveness of Ordering Paragraph 2 of the October 5 Order (and the last two sentences of Section 4.3.9 of the NCIP as revised in that order) until December 11, 2018, the day before the CPRE Tranche 1 bid bond deadline. This amounts to an extension of the Milestone Payment deadline for the projects of fifteen (15) business days.

16. Neither Duke nor any other party will be prejudiced by entry of a stay of the October 5 Order as to the Cypress Projects while the parties seek resolution of this issue and the Commission considers the appropriateness of any solution proposed by the parties. As an initial matter, in the absence of further relief beyond the requested stay, the Cypress Projects' Milestone Payments would still be due by December 11, so that it would be clear prior to the evaluation phase of the CPRE whether the independent Network Upgrades for the Cypress Projects would be funded.

17. Moreover, to the best of Cypress Creek's knowledge there are no projects in the interconnection queue with Network Upgrades dependent on the Cypress Projects' independent

upgrades. There are later-queued projects that are dependent on Friesian's Network Upgrades. However, neither those projects nor the Cypress Projects will have certainty as to their required Network Upgrades until Friesian definitively commits (or declines to commit) to its interdependent Network Upgrades. Extending the deadline for the Cypress Projects' Milestone Payments would not alter this situation or cause harm to any party. In order to preserve the rights of Cypress Creek, as well as maintain the status quo of the parties, as justice so requires, the Commission should enter a temporary stay of the October 5 Order as described above and extend the requirement for the Cypress Projects to provide the Milestone Payment required by Section 4.3.9 of the NCIP as revised by that Order.

18. As additional grounds for this requested stay, Cypress Creek represents that Duke has committed to allowing the use of an appropriate surety bond for the posting of the required Financial Security (in lieu of cash payment) but has not yet provided Cypress Creek with a proposed form surety bond for this purpose. Given that 23 of the 30 business days allowed for such posting have elapsed, it would be extremely difficult if not impossible for Cypress Creek to arrange \$9.6 million of Financial Security by the current deadline.

19. Cypress Creek has conferred with NCCEBA, NCSEA, Duke, and the Public Staff, and each of these parties supports the stay requested herein.

WHEREFORE, for the foregoing reasons Cypress Creek respectfully requests that the Commission stay the effectiveness as to the Cypress Projects of (i) Ordering Paragraph 2 of its October 5, 2018 *Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1 of CPRE RFP*, and (ii) the associated last two sentences of the Commission's modification of the NCIP until December 11, 2018, and for such other and further relief as the Commission deems just and proper.

Respectfully submitted, this 9th day of November, 2018.

By: /s/
Benjamin L. Snowden
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Attorney for Petitioner Cypress Creek Renewables

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **MOTION TO STAY** has been served this day upon each party of record in this proceeding or their attorney by electronic mail or by depositing a copy thereof in the United States mail, postage prepaid.

This the 9th day of November, 2018.

/s/

Benjamin L. Snowden
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VERIFICATION

Steven J. Levitas, having been duly sworn, deposes and says:

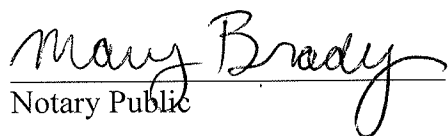
1. I am Senior Vice President for Regulatory Affairs and Strategy of Cypress Creek Renewables.
2. I have read the foregoing **Motion to Stay** and know its contents.
3. The matters stated in this instrument are true to the best of my knowledge.



Steven J. Levitas
Senior Vice President for Regulatory Affairs
and Strategy
Cypress Creek Renewables

Sworn to and subscribed before me,

this 9th day of November, 2018.


Notary Public

My commission expires: May 22, 2022

