

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. SP-13695, SUB 1

In the Matter of:) ACCION GROUP, LLC, THE CPRE
 Petition for relief of) INDEPENDENT ADMINISTRATOR,
 Orion Renewable Resources LLC)

Independent Administrator's Post Hearing Brief

NOW COMES, Accion Group, LLC, the Independent Administrator for the Competitive Procurement of Renewable Energy Program ("*CPRE*" or "*Program*") (hereinafter "*IA*" or "*Accion*") through its attorneys, The Crisp Law Firm, PLLC, and respectfully submits the following Post Hearing Brief.

A. PROCEDURAL STATUS

This matter stems from the *Verified Petition for Relief by Orion Renewable Resources LLC* (the "*Petition*") ("*Petitioner*" or "*Orion*") filed with the North Carolina Utilities Commission (the "*Commission*") on March 9, 2020. The Petition pertains to Orion's Proposal under Tranche 1 of the CPRE involving Duke Energy Carolinas, LLC ("*Duke*"). In the Petition, Orion argues that its Proposal ("*Proposal*") for an 80-megawatt solar project ("*Project*") was impermissibly disqualified from the CPRE Program.

On April 9, 2020, Accion filed its *Response* to the Petition. On May 26, 2020, Orion filed its *Reply in Support the Petition*. On June 12, 2020, Accion filed its *Response to an Additional Reply*. On October 21, 2020, the Commission issued its *Order Scheduling Hearing*. On October 28, 2020, Accion filed its confidential *Redirect Exhibit*. On

November 2, 2020, the Commission held a remote hearing at which Orion, Duke, and Accion appeared with counsel and witnesses. On November 24, 2020, at the request of the Commission, Duke filed its *Late-Filed Exhibit* and on November 25, 2020, Duke filed its *Corrected Late-Filed Exhibit*. On January 4, 2021, Accion filed its *Independent Administrator's Post Hearing Brief*, Orion filed its *Post-Hearing Brief of Orion Renewable Resources LLC*, and Duke filed its *Post-Hearing Brief of Duke Energy Carolinas, LLC*.

On January 25, 2021, Orion filed its *Motion to Strike, or in the Alternative to Reopen Hearing of Orion Renewable Resources LLC*. On February 3, 2021, the Commission issued its *Order Establishing Deadlines for Filings Responsive to Orion's Motion to Strike*. On February 15, 2021, Duke filed its *Response in Opposition to Motion to Strike*, and Accion filed its *Response to Motion to Strike, or in the Alternative to Reopen Hearing*. On February 22, 2021, Orion filed its *Reply in Support of Motion to Strike, or in the Alternative to Reopen Hearing*. On April 14, 2021, the Commission issued its *Order Denying Motion to Strike and Reopening Record, Allowing Testimony or Comments on Late-Filed Exhibit, and Scheduling Further Hearing*. On June 16, 2021, Duke filed its confidential CPRE Tranche 1 for DEC: Orion 4/20/2021 Data Request, Item #1.

The Commission conducted a further remote hearing on June 30, 2021. Once again, counsel and witnesses appeared for Orion, Duke, and Accion. On July 15, 2021, the Commission issued its *Notice of Due Date for Proposed Orders and/or Briefs*. Pursuant to that Order, Accion submits this Post-Hearing Brief.

B. THE IA EVALUATED BIDS BASED ON THEIR COST TO RATEPAYERS

Orion's Contentions

The essence of Orion's contention is the IA's evaluation was based on a "Net Benefit" analysis. According to Orion "Net benefit is a measure, distinct from avoided cost..."¹ Orion contends that North Carolina Gen. Stat. 62-110.8(b)(2), House Bill 589, S.L. 2017-192 requires a determination based on Orion's understanding of avoided cost, rather than the IA's Net Benefit analysis. The correctness of Orion's statutory interpretation is the subject of prior Briefs submitted in this matter. (*See Post-Hearing Brief of Duke Energy Carolinas, LLC filed January 4, 2021, and the Independent Administrator's Post-Hearing also filed on January 4, 2021.*) However, Orion's assertion that there is a legal difference or distinction between avoided cost and Net Benefit is incorrect.

Moreover, Orion's assertion that any proposal which is below the avoided cost cap is entitled to a Purchase Power Agreement ("**PPA**") is also mistaken.

Net Benefit Analysis

Net Benefit is an analysis method which determines whether a Proposal is below the avoided cost cap on a twenty-four hour basis for each day of the entire term of the proposed project, in this case twenty years. This is sometimes referred to as "8760 X 20." As such, it accounts for more variables than the evaluation method advocated by Orion.

¹ See Orion's Verified Petition for Relief at p.1.

The approach advocated by Orion involves an evaluation of Proposals based on particular selected indicative time-periods, or decrements. That approach does not evaluate the avoided cost of each Proposal hour by hour, day by day, over the entire twenty-year term of the PPA, or 8760 X 20. Because it does not involve as extensive an evaluation, it is possible for there to be many times during the course of the twenty-year term of a PPA when the Proposal is above the avoided cost cap.

Because of this difference, the Net Benefit approach provides the most precise analysis of the cost of each Proposal to the ratepayer. Rather than evaluating Proposals based on particular selected indicative time-periods, or decrements, Net Benefit analyzes the true cost hour by hour, day by day over the entire term of the PPA.

The Three Pricing Periods, or Decrements, in Tranche 1 were a composite of Duke avoided costs

Orion's Proposal, like all other proposals, was required to have a bid at or below the avoided cost threshold in order to be considered in Tranche 1 of the CPRE program. Orion would have the Commission accept its assertion that by meeting this lone requirement, it should have been awarded a PPA for its Proposal.² This would be so, even though it was established through the IA's evaluation that it would have

²In the prefled second supplemental rebuttal testimony, Orion's witness Robert Lasocki stated, "if Accion had correctly (in Orion's view) employed the Avoided Cost Cap, rather than Net Benefit, as the cost-effectiveness standard in Tranche 1, none of the 15 proposals referenced in the LFE would have been selected, and Orion's proposal would have been offered a PPA. Tr. 33.

produced a cost to consumers above the avoided cost cap over the total life of the project.

Bidders in the CPRE program bid a decrement to three indicative pricing periods provided in the RFP. As part of their Proposals, bidders provided their production profile for each hour of the day for twenty years, that is, 8760 X 20 years.³ The three pricing periods were composites of avoided costs and were provided as guidance for bidders. *Tr.88:11-13*⁴ In contrast, using Duke's twenty-year forecast, the IA calculated the avoided cost for each hour of each day for the twenty-year term of the PPA. *Tr.38:9-20*. This was done by comparing Orion's production profile (8760 X 20 years) and Duke's 8760 X 20-year forecast of avoided cost.⁵ The IA's model is a more sophisticated evaluation that identifies the full cost to ratepayers as opposed to merely the cost during three composite pricing periods, or decrements.

The Net Benefit Analysis utilized the bid input parameters to calculate each Proposal's Net Benefit to Duke's system over the twenty-year PPA term. A proposal's

³ Accion witness Harold Judd explained this during the hearing on November 2, 2020, stating that "[what] we require[d] of bidders was an 8760, that is the hourly data, for every year of the 20 years. We didn't simply take one year and extrapolate, but rather we said you tell us what you think your production profile will look like for the entire term." *Id.* at 29:19-30:1.

⁴ Accion's witness, Harold Judd, stated, "Those summary three indicative collapsed guidance numbers that were provided was simply a threshold to able to participate." *Id.*

⁵ Duke's Counsel Jack Jirak questioned if Orion was aware of the IA's use of Duke's forecast, "you don't disagree with the fact that the IA's analysis was an hourly comparison of the cost of your project against the hourly avoided cost in the Duke system over the same -- over the 20-year period of the PPA?" *Tr. 38:9-13*. Orion's witness Robert Lasocki responded that he was aware of the use of the forecast but had not seen it, saying in response, "I do understand that an 8760 of hourly rates were used by the independent evaluator. These -- that same 8760 hourly rates were not provided to bidders, so I did not have a copy of that." *Tr. 38:16-19*.

Net Benefit is the sum of the project's net energy benefit and the project's capacity benefit, less the costs of system upgrades required to interconnect the project.

Net Benefit calculates whether a Proposal is below the avoided cost cap throughout the entire project on an hour by hour, day by day basis as opposed to only during a decrement. As such, it is significantly more precise than the methodology advocated by Orion. The proof of this can be found in the very significant added cost the Orion proposal will impose on ratepayers if it is awarded a PPA in Tranche 1.⁶

Evaluating Proposals Based on Net Benefit Complies with the CPRE Rules

Evaluating Proposals based on a Net Benefit analysis is a more effective execution of the CPRE Program Evaluation Rules. The evaluation process stated in the Tranche 1 RFP was developed and conducted within the guidelines of CPRE program evaluation rules. The source of these rules originated in the document G.S. 62-110.8 and were implemented in document R8-71. Stated therein,

"The third-party entity (later determined to be Accion) shall develop and publish the methodology used to evaluate responses received pursuant to a competitive procurement solicitation and to ensure that all responses are treated equitably." North Carolina G.S. 62-110.8 (d)

As part of the methodology pursuant to a competitive procurement solicitation, the rulings were explicit eliminating proposals that failed in cost-effectiveness:

*"To ensure the cost-effectiveness of procured new renewable energy resources, each public utility's procurement obligation shall be capped by the public utility's current forecast of its avoided cost **calculated over the term of the power purchase agreement.**"* North Carolina G.S. 62-110.8 (b)(2). [Emphasis added]

⁶ See "Independent Administrator Redirect Exhibit- CONFIDENTIAL" docketed on October 28, 2020.

Further,

*"The purpose of this rule is to implement the provisions of G.S. 62-110.8...for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and **cost-effective** electric service to customers in North Carolina."*
R8-71 (a)

Additionally, the rulings provided more specific evaluation process instructions which gave the right to Accion to eliminate proposals based on CPRE guidelines, which as previously stated consisted of cost-effectiveness:

"In step one...the Independent Administrator shall...eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors..." R8-71 (f)(3)(i)

To this end, Accion developed a 20-year hourly Net Benefit calculation model for cost effectiveness against which every qualifying bid was evaluated. Each bidder provided the inputs to the model (8760 & pricing) and each bid was calculated using the same model, ensuring a completely unbiased process. The Net Benefit calculation provided not only a ranking, but also a pass/fail test. Any proposal that was calculated to have a negative Net Benefit was eliminated, during any period in the evaluation process. The methodology was spelled out in the RFP. Bidders were provided a comment opportunity prior to the Tranche 1 bidding process. Orion did not provide any suggestions.

The RFP states,

*"Each Proposal will be evaluated on its benefit to the DEC/DEP **system over the twenty year analysis period on a \$/MWh basis** (accumulated net present value)...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." [Emphasis added]

The Tranche 2 Issue

As the evidence has shown, the IA conducts its Net Benefit analysis in Step 1 of the evaluation process. Step 2, which is performed by Duke, takes into account the transmission and distribution ("*T&D*") costs associated with each Proposal. In the most recent testimony, there was discussion about Maximum Allowable T&D Upgrade Costs in relation to 15 Proposals that were eliminated during the Step 2 evaluation process. This metric was only created after the completion of the Tranche 1 process. It represents a threshold that, once surpassed, can determine with certainty that the proposal will have a negative Net Benefit and thus should be eliminated. This is due to the nature of the calculations of the two metrics, in which all proposals that have more T&D upgrade costs than their Maximum Allowable also have a negative Net Benefit. The reverse is not necessarily always true however, as exemplified by the Orion proposal. A negative Net Benefit does not guarantee a proposal having a T&D Upgrade cost above the Maximum Allowable.

While a quantifiable Maximum Allowable was not used in Tranche 1, its premise, or purpose, was. In situations where Proposals T&D Costs were exorbitant, it was abundantly clear that a proposal would fail in cost-effectiveness. As stated in the most recent testimony by Harold Judd,

"...if we put three shifts of workers on it and brought in the Army Corps of Engineers and the Commission was prepared to approve significant system upgrade costs, they could have

been constructed, but that added cost would have necessitated a significant imputed cost to those projects, which is why we stopped and did not have those in our Step 2 analysis” (71).

Entitlement to a PPA

Orion’s contention that any Proposal that is under the avoided cost cap is legally entitled to a PPA is not correct. As previously indicated, this issue is addressed in detail in the *Post-Hearing Brief* of Duke Energy Carolinas, LLC filed January 4, 2021, and the Independent Administrator’s *Post-Hearing Brief* also filed on January 4, 2021. If every Proposal that was below the avoided cost cap was legally entitled to a PPA, the cost to ratepayers would be substantial. This is especially true if Orion’s interpretation of avoided cost versus Net Benefit was used in the evaluation process. For example, the Orion Proposal was the costliest Proposal to ratepayers among the 15 projects analyzed in the Step 2 process of Tranche 1. This was so because, while it was below the avoided cost cap as to the decrement examples in the RFP, over the life of the project it was frequently above the avoided cost cap on an hour by hour, day by day basis. As a consequence, the IA eliminated it.

The issue is quite simple. Is a Proposal entitled to a PPA when it is below the avoided cost cap with respect to identified decrements, even though it is above the avoided cost cap over the life of the project? If Orion is correct, ratepayers will pay more than they would under a Net Benefit analysis because, as previously stated, there will be periods of time during the project when it will be above the avoided cost cap.

Orion Has Not Established that the Net Benefit Evaluation was Incorrect

Orion has not established that Accion's Net Benefit evaluation method was incorrect, improper, or inconsistent with North Carolina law.⁷ Orion would have the Commission require a less precise evaluation method, one that did not analyze the avoided cost of a proposal on an hour by hour basis for every day of the twenty-year term of a project. Such a less precise evaluation method would result in a substantially greater cost to North Carolina ratepayers. Because the evaluation method advocated by Orion is far less precise than the Net Benefit analysis, some bidders, such as Orion, could end up receiving a windfall at the expense of ratepayers. That windfall can be measured by the amount above the avoided cost cap ratepayers will be paying to those bidders who received a PPA based on the evaluation method advocated by Orion. Such a windfall does occur when the Net Benefit evaluation method is followed.

Orion's witness, Robert Lasocki, did not dispute Accion's Net Benefit calculations. When Duke's Counsel Jirak asked Mr. Lasocki, "Can you point me to your testimony anywhere where you've identified a mathematical error in the IA's Net

⁷ Accion witness Garey Rozier made it clear that Accion's Net Benefit Analysis worked to the benefit of customers and the dictates of the law stating that, "every project that didn't pass our detailed 8760 cost benefit was above avoided cost for Duke customers." Tr. 69:14-16.

Benefit analysis?" Mr. Lasocki responded, "I don't believe there was a mathematical error." *Tr. 39: 10 & 11.*

C. CONCLUSION

Accordingly, for the reasons set forth herein, and based on the record established by the Commission, the IA respectfully requests that Orion's request be denied.

Respectfully submitted,

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Through Its Attorneys
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CERTIFICATE OF SERVICE

I certify that a copy of Accion Group, LLC's, The CPRE Independent Administrator, Post Hearing Brief in Docket No. SP-13695, SUB 1, has been served by electronic mail, hand delivery, or by depositing a copy in the United States mail, postage prepaid, properly addressed to parties of record.

This the 30th day of July, 2021.

s/Jack P. Crisp, Jr., Esquire
Jack P. Crisp, Jr., Esquire