

PUBLIC (REDACTED) VERSION

**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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VERIFIED PETITION FOR RELIEF
BY ORION RENEWABLE
RESOURCES LLC

NOW COMES Orion Renewable Resources LLC (“Orion”), by and through the undersigned counsel and pursuant to sections 62-110.8 and 62-2(b) of the North Carolina General Statutes, and submits this verified petition (the “Petition”) to the North Carolina Utilities Commission (the “Commission”) to initiate a proceeding to remedy the impermissible disqualification of Orion’s Proposal 129-01 (“Proposal” or “Bid”) for an 80-megawatt solar project (“Project”) in Tranche 1 of the Competitive Procurement of Renewable Energy (“CPRE”) Program of Duke Energy Carolinas, LLC (“DEC”).

This Petition arises from elimination of Orion’s Proposal from CPRE Tranche 1 on the grounds that the “Net Benefit” of the Proposal to DEC was negative. Net Benefit is a measure, distinct from avoided cost, that the CPRE Independent Administrator (“IA”) created to rank the economic competitiveness of each eligible CPRE proposal. While Net Benefit was created for the purpose of ranking CPRE proposals for selection, the complete disqualification of a proposal based on that analysis - where DEC has not met its procurement goal - is inconsistent with North Carolina Gen. Stat. 62-110.8(b)(2), House Bill 589, S.L. 2017-192 (“HB 589”), the Rules and Orders of this Commission implementing the CPRE Program, and the terms and conditions of DEC’s Final Tranche 1 Request for Proposal published on July 11, 2018 (“Tranche 1 RFP”). Because DEC did

not meet its procurement goal of 600 megawatts in its final selection of proposals in the Tranche 1 RFP, every eligible proposal in Tranche 1 should have been offered a Power Purchase Agreement (“PPA”) if its bid price came in under avoided cost. Orion’s Proposal is therefore entitled to a Tranche 1 PPA if the total cost of the Proposal, inclusive of the cost of any required System Upgrades (as that term is defined in the Tranche 1 RFP), does not exceed DEC’s published avoided cost rates for Tranche 1.

In support of this Petition, Orion respectfully shows the Commission the following:

I. THE PARTIES

1. Orion Renewable Resources LLC is a limited liability corporation organized under the laws of Delaware and certified to transact business in North Carolina. Its principal place of business is located at 155 Grand Avenue, Suite 706, Oakland, California.

2. Orion Renewable Resources LLC is owned by affiliates of Orion Renewable Energy Group LLC (“OREG”) and MAP® Energy (“MAP”). OREG and MAP have a wealth of experience developing renewable energy projects, and OREG’s owners have been pioneers in expanding the use of renewable energy in the United States for nearly 25 years. OREG’s successful track record of completing projects is the result of expertise in siting, development, power sales, finance, construction, and operations. In the United States, approximately 5,000 megawatts (“MW”) of renewable energy projects in operation or under construction have been developed by OREG’s principals, affiliates and predecessor companies.

3. Orion's counsel in this proceeding, to whom all notices, pleadings, and other documents related to this proceeding should be directed, is:

Benjamin L. Snowden
Kilpatrick Townsend Stockton LLP
4208 Six Forks Road, Suite 1400
Raleigh, NC 27609
Telephone: (919) 420-1719
Email: bsnowden@kilpatricktownsend.com

II. BACKGROUND

A. The CPRE Program

4. HB 589 created the CPRE program, which obligates Duke Energy Progress, LLC ("DEP") and DEC¹ 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."

5. 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.² 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.

¹ Although the two utilities took bids separately and have distinct procurement targets, for most purposes related to CPRE, DEP and DEC have made joint proposals and the same rules apply to both utilities. Because Orion bid into DEC's program, however, Orion herein refers exclusively to DEC.

² Rule R8-71(f)(3)(i).

6. 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.³ 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.⁴

B. The Avoided Cost Cap

7. 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."⁵

8. 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

³ Rule R8-71(f)(3)(iii).

⁴ R8-71(f)(3)(iv).

⁵ G.S. § 62-110.8(b)(2).

Rates”).⁶ The utility is required to publish the Avoided Cost Rates against which proposals will be evaluated.⁷

9. 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.⁸ This is reiterated in other filings and Commission Orders relating to CPRE.⁹ Submittals and reports of the IA for Tranche 1, Accion Power (“Accion”), also confirm this understanding.¹⁰

⁶ “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.”

⁷ R8-71(f)(1)(ii).

⁸ 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.

⁹ 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.’”).

¹⁰ 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.”).

10. 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 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.¹¹ Bidders were required to provide pricing for their Proposals in the form of a single price decrement to DEC’s published Avoided Cost Rates.

11. 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.¹²

12. Neither HB 589, the Commission’s CPRE rules, the DEC CPRE Program Plan, nor the Tranche 1 RFP establish any minimum “cost-effectiveness” threshold for proposals other than the utility’s published Avoided Cost Rates.

i. “Net Benefit” and the Ranking of CPRE Proposals

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

¹¹ Tranche 1 RFP at 11-12, 14.

¹² Tranche 1 Final Report at 24; R8-71(f)(3)(iii).

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.¹³

Unlike compliance with the avoided cost cap, which is based only on the utility's published, levelized Avoided Cost Rates,¹⁴ the Net Benefit analysis in Step 1 compares the proposal's bid price 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 Net Benefit less than zero.

14. The IA has not disclosed the details of its methodology for calculating Net Benefit, nor DEC's projections of its system costs, and has consistently treated that information as proprietary and confidential, so bidders in Tranche 1 were unable to predict what the Net Benefit of their proposals would be, or to ensure that their Net Benefit would be positive.¹⁵

15. In its Final Report for Tranche 1, the IA reported that in "Step 1, the proposals were ranked based on the [Net Benefit], excluding T&D system upgrade costs. In the Step 2 process, the T&D system upgrade costs for projects were calculated in an iterative process starting with the most attractive proposals and then imputed to the Proposal in the final ranking of Proposals."¹⁶

¹³ Tranche 1 RFP at 13.

¹⁴ 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.

¹⁵ Orion does not take issue with the IA's decision to keep the details of the Net Benefit calculation confidential, except insofar as Net Benefit is used as a basis for disqualifying otherwise-eligible proposals.

¹⁶ *CPRE Tranche 1 Final Independent Administrator Report*, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (July 18, 2019) ("Tranche 1 Final Report") at 24.

16. 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, suggests that the Net Benefit analysis will 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.

C. Orion's CPRE Proposal

17. 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.

18. The Project seeks interconnection to the DEC transmission grid. The proposed Project is not located in a constrained area of DEC's grid, and Orion has no reason to believe that the Project would require significant System Upgrades in order to interconnect safely to DEC's system.

19. Orion submitted its Proposal for the Project 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's bid was in the fourth (least competitive) quartile of Tranche 1 proposals, but Orion's economic analysis of its bid showed that the total cost of the Proposal would be below DEC's Avoided Cost Rates so long as System Upgrade costs did not exceed approximately [REDACTED]

20. Although Orion's Proposal was not selected as part of the original Competitive Tier for Tranche 1, 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.

21. On April 9, 2019, Orion received Final Notification from Accion, the IA (Attachment A), stating that Accion had "completed the evaluation of proposals in Tranche 1 of the [CPRE]. The IA determined that your proposal DEC_129-01 was not selected and has been released from consideration." Accion did not explain at that time why Orion's Proposal was disqualified. That same day, Orion requested a conference with Accion to better understand the ranking of its Proposal and the reason for its disqualification. Accion promised to provide more information at a "debrief" session after completion of the contracting period, which it expected to take 60 days.

22. Despite repeated requests from Orion, Accion was not available for the "debrief" session with Orion, and did not provide any other relevant information about the disqualification of Orion's Proposal, until August 2019.

23. As a result of being disqualified from Tranche 1, the Project lost its position in DEC's Interconnection Queue relative to the projects selected in Tranche 1 and any other projects ahead of them in the queue.¹⁷

¹⁷ North Carolina Interconnection Procedures, Forms, and Agreements for State-Jurisdictional Generator Interconnections, § 1.7.3.

D. Conclusion of CPRE Tranche 1

24. The CPRE Tranche 1 selection and contracting process concluded on July 8, 2019.

25. 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.¹⁸

E. Orion's Post-Tranche 1 Communications with the IA and the Public Staff

26. On August 19, 2019, Accion sent a message to Orion via the Tranche 1 portal (Attachment B), stating that the "Step 1 analysis determined that Net Energy Benefit Calculation (Energy Benefit less Proposal Cost) was negative." This was the first indication Orion had received from Accion that the Proposal was disqualified because of Accion's "Net Energy Benefit" ("NEB") calculation, rather than a determination of System Upgrade costs for the proposed Project which resulted in its total cost exceeding DEC's published Avoided Cost Rates.

27. Two days later, on August 21, 2019, the long-promised "debrief" session took place. On that day, Orion and Accion had a conference call to discuss the disqualification of the Proposal. During the call, Accion relayed the following information to Orion:

- a. The Proposal had been eliminated because the NEB calculation was negative, not because the bid cost exceeded Avoided Cost Rates.
- b. The IA performed the NEB calculation using its proprietary and confidential methodology.¹⁹

¹⁸ Tranche 1 Final Report at 60.

¹⁹ It is worth noting that Accion said it considered only the Project's Net **Energy** Benefit, and not the **total** Net Benefit (which would include a capacity component). Accion did not disclose the results of a full Net Benefit analysis for Orion's Proposal.

- c. Pricing in the Proposal (without considering System Upgrade costs) was below DEC's published Avoided Cost Rate in all three avoided cost periods specified in the RFP. However, because the bid price was projected to exceed DEC's projections of its hourly energy cost (**not** the published Avoided Cost Rate) during some hours over the 20-year term of the PPA, the overall Net Energy Benefit calculated for the Proposal was negative.
- d. Because the NEB calculation for the Proposal was negative, the Proposal was not included in DEC's Step 2 T&D System Upgrade cost analysis, even though the Proposal had been advanced to Step 2 and was required to post \$1,488,000 of Proposal Security. Consequently, no determination of System Upgrade costs for the Project had been made.

28. Based on the information provided at the “debrief” session, it appeared to Orion that its Proposal had been disqualified from Tranche 1 as a result of Accion’s Net Energy Benefit calculation, which was inconsistent with the terms of the Tranche 1 RFP.²⁰ On October 10, 2019, Orion requested the opportunity to further discuss the NEB calculation with Accion, with the goal of better understanding the basis for disqualification of the Proposal. Accion directed Orion to submit its questions to the message board on the IA web site. Following Accion’s directive, on October 11, 2019, Orion submitted a list of questions to the IA message board. On October 14, 2019, Accion sent back a message refusing to provide any further information, stating simply that the “information provided in the Tranche 1 final report, as filed with the NCUC, and the debrief

²⁰ Because DEC had failed to meet its procurement goal for Tranche 1, every otherwise-eligible Proposal that was below the avoided cost cap should have been offered a PPA. No proposal should have been disqualified based on economic factors other than compliance with the cap.

provided to this MP is the extent of what will be shared regarding the Tranche 1 evaluation process. We urge you to review those materials.”

29. Its attempts to obtain more information from Accion having been rejected, Orion then sent a letter to the Public Staff (Attachment C) on October 25, 2020, which laid out its concerns about the disqualification of its Proposal based on the Net Energy Benefit calculation in Step 1 of the CPRE.

30. On information and belief, the Public Staff communicated directly with Accion to discuss Orion’s concerns about the disqualification of its Proposal.

31. On November 22, 2019, Orion met with the Public Staff to discuss the information the Public Staff had received from Accion. The Public Staff stated at that meeting that, according to Accion, Orion’s Proposal had not been eliminated based on a Net Energy Benefit calculation in Step 1. Rather, Accion told the Public Staff that it had concluded in the Step 2 analysis that System Upgrade costs for the proposed Project (which Accion estimated would amount to at least \$455,000) would push the total cost of the Proposal over DEC’s published Avoided Cost Rates. Accion confirmed to the Public Staff that the Project was not included in the Step 2 interconnection T&D “grouping study,” but did not tell the Public Staff how System Upgrade costs for the Project had been determined.

32. Accion’s statements, as reported to Orion by the Public Staff, were inconsistent with Accion’s message to Orion in August (Attachment B) as well as its explanation at the August 21, 2019 “debrief” session that the Proposal had been disqualified based on a Net Energy Benefit calculation in Step 1. Consequently, Orion asked the Public Staff to request additional information from Accion about the basis for disqualification of Orion’s Proposal. These additional questions for Accion were sent to the Public Staff in a letter dated December 2, 2019 (Attachment D).

33. On information and belief, Accion and the Public Staff had further communications about the disqualification of Orion's Proposal in December 2019 and January 2020. Accion declined to provide further written information to Orion but offered to discuss Orion's concerns on a conference call.

34. Orion and Accion convened a conference call on February 15, 2020. The Public Staff was unable to join the call due to a scheduling conflict. On that call, Accion stated – contrary to the Public Staff's understanding – that Orion's Proposal had in fact been disqualified based on a Net Energy Benefit calculation in Step 1. Accion also acknowledged that DEC had not conducted an analysis of potential System Upgrade costs of the Project, and that neither Accion nor DEC had analyzed whether the total costs of the proposed Project exceeded DEC's published Avoided Cost Rates. Accion said they did not believe disqualification of Orion's Proposal based on a Net Energy Benefit calculation in Step 1 violated CPRE Rules or Orders or the Tranche 1 RFP, but conceded that there was a difference of opinion on the matter. They also acknowledged Orion's right to file this Petition with the Commission to resolve the disagreement.

F. Tranche 2

35. Proposals for CPRE Tranche 2 are due on March 9, 2020. Orion (or an affiliated entity) intends to submit a proposal for the Project into Tranche 2. However, even if Orion's Proposal were to be selected in Tranche 2 (which is by no means certain), this would not remedy the improper denial of Orion's opportunity to obtain a Tranche 1 PPA. This is true for several reasons, including but not limited to: (1) the lower avoided cost cap for Tranche 2; (2) imposition of a Solar Integration Services Charge on Tranche 2 projects; (3) potentially higher System Upgrade costs based on the later interconnection queue positions of Tranche 2 projects; and (4)

the significant delay in commercial benefits which would result from implementation of the Project in Tranche 2.

36. On February 28, 2020, Accion published a Memorandum to Tranche 2 participants (Attachment E) entitled “Duke CPRE Tranche 2 Screening and Selection Process” (“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.

37. The Tranche 2 Memo contradicts Accion’s position regarding the Proposal in Tranche 1 and confirms 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.” Tranche 2 Memo at 1. 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[.]” Tranche 2 Memo at 1.

38. The Tranche 2 Memo also indicates that DEC 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.

Tranche 2 Memo at 2 (emphasis added).

III. GROUND FOR RELIEF

39. Accion improperly disqualified Orion's Proposal from CPRE Tranche 1, based on a conclusion that its "Net Energy Benefit" was negative. While Net Energy Benefit may be used for ranking a proposal relative to other proposals, it is not a permissible basis for disqualifying a proposal from CPRE where the utility has not met its procurement goal for that tranche. Accion did not consider whether the total cost of Orion's Proposal was below DEC's published Avoided Cost Rates, as required by HB 589, the implementing Rules and Orders of this Commission, and the terms of the Tranche 1 RFP.

40. Because DEC failed to meet its Tranche 1 600 MW procurement goal, any Tranche 1 proposal whose cost did not exceed DEC's published Avoided Cost Rates and was otherwise eligible under the Tranche 1 RFP should have been offered a Tranche 1 PPA, even if it was the last-ranked proposal. Orion's Proposal conformed to the requirements of CPRE Tranche 1. Therefore, if the total cost of the Proposal, inclusive of any System Upgrade costs, did not exceed DEC's published Avoided Cost Rates, the Proposal should have been awarded a Tranche 1 PPA.

41. As a result of Accion's improper disqualification of the Proposal from Tranche 1 before DEC conducted the Step 2 interconnection T&D "grouping study," DEC did not provide an estimate of the System Upgrade costs for the Proposal. However, preliminary analyses conducted by Orion strongly suggest that the Project would not have triggered System Upgrades sufficient to push the total cost of the Proposal over DEC's published Avoided Cost Rates.

42. To remedy Accion's improper disqualification of Orion's Proposal, DEC should be directed to conduct an interconnection T&D study (using an appropriate baseline that reflects the interconnection queue priority of the Project in the CPRE Tranche 1 grouping) to determine the cost of System Upgrades for the Project.

43. If the cost of System Upgrades, as determined in such a study, does not cause the total cost of Orion's Proposal to exceed DEC's published Avoided Cost Rates for Tranche 1, the Proposal should be awarded a Tranche 1 PPA.

IV. CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Orion respectfully requests that the Commission grant the following relief in order to remedy the IA's improper disqualification of Orion's bid in violation of HB 589, the CPRE Rules and Orders, and the Tranche 1 RFP:

1. Join Accion, DEC, and/or any other persons the Commission deems necessary as Parties to this proceeding so that complete relief may be accorded.

2. Clarify that Net Benefit or Net Energy Benefit is not a permissible basis on which to determine whether the total cost of a CPRE proposal exceeds the utility's Avoided Cost Rates or to disqualify a proposal from an RFP.

3. Direct DEC to conduct an interconnection study to determine the cost of System Upgrades for the Project using an appropriate baseline that reflects the queue priority of the Project in the CPRE Tranche 1 grouping, and to file the results of such study with the Commission in this docket. Such study should use the same cost and other assumptions DEC's T&D Sub-Team applied to other Tranche 1 projects to determine their System Upgrade costs for this purpose. The system "baseline" for such interconnection study should replicate the baseline used for the Tranche 1, Step 2 T&D grouping study.

4. Direct Accion to determine, based on the results of such interconnection study, whether the cost of System Upgrades for the Project would result in the total costs of the Proposal exceeding DEC's published Avoided Cost Rates for Tranche 1. In making that determination, Accion should use the same cost and other assumptions it applied to


determining whether the total cost of other CPRE Tranche 1 bids exceeded DEC's published Avoided Cost Rates based on the Step 2 T&D study. Accion shall provide detailed information concerning this analysis to Orion, and shall file the results of its analysis with the Commission.

5. If, based on the foregoing analysis, the Commission determines that total cost of the Proposal does not exceed DEC's published Avoided Cost Rates, direct DEC to offer a Tranche 1 CPRE PPA to Orion. The terms and conditions of that PPA shall be adjusted as reasonably necessary to accommodate any delays in project development and construction as a result of Accion's improper disqualification of Orion's Proposal, Orion's prior attempts to resolve this issue with the IA, and this proceeding.

6. Award such other relief as the Commission deems just and proper.

Respectfully submitted this the 8th day of March 2020.

KILPATRICK TOWNSEND & STOCKTON LLP

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Email: bsnowden@kilpatricktownsend.com

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

In the Matter of:

Orion Renewable Resources LLC

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VERIFICATION

I, Tim Lasocki, being first duly sworn, depose and say that I am Vice President of Origination and Finance for Orion Renewable Energy Group LLC, and in such capacity, I have read the foregoing Petition for Relief and know the contents thereof, and by my signature below verify that the contents are true and correct to the best of my knowledge.



Tim Lasocki

Alameda County, California

Signed and sworn before me this day by Tim Lasocki

Date: March 6, 2020

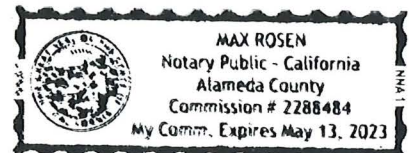


Notary Public

[SEAL]

My Commission Expires:

May 13, 2023



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

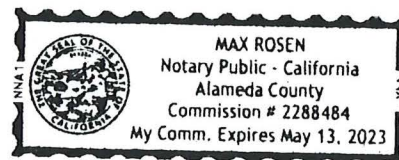
State of California
County of Alameda)

On March 6, 2020 before me, Max Rosen
(insert name and title of the officer)

personally appeared Timothy Lasocki,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature  (Seal)