

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1167
DOCKET NO. E-7, SUB 1166**

In the Matter of:)	
Application of Duke Energy Progress, LLC)	NCSEA AND SACE’S
and Duke Energy Carolinas, LLC)	RESPONSE IN OBJECTION
Requesting Approval of Solar Rebate)	TO DUKE ENERGY
Program Pursuant to N.C. Gen. Stat. §)	PROGRESS, LLC AND
62155(f))	DUKE ENERGY
)	CAROLINAS, LLC’S
)	COMPLIANCE FILING FOR
)	SOLAR REBATE
)	PROGRAM

NCSEA AND SACE’S RESPONSE IN OBJECTION TO COMPLIANCE FILING

The North Carolina Sustainable Energy Association (“NCSEA”) and the Southern Alliance for Clean Energy (“SACE”), intervenors in the above-captioned proceeding, offer the following response in objection to *Duke Energy Progress, LLC and Duke Energy Carolinas, LLC’s Compliance Filing for Solar Rebate Program* (“Compliance Filing”) made jointly by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke”). On January 22, 2018, Duke filed *Duke Energy Progress, LLC and Duke Energy Carolinas, LLC’s Application Requesting Approval of Solar Rebate Program* (“Application”) to implement the provisions of N.C. Gen. Stat. § 62-155(f). Pursuant to the Commission’s January 26, 2018 *Order Establishing Proceeding to Review Proposed Solar Rebate Program*, NCSEA and SACE each filed initial comments on February 9, 2018. On February 16, 2018, Duke and SACE each filed reply comments. On April 3, 2018, the Commission issued its *Order Modifying and Approving Riders Implementing Solar Rebate Program* (“Order”). Pursuant to the Order, on April 13, 2018, Duke made its Compliance Filing. In its Compliance Filing,

Duke notifies the Commission that the solar rebate “program is not anticipated to launch until the summer of 2018.” Compliance Filing, p. 2. Prior to the Compliance Filing, Duke had not alerted the Commission, intervenors, or stakeholders that the solar rebate program would not launch until the summer of 2018 despite multiple opportunities to do so. NCSEA and SACE file this response in objection to Duke’s Compliance Filing¹ because (1) Duke’s proposed delay violates the provisions of N.C. Gen. Stat. § 62-155(f); (2) Duke has not provided an explanation for the delay, much less demonstrated that the delay is necessary; (3) the delay unfairly prejudices rebate-eligible projects that were installed early in 2018; and (4) the delay, if approved, renders any analysis of the effectiveness of the solar rebate program ineffective.

As an initial matter, NCSEA and SACE note that Duke did not address the launch date for the solar rebate program in its Application. Because Duke did not disclose in its Application that it would not launch the solar rebate program until the summer of 2018, neither NCSEA nor SACE addressed the launch date in their initial comments, and SACE did not address the launch date in its Reply Comments. Duke should have proposed a delay in the start of the rebate program in its Reply Comments in response to SACE’s initial comments about the trigger of the 90-day window for rebate applications.² Instead,

¹ While NCSEA and SACE object to a delay in launching the solar rebate program until the summer of 2018, if the Commission determines that such a delay is appropriate, NCSEA and SACE do not object to Duke’s proposed remedy of allowing owners of rebate-eligible systems that were installed between January 1, 2018 and the launch of the program to apply for a rebate up to 90 days from the date of the official program launch.

² In its reply comments, in response to suggestions from NCSEA and SACE regarding assignability of rebates, Duke stated that “extending the riders to allow customers to assign the rebate payment to third parties *would likely extend the timeframe of the Companies being able to launch the program to customers.*” *Duke Energy Progress, LLC’s and Duke Energy Carolinas, LLC’s Reply Comments*, p. 6 (February 16, 2018)

of suggesting that the 90-day window begin when the rebate program launches, Duke stated that “The Companies agree with SACE’s recommendation that the date of the Commission’s *Order Approving the Solar Rebate Rider* should become the installation date for otherwise eligible solar facilities installed prior to the Commission’s Order.” Duke’s Reply Comments, p. 4. The delay proposed by Duke in their Compliance Filing directly contravenes their Reply Comments.

This proceeding has been fairly noncontroversial when compared to other Commission proceedings implementing the provisions of House Bill 589. The comments of NCSEA, SACE, and the Public Staff were generally supportive of Duke’s Application. However, Duke’s Compliance Filing makes clear that the noncontroversial nature of this proceeding is due in part to the fact that Duke failed to fully disclose its plans for the solar rebate program.

I. DUKE’S PROPOSED DELAY VIOLATES N.C. GEN. STAT. § 62-155(F)

House Bill 589 was passed by the General Assembly on June 30, 2017 and signed into law as Session Law 2017-192 by Governor Cooper on July 27, 2017. House Bill 589 enacted N.C. Gen. Stat. § 62-155(f), which directs DEC and DEP to each propose a rebate program for ten megawatts of small customer owned or leased solar generation “capacity annually starting in January 1, 2018[.]” N.C. Gen. Stat. § 62-155(f)(1). Rooftop solar installers and potential rooftop solar adopters have already waited for nine and a half months since the General Assembly passed House Bill 589 for the solar rebate program to become available. It has now been more than three and a half months since

(emphasis added) (“Duke’s Reply Comments”). Duke did not provide an estimated length of the extension in its reply comments. However, the Commission did not adopt NCSEA and SACE’s suggestion, and thus warning is not applicable to the present circumstances. Order, p. 8.

January 1, 2018, the date by which the General Assembly directed for the solar rebate program to start. Despite this clear legislative mandate that the solar rebate program is to start on January 1, 2018, Duke is now unilaterally asserting that the program will not “launch until the summer of 2018.” Compliance Filing, p. 2.³

While Duke stated in the Compliance Filing that the solar rebate program will launch in the summer of 2018, Duke has not specified whether that means June 21, 2018 or September 21, 2018 or any date in-between. Duke has already stated that it will take 30 to 45 days for it to provide rebate checks after an application is received. Duke’s Reply Comments, p. 8 (“The Companies will provide rebate checks to customers within 30-45 days from the date of project completion or project acceptance into the program, whichever comes later.”). If the Commission allows Duke’s proposed delay, rooftop solar adopters may not receive a rebate payment until November 2018 and this uncertainty and delay could negatively affect the efficacy of the solar rebate program.

II. DUKE HAS NOT PROVIDED AN EXPLANATION FOR THE PROPOSED DELAY

Duke has not provided any reason for its proposed delay in the solar rebate program in its Application, Reply Comments, or Compliance Filing, much less demonstrated that such a delay is necessary. NCSEA notes that Duke has extensive experience with programs similar to the solar rebate program required by N.C. Gen. Stat.

³ NCSEA and SACE note that the General Assembly could have allowed the Commission the authority to delay the solar rebate program but chose not to do so. House Bill 589 also enacted N.C. Gen. Stat. § 62-110.8 which addresses the competitive procurement of renewable energy. Within that statute, the General Assembly adopted N.C. Gen. Stat. § 62-110.8(h)(5), which directs the Commission to adopt rules establishing “a procedure for the Commission to modify or delay implementation of the provisions of this section[.]” NCSEA and SACE note that N.C. Gen. Stat. § 62-155(f) has no similar directive from the General Assembly regarding modification or delay of the statutory requirements for the solar rebate program.

§ 62-155(f). DEP previously offered a rebate to rooftop solar adopters in its North Carolina service territory. *See generally*, Docket No. E-2, Sub 979. In addition, both DEC and DEP offer rebates to rooftop solar adopters in their respective South Carolina service territories. *See generally*, South Carolina Public Service Commission Docket Nos. 2015-53-E and 2015-55-E. Simply put, there is no stated, valid reason in any of Duke’s filings for the proposed delay in the solar rebate program.

III. DUKE’S PROPOSED DELAY PREJUDICES ALREADY-INSTALLED REBATE-ELIGIBLE PROJECTS

Customers have been installing rooftop solar since January 1, 2018 with the understanding that they would be eligible for rebates pursuant to N.C. Gen. Stat. § 62-155(f). Duke’s proposed delay unfairly prejudices systems that have already been installed or will be installed prior to Duke launching the solar rebate program. On or about November 4, 2017, Duke posted on its website that “[p]articipation under the program is on a first-come, first-served basis for customers who have installed solar panels and a bi-directional meter on their property on or after Jan. 1, 2018.” *Duke Energy Solar Rebate Program*, available at https://www.duke-energy.com/_/media/pdfs/for-your-home/solar-rebate-fact-sheet.pdf. This “first-come, first-served” policy also appears in Duke’s proposed and approved rider language. *See generally*, Application, Appendices A and B (“Participation under the program is available on a ‘first-come-first-served’ basis for systems installed on and after January I, 2018, subject to the Company's discretion.”) and Duke’s Compliance Filing, Appendices A and C (“Participation under the program is available on a ‘first-come, first-served’ basis for systems installed on and after January I,

2018.”)⁴ The Commission substantiated this position in its Order, noting that it is Duke’s “own proposal to make the Solar Rebate Rider available on a ‘first-come-first-served’ basis for otherwise eligible customers and solar PV systems, subject to the set-asides reserved by statute.” Order, p. 13. A “first-come, first-served” policy that is based on the installed date does not present an issue for customers who installed rooftop solar early in 2018 based on the provisions of N.C. Gen. Stat. § 62-155(f). However, if Duke bases the “first-come, first-served” policy on the date that a rebate application is filed, customers who installed rooftop solar early in 2018 will be competing against projects installed later in the year, which appears inconsistent with the Commission’s Order and represents an unfair hurdle for early adopters.

IV. DUKE’S PROPOSED DELAY RENDERS ANALYSIS OF THE SOLAR REBATE PROGRAM INEFFECTIVE

In its Order, the Commission concluded that “that the reasonableness of the incentives offered through the Solar Rebate Rider could change due to future changes in the solar market.” Order, p. 9. The Commission went on to conclude “that there exists a compelling reason for it to continue to monitor the reasonableness of the incentives offered throughout the duration of the Solar Rebate Rider.” *Id.* NCSEA and SACE believe that, if Duke’s proposed delay is allowed, any analysis of the reasonableness of the incentives offered during the first year of the solar rebate program will be unreliable. Compressing the rebate application timeline into a period of several months, instead of a full year, will result in an unrepresentative year for rooftop solar installations. The

⁴ NCSEA and SACE note that in its Reply Comments, Duke based priority on the date that a rebate application is received. Duke’s Reply Comments, p. 6 (“Customers’ applications will be processed on a first-come, first-served basis based upon the order in which the rebate application is received.”). However, this position appears inconsistent with both the rider language and with the Commission’s order.

uncertainty will increase the likelihood that customers will delay or decide against installing rooftop solar, which is the exact opposite effect from what the General Assembly intended.

V. CONCLUSION

Duke's solar rebate program is only statutorily guaranteed through December 31, 2022. N.C. Gen. Stat. § 62-155(f)(1). Duke is now seeking to delay the program – which was intended by the General Assembly to begin January 1, 2018 – until at least June 2018 and possibly until September 2018. Customers installing eligible rooftop solar projects may not receive rebate payments until as late as November 2018. The General Assembly intended for the solar rebate program to be available for five years from January 1, 2018 until December 31, 2022. Because of Duke's proposed delay, at best the rebate program will be available for four and a half years. NCSEA and SACE request that the Commission direct Duke to begin launch the solar rebate program immediately or within a reasonable practicable time.

Respectfully submitted, this the 17th day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 17th day of April, 2018.

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