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August 16, 2017

VIA ELECTRONIC FILING

Ms. Martha Lynn Jarvis, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street, Fifth Floor
Raleigh, North Carolina 27603

Re: Rulemaking Proceeding to Implement Session Law 2017-192, **Docket No. E-100, Sub 150**

Dear Ms. Jarvis:

This letter responds to the North Carolina Utilities Commission's ("Commission") Order Initiating Rulemaking Proceeding issued on July 28, 2017 in Docket Number E-100, Sub 150. The Southern Environmental Law Center ("SELC") provides the following brief comments related to the Commission's rulemaking to implement G.S. 62-110.8 in Session Law 2017-192 (House Bill 589). These comments specifically relate to the Commission's "oversight of the competitive procurement program." G.S. 62-110.8(h)(1).

SELC's goal in submitting these comments is to help ensure success of the competitive solicitation program and procurement of additional clean, renewable energy for North Carolina. In particular, we recommend that the Commission rules provide for transparency, continued stakeholder input, and a level playing field within the competitive procurement process. These recommendations should contribute to a successful program and preserve Commission and stakeholder resources by limiting the potential for confusion or conflict later in the process.

Providing for Transparency and Stakeholder Input

We recommend that the Commission consider ways to enable both transparency and stakeholder input in its rulemaking and implementation of the competitive procurement program. In other states where competitive procurement programs have been implemented, notably Georgia, there have been concerns and complaints about lack of transparency and the need for greater stakeholder input opportunities and oversight by

the Commission. To the extent possible, providing sufficient transparency and stakeholder input options at the outset of this new North Carolina program could help avoid conflicts or concerns in the future.

Specifically, to allow for transparency and stakeholder input, the rulemaking could incorporate the following recommendations: 1) establish or designate a specific docket for initial program details and any subsequent program modifications, 2) direct the participating utilities to file details on how they plan to divide the G.S. 62-110.8 procurement requirement among balancing authorities and by year, 3) make the pro-forma power purchase agreement terms and any bidder pre-qualifications available for stakeholder input prior to approval, and 4) allow for stakeholder input on selection of the third-party program administrator.

1) Establish a Specific Docket for Program Filings with Stakeholder Review and Commission Oversight

Session Law 2017-192 directs the utilities to file their proposed renewable energy competitive solicitation programs with the Commission. We recommend that the Commission include in its rules for oversight of this process the following provisions related to program filings:

- Establish or designate a docket dedicated to the utilities' competitive procurement program filings, including the initial program filings expected in November 2017;
- Require the utilities to annually update their program filings as necessary in this designated docket;
- Allow a comment period for stakeholders to provide feedback on the utilities' initial program filings and any subsequent annual updates;
- Include a provision that the Commission will consider stakeholder input prior to approving or modifying the utilities' program proposals.

Providing an established docket for program filings and allowing stakeholder input that the Commission will take into consideration should enable transparency and participation both initially and throughout the implementation process. The Commission's rules should direct that any program modifications, in addition to the initial filings, be submitted in the designated docket and subject to stakeholder comment and Commission oversight and approval.

Future changes to the procurement requirement of Session Law 2017-192 should also be filed in this designated docket and subject to stakeholder review and Commission oversight. G.S. 62-110.8(a), G.S. 62-110.8(b)(1), and G.S. 62-159.2(d) describe how the initial procurement requirement may be adjusted over time to account for changes in

other power purchase agreement capacity, large customer programs, and integrated resource plans.

2) Direct the Utilities to File Certain Program Details

The Commission's rules should direct the utilities to provide details on a proposed allocation of the procurement requirement in the utilities' initial filings and any subsequent annual updates as needed. Session Law 2017-192 establishes an overall procurement requirement of 2,660 megawatts ("MW") over a term of 45 months from when the Commission approves the program. However, the law provides few additional details on how the participating utilities will divide this procurement requirement between the utilities and balancing authorities and how the requirement will be divided by year. The utilities may already intend to file a proposed approach to this division in their initial filings. To provide the opportunity for oversight by the Commission and clarity for the program participants, the Commission rules should direct the utilities to provide a proposed approach to this division within their initial program proposals and in subsequent annual filings as needed. After a comment period for stakeholders, the Commission would then consider the utilities' proposals and whether to modify them before approval.

3) Allow Stakeholder Input on Pro-forma Power Purchase Agreement Terms and Bidder Pre-qualifications

To provide additional transparency and certainty for program participants, the Commission rules should direct the utilities and the third-party administrator to file any proposed pro-forma power purchase agreement terms and bidder pre-qualifications in the designated docket, and allow for stakeholder comment prior to Commission review, revision, and approval. Session Law 2017-192 requires the third-party administrator to develop and publish a methodology to use to evaluate competitive procurement bids. G.S. 62-110.8(d). The law further directs the utilities to submit and make publicly available a pro-forma contract for the competitive procurement 30 days prior to each competitive procurement solicitation. G.S. 62-110.8(b)(3). The Commission is authorized to review, approve, and revise as needed these pro-forma contracts.

To allow enough time for stakeholder input and Commission review, the Commission's oversight rules should direct the utilities to file a draft version of the pro-forma contracts ahead of the 30 days in the designated docket and then provide a sufficient amount of time for stakeholder comment and review. A similar process for the third-party administrator's evaluation criteria would further enable transparency and certainty for the competitive solicitation process. The rules should allow for this review both in the initial program proposals and any subsequent modifications in future years.

4) Allow Stakeholder Input Prior to Selecting the Third-Party Administrator

Finally, the Commission should provide an opportunity for stakeholders to comment on selection of the third-party administrator for the competitive procurement program. The Commission could issue an order or other notice soliciting input on third-party administrator options once several potential candidates have been identified. This procedure may not need to be memorialized in a rulemaking. The Commission should also seek stakeholder input on the role and duties of the third-party administrator; on how the third-party administrator will interact with the utilities and other program participants; and on the process for handling any questions, issues or complaints.

Providing a Level Playing Field for Participants

To the extent possible, the Commission should use its oversight role and this rulemaking to provide for the fair and equitable treatment of all program participants in the competitive procurement process. Session Law 2017-192 provides certain limitations along these lines. The utilities are authorized to participate in the competitive procurement process but are limited to a 30% cap and requirements that any information used by the utilities in submitting a bid must be made publicly available to other participants. The Session Law thus recognizes the inherent imbalance of power in utility participation in the program and seeks to mitigate any unfair advantage. The Commission should consider whether additional clarity is needed in the rulemaking to ensure a balance in program participation by the utilities and independent developers.

We further recommend that the Commission rules direct the third-party administrator to file information on which companies and projects are selected during the bidding process, and how those projects compare with other bids received. Providing this information publicly in the designated docket will inform the Commission, stakeholders, and program participants on how much of the procurement requirement is being awarded to particular developers or the utilities and how selected projects compare to overall participation in the program. We encourage the Commission to consider these options and any other ways that the rulemaking can provide a fair and transparent process for all participants.

Conclusion

We appreciate the opportunity to comment on this rulemaking proceeding. We hope the comments above assist the Commission in developing rules to oversee the competitive procurement process for renewable energy initiated by Session Law 2017-192. In particular, establishing a designated docket for competitive procurement program details, directing the utilities and third-party administrator to file important program details, and allowing for stakeholder input on program requirements and modifications

should allow for transparency, certainty, and fairness in the procurement process both at the outset and in future years of the program.

We look forward to commenting further on the Commission's draft rules later this year.

Sincerely,

s/Lauren J. Bowen

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cc: Counsel of record (via electronic mail)