

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. SP-13695, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition for Relief of Orion Renewable Resources LLC	) ) )	MOTION FOR LEAVE TO FILE COMMENTS AND COMMENTS OF THE PUBLIC STAFF
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NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully moves for leave to file comments regarding the Petition for Relief (Petition) filed by Orion Renewable Resources LLC (Orion), in this docket on March 8, 2020. In support of this motion, the Public Staff respectfully shows the Commission the following:

I. Motion for Leave to file comments

1. The intervention of the Public Staff in matters before the Commission is recognized pursuant to N.C. Gen. Stat. § 62-15(d) and Commission Rule R1-19(e).

2. Since the enactment of House Bill 589 by the General Assembly in 2017, the Public Staff has been an active participant in the Commission's implementation of the Competitive Procurement of Renewable Energy (CPRE) Program enacted pursuant to N.C. Gen. Stat. § 62-110.8, including the rulemaking proceeding in Docket No. E-100, Sub 150; the proceeding to select the Independent Administrator (IA) of the CPRE Program in Docket No. E-100, Sub 151; the review of the CPRE Program jointly proposed by Duke Energy

Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (jointly, “Duke”) in Docket Nos. E-2, Sub 1159, and E-7, Sub 1156; and the subsequent amendments to the CPRE Program and CPRE Program plan in those dockets. The Public Staff has also participated in revisions to the North Carolina Interconnection Procedures (NCIP) related to implementation of CPRE Tranche 1 in Docket No. E-100, Sub 101. In addition, the Public Staff participated in the technical conference held by the Commission on May 23, 2019, and has been an active participant in the multiple stakeholder working groups held by Duke Energy and the IA, pursuant to the Commission’s July 2, 2019 *Order Modifying and Accepting CPRE Program Plan* in Docket Nos. E-2, Sub 1159 and E-7, Sub 1156.

3. On March 8, 2020, in this Docket, Orion filed its Petition, seeking relief from the disqualification of its Proposal # 129-01 (Orion Proposal) for an 80-megawatt solar facility bid into Tranche 1 of the CPRE in the DEC territory.

4. On April 9, 2020, Accion Group, LLC, the Independent Administrator for the CPRE Program (“IA” or “Accion”), filed comments with the Commission regarding the Petition.

5. On May 26, 2020, Orion filed reply comments in support of its Petition.

6. Both Orion in its Petition and the IA in its Comments referred to communications, comments, or statements of the Public Staff related to the basis for elimination of the Orion Proposal from CPRE Tranche 1 consideration, and the Public Staff respectfully requests the opportunity to clarify those comments to

ensure that the Commission has a full understanding of the Public Staff's position related to the proposal evaluation methodology used by the IA and the basis for why the Orion Proposal was eliminated.

7. The Public Staff believes that its comments on the matters in dispute will be informative for the Commission in evaluating the statements made by Orion and Accion, and will also help to reduce future uncertainty regarding disputes that otherwise may arise in future CPRE solicitations.

## II. Comments of the Public Staff

8. The Public Staff first became aware of the dispute regarding Orion's Proposal in October 2019, when counsel for Orion reached out to the Public Staff regarding concerns over the project's elimination from Tranche 1 consideration. The Commission's Rule to implement the CPRE Program codified in R8-71 does not contain any specific dispute provisions, but the Public Staff recognized that the general preference to informally resolve disputes as expressed in Commission Rule R1-4(a) in order to avoid a formal complaint being filed under Commission Rule R1-5 is applicable, and therefore participated in discussions with both Orion and Accion regarding the matters in dispute from October 2019 through February 2020, as documented in the Petition. The Public Staff does not dispute or take issue with the timeline or any of the characterizations of the information shared by the Public Staff indicated in the Petition.

9. The Public Staff acknowledges that following the inquiry from Orion received in October 2019, the Public Staff had discussions with the IA regarding

the Orion Proposal and the basis for its elimination from consideration in Tranche 1. In particular, the Public Staff shared a copy of the letter it received from Orion with the IA (included in the Petition, at Attachment C) after receiving authorization from Orion to share the letter. The IA provided the Public Staff with a confidential response to questions raised in Orion's letter, which is attached as Confidential Attachment 1 to these comments. On Page 3 of that response, the IA communicated to the Public Staff that:

**[BEGIN CONFIDENTIAL]**

[REDACTED]

**[END CONFIDENTIAL]**

10. During its November 22, 2019 meeting with Orion, the Public Staff communicated to Orion that based on the communications with the IA, it was the Public Staff's understanding that the Proposal had completed Step 1 of the CPRE evaluation process, and after posting the necessary performance security, had proceeded to the Step 2 process. Further, the Public Staff communicated its understanding that as part of the IA's iterative process in Step 2, the IA assigned generic system upgrade costs to all eligible projects prior to completing a full T&D study, and that as a result of these additional costs being imputed to the bid prices, some projects, including the Orion proposal, were found to be above avoided costs and were therefore eliminated from further consideration.

11. In its Petition, Orion states its position that its Proposal was improperly eliminated from CPRE Tranche 1 in Step 1 of the CPRE evaluation and selection process on the grounds that the “Net Benefit” of the Proposal, as determined using the evaluation methodology developed by the IA (IA Evaluation Tool) was negative, despite the fact that its Proposal as submitted was below avoided costs. (Petition at 1-2)

12. Orion further stated that the Net Benefit calculation was created for the purpose of ranking the economic competitiveness of each eligible CPRE proposal for selection purposes in each CPRE tranche, but it was not designed to disqualify projects where DEC has not met its procurement goal for that tranche. Orion indicated its position that such action would be inconsistent with the guidance provided in N.C. 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). (*Id.*)

13. Orion therefore requests that since DEC did not meet its procurement goal of 600 megawatts in the CPRE Tranche 1 RFP, any eligible proposal in Tranche 1 should have been offered a Power Purchase Agreement (PPA), if its bid price remained under avoided costs, after the inclusion of the costs of any required system upgrades that would have been identified and imputed to projects in Step 2 of the CPRE evaluation and selection process. (*Id.*)

14. Orion also requested that the Commission clarify that the Net Benefit determination by the IA is not a permissible basis on which to determine whether the total cost of a CPRE proposal exceeds the utility's avoided cost rates and to therefore disqualify a CPRE proposal from an RFP. Orion further requested that the Commission direct DEC 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 Proposal, and if the Proposal is found to be below avoided costs after this Step 2 analysis, that it be offered a Tranche 1 PPA. (*Id.* at 15-16)

15. In its Comments, the IA noted its position that the core issue in this dispute is as follows:

Should the value of CPRE Proposals, and in turn the eligibility for a Power Purchase Agreement ("PPA"), be based on the IA's robust and detailed evaluation of the 8760 hourly impacts of each year of the 20-year analysis which determines the net benefit to customers, or on whether Proposals are at or below Duke's levelized avoided energy and capacity rates utilizing the methodology most recently approved by the Commission? (IA Comments at 2).

16. The Public Staff agrees with both Orion and the IA that this fundamental point of disagreement requires clarification to ensure all proposals in Tranche 1 were treated consistent with the legislative intent of HB 589 and to increase transparency for future CPRE Tranches regarding the basis on which projects are being ranked, and in some cases, eliminated from consideration.

17. In its Comments, the IA describes the development of the IA Evaluation Tool in order to provide "the most comprehensive analysis of the benefit

of each Proposal to customers rather than mechanically assuming that a simplistic evaluation of bid decrements was sufficient.” (IA Comments at 4). The Public Staff agrees with the IA that the IA Evaluation Tool was discussed with the Public Staff and that the Public Staff participated in demonstrations of the IA Evaluation Tool using mock data prior to the receipt of proposals for Tranche 1. The Public Staff also agrees with the IA Evaluation Tool provides a more accurate assessment of the value of proposals, and the Public Staff continues to agree with the IA that the “IA Evaluation Tool is a vital tool to rank Proposals relative to each other, controlling for size and output characteristics.” (IA Comments at 4).

18. The Public Staff further agrees that the IA Evaluation Tool should be used to rank eligible projects in order to identify the projects that provide the most value to customers for selection by DEC and DEP. However, in the event that the full target procurement has not been reached, and projects that submitted bids below avoided costs remain eligible for consideration, the Public Staff does not believe that the Net Benefit calculation from the IA Evaluation Tool should be used to eliminate those projects.

19. N.C. Gen. Stat. § 62-110.8(b)(2) provides that:

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. The public utility's current forecast of its avoided cost shall be consistent with the Commission-approved avoided cost methodology.

The Public Staff believes the statute clearly provides that the appropriate basis for determining whether projects are cost-effective is the utility's current

forecast of its avoided cost, and that this remains the primary basis by which otherwise eligible projects can be eliminated from consideration based on their cost-effectiveness.

20. The Public Staff further agrees with the statements made by Orion in paragraphs 8 through 10 that the guidance and information contained in the Commission Rules, DEC and DEP's CPRE Program Plan approved by the Commission in its February 21, 2018 *Order Modifying and Approving Joint CPRE Program* in Docket Nos. E-2 Sub 1159 and E-7 Sub 1156, and the Tranche 1 RFP itself, rely on the use of avoided costs as the appropriate threshold for determining the cost-effectiveness of projects and providing a basis for eliminating projects from further consideration.

21. The Public Staff also agrees with the statements by Orion in paragraphs 13, 15, and 16 that the Tranche 1 RFP, as well as the reports filed by the IA as part of the Tranche 1 evaluation discuss the IA Evaluation Tool and the use of the Net Benefit calculation to rank and select the most cost-effective projects. The Tranche 1 RFP did not indicate, however, that projects would be eliminated from consideration based on the Net Benefit calculations.

22. The Public Staff disagrees with the IA's characterization that Orion's position would limit the IA's ability to select the most cost-effective proposals, and instead require that projects be ranked solely based on their decrement to the avoided cost cap. (IA Comments at 2-3). Instead, the Public Staff recognizes the guidance on evaluating and ranking the proposals based on both economic and



non-economic criteria provided in the Tranche 1 RFP to select the most optimal portfolio of projects, consistent with Commission Rule R8-71(f)(1)(iii). The Public Staff specifically notes that Appendix F of the Tranche 1 RFP contained a scoring sheet, which according to page 14 of the RFP was “developed by the IA and sets forth the weighting the IA will use in determining the Step 1 ranking of all Proposals,” including both economic and non-economic factors.

23. The Public Staff does not take a position regarding the memorandum filed by the IA on February 28, 2020 entitled “Duke CPRE Tranche 2 Screening and Selection Process” (included in the Petition as Attachment E) to provide guidance on the IA evaluation process for Tranche 2 purposes. However, the Public Staff agrees that the approach proposed by the IA in the memorandum for ranking and selection of projects is consistent with the Public Staff’s understanding of the appropriate use of the Net Benefit calculation for all tranches, and that otherwise eligible projects will only be eliminated if their bids, when calculated to include T&D costs, exceed avoided costs.

24. With regard to the timeliness of Orion’s petition, the Public Staff recognizes that several months have passed since this issue first arose and that the Tranche 2 RFP has now closed. Nonetheless, the Public Staff believes that Orion made timely efforts following the receipt of information from the IA on why its project was not selected in Tranche 1. While not taking a position on the next steps to be taken in this dispute, the Public Staff believes that Orion’s Petition raises issues for Tranche 1 and continued CPRE implementation that require consideration by the Commission.

WHEREFORE, the Public Staff respectfully requests that the Commission:

1. Accept these comments by the Public Staff;
2. Confirm that, consistent with N.C. Gen. Stat. § 62-110.8(b)(2), a utility's current forecast of its avoided costs provides the appropriate basis for determining whether CPRE projects are cost-effective;
3. Clarify that the IA Evaluation Tool is appropriate for ranking and selecting the most cost-effective projects; and
4. For such other relief as the Commission may find appropriate.

Respectfully submitted, this the 29th day of May 2020.

PUBLIC STAFF  
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Executive Director

Dianna W. Downey  
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Electronically submitted  
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### **CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served a copy of the foregoing upon each of the parties of record in this proceeding or their attorneys of record by emailing them an electronic copy or by causing a paper copy of the same to be hand-delivered or deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 29th day of May 2020.

Electronically submitted  
/s/ Tim R. Dodge



Docket No. SP-13695, Sub 1

Confidential Exhibit (1)

Public Staff's Motion for Leave to  
File Comments and Comments