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BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 140

FILED
2015
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Clerk's Office
Utilities Commission

In the Matter of:)
Biennial Determination of Avoided Cost Rates) **RESPONSE TO PETITION**
for Electric Utility Purchases from Qualifying) **FOR CLARIFICATION**
Facilities – 2014)
)

NCSEA'S RESPONSE

On 28 January 2015, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, Inc. (“DEP”) filed a *Petition for Clarification and Request for Expedited Treatment* (“Petition”) in this docket. In the Petition, DEC and DEP jointly request issuance of a North Carolina Utilities Commission (“Commission”) order clarifying:

- A. Whether DEC and DEP are required to offer 15-year maximum term contracts in their bilateral negotiations with qualifying facilities (“QFs”) with nameplate capacities exceeding 5 MW (“Large QFs”), regardless of the Large QFs’ individual characteristics;
- B. Whether Finding of Fact No. 5 in the Commission’s 31 December 2014 *Order Setting Avoided Cost Input Parameters* (“Avoided Cost Order”) applies uniformly to all bilateral negotiations with Large QFs, without regard for the specific characteristics of the Large QFs; and
- C. Whether the Avoided Cost Order is intended to make the standard tariff and agreements available to all QFs up to 80 MWs in size.

See Petition at p. 7. DEC and DEP also requested expedited resolution of their request.

The North Carolina Sustainable Energy Association (“NCSEA”) responds to the Petition as follows:

A./B. The Avoided Cost Order requires that rates be calculated in the same way for all QFs but does not require that the same terms be offered to all QFs.

The biennial avoided cost proceedings held by the Commission pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 establish the standard offer for small QFs (the “Standard Offer”). The Standard Offer consists of both *rates* at which the utilities purchase QF output and *terms* pursuant to which the purchase and sale occurs. Without question, the focus of the Avoided Cost Order, as evidenced by its very captioning – *Order Setting Avoided Cost Input Parameters* – is on the inputs that affect calculation of a utility’s avoided costs and the *rates* derived from those costs.¹

With regard to calculation of *rates*, Finding of Fact Number 5 – which includes the Avoided Cost Order’s only substantive mention of Large QFs – is clear and unambiguous:

It is inappropriate for DEC, DEP and [Dominion North Carolina Power (“DNCP”)] when negotiating contracts with QFs that are not eligible for standard contracts to employ methods found by the Commission to be inappropriate in the application of the peaker method when calculating standard contract rates.

Finding of Fact Number 5 makes clear that each utility is to use one method for calculating rates for QFs, irrespective of eligibility of the QF for the Standard Offer. In other words, far from creating ambiguity, the Avoided Cost Order actually clarifies that, all else being equal, the method for calculating a utility’s rates should not differ

¹ With regard to *terms* (as opposed to *rates*), the Avoided Cost Order included only two rulings, both of which addressed the parties’ proposals for changes to the terms of the Standard Offer. The Commission ruled that (1) the eligibility threshold for the Standard Offer should remain at 5 MW and (2) the Standard Offer shall continue to include a 15-year fixed payment schedule option. Neither of these rulings pertains to Large QFs.

depending on whether the utility is approached by, for example, a 4.99 MW QF or a 5.01 MW QF. As explained by the Commission,

[T]he method by which avoided costs are calculated should, to the extent possible, remain consistent in both standard and negotiated contracts. If a method is not applicable to calculating the avoided costs of a QF smaller than five MW, the fact that a QF is greater than five MW does not validate such a method. In an effort to ease the negotiation process and avoid unnecessary and protracted proceedings, the Commission determines not to authorize DEC, DEP and DNCP when negotiating contracts with QFs that are not eligible for standard contracts to employ methods found by the Commission to be inappropriate in the application of the peaker method when calculating standard contract rates.

Avoided Cost Order at p. 21. Thus, NCSEA believes the order is clear that the appropriateness/inappropriateness determinations made by the Commission in Findings of Fact Nos. 7, 8, 9, 10, 11, 12, 13, 23, 24, 26, 27 and 28 are to be used for calculating rates for QFs, irrespective of eligibility for the Standard Offer. At the same time, the order acknowledges that rates are time-sensitive. The order makes patently clear that, with regard to Large QFs and negotiated contracts, a utility may take the time-sensitivity of rates into account by plugging “the most up-to-date data” into the Commission-approved method for calculating rates. *Id.*

Beyond Finding of Fact Number 5 and its implications for the *rates* to be offered to Large QFs, the Avoided Cost Order is silent as to Large QFs – the order does not address the *terms* to be offered to Large QFs. DEC and DEP appear concerned that a Commission ruling lurks in the silence. NCSEA believes that, just as silence in any other order would leave the *status quo* undisturbed, the silence in the Avoided Cost Order leaves undisturbed the *status quo* as to Large QFs with respect to the *terms* they may be offered. In other words, Large QFs that were not entitled to a 15-year fixed payment schedule prior to entry of the Avoided Cost Order continue not to be entitled to a 15-year

fixed payment schedule. Therefore, NCSEA believes it is already quite clear that DEC and DEP are not required to offer “15-year maximum term contracts” to Large QFs.²

C. The Avoided Cost Order does not make the Standard Offer rates and terms available to all QFs up to 80 MWs in size.

Given the position of NCSEA set out above, NCSEA believes it is clear that the Commission did not intend to make the Standard Offer – *i.e.*, the rates and terms – available to all QFs up to 80 MWs.³

D. Expedited Resolution

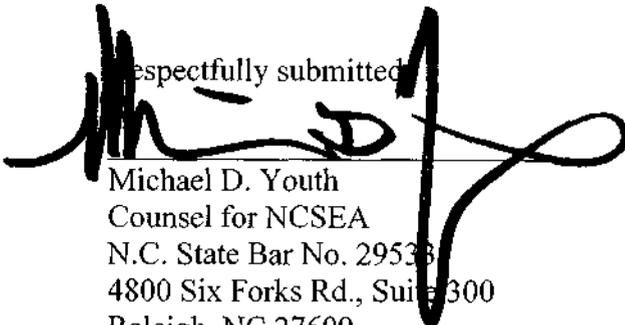
NCSEA does not oppose expedited resolution of the Petition.

² The Avoided Cost Order does not require DEC and DEP to offer “15-year maximum term contracts” to Large QFs. At the same time, NCSEA believes DEC and DEP should not decline to offer a “15-year maximum term contract” to a particular Large QF where doing so would be arbitrary or discriminatory. Thus, for example, if DEC and DEP began offering “15-year maximum term contracts” to solar Large QFs in general, DEC and DEP should not decline, in an arbitrary or discriminatory manner, to offer a particular solar Large QF such a contract.

³ While Large QFs are not eligible for the Standard Offer rates and terms, NCSEA certainly supports the voluntary efforts being undertaken by DEC and DEP to standardize the *terms* of negotiated contracts. To refresh the Commission’s recollection, DEC/DEP witness Kendal Bowman testified as follows at the evidentiary hearing:

[E]ven before the initiation of this docket, the Companies have been taking steps to further streamline the QF PPA negotiation process. Recognizing the continued growth in proposed QF projects, the Companies undertook to develop a standardized form PPA to be used for the basis for all negotiated QF contracts. Moreover, the Companies recognize that different types of QFs may require different commercial terms in their PPAs. The Companies have incorporated that concept into their standard form by having different commercial terms available depending upon the type of QF with which they are negotiating. The use of standardized terms means that negotiations do not have to begin from scratch and ensures that QFs receive consistent treatment.

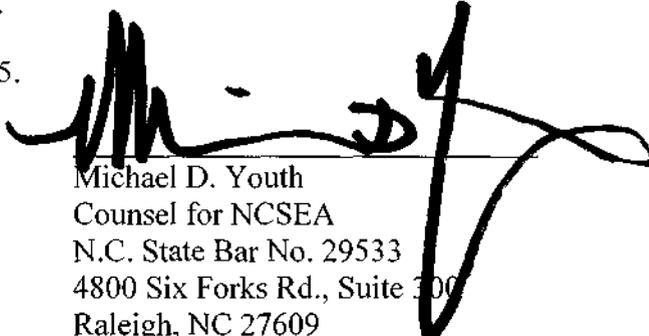
Transcript of Testimony (Heard 7-7-2014 in Raleigh) Volume 1, p. 137, Commission Docket No. E-100, Sub 140 (30 July 2014).

Respectfully submitted,

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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 Response, together with any exhibits attached thereto, 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 2nd day of ~~January~~, 2015.
Feb.


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