Eagle Intel Services LLC

REPORT OF INTERVIEW

DATE: September 13, 2019
TIME: 9:30 AM

LOCATION: Womble Bond Dickinson
555 Fayetteville Street
Raleigh, NC

PARTICIPANTS: Ken Jennings, Renewable Strategy Policy Director, Duke Energy
Jim Cooney, Outside Counsel, Womble Bond Dickinson, LLP
Vijay Bondada, VP for Litigation, Duke Energy
Marcy Selle, Outside Counsel, Womble Bond Dickinson, LLP
Tom Beers, EIS Investigator
Kevin Greene, EIS Investigator

On the above date and time, Eagle Intel Services Investigators Tom Beers and Kevin Greene conducted an interview of Ken Jennings, Director for Renewable Strategy Policy for Duke Energy, at the offices of Womble Bond Dickinson in Raleigh, North Carolina. This interview was previously arranged by and through Jim Cooney, outside counsel for Duke Energy, at the request of EIS investigators. The following information was provided by Jennings unless otherwise indicated:

1. Jennings has been the North Carolina Renewables Director for Duke since 2014. His duties include the analysis of renewable energy in North Carolina, renewable energy products and cost rate structures.

2. Jennings spent two years working in the stakeholder's process led by the NC General Assembly (NCGA) to address renewable energy through a variety of different concepts. These new concepts led to the creation of North Carolina HB 589.

3. Jennings explained that prior to HB 589, North Carolina had become the leading PURPA jurisdiction through a series of regulatory and policy decisions. This created very favorable rates for solar developers, but came at a higher cost to customers because the solar power rates were set administratively and legislatively, rather than through market forces. The rates and contract terms were attractive to solar developers and as a result North Carolina became the number one state in terms of solar development. This, in turn, led to very large solar projects that were well beyond the 100KW projects envisioned by PURPA, and which averaged as much as 5MW.

4. In addition, there were power quality issues on the distribution circuits created by solar energy. Solar energy in North Carolina was largely tied into the distribution circuits rather than the transmission circuits, in part due to a lack of guidance and

the growth of the industry. The customers who were on the same distribution circuit would see fluctuations in voltage as solar energy came on and came off distribution. For individuals, this might be a flickering of a light or a screen. However, for major industrial customers, these surges would cause a potential intermittent power interruption that could shut down assembly lines or other critical processes. Consequently, one of the issues to be addressed was to move solar generation from the distribution circuit to the transmission system.

5. Jennings said the NCGA was primarily interested in saving money for the ratepayers of North Carolina. Duke was primarily interested in making the grid system more reliable. Before HB 589, the solar developers were only interested in putting a project in the cheapest location and this was usually overloaded areas that had inexpensive and flat real estate.

6. Jennings said many months of stakeholder meetings and negotiations resulted in the language of HB589. By moving more projects to competitive market driven rates, the overall power costs for customers would be lowered (Duke's administratively set payments were passed along to its customers) and would result in projects being developed because they made energy sense, not because they were supported by abnormally high rates. This would also lead to projects being located near transmission corridors for more efficient (and less costly) access to transmission. HB 589 had a number of different provisions affecting different parts of the power business. As it applied to solar development, HB 589 reformed PURPA contract and enabled competitive procurement where bidding would lead to a just and reasonable rate of return. It also enabled Duke to direct the solar development to areas that were closer to transmission to enable continued development without affecting the distribution portion of the grid.

7. Jennings was familiar with the part of HB589 that grandfathered renewable qualified facilities (QFs), that were in the queue to be connected, to the old rates and terms, provided that the combined QFs did not exceed the nameplate capacity of the substation. Jennings said this small part of HB589 was put in the bill in the later stages of negotiations. Jennings said he does not believe there were any detailed discussions of the definition of nameplate capacity during the negotiations of HB589. Jennings said he did not know there were multiple nameplate ratings until after Duke issued the Method of Service Guidelines in September of 2017 and the dispute between Duke and the solar developers began.

8. During the discussions over HB589, Jennings provided multiple savings analyses to the Legislature. None of these discussions involved the different levels of lost savings due to utilizing different nameplate capacity ratings for grandfathered QFs.

9. Gary Freemen, of Duke, was also involved with the discussions between the stakeholders. Jennings believes that Freeman had discussions with the solar developers over the nameplate capacities. Per Jennings, Freeman wanted additional screens in place for the potential solar projects. Duke wanted to pull out any of the QF's that were greater than 10 MW's and would have exceeded the nameplate rating. These terms were originally agreed to by the solar industry representatives.

10. Jennings explained that he now knows that the base nameplate rating represents 100% of the capacity. The middle rating of 133% of the base rating can be reached by pumping cooling oil. The highest rating of 167% is reached by adding cooling fans.

11. Jennings said, as an engineer, it is intuitive to him to assume that the term nameplate capacity in HB 589 refers to the lowest rating because that is the capacity without additional mechanical assistance and would therefore be the most reliable for the grid. However, there was no discussions regarding the definition or the other possible ratings when the negotiations of HB 589 were being held.

12. After Duke issued the Method of Service Guidelines, Jennings worked to communicate to stakeholders the reasons why Duke was using the lowest nameplate rating to determine what grandfathered QFs could be connected to the grid. The main reason was reliability of the system.

13. Jennings said after HB589, he received a lot of positive feedback. After Duke defined nameplate as the low capacity rating nameplate, there was a negative backlash. Jennings said Duke received brand damage from a narrow part of HB 589.

14. Jennings said he communicated this position of using the lowest rating until December 2017 when Duke agreed with the solar industry to utilize the middle rating. Jennings was not part of the settlement discussions. It is his understanding that the middle rating was chosen as a compromise position.

15. Because Jennings was not part of the team dealing with the solar developers over the nameplate dispute, he was not aware of discussions within Duke that indicated Duke was planning to settle with the solar industry because of concerns over lawsuits. Jennings said there are always lawsuits and he added that there are more lawsuits now than during that time.

16. Similarly, because he was not part of the team dealing with the solar developers, Jennings said he was not aware of conversations within Duke indicating Duke was willing to settle with the solar industry because of concerns over public image.

17. Jennings indicated that there were a number of settlements that eroded some of the savings that was projected from HB589. The total is approximately $250 Million and Jennings estimated that the nameplate capacity settlement accounts for roughly $100 Million of the total. The settlement at the middle nameplate rating resulted in lost savings from HB 589, of approximately $100 million. If Duke had conceded to the highest nameplate capacity, the lost savings would have been approximately $180 million.

18. Jennings speculated that Duke settled with the solar industry regarding the nameplate issue over concerns of brand and public image. However, he has no direct knowledge of this.

19. Jennings never heard anyone say that resolving the dispute over nameplate capacity was connected to the pending 401 permits for the pipeline.