

# N.C. General Assembly Restructures the Renewable Energy Industry with House Bill 589

By Karen Kemerait

On the last day of the 2017 session, the North Carolina General Assembly passed the “Competitive Energy Solutions for NC” bill (HB 589) that, among other things, restructures how North Carolina implements the federal Public Utilities Regulatory Policy Act of 1978 (“PURPA”). This legislation was the result of over nine months of negotiations among a diverse group of stakeholders and was signed into law by Governor Roy Cooper on July 27, 2017, and it makes some of the most comprehensive changes in energy policy in North Carolina in a decade.

North Carolina currently has 6,916 MW of installed renewable energy capacity. Of that, 3,287 MW is solar energy. North Carolina is ranked second in the country for solar energy generation.

Prior to the enactment of HB 589, public utilities, such as Duke Energy, were required to purchase renewable energy from a qualified facility at an “avoided cost” rate that is set by the North Carolina Utilities Commission. Standard contracts have been provided to qualified facilities of 5 MW or less, and were offered at 5, 10, and 15-year terms.

The Competitive Energy Solutions for NC law restructures how renewable energy will be purchased and sold in North Carolina. Below are some of the key provisions:

## Small Power Producers

Qualifying facilities that are eligible for standard contracts at the avoided cost rate are reduced to small power producers that produce 1 MW or less of capacity. Larger scale solar production will be shifted to a new competitive bidding process.

The standard contracts now offered are limited to 10 years at the avoided cost rate. Once an electric public utility has purchased 100 MW of capacity from small power producers, the contracts will only be available to small power producers of 100 kW or less of capacity. Other small power producers will have to negotiate with the electric utilities for contracts for a fixed five-year term.

The fixed five-year terms do not apply to swine and poultry waste facilities, hydroelectric facilities of up to 5 MW, landfill gas, manure digester gas, agriculture waste gas, sewer gas, and sludge gas, allowing them to enter into fixed-term contracts for longer periods. The new law also provides for an expedited review process for interconnection of swine and poultry waste-to-energy projects of 2 MW or less.

## Competitive Bidding Process

The competitive bidding process for larger renewable energy producers requires public utilities, including Duke Energy, to submit request for proposals (RFPs) for a total of 2,660 MW over a 45-month period. The bidding process will be overseen by an independent administrator. The public utility will have authority to determine the location and allocated amounts of renewable energy projects within its service territory, and will have the right to control the operation and dispatch

of third-party facilities. Electric public utilities can purchase renewable energy facilities from third-parties, and they are also permitted to construct their own renewable energy facilities for up to 30% of the amount of the competitive procurement requirement.

The initial request for proposals of 2,660 MW will be reduced if the utilities have power purchase agreements (from small producers) for more than 3,500 MW of capacity not subject to economic dispatch or curtailment.

## Distributed Resources Access Act

As part of the compromise among the stakeholders, the new law allows for third-party leasing of solar energy, which was previously prohibited. This allows customers to enter into power purchase agreements with solar companies to operate a solar energy system on their property and purchase all of the energy produced by the system.

## Moratorium on Wind Energy

Finally, the new law places a moratorium on new and modified permits for wind energy producers until December 31, 2018 so the State can study the impacts of wind energy on military operations in the State. North Carolina currently has one wind energy farm in Perquimans and Pasquotank Counties, the Amazon Wind Farm US East, that was completed in February 2017 and produces 208 MW of energy. The moratorium only affects new and modified permits; but it will likely impact the planned expansion of the project, which was intended to increase production to 300 MW. Two other proposed wind farms, in Chowan County and Tyrell County, could be derailed by the moratorium. However, along with his signature on the new law, Governor Cooper issued an executive order, “Promoting Wind Energy Development” ordering the state to proceed with the review and processing of wind energy permit applications such as those in Chowan and Tyrell County.

## New Rules Being Promulgated by the Utilities Commission

As required by HB 589, the Utilities Commission initiated a rule-making procedure this past summer to determine how HB 589 will be implemented, and invited Duke Energy, the Public Staff, and interested parties to file proposed rules and comments. Duke Energy, the Public Staff, and solar industry participants, including the NC Clean Energy Business Alliance and the NC Sustainable Energy Association, filed proposed rules and comments. The Utilities Commission is expected to adopt final rules to implement HB 589 in the middle of October 2017.

Karen Kemerait is an attorney with Smith Moore Leatherwood, LLP in the Raleigh Office. She focuses her practice in the areas of utilities, zoning and land use, telecommunications, environmental and administrative law.