



Date: May 2, 2019  
Time: 10:00 AM – 11:32 AM

Location: Offices of Kilpatrick Townsend  
4208 Six Forks Rd, Suite 1400  
Raleigh, NC 27609

Present: Steven Levitas  
Clay Wheeler, Attorney for Levitas  
Lynne LNU, Legal Assistant  
Kevin Greene, EIS Investigator  
Thomas Beers, EIS Investigator

On the above date and time, Eagle Intel Services LLC Investigators, Kevin Greene and Thomas Beers, met with Steven Levitas and his attorney, Clay Wheeler, on behalf of Kilpatrick Townsend. Levitas holds a position as Senior Counsel with the law firm of Kilpatrick Townsend. This meeting was previously arranged via phone calls between Investigator Beers and Levitas. The following information was provided by Levitas:

1. Levitas is currently Senior Vice President of Regulatory and Governmental Affairs with the solar energy development company, Cypress Creek Renewables. (Cypress Creek). Cypress Creek is one of the largest solar energy developers in the country and is headquartered in Santa Monica, CA.
2. Prior to his employment with Cypress Creek, Levitas was Vice President of Business Affairs with a solar developer named FLS Energy. Levitas was with FLS since January of 2016.
3. In the 1990's Levitas held the position of Deputy Secretary of The Department of Natural Resources (DNR). DNR has since been renamed Department of Environmental Quality (DEQ). At DNR, Levitas was heavily involved with the review and issuance of 401 permits.
4. Levitas said he played a significant role in the drafting and passing of House Bill 589 (HB 589). HB 589 was a very involved bill that effected the way the Public Utilities Regulatory Policies Act (PURPA) was implemented in North Carolina.
5. Levitas explained how PURPA was passed by US Congress in 1978 and required utility companies to purchase power at an "avoided cost: rate. Much of



PURPA implementation was left to individual states. North Carolina's implementation of PURPA has been historically favorable to large solar projects.

6. Beginning around 2010, solar equipment began to become more affordable making solar projects more profitable for solar developers. As the projects began to become profitable, North Carolina attracted many solar projects due to the favorable implementation of PURPA. The favorable avoided cost rate authorized by the North Carolina Utilities Commission and the lengthy 15-year contracts were attractants to solar projects in North Carolina. North Carolina attracted the second most solar projects in the country.
7. In the industry, a solar project is known as a qualified facility or "QF". As the number of QFs grew in North Carolina, Duke Energy began to place more requirements or "screens" on the QFs. These screens were required to be satisfied before Duke would approve the QF to be connected to the grid.
8. In the spring of 2016, a new screen was implemented by Duke regarding "circuit stiffness". The circuit stiffness screen was a cause for concern for many solar developers and many solar companies filed notices of dispute with the North Carolina Utilities Commission. Levitas was the lead negotiator for solar industry during discussions to settle the circuit stiffness dispute with Duke. Duke and the solar developers eventually settled the circuit stiffness dispute after months of negotiations.
9. Levitas said he had a good working relationship with Duke and wanted to work with Duke to avoid future conflicts. It was during the course of negotiating the circuit stiffness dispute that Levitas suggested to Duke representatives that they should all work to improve the implementation of PURPA through new legislation.
10. In late 2016, Levitas and other solar developers met with Duke to discuss a legislative proposal that would resolve future disputes over PURPA implementation.
11. A draft bill was prepared in early 2017, but negotiations over the proposed legislation, as it related to the utility scale solar projects, reached an impasse.
12. In May of 2017, to break the stalemate between the solar industry and Duke, North Carolina General Assembly Representatives Szoka and Arp arranged for members of the solar industry and representatives of Duke, to convene in one room and suggested they stay in the room until a deal was worked out. This meeting lasted for several hours until a conceptual agreement was reached.



13. The agreement that eventually became House Bill 589, changed the way avoided costs were calculated, changed contract terms and QF size requirements. Future QFs were to be paid an avoided cost rate calculated through a competitive bidding process. Future contracts were shortened from 15 years to 5 years and qualifying projects were reduced to 1 megawatt.
14. According to Levitas, to get the deal done, the solar industry essentially agreed to all of Duke's proposals and insisted on only one item that benefited the solar industry. The solar industry insisted that QFs under development, be grandfathered under the former avoided cost rates and former contract terms. Duke agreed to this request and HB 589 passed in the summer of 2017.
15. In September of 2017, Duke rolled out new interconnection screens that would have killed approximately 30% to 40% of QFs in the queue for approval. The most detrimental screen to the solar industry was Duke's interpretation of "nameplate capacity". HB 589 essentially grandfathered QFs, in the queue, at the old rate as long as the combined QFs did not exceed the nameplate capacity of the transformer. Duke made an official interpretation of "nameplate capacity", as mentioned in HB 589, as the lowest capacity rating listed on the substation's nameplate.
16. Levitas said, there were three nameplate ratings on each substation but Duke's interpretation of using the lowest rating would have disqualified QFs that could have been grandfathered at the old avoided cost rates.
17. After Duke's announcement of the nameplate capacity interpretation, the solar industry filed notices of disputes with the NCUC and prepared to file lawsuits.
18. Levitas said he and other members of the solar industry reached out to people to try to get Duke to the table to resolve this new issue. Levitas reached out to Rep Szoka, the Governor's Office and to the NC Public Staff.
19. Duke agreed to a meeting on December 14, 2017, held at the Offices of The Public Staff. Present at the meeting were Chris Ayers, Director of the Public Staff, Rep Szoka, McKinney from the Governor's Office, numerous members of the solar industry and representatives from Duke.
20. Levitas said, at the meeting on December 14<sup>th</sup>, an agreement in principal was reached. The agreement was not ideal for the solar industry, but it did save a large number of QFs that were in the queue. Instead of losing 30% to 40%, the solar industry lost approximately 15% of the QFs. The essential agreement



allowed the grandfathered QFs to exceed the lower nameplate capacity with possibilities to add more with substation upgrades.

21. Even though the essential deal was reached on December 14<sup>th</sup> 2017, negotiations continued to the end of January, 2018 over specifics, contract language and over things that were not thought of during the meeting on December 14<sup>th</sup>.
22. Levitas said he was the lead negotiator for the solar industry and was responsible for reaching out to all the solar companies and to Duke. The process was very involved and took much back-and-forth.
23. Levitas said he received numerous calls from Ken Eudy and William McKinney from the Governor's Office to get the deal done. Levitas said he was not told to settle the deal in one way or another but was pressured to finalize the deal. The final approved settlement was finished in late January and filed in early February.
24. Levitas said he did not know if the approval for the Atlantic Coast Pipeline (ACP) 401 permit was in anyway linked to the negotiations between the solar industry and Duke.
25. At some point, Levitas said he became aware that there was an ACP permit application.
26. Levitas said it was probably not a coincidence that the ACP Permit was announced at the same time the solar deal was completed. Levitas surmised that because Governor Cooper has a strong commitment to environmental issues and many of his supporters were against the ACP, Cooper might have thought it was desirable, politically, to announce the solar deal with Duke near the time he announced approval for the ACP.
27. Levitas said the Governor's Office did not take sides in the dispute between the solar industry and Duke. The Governor's Office wanted a resolution and encouraged Duke and the solar industry to resolve the issue. They played an important role in getting people to the table.
28. Levitas did not know anything about the Memorandum of Understanding (MOU) between the ACP and the Governor's Office, where \$57M was to be placed in a fund to be partially used to promote renewable energy.



29. Levitas was aware that documents, relating to the ACP, from the Governor's Office have been made public with several documents mentioned in newspaper articles. Levitas was asked about several publicized text messages. Specifically, texts between Lloyd Yates and Kristi Jones on January 16, 2018. In this text chain, Yates asked Jones "Why does it seem that approval of the Atlantic Coast Pipeline is dragging? How can we move it along?" In this text chain, Lloyd and Jones arrange a phone meeting between Governor Cooper and Lynn Good, on January 17<sup>th</sup> 2018, to discuss this issue. A proposed nameplate settlement agreement between Duke and the Solar Industry began to be circulated on January 19<sup>th</sup>, 2018.
30. Levitas said there were no concessions by Duke to the solar industry, after the meeting between Governor Cooper and Lynn Good on 1/17/19, that caused the agreement to be reached.