



Date: April 2, 2019

Time: 3:00 PM – 5:00PM

Location: Public Staff – North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27699-4326

Present: Christopher Ayers, Executive Director
James McLawhorn, Director – Electric Division
Dianna Downey, Staff Attorney
Tim Dodge, Attorney
David Drooz, Attorney
Layla Cummings, Attorney
Dustin Metz, Engineer
Frank Brostrom, EIS Investigator
Kevin Greene, EIS Investigator
Thomas Beers, EIS Investigator

1. On the above date and time, Eagle Intel Services Investigators, Frank Brostrom, Kevin Greene and Thomas Beers, met with members of the North Carolina Public Staff as listed above. This meeting was previously arranged via phone calls and emails between Executive Director of Public Staff, Christopher Ayers (Ayers) and Investigator Greene. The following information was primarily provided by Ayers with interjections and explanations from other staff members:
2. The Public Staff is an independent agency primarily tasked with making recommendations to the North Carolina Utilities Commission (NCUC) while advocating for the consumers of utilities in North Carolina. The Public Staff is entirely independent from the NCUC and employs approximately 80 persons. The primary role of the Public Staff is to advocate for the consumers of utilities. This includes ensuring consumers pay reasonable prices for utilities and ensuring there are adequate and consistent power supplies.
3. Ayers explained the Public Staff does not make decisions or rulings on issues regarding electricity rates. The final decisions on rates are made by the seven (7) commissioners that make up the NCUC. The Public Staff can only make recommendations to the NCUC.



4. Ayers said he and the Public Staff members were involved with the mediation of the “Nameplate” dispute between solar developers and Duke Energy, that initially began in 2017. Ayers and the other members of the Public Staff provided the background of the Nameplate dispute and described how the Public Staff was involved in resolving the dispute as follows:
5. The Public Utility Regulatory Policies Act (PURPA) is a Federal Law passed in 1978 and requires electric utilities to purchase electricity from independent electricity producers, referred to as Qualified Facilities (QFs), at an “Avoided Cost” rate. The avoided cost is the marginal cost an electric utility would have been incurred to produce or purchase the electricity.
6. There are two components of avoided cost. The avoided energy cost and avoided capacity costs.
7. The avoided cost rate in North Carolina is calculated using the “peaker” method.¹
8. The avoided cost rate is calculated every two years. In North Carolina, as in other states, the avoided cost rate has been steadily falling over the years. This is mainly due to the reduced price of fuel used to generate power, most importantly, natural gas.
9. North Carolina has historically authorized long term (15 year) contracts between QFs and electric utilities. These long-term contracts essentially locked in QF’s at higher avoided cost rates. These long-term contracts helped attract many solar

¹ The peaker method assumes that a QF, rather than displacing or delaying the need for a particular generating unit, allows the utility to reduce the marginal generation on its system and avoid building a peaking unit (typically, a combustion turbine (CT)). Under the peaker methodology, the capacity component of the avoided cost is based on the annual equivalent of the utility’s least-cost capacity option, which is typically a CT. The energy component of the avoided cost is based on actual or forecast system marginal energy costs over the life of the contract. The peaker method assumes that the QF output displaces the marginal or most expensive generation source available for dispatch over the duration of the contract. Marginal energy costs may be calculated on an hourly or longer period. A production cost simulation is used to estimate these system marginal energy costs with and without the QF in the portfolio.



companies to build QF's in North Carolina. North Carolina has the 2nd most QF's in the country behind California. Generous tax credits and reduced property tax incentives are other reasons North Carolina has attracted so many QF's.

10. North Carolina HB 589 was passed in June of 2017. This bill introduced a new pricing method for electricity purchased by the utilities from QF's. HB 589 mandated that utilities purchase a specified amount of renewable energy through a competitive procurement procedure. This rate, established from this competitive bidding, could not exceed the avoided cost rate. The avoided cost rate would still be an option for QF's, electing to sell electricity at that rate. However, HB 589 changed contract terms for QF's electing to sell power through the avoided cost rate. The prior avoided cost contracts were an automatic or pro forma 15 year contract for all QF's under 5 Mega Watts. For new QF's, the contracts would be 10 year terms for QF's under 1 megawatt and for larger QF's, the contracts terms would be negotiated up to a maximum of 5 years. Contracts for QF's electing to sell electricity through competitive procurement, would receive a pro forma 20-year contract.
11. The new competitive procurement procedure is conducted by an independent administrator, paid by Duke Energy. The independent administrator is a New Hampshire based company named Axion. Axion is also the administrator in Georgia.
12. Because most solar developers needed the longer contracts to obtaining financing, the new, shorter contract terms for avoided cost rate QF's made new projects unfeasible.
13. Even though the contract terms, under the competitive procurement procedure, were longer (20 years), the rates would be lower than the avoided cost rates making new QF's less profitable for solar developers.
14. Section 1.c. of HB 589 grandfathered QFs, in the approval process but not yet on-line, to receive the older higher avoided cost rates and old 15-year contracts, as long as the QF combined with other QFs did not exceed the nameplate capacity of the local transformer substation. This line of QFs has been referred to as "The Queue".
15. Dustin Metz, Engineer for Public Staff, explained the nameplate capacity ratings in simple terms. Metz said each transformer substation has a nameplate with three listed capacity ratings. The lowest rating is the amount of electricity that can be put through the substation without engaging cooling systems. If the electricity load exceeds the lowest rating, the transformers need to be cooled by pumping cooling oil through the system. The total capacity using the cooling oil is the middle capacity



nameplate rating. If the electricity load exceeds the mid capacity level, fans will need to be turned on to further cool the transformers. The total capacity for the substation, using all cooling systems, is the highest capacity rating for the substation.

16. HB 589 did not define which nameplate capacity, low, mid or high, should be used to determine which QFs could be brought on-line before the total load exceeded the substation capacity.
17. In September of 2017 Duke Energy released written Method of Service Guidelines – making it clear that Duke interpreted “nameplate capacity”, as mentioned in HB 589, as the lowest capacity rating listed on the substation’s nameplate.
18. Ayers said, After Duke released the Method of Service Guidelines, Public Staff, began receiving complaints from solar groups stating that Duke Energy has changed the rules for the QF’s in the queue. The solar groups were planning lawsuits. Public Staff held some discussions with members of the solar industry and members of Duke Energy. Ayers said he was contacted by Ken Eudy, from the Governor’s Office, who expressed concerns that the Governor’s Office wanted the issue resolved. Rep Szoka, who was a sponsor of HB 589, called Ayers and also expressed a desire to get the dispute resolved.
19. Because the members solar industry and Duke Energy both contacted Public Staff to help resolve the issue, Ayers called a meeting to negotiate the issues regarding the nameplate interpretation.
20. A meeting was scheduled for December 14, 2017 at the offices of Public Staff. Ayers invited several members of the Solar Industry, Members of Duke Energy, Rep Szoka and Ken Eudy from the Governor’s Office. Eudy was not able to attend, so William McKinney attended on behalf of the Governor’s Office.
21. Ayers knew that many solar developers had complained to the Governor’s Office about Nameplate Issue. Ayers had heard from the Governor’s Office in response to the complaints, asking for a resolution. Ayers invited members of the Governor’s Office to the meeting so they could see the negotiations first hand and he would no longer need to be the middleman. Ayers insisted that no one from the Governor’s Office, at any time, had advocated for one side or the other.
22. Ayers said he was never asked or pressured by the Governor’s Office to sway the negotiations in one way or another. He was never asked, by the Governor’s Office, or anyone, to approve the Settlement.



23. Ayers said that Steve Levitas and Brian O'Hara were the most vocal from the solar industry, attending the meeting. Also present on behalf of the solar industry were; Alex Miller, a solar lobbyist, and Ralph Thomson.
24. During the meeting, which lasted all day, The Public Staff acted as a mediator between the solar industry and Duke Energy.
25. The main contested issues revolved around the interpretation of nameplate capacity, substation upgrade costs and screening criteria for QFs.
26. Duke interpreted the nameplate capacity to be the lowest, and the Solar Industry contended the highest level should be used. The solar industry believed costs to upgrade substations, to accommodate more QFs, should be paid by Duke and Duke held the position that the Solar Industry should pay for upgrades.
27. During the meeting it was suggested by the solar industry, that if the QFs exceeded the nameplate capacity, then, the upgrade costs should be passed on to the consumer. Ayers made it clear to the group, that the Public Staff would not support this type of blanket approach.
28. Ayers believed at the end of the meeting on 12/14/17, an agreement was reached that was for the most part, the same agreement that was filed on Feb 2, 2018. According to this agreement, the middle nameplate capacity would be the new threshold for the QFs in the queue. If a QF, combined with others, exceeded the middle nameplate capacity of a substation, they could not be brought on-line until upgrades were made to the substation. If a substation was required to be upgraded, the QF would have to pay for upgrades, unless it could be shown that upgrades to the substation would have system benefits. In that case, Duke would incur the upgrade costs for the percentage of upgrades that had system benefits. These upgrade costs, if approved by Public Staff and the Public Utilities Commission, would be passed on to the consumer.
29. Ayers said if Duke submitted a plan to upgrade a substation that has system benefits, Public Staff would review the plan to determine what portion, if any, would be passed to the ratepayers. If Duke submitted a plan to upgrade a substation that would be paid by the QF, Public Staff would not need to review it. If the QF disagreed, they could dispute it with the Utilities Commission.
30. Ayers said the agreement, on the surface, did not necessarily provide the most benefit to the ratepayers for whom the Public Staff advocates. However, the



agreement avoided a potential lawsuit against Duke, which the solar groups were considering, that could have cost ratepayers more if the solar groups were successful in the lawsuit.

31. Ayers said he believed, there may have been other, unresolved issues that revolved around identifying what QFs qualified to be grandfathered for the old rates and in what order they were to be brought on-line. There also may have been unresolved issues as to when upgrades would be made and what upgrades were considered to have system benefits.
32. Ayers believed that there were several weeks of continued negotiations to resolve the more detailed disputes, but the main agreement was reached at the meeting on 12/14/17.
33. Ayers said he had 3 or 4 discussions about the nameplate issue with Ken Eudy. Ayers said Eudy was mostly calling to inquire about the status of the negotiations. Ayers remembered telling Eudy, before the meeting on 12/14/17, that if all the solar projects in the queue were allowed to go on-line at the old rates, with substation upgrades, the costs of \$150,000,000 to \$200,000,000 would be passed to the ratepayers. Eudy told Ayers that he was not aware of that and thanked him for the information.
34. Ayers said he invited Eudy to the meeting on 12/14/17. Eudy could not make the meeting so William McKinney was present instead. Ayers said McKinney did not drive any negotiations and did not advocate for either side. During his six-year tenure as Director of Public Staff, he had previously never asked anyone from the Governor's Office to be present at a mediation or negotiation.
35. During the meeting with the Public Staff, EIS investigators inquired about several other topics related to the Public Staff, Duke, the Solar Industry and the Governor's office. Ayers committed to follow-up on the items and report back to the investigators. That evening, April 2nd, at approximately 7:20 PM, Investigator Greene received a call from Ayers, at which time Investigator Beers was conferenced into the call. The following information was provided by Ayers during the call:
36. An email, on November 21, 2017, from Jeremy Tarr, Policy Advisor with the Governor's Office, to Public Staff Attorney Beth Culpepper was previously shown to Ayers during the meeting. This email was a request from Tarr asking her to "forward the original precedent agreement filing and amended filings." Culpepper responded



to the email request by attaching the FERC Order Issuing Certificate, with the attachment file name; ACP Certificate Order 10-13-17. Also included in the response were the various docket numbers associated with the filings.

37. Ayers spoke to Culpepper and she originally didn't recall the email. After searching and finding the email on her computer, she did recall sending the requested information, specifically the FERC Order. She told Ayers that she had very little contact with Tarr and never really spoke to him about anything else.
38. Another issue addressed during the meeting was the fact that six weeks passed after the Public Staff, Duke, Solar Industry meeting on 12/14/17 before a final Settlement Agreement was reached. The question for the Public Staff was were there any other issues that prevented the final Settlement Agreement from being presented during that timeframe? Ayers told the investigators that he and Tim Dodge went through their emails regarding the negotiations for the Settlement Agreement. Ayers provided the following summary of pertinent emails, with the inferred dates as to when the emails originated, that related to the Settlement Agreement, of which the Public Staff was mainly cc'd on:
 39. 12/08/2017 – Emails relating to Duke's request to pass costs of substation upgrades, caused by QF's coming online, to ratepayers. Ayers stated that Duke had made several contacts with the Public Staff in early December 2017, prior to the meeting on 12/14/17. The emails on 12/8/17, were related to a proposal from Duke to pass substation upgrade costs to ratepayers. These costs would be required to increase capacity to allow more QF's to be brought on-line. This proposal would have resolved the nameplate issue but would have cost ratepayers millions of dollars. Ayers said he flatly rejected the proposal.
 40. 12/14/2017 – Emails that the number of substation upgrades were in dispute and the details of the ONAN Nameplate Rating. The emails depicted whether upgrades would be required for 17, 22 or 28 substations.
 41. 12/14/2017 – Emails regarding the dispute as to whether Duke would allow a downsizing threshold for the projects already placed in the queue. Duke ultimately agreed. Ayers gave an example of a solar project going from a 20 MW QF to a 10 MW QF.
 42. 12/15/2017 – Email sent from Duke that contained a draft to the proposed Settlement Agreement. Ayers, upon reviewing the email chain, felt that there were



differences to be resolved and surmised that it had to do with the solar developers proposed Technical Working Group.

43. 1/04/2018 – Email exchange regarding whether the parties should get the Public Staff to reconvene because they were at an impasse. Per Ayers they were not officially asked. Issues addressed in the exchange included the size of the grandfathered projects and the priority of the work on the substation upgrades, which would affect the order of the projects within the Queue.
44. 1/22/2018 – Emails as to various project's eligibility under the Settlement Agreement.
45. 1/24/2018 – Email from Public Staff inquiring about the status of the Settlement Agreement.
46. 1/25/2018 – Emails regarding the Public Staff's review of the Settlement Agreement. Public Staff revised the "systems benefit" language.
47. Ayers stated the primary email participants to be various Duke employees, including outside counsel Brett Breitschert, with McGuire Woods law firm, and various renewable energy representatives to include; Steve Levitas, Brian O'Hara, and Chris Carmody.
48. Ayers addressed the question as to the Public Staff's involvement with the Atlantic Coast Pipeline (ACP) project. He provided information as to the location of the documents on file with the North Carolina Utilities Commission website. Specifically, the Advance Notice of Proposed Agreements, the FERC Precedent Agreements filing, which is document E-2 Sub 1052 and E-7 Sub 1062. These filings offer a timeline and updates as to the Precedent Agreement. Ayers suggested that the investigators review the Docket files and he would welcome additional questions if and when necessary.

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