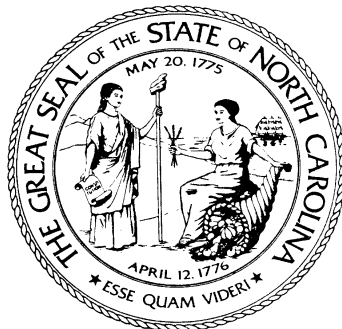


**ANNUAL REPORT REGARDING
RENEWABLE ENERGY AND ENERGY EFFICIENCY
PORTFOLIO STANDARD IN NORTH CAROLINA
REQUIRED PURSUANT TO N.C.G.S. § 62-133.8(j)**

DATE DUE: OCTOBER 1, 2020

SUBMITTED: SEPTEMBER 28, 2020

**RECEIVED BY
THE GOVERNOR OF NORTH CAROLINA;
THE ENVIRONMENTAL REVIEW COMMISSION;
THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE
ON AGRICULTURE AND NATURAL AND ECONOMIC
RESOURCES; THE SENATE APPROPRIATIONS
COMMITTEE ON AGRICULTURE, NATURAL, AND
ECONOMIC RESOURCES; AND THE CHAIRS OF THE
HOUSE OF REPRESENTATIVES APPROPRIATIONS
COMMITTEE ON AGRICULTURE AND NATURAL AND
ECONOMIC RESOURCES**



**SUBMITTED BY
THE NORTH CAROLINA UTILITIES COMMISSION**

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APPENDICES

1. Environmental Review

- Letter from Chair Charlotte A. Mitchell, North Carolina Utilities Commission, to Secretary Michael S. Regan, North Carolina Department of Environmental Quality (August 7, 2020)
- Letter from Assistant Secretary for Environment Shelia Holman, North Carolina Department of Environmental Quality, to Chair Charlotte A. Mitchell, North Carolina Utilities Commission (September 11, 2020)

2. Rulemaking Proceeding to Implement Session Law 2007-397

- Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief, Docket No. E-100, Sub 113 (December 16, 2019, Errata Order issued February 13, 2020)
- Order Establishing 2019, 2020, and 2021 Poultry Waste Set-Aside Requirement Allocation, Docket No. E-100, Sub 113 (December 16, 2019, Errata Order issued February 13, 2020)
- Order Amending Rule R8-65, Docket No. E-100, Sub 113 (August 26, 2020)
- Order Approving Update to 2018 Retail Sales Input and Maintaining Poultry Waste Set-Aside Allocations, Docket No. E-100, Sub 163 (August 31, 2020)

3. Renewable Energy Facility Registrations

- Order Revoking Registration of Renewable Energy Facilities and New Renewable Energy Facilities, Docket No. E-100, Sub 130 (February 26, 2020)
- Order Giving Notice of Intent to Revoke Registration of Renewable Energy Facilities and New Renewable Energy Facilities, Docket No. E-100, Sub 130 (August 31, 2020)
- Order on Request for Declaratory Ruling, Docket No. SP-100, Sub 34 (November 18, 2019)

EXECUTIVE SUMMARY

In August 2007, North Carolina enacted legislation, Session Law 2007-397 (Senate Bill 3), that, among other things, established a Renewable Energy and Energy Efficiency Portfolio Standard (REPS), the first renewable energy portfolio standard in the Southeast. Under the REPS, all electric power suppliers in North Carolina must meet an increasing amount of their retail customers' energy needs by a combination of renewable energy resources (such as solar, wind, hydropower, geothermal and biomass) and reduced energy consumption. Pursuant to N.C. Gen. Stat. § 62-133.8(j), the Commission is required to report by October 1 of each year to the Governor; the Environmental Review Commission; the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources; the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources; and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources on the activities taken by the Commission to implement, and by electric power suppliers to comply with, the REPS requirement.

Electric Power Supplier Compliance

The REPS requires electric power suppliers, beginning in 2012, to meet an increasing percentage of their retail customers' energy needs by a combination of renewable energy resources and energy reductions from the implementation of energy efficiency (EE) and demand-side management (DSM) measures. In addition, as of 2010, each electric power supplier must meet a certain percentage of its retail electric sales with solar renewable energy credits (RECs) from certain solar facilities. Finally, starting in 2012, each electric power supplier must meet a certain percentage of its retail electric sales from swine waste resources and a specified amount of electricity provided must be derived from poultry waste resources.

Monitoring Compliance with REPS Requirements

The Commission monitors compliance with the REPS requirements through the annual filing by each electric power supplier of a REPS compliance plan and a REPS compliance report. Pursuant to Commission Rule R8-67(a)(5), electric power suppliers may employ the services of a utility compliance aggregator to assist it in demonstrating its compliance with the REPS through, among other things, the filing of REPS compliance plans or reports and participating in NC-RETS on behalf of an electric power supplier. Pursuant to Commission Rule R8-67(b), on or before September 1 of each year, each electric power supplier, or its utility compliance aggregator, is required to file with the Commission a REPS compliance plan providing specific information regarding its plan for complying with the REPS requirement of Senate Bill 3. Pursuant to Commission Rule R8-67(c), each electric power supplier, or its utility compliance aggregator, is

required to annually file with the Commission a REPS compliance report. The REPS compliance plan is a forward-looking forecast of an electric power supplier's REPS requirement and its plan for meeting that requirement. The REPS compliance report is an annual look back at the RECs earned or purchased and energy savings actually realized during the prior calendar year, and the electric power supplier's compliance in meeting its REPS requirement.

Since the Commission's 2019 report, the Commission has issued orders approving the REPS compliance reports filed by DEP, DEC, and Dominion based upon the Commission's determination that each of these utilities met their respective REPS compliance obligations. In addition, the Commission has accepted the REPS compliance plans filed by DEP, DEC, and Dominion as a part of the Commission's review of each utility's integrated resource planning (IRP) update reports. Also since the Commission's 2019 report, the Commission has issued orders approving REPS compliance reports and accepting REPS compliance plans filed by North Carolina Electric Municipal Corporation (NCWEMC), EnergyUnited, Tennessee Valley Authority (TVA), Fayetteville Public Works Commission (FPWC), the Town of Waynesville (Waynesville) and NTE Carolinas, LLC (NTE), North Carolina Eastern Municipal Power Agency (NCEMPA) and North Carolina Municipal Power Agency Number 1 (NCMPA1).

Cost Recovery Rider

Section 62-133.8(h) of the North Carolina General Statutes authorizes each electric power supplier to establish an annual rider up to an annual cap to recover the incremental costs incurred to comply with the REPS requirement and to fund certain research. Commission Rule R8-67(e) establishes a procedure under which the Commission will consider approval of a REPS rider for each electric public utility. The REPS rider operates in a manner similar to that employed in connection with the fuel charge adjustment rider authorized in N.C.G.S. § 62-133.2 and is subject to an annual true-up.

Since the Commission's 2019 report, the Commission has issued orders approving REPS cost recovery rider charges for DEP, DEC, and Dominion based upon the Commission's determination that the incremental costs to comply with the REPS requirements and to fund research were reasonably and prudently incurred and below the statutory spending limit, and that the rider charges were less than the limits established in N.C.G.S. § 62-133.8(h)(4).

2020 Legislation

In 2020, the General Assembly did not pass any legislation amending the REPS.

Commission Implementation

Rulemaking Proceeding

Immediately after Senate Bill 3 was signed into law, the Commission initiated a proceeding in Docket No. E-100, Sub 113, to adopt rules to implement the REPS and other provisions of the new law. On February 29, 2008, the Commission issued an Order adopting final rules implementing Senate Bill 3.

Since issuing the 2008 Order adopting rules to implement Senate Bill 3, the Commission has issued several orders interpreting various REPS provisions, including the following Orders issued after presenting the 2019 REPS report to the General Assembly:

- On December 16, 2019, as corrected on February 13, 2020, the Commission issued an Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief. The Order concluded that the electric suppliers made a reasonable effort to comply with the swine and poultry waste set-aside REPS requirements in 2019 but would not be able to fully comply. As to the swine waste set-aside requirement, the Commission noted that DEC, DEP, and Dominion are in a position to meet a modified swine waste set-aside requirement of 0.04% of prior year's retail sales even though the other electric power suppliers in the state are not in a similar position. The Commission also concluded that it is in the public interest to delay entirely the 2019 swine waste set-aside requirements for one additional year, for the remaining electric power suppliers and to delay future increases in the swine waste set-aside requirement. The Commission allowed electric power suppliers that have acquired swine waste RECs for 2019 REPS compliance to bank such RECs for swine waste set-aside compliance in future years. As to the poultry waste set-aside requirement, the Commission noted that compliance has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development and projects have experienced operational challenges. While no party presented evidence that the aggregate 2019 poultry waste set-aside of 700,000 MWh could be met, the parties agree that a modified compliance requirement of 500,000 MWh for 2019, 700,000 MWh for 2020, and 900,000 MWh for 2021 is achievable. Therefore, the Commission concluded that the poultry waste set-aside requirement should be modified accordingly.

The Order resulted in the following updated compliance schedules for the swine waste set-asides REPS requirements:

For Electric Public Utilities:

| Calendar Year | Requirement for Swine Waste Resources |
|---------------------|---------------------------------------|
| 2019 | 0.04% |
| 2020-2021 | 0.07% |
| 2022-2024 | 0.14% |
| 2025 and thereafter | 0.20% |

For EMC's and Municipalities:

| Calendar Year | Requirement for Swine Waste Resources |
|---------------------|---------------------------------------|
| 2019 | 0.00% |
| 2020-2021 | 0.07% |
| 2022-2024 | 0.14% |
| 2025 and thereafter | 0.20% |

The Order resulted in the following updated compliance schedules for the poultry waste set-asides REPS requirements:

| Calendar Year | Requirement for Poultry Waste Resources |
|---------------------|---|
| 2019 | 500,000 MWh |
| 2020 | 700,000 MWh |
| 2021 and thereafter | 900,000 MWh |

- On December 16, 2019, as corrected on February 13, 2020, the Commission issued an Order Establishing 2019, 2020, and 2021 Poultry Waste Set-Aside Requirement Allocation. Based on retail electricity sales for 2016, 2017, and 2018; the average of those three years of retail sales; and the load ratio share of the State's aggregate retail sales for those three years; as entered into NC-RETS by electric power suppliers and utility compliance aggregators as required by Commission Rule R8-67(h)(11), the Order established an aggregate poultry waste set-aside requirement of 500,000 MWh for 2019, 700,000 MWh for 2020, and 900,000 MWh for 2021 and thereafter.
- On August 26, 2020, the Commission issued an order amending Rule R8-65 such that (1) those persons filing hard copies of Reports of Proposed Construction shall no longer be required to provide the original and six copies. Instead they shall provide one original, verified copy and (2) Reports of Proposed Construction for rooftop solar photovoltaic systems shall no longer be required to include a color or aerial photo.
- On August 31, 2020, the Commission issued an order allowing NCEMPA and NCMPA1 (Power Agencies) to update their 2018 total retail sales data in NC-RETS following notification that the Power Agencies included system losses in the 2018 total retail sales for their members. In the order, the

Commission specifically determined “that (1) any such adjustment shall not alter its load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement relied upon by any electric power supplier in its REPS and REPS EMF Rider or 2019 Compliance Plan, as applicable; and (2) any such adjustment shall not alter any electric power suppliers’ load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021.”

Renewable Energy Facilities

Senate Bill 3 defines certain electric generating facilities as “renewable energy facilities” or “new renewable energy facilities.” Renewable energy certificates (RECs) associated with electric or thermal power generated at such facilities may be used by electric power suppliers to comply with the REPS requirement as provided in N.C.G.S. § 62-133.8(b) and (c).

In its rulemaking proceeding, the Commission adopted rules providing for certification or reports of proposed construction and registration of renewable energy facilities and new renewable energy facilities. As of August 31, 2019, the Commission has accepted registration statements filed by 1373 facilities. A list of these facilities, along with other information, may be found on the Commission’s website at: <https://www.ncuc.net/Reps/reps.html>.

In addition, since the 2019 REPS report was presented, the Commission has issued additional orders addressing issues related to the registrations of a renewable energy facility or new renewable energy facility, including the following:

- On February 26, 2020, the Commission issued an Order revoking the registrations of 48 facilities registered with the Commission as renewable energy facilities or as new renewable energy facilities. The owners of the 48 facilities did not complete their annual certifications on or before October 5, 2019, as required by the Commission’s September 4, 2019 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS, the owner must again register the facility with the Commission.
- On August 31, 2020, the Commission issued an Order giving notice of its intent to revoke the registration of 4 renewable energy facilities and 206 new renewable energy facilities because their owners had not completed or filed the annual certifications required each April 1, as detailed in Commission Rule R8-66(b). Facility owners were given until October 1, 2020, to file their annual certifications belatedly. Owners that do not complete the annual

certifications face their facility's registrations being revoked pursuant to Commission Rule R8-66(f). This matter is pending before the Commission.

- On November 18, 2019, the Commission issued an Order in Docket No. SP-100, Sub 34, finding that poultry carcasses or mortalities and the necessary carbon-based biomass material used to compost those carcasses or mortalities (Composting Material) should not be considered "poultry waste" for satisfaction of the poultry waste set-aside requirement of the REPS. The Commission determined that Composting Material is neither "poultry waste," nor "poultry waste combined with . . . bedding material," under the plain language of the REPS statute. Material which meets the statutory definition of poultry waste and poultry waste combined with either other poultry litter or poultry bedding, specifically identified in the statute, qualifies as poultry waste, but no other Composting Material or biomass material that is not itself poultry waste or that is not otherwise used as poultry bedding material is to be considered poultry waste.

North Carolina Renewable Energy Tracking System (NC-RETS)

Pursuant to N.C.G.S. § 62-133.8(k), enacted in 2009, the Commission was required to develop, implement, and maintain an online REC tracking system no later than July 1, 2010, in order to verify the compliance of electric power suppliers with the REPS requirements.

On February 2, 2010, after evaluating the bids received in response to a request for proposals (RFP), the Commission signed a Memorandum of Agreement (MOA) with APX, Inc. (APX), to develop and administer an online REC tracking system for North Carolina, NC-RETS. APX successfully launched NC-RETS on July 1, 2010, and by letter dated September 3, 2010, the Commission accepted the system and authorized APX to begin billing users pursuant to the MOA. The original MOA with APX expired on December 31, 2013. Based on the feedback received from the stakeholders, the Commission extended the MOA with APX through December 31, 2017, and subsequently extended the MOA through December 31, 2020.

RECs have been successfully created by and imported into NC-RETS, and the electric power suppliers have used the system to demonstrate compliance with the 2010-2019 REPS solar set-aside requirements, the 2019 poultry waste set-aside requirement, and the 2012-2019 REPS general requirements. Lastly, the Commission has established an on-going NC-RETS stakeholder group, providing a forum for resolution of issues and discussion of system improvements.

Environmental Impacts

Pursuant to N.C.G.S. § 62-133.8(j), the Commission is directed to consult with the North Carolina Department of Environmental Quality (DEQ) in preparing

its report and to include any public comments received regarding direct, secondary, and cumulative environmental impacts of the implementation of the REPS requirements of Senate Bill 3. The Commission has not identified, nor has it received from the public or DEQ, any public comments regarding direct, secondary, and cumulative environmental impacts of the implementation of the REPS provision of Senate Bill 3. DEQ, in response to the Commission's request, notes impacts on North Carolina's air, water, and land quality. DEQ's full response is attached to this report as a part of Appendix 1.

Wholesale Providers Meeting REPS Requirements

DEC continues to meet the REPS requirements for Rutherford EMC; Blue Ridge EMC; and the towns of Dallas, Forest City, and Highlands. Dominion has agreed to meet the REPS requirements for the Town of Windsor. The Towns of Macclesfield, Pinetops, and Walstonburg have previously filed letters stating that the City of Wilson, as their wholesale provider, has agreed to include their loads with its own for reporting to NCEMPA for REPS compliance. NCEMC indicates that the Town of Oak City is a wholesale customer of Edgecombe-Martin County EMC; the Town of Enfield is a wholesale customer of Halifax EMC; and the Town of Fountain is a wholesale customer of Pitt & Greene EMC and the towns' REPS requirements are included as part of the requirements of their respective EMCs reporting to NCEMC for REPS compliance.

Conclusions

All electric power suppliers have met the 2012-2019 general REPS requirements and appear on track to meet the 2020 general REPS requirements. All electric power suppliers have met the 2012-2019 solar set-aside requirements and appear to be on track to meet the 2020 solar set-aside requirement. The Commission granted a joint motion to delay implementation of the 2019 swine waste set-aside requirement for one year - except for the electric public utilities – requiring them to meet a 0.04% swine waste set-aside for 2019. The electric public utilities met the 0.04% swine waste set-aside for 2019. The Commission's modification order also reduced the poultry waste set-aside requirements for 2019 for all electric power suppliers to 500,000 MWh. Most electric power suppliers have indicated that they will have difficulty meeting the swine waste set-aside requirements for 2020 and that they will request a modification in these requirements for 2020, as well as a delay in future increases in these requirements. Electric power suppliers cite the lack of technological progress for power production from swine waste and failure of counter parties to deliver RECs as anticipated as impediments to meeting future swine waste set-aside requirements.

BACKGROUND

In August 2007, North Carolina enacted comprehensive energy legislation, Session Law 2007-397 (Senate Bill 3), which, among other things, established a Renewable Energy and Energy Efficiency Portfolio Standard (REPS), the first renewable energy portfolio standard in the Southeast. Under the REPS, all electric power suppliers in North Carolina must meet an increasing amount of their retail customers' energy needs by use of a combination of renewable energy resources (such as solar, wind, hydropower, geothermal and biomass) and reduced energy consumption. Beginning at 3% of retail electricity sales in 2012, the REPS requirement ultimately increases to 10% of retail sales beginning in 2018 for the State's EMCs and municipally owned electric providers and 12.5% of retail sales beginning in 2021 for the State's electric public utilities.

In N.C.G.S. § 62-133.8(j), the General Assembly required the Commission to make the following annual report:

No later than October 1 of each year, the Commission shall submit a report on the activities taken by the Commission to implement, and by electric power suppliers to comply with, the requirements of this section to the Governor, the Environmental Review Commission, and the Joint Legislative Oversight Committee on Agriculture, Natural, and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources. The report shall include any public comments received regarding direct, secondary, and cumulative environmental impacts of the implementation of the requirements of this section. In developing the report, the Commission shall consult with the Department of Environment and Natural Resources.¹

On October 1, 2008, the Commission made its first annual report pursuant to N.C.G.S. § 62-133.8(j),² and last year, on October 1, 2019, the Commission

¹ North Carolina General Statutes Section 62-133.8(j) was amended by Session Law 2011-291 to require that the annual REPS Report be submitted to the Joint Legislative Commission on Governmental Operations, rather than the Joint Legislative Utility Review Committee, and further amended by Session Law 2017-57 to require that the annual REPS Report be submitted to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources.

² Annual Report of the North Carolina Utilities Commission to the Governor of North Carolina, the Environmental Review Commission and the Joint Legislative Utility Review Committee Regarding Energy and EE Portfolio Standard, October 1, 2008 (2008 REPS Report).

made its twelfth annual report.³ The remaining sections of this report detail, as required by the General Assembly, developments related to Senate Bill 3, activities undertaken by the Commission during the past year to implement Senate Bill 3, and actions by the electric power suppliers to comply with N.C.G.S. § 62-133.8, the REPS provisions of Senate Bill 3.

2020 LEGISLATION

In 2020, the General Assembly did not pass any legislation amending the REPS.

COMMISSION IMPLEMENTATION

Rulemaking Proceeding

As detailed in the Commission's 2008 REPS Report, after Senate Bill 3 was signed into law, the Commission initiated a proceeding in Docket No. E-100, Sub 113 to adopt rules to implement the REPS and other provisions of the new law. On February 29, 2008, the Commission issued an Order adopting final rules implementing Senate Bill 3. The rules, in part, require each electric power supplier to file an annual REPS compliance plan and an annual REPS compliance report to demonstrate, respectively, reasonable plans for, and actual compliance with, the REPS requirement.

In its 2019 REPS Report, the Commission notes that it had issued numerous orders interpreting various provisions of the REPS statute, in which it made the following conclusions:

- Tennessee Valley Authority's (TVA) distributors making retail sales in North Carolina and electric membership corporations (EMCs) headquartered outside of North Carolina that serve retail electric customers within the State must comply with the REPS requirement of Senate Bill 3, but the university-owned electric suppliers, Western Carolina University and New River Light & Power Company, are not subject to the REPS requirement.

³ Annual Report of the North Carolina Utilities Commission to the Governor of North Carolina; the Environmental Review Commission; the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources; the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources; and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources Regarding Renewable Energy and Energy Efficiency Portfolio Standard, October 1, 2019 (2019 REPS Report).

- Each electric power supplier's REPS requirement, both the set-aside requirements and the overall REPS requirements, should be based on its prior year's actual North Carolina retail sales.
- An electric public utility cannot use existing utility-owned hydroelectric generation for REPS compliance but may use power generated from new small (10 MW or less) increments of utility-owned hydroelectric generating capacity.
- The solar, swine waste and poultry waste set-aside requirements should have priority over the general REPS requirement where both cannot be met without exceeding the per-account cost cap established in N.C.G.S. § 62-133.8(h).
- The set-aside requirements may be met through the generation of power, purchase of power, or purchase of unbundled renewable energy credits (RECs).
- The 25% limitation on the use of out-of-state RECs applies to the general REPS requirement and each of the individual set-aside provisions.
- The electric power suppliers are charged with collectively meeting the aggregate swine waste and poultry waste set-aside requirements and may agree among themselves how to collectively satisfy those requirements.
- RECs associated with the electric power generated at a biomass-fueled combined heat and power (CHP) facility located in South Carolina and purchased by an electric public utility in North Carolina would be considered as in-state pursuant to N.C.G.S. § 62-133.8(b)(2)(d), but RECs associated with out-of-state renewable generation not delivered to and purchased by an electric public utility in North Carolina and RECs associated with out-of-state thermal energy would not be considered to be in-state RECs pursuant to N.C.G.S. § 62-133.8(b)(2)(d).
- Only RECs associated with the percentage of electric generation that results from methane gas that was actually produced by poultry waste or swine waste may be credited toward meeting the swine waste and poultry waste set-aside requirements. Thus, not all of the methane gas produced by the anaerobic digestion of swine or poultry waste, as well as "other organic biodegradable material," would qualify toward the set-aside requirements because the other material described as mixed with the poultry waste or swine waste is responsible for some percentage of the resulting methane gas.
- Issuance of a joint request for proposals (RFP) is a reasonable means for the petitioners to work together collectively to meet the swine waste set-aside requirement.

- A Pro Rata Mechanism (PRM) is a reasonable and appropriate means for the State's electric power suppliers to meet the aggregate swine waste and poultry waste set-aside requirements of N.C.G.S. § 62-133.8(e) and (f). As it had earlier done with regard to the aggregate swine waste set-aside requirement, the Commission approved the joint procurement of RECs from energy produced by poultry waste, the sharing of poultry waste generation bids among electric suppliers, and other collaborative efforts as a reasonable means for the State's electric suppliers to work together to meet the poultry waste set-aside requirement.
- The term "allocations made by the Southeastern Power Administration" (SEPA), is used as a term of art in N.C.G.S. § 62-133.8(c)(2)(c). Therefore, a municipal electric power supplier or EMC will be permitted to use the total annual amount of energy supplied by SEPA to that municipality or EMC to comply with its respective REPS requirement, subject to the 30% limitation provided in N.C.G.S. § 62-133.8(c)(2)(c).
- RECs associated with the thermal energy output of a CHP facility which uses poultry waste as a fuel should not be eligible for use to meet the poultry waste set-aside requirement under N.C.G.S. § 62-133.8(f). The Commission reasoned that the legislature's inclusion of the phrases "or an equivalent amount of energy" and "new metered solar thermal energy facilities" in subsection (d), coupled with the lack of similar express language in subsection (f), demonstrated a clear legislative intent to allow solar thermal RECs to meet the solar set-aside requirement, but not to allow thermal RECs to meet the poultry waste set-aside requirement.
- An electric public utility can recover through its fuel cost rider the total delivered cost of the purchase of energy generated by a swine or poultry waste-to-energy facility where the RECs associated with the production of the energy are purchased by another North Carolina electric power supplier to comply with the REPS statewide aggregate swine waste and poultry waste set-aside requirements.
- Amendments to NC-RETS Operating Procedures, Rules R8-64 through R8-69, and an application form for use by owners of renewable energy facilities in obtaining registration of a facility under Rule R8-66 should be adopted. The amendments to Rules R8-64 through R8-69 clarify and streamline the application procedures, registration, record keeping, and other requirements for renewable energy facilities.
- Commission Rules R8-67(b), R8-67(c), and R8-67(h) should be amended by adding a requirement that REPS compliance plans contain a list of planned and implemented demand-side management (DSM) measures and include a measurement and verification (M&V) plan if one is not already filed with the Commission. Additionally, the amendment added reporting requirements to the

REPS compliance reports for EMCs regarding energy efficiency (EE) and implementation of M&V plans. The Order also required all electric power suppliers to review the number of energy efficiency certificates (EEC) they have reported to date and submit any changes necessitated by the Order.

- That Commission Rules R8-61, R8-63, and R8-64 should be amended by adding to the previously existing requirement that an application for a certificate of public convenience and necessity (CPCN) contain a map and location of the facility. The amendments require additional information including: (1) the proposed site layout relative to the map; (2) all major equipment, including the generator, fuel handling equipment, plant distribution system, and start up equipment; (3) the site boundary; (4) planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities.
- That the electric power suppliers made a reasonable effort to comply with the swine waste and poultry waste set-aside REPS requirements in 2012 but will not be able to comply. The Order concluded that it was in the public interest to eliminate the swine waste set-aside requirement in 2012, and to delay the implementation of the poultry waste set-aside requirement by one year until 2013. In addition to modifying the compliance schedules for the swine waste and poultry waste set-aside REPS requirements, the Order also required that DEC and DEP file tri-annual progress reports on their compliance with, and efforts to comply with, the swine waste and poultry waste set-aside requirements.
- The electric power suppliers made a reasonable effort to comply with the swine waste and poultry waste set-aside REPS requirements in 2013 but will not be able to comply. The Order concluded that it was in the public interest to delay the implementation of the swine and poultry waste set-aside requirements by one year until 2014. Finally, the Order concluded that the triannual progress reporting requirement established in the Commission's 2012 Delay Order should also apply to Dominion, GreenCo, FPWC, EnergyUnited, Halifax, NCEMPA and NCMAPA1.
- Proceeds from REC sales should be credited to customers if the RECs were purchased with REPS rider proceeds, or if the RECs were produced via a generating facility that was paid for by customers. Further, the Commission determined that, since it cannot anticipate every scenario, it will review REC sales on a case-by-case basis in REPS rider proceedings and general rate cases, as the issues arise. The Commission further determined that the electric public utility will have the burden of proving that each REC sale was in the best interest of its customers and should file complete information regarding the original purchase price, resale price, the cost of replacement RECs and any incremental administrative costs or brokerage fees incurred pursuant to the transaction.

- The electric power suppliers made a reasonable effort to comply with the swine waste set-aside REPS requirement in 2014 but will not be able to comply. The Commission's determination was based on the tri-annual reports submitted by the electric power suppliers in Docket No. E-100, Sub 113A, the Petitioners' motion, and the intervenors' comments. The Commission found that, among the reasons the electric power suppliers would not be able to comply, is that the technology is in early stages of development. Additionally, the Order directed the Public Staff to conduct two stakeholder meetings in 2015 to discuss potential obstacles to achieving the swine and poultry waste requirements and options for addressing them. Finally, the Order concluded that the triannual progress reporting requirement established in the Commission's 2012 Delay Order and expanded in the Commission's 2013 Delay Order should continue until the Commission finds that they are no longer necessary. The Order resulted in updated compliance schedules for the swine waste set-aside REPS requirement.
- On June 3, 2014, in Docket No. E-100, Sub 113, the Commission issued an Order Requesting Comments regarding potential changes to Rules R8-64 and R8-65, as well as to the reporting requirements set forth in Docket No. E-100, Subs 101, 83, and 41B (June Order). In the June Order, the Commission took note that, over the past few years, a large number of facilities, particularly solar photovoltaic, have been filing applications for CPCNs. However, it is currently unclear whether certificate holders for solar facilities are complying with this construction progress report requirement. Further, because there is no requirement for notice of completion, the Commission cannot easily discern how many facilities are actually being built. The June Order requested that interested parties file comments by June 30, 2014, and that reply comments be filed by July 21, 2014.
- It would be appropriate to streamline current reporting requirements to provide a more coherent and complete picture of the status of non-utility generators within North Carolina. The Commission's order states that a consolidated report would be beneficial to all parties. The Order required DEC, DEP and Dominion to file by March 31, of each year, beginning March 31, 2015, three lists with the following information:
 - a. An Interconnection Application List of all applications in the utility's interconnection queue that provides the owner's name, Commission Docket No., AC capacity (kW), fuel type(s), application date, county, and interconnection application status;
 - b. An Interconnection List of all generators interconnected with the utility's system in North Carolina that provides the owner's name, Commission Docket No., AC capacity (kW), fuel type(s), power delivery date, county and whether the facility is net metering; and

c. A Purchased Power Agreement List of all facilities with which the utility has a purchased power agreement (or application) that provides the owner's name, Commission Docket No., AC capacity (kW), fuel type(s), energized date, tariff name(s), term (years), county and PPA application status. Concurrently, the Order repealed the reporting requirement contained in Commission Rule R8-64(e).

- On December 1, 2015, the Commission issued an Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief. The Order concluded that the electric suppliers made a reasonable effort to comply with the swine and poultry waste set-aside REPS requirements in 2015 but would not be able to comply. As to the swine waste set-aside requirement, the Commission notes that despite allowing electric power suppliers to bank RECs for three years, the cumulative effect of this banking has yet to result in the ability to comply with the initial swine waste set-aside. Therefore, the Commission concluded that it is in the public interest to delay the entire requirement of N.C.G.S. § 62-133.8(e) for one year and allow electric power suppliers to continue to bank RECs for swine waste set-aside requirement compliance in future years. As to the poultry waste set-aside requirement, the Commission notes that compliance has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development. No party presented evidence that the aggregate 2015 poultry waste set-aside could be met, however, the Public Staff, DEC and DEP state that, due to the availability of RECs pursuant to Section 4 of S.L. 2010-195, as amended by S.L. 2011-279 (Senate Bill 886), the 2014 level of the poultry waste set-aside could be maintained. Therefore, the Commission concluded that the poultry waste set-aside requirement should be modified by adding an additional year (2015) of compliance at the 170,000 MWh threshold, prior to escalating the requirement to 700,000 MWh.
- On December 15, 2015, the Commission issued an Order Establishing 2015 Poultry Waste Set-Aside Requirement Allocation. The Commission recognized that the pendency of the matter regarding the allocation of the aggregate poultry waste set-aside requirement for 2015 created uncertainty for electric power suppliers. Therefore, the Commission found good cause to clarify the allocation of the aggregate poultry waste set-aside requirement for compliance year 2015. The Order established that the 2014 retail sales data reported to NC-RETS by electric power suppliers and utility compliance aggregators, shall be used to allocate, on a pro-rata basis, the 170,000 MWh aggregate poultry waste set-aside requirement for 2015.
- On April 18, 2016, in Docket No. E-100, Sub 113, the Commission issued an Order Establishing Method of Allocating the Aggregate Poultry Waste Resource Set-Aside Requirement concluding that, starting with the 2016 compliance year, the aggregate poultry waste set-aside obligation shall be allocated among the electric power suppliers by averaging three years of

historic retail sales (2013, 2014, and 2015), with the resulting allocation held constant for three years (2016, 2017, and 2018).

- On June 6, 2016, in Docket No. E-100, Sub 113, the Commission issued an Order on NCSEA's Request, concluding that a topping cycle combined heat and power system does not constitute an energy efficiency measure under N.C.G.S. § 62-133.8(a)(4), except to the extent that the secondary component, the waste heat component, is used. NCSEA appealed the Commission's decision to the North Carolina Court of Appeals, which reversed the Commission decision finding that the statute (N.C.G.S. § 62-133.8) is unambiguous and that it allows the entire CHP system to be considered an energy efficiency measure. *See, State ex. rel. Util' Comm. v. North Carolina Sustainable Energy Association*, No. COA16-1067, (2017).
- On August 5, 2016, in Docket No. E-100, Sub 113, the Commission Issued an Order Establishing the 2016, 2017, and 2018 Poultry Waste Set-Aside Requirement Allocation. The Order established that the aggregate poultry waste set-aside requirement for 2016, 2017, and 2018 shall be allocated among the electric power suppliers and utility compliance aggregators based on the load ratio share calculations filed by the NC-RETS administrator in Docket No. E-100, Sub 113 on July 11, 2016 and the methodology previously adopted by the Commission. The resulting requirements will be held constant for three years, and the allocation process will be repeated in 2018 in order to set the allocation requirements for compliance years 2019, 2020, and 2021.
- On October 17, 2016, the Commission issued an Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief. The Order concluded that the electric suppliers made a reasonable effort to comply with the swine and poultry waste set-aside REPS requirements in 2016 but would not be able to comply. As to the swine waste set-aside requirement, the Commission notes that despite allowing electric power suppliers to bank RECs for three years, the cumulative effect of this banking has yet to result in the ability to comply with the initial swine waste set-aside. Therefore, the Commission concluded that it is in the public interest to delay the entire requirement of N.C.G.S. § 62-133.8(e) for one year and allow electric power suppliers to continue to bank RECs for swine waste set-aside requirement compliance in future years. As to the poultry waste set-aside requirement, the Commission notes that compliance has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development. No party presented evidence that the aggregate 2016 poultry waste set-aside could be met, however, the Public Staff, DEC and DEP state that, due to the availability of RECs pursuant to Section 4 of S.L. 2010-195, as amended by S.L. 2011-279 (Senate Bill 886), the 2015 level of 170,000 MWh for the poultry waste set-aside could be maintained. Therefore, the Commission concluded that the poultry waste set-aside requirement should be modified by adding an additional year (2016) of

compliance at the 170,000 MWh threshold, prior to escalating the requirement to 700,000 MWh.

- On August 3, 2017, the Commission issued an order in Docket No. E-100, Subs 113, 121, and 134, giving notice of the Commission's implementation of new fees and administrative changes as a result of the enactment of House Bill 589 (S.L. 2017-192). In that Order, the Commission expressed its intent to undertake additional administrative implementation of the provisions of S.L. 2017-192, including adopting amendments to the Commission's rules, as necessary, and updating and adopting various forms available on the Commission's website. Finally, that Order noted the Commission's intent to initiate separate proceedings to implement other sections of S.L. 2017-192.
- The Commission has adopted the following Commission Rules: Rule R8-71, Competitive Procurement of Renewable Energy (Docket No. E-100, Sub 150); Rule R8-72, Community Solar Program (Docket No. E-100, Sub 155); and Rule R8-73, Applications for Certificate of Authority to Engage in Business as an Electric Generator Lessor; Transfers; and Notice (Docket No. E-100, Sub 156).
- On October 16, 2017, the Commission issued an Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief. The Order concluded that the electric suppliers made a reasonable effort to comply with the swine and poultry waste set-aside REPS requirements in 2017 but would not be able to comply. As to the swine waste set-aside requirement, the Commission noted that despite allowing electric power suppliers to bank RECs for four years, the cumulative effect of this banking has yet to result in the ability to comply with the initial swine waste set-aside. Therefore, the Commission concluded that it is in the public interest to delay the entire requirement of N.C.G.S. § 62-133.8(e) for one year and allow electric power suppliers to continue to bank RECs for swine waste set-aside requirement compliance in future years. As to the poultry waste set-aside requirement, the Commission noted that compliance has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development. No party presented evidence that the aggregate 2017 poultry waste set-aside could be met, however, the Public Staff, DEC and DEP state that, due to the availability of RECs pursuant to Section 4 of S.L. 2010-195, as amended by S.L. 2011-279 (Senate Bill 886), the 2016 level of 170,000 MWh for the poultry waste set-aside could be maintained. Therefore, the Commission concluded that the poultry waste set-aside requirement should be modified by adding an additional year (2017) of compliance at the 170,000 MWh threshold, prior to escalating the requirement to 700,000 MWh.
- In its order dated March 29, 2018, the Commission found good cause to adopt various administrative, technical, and conforming amendments to the Commission's rules to continue implementation of S.L. 2017-192. The

Commission further found good cause to adopt revised forms including the following: (1) Application for a Certificate of Public Convenience and Necessity- Rule R8-64; (2) Report of Proposed Construction – Rule R8-65; (3) Registration Statement for the Registration of a Renewable Energy Facility or New Renewable Energy Facility– Rule R8-66; and (4) Annual Certification of Compliance with the Requirements of Commission Rule R8-66 for the Continuation of the Registration of a Renewable Energy Facility or New Renewable Energy Facility. Finally, the Commission gave notice that, effective May 1, 2018, the Commission would require the use of these forms by persons seeking a certificate of public convenience and necessity pursuant to Commission Rule R8-64, reporting the proposed construction of an electric generating facility pursuant to N.C.G.S. § 62-110.1(g), seeking registration of a renewable energy facility pursuant to Commission Rule R8-66, or annually certifying compliance with the requirements of Commission Rule R8-66.

- On October 8, 2018, the Commission issued an Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief. The Order concluded that the electric suppliers made a reasonable effort to meet the swine and poultry waste set-aside REPS requirements in 2018 but would not be able to comply. As to the swine waste set-aside requirement, the Commission noted that DEC, DEP, and Dominion are in a position to meet a modified swine waste set-aside requirement of 0.02% of the prior year's retail sales even though the other electric power suppliers in the state are not in a similar position. The Commission also concluded that it is in the public interest to delay entirely the 2018 swine waste set-aside requirements for one additional year, for the remaining electric power suppliers and to delay future increases in the swine waste set-aside requirement. The Commission allowed electric power suppliers that have acquired swine waste RECs for 2018 REPS compliance to bank such RECs for swine waste set-aside compliance in future years. As to the poultry waste set-aside requirement, the Commission noted that compliance has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development and projects have experienced operational challenges. No party presented evidence that the aggregate 2018 poultry waste set-aside of 700,000 MWh could be met; however, the parties agree that a modified compliance requirement of 300,000 MWh for 2018, 700,000 MWh for 2019, and 900,000 MWh for 2020 is achievable. Therefore, the Commission concluded that the poultry waste set-aside requirement should be modified accordingly.

Since the October 1, 2019 REPS report was submitted, the Commission has issued a limited number of additional orders interpreting various provisions of the REPS statute and seeking additional information to aid the Commission in future interpretations. The following Orders are of particular interest:

Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief, Docket No. E-100, Sub 113 (December 16, 2019, Errata Order issued February 13, 2020)

On September 23, 2019, DEC, DEP, Dominion, NCEMC, FPWC, EnergyUnited, TVA, the Town of Waynesville, the Town of Windsor, NCEMPA and NCMPA1 (Joint Movants) filed a motion to modify and delay the 2019 swine and poultry waste set-aside requirements of N.C.G.S. § 62-133.8(e) and (f), respectively. Joint Movants requested that the Commission modify the obligation of DEC, DEP and Dominion to comply with the swine waste set-aside requirement by lowering the 2019 compliance requirement to 0.04% of prior-year retail sales, shifting the increase to 0.07% to begin in calendar year 2020; delaying the subsequent increases in compliance requirements by one year; and delaying all other electric suppliers' need to comply with the requirements by one year until 2020. As to the poultry waste set-aside requirement, Joint Movants requested that the Commission modify all electric suppliers' obligation to comply with the requirements by lowering the 2019 statewide compliance requirement to 500,000 MWh and shifting the increase to 700,000 MWh and 900,000 MWh to calendar years 2020 and 2021, respectively. The Joint Movants state that they have individually and collectively made reasonable efforts to comply with the REPS components for swine and poultry waste. On October 24, 2019, the Commission issued an Order Requesting Comments. Between November 7, 2019, and November 11, 2019, the North Carolina Poultry Federation (NCPF); the North Carolina Pork Council (NCPC); Phibro, LLC(Phibro); NTE Carolinas (NTE) and the Public Staff filed comments on Joint Movants' motion. On November 13, 2019, the Commission issued an Order Requiring and Requesting Reply Comments. On November 20, 2019, DENC, NCEMC, NTE, NCEMPA, NCMPA1, DEC, DEP, Phibro, EnergyUnited, and the Public Staff filed Reply Comments.

On December 16, 2019, as corrected on February 13, 2020, the Commission issued an Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief. The Order concluded that the electric suppliers made a reasonable effort to meet the swine and poultry waste set-aside REPS requirements in 2019 but would not be able to fully comply. As to the swine waste set-aside requirement, the Commission noted that DEC, DEP, and Dominion are in a position to meet a modified swine waste set-aside requirement of 0.04% of the prior year's retail sales even though the other electric power suppliers in the state are not in a similar position. The Commission also concluded that it is in the public interest to delay entirely the 2018 swine waste set-aside requirements for one additional year, for the remaining electric power suppliers and to delay future increases in the swine waste set-aside requirement. The Commission allowed electric power suppliers that have acquired swine waste RECs for 2019 REPS compliance to bank such RECs for swine waste set-aside compliance in future years. As to the poultry waste set-aside requirement, the Commission noted that compliance has been hindered by the fact that the technology of power production from poultry waste continues to be in its early

stages of development and projects have experienced operational challenges. No party presented evidence that the aggregate 2019 poultry waste set-aside of 700,000 MWh could be met; however, the parties agree that a modified compliance requirement of 500,000 MWh for 2019, 700,000 MWh for 2020, and 900,000 MWh for 2021 is achievable. Therefore, the Commission concluded that the poultry waste set-aside requirement should be modified accordingly.

The Order resulted in the following updated compliance schedules for the swine waste set-asides REPS requirements:

For Electric Public Utilities:

| Calendar Year | Requirement for Swine Waste Resources |
|---------------------|---------------------------------------|
| 2019 | 0.04% |
| 2020-2021 | 0.07% |
| 2022-2024 | 0.14% |
| 2025 and thereafter | 0.20% |

For EMC's and Municipalities:

| Calendar Year | Requirement for Swine Waste Resources |
|---------------------|---------------------------------------|
| 2019 | 0.00% |
| 2020-2021 | 0.07% |
| 2022-2024 | 0.14% |
| 2025 and thereafter | 0.20% |

The Order resulted in the following updated compliance schedules for the poultry waste set-asides REPS requirements:

| Calendar Year | Requirement for Poultry Waste Resources |
|---------------------|---|
| 2019 | 500,000 MWh |
| 2020 | 700,000 MWh |
| 2021 and thereafter | 900,000 MWh |

Order Establishing 2019, 2020, and 2021 Poultry Waste Set-Aside Requirement Allocation, Docket E-100, Sub 113 (December 16, 2019, Errata Order issued February 13, 2020)

On December 16, 2019, as corrected on February 13, 2020, the Commission issued an order establishing the 2019, 2020, and 2021 Poultry Waste Set-Aside Requirement Allocation. The Order established that the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021 shall be allocated among the electric power suppliers and utility compliance aggregators based on the load ratio share calculations provided by the NC-RETS administrator for 2016, 2017, and 2018 and the methodology previously adopted by the Commission. The resulting requirements will be held constant for three years, and the allocation

process will be repeated in 2022 in order to set the allocation requirements for compliance years 2022, 2023, and 2024.

Order Amending Rule R8-65, Docket Nos. E-100, Sub 113 and M-100, Sub 158 (August 26, 2020)

On August 26, 2020, the Commission issued an order amending Rule R8-65 such that (1) those persons filing hard copies of Reports of Proposed Construction shall no longer be required to provide the original and six copies. Instead they shall provide one original, verified copy and (2) Reports of Proposed Construction for rooftop solar photovoltaic systems shall no longer be required to include a color or aerial photo.

Order Approving Update to 2018 Retail Sales Input and Maintaining Poultry Waste Set-Aside Allocations, E-100, Sub 113 (August 31, 2020)

On July 15, 2020, ElectriCities, NCEMPA, and NCMPA1 (Power Agencies) filed a request to reopen NC-RETS retail sales inputs for 2018. In that request, the Power Agencies notified the Commission that ElectriCities discovered an error in the Power Agencies 2018 retail sales data submitted to NC-RETS. Specifically, 2018 retail sales for the Power Agencies were incorrectly entered into NC-RETS due to an error in the calculation methodology used in compiling total retail sales data. As a result, system losses were erroneously included in the inputted total sales number, when such losses should not have been included in calculating total sales. For 2018, NCEMPA inputted its members' total MWh sales as being 7,689,807 MWh, which erroneously includes their total system losses of 349,505 MWh - an overstatement of 4.55%. The correct total retail sales for NCEMPA's member municipalities in 2018 was 7,340,302 MWh. Likewise, NCMPA1 inputted that its members' total 2018 MWh sales were 5,394,312 MWh. That figure erroneously includes their total system losses of 217,267 MWh - an overstatement of 4.03%. The correct retail total sales for NCMPA1's member municipalities in 2018 was 5,177,045 MWh.

On August 31, 2020, the Commission issued an order allowing NCEMPA and NCMPA1 (Power Agencies) to update its 2018 total retail sales data in NC-RETS following erroneous data input based on an accounting error by the Power Agencies. In the order, the Commission specifically determined "that (1) any such adjustment shall not alter its load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement relied upon by any electric power supplier in its REPS and REPS EMF Rider or 2019 Compliance Plan, as applicable; and (2) any such adjustment shall not alter any electric power suppliers' load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021."

Renewable Energy Facilities

The REPS statute defines certain electric generating facilities as renewable energy facilities or new renewable energy facilities. RECs associated with electric or thermal power generated at such facilities may be used by electric power suppliers for compliance with the REPS requirement as provided in N.C.G.S. § 62-133.8(b) and (c). In its rulemaking proceeding, the Commission adopted rules providing for a report of proposed construction, certification or registration of renewable energy facilities and new renewable energy facilities.

Pursuant to N.C.G.S. § 62-110.1(a), no person, including any electric power supplier, may begin construction of an electric generating facility in North Carolina without first obtaining from the Commission a certificate of public convenience and necessity (CPCN). Two exemptions from this certification requirement are provided in N.C.G.S. § 62-110.1(g): (1) self-generation, and (2) nonutility-owned renewable generation under 2 MW. Any person exempt from the certification requirement must nevertheless file a report of proposed construction with the Commission pursuant to Rule R8-65.

To ensure that each renewable energy facility from which electric power or RECs are used for REPS compliance meets the particular requirements of Senate Bill 3, the Commission adopted Rule R8-66 to require that the owner, including an electric power supplier, of each renewable energy facility or new renewable energy facility register with the Commission if it intends for RECs it earns to be eligible for use by an electric power supplier for REPS compliance. This registration requirement applies to both in-state and out-of-state facilities. As of August 31, 2020, the Commission has accepted registration statements filed by 1373 facilities.

As detailed in the 2019 REPS Report, the Commission has issued several orders addressing issues related to the registration of a facility, including the definition of “renewable energy resource,” as summarized below.

- Accepted registration as a new renewable energy facility, a 1.6-MW electric generating facility to be located near Clinton in Sampson County, North Carolina, and fueled by methane gas produced from anaerobic digestion of organic wastes from a Sampson County pork packaging facility and from a local swine farm.
- Issued a declaratory ruling that: (1) the percentage of refuse-derived fuel (RDF) that is determined by testing to be biomass, and the synthesis gas (Syngas) produced from that RDF is a “renewable energy resource” as defined in N.C.G.S. § 62-133.8(a)(8); (2) the applicant’s delivery of Syngas from a co-located gasifier to an electric utility boiler would not make the company a “public utility” as defined in N.C.G.S. § 62-3(23); and (3) the applicant’s construction of a co-located gasifier and the piping connection from the gasifier to an existing electric utility boiler would not require a CPCN under N.C.G.S. § 62-110(a) or under N.C.G.S. § 62-110.1(a).

- Issued an Order amending existing CPCNs for two electric generating facilities in Southport and Roxboro, North Carolina, that were being converted to burn a fuel mix of coal, wood waste, and tire-derived fuel (TDF). The Commission concluded that the portion of TDF derived from natural rubber, an organic material, meets the definition of biomass, and is eligible to earn RECs, but required the applicant to submit additional information to demonstrate the percentage of TDF that is derived from natural rubber. In addition, the Commission accepted registration of the two facilities as new renewable energy facilities.
- Accepted registration as a new renewable energy facility, a 1.6-MW CHP facility to be located in Darlington County, South Carolina, that will generate electricity using methane gas produced via anaerobic digestion of poultry litter from a chicken farm mixed with other organic, biodegradable materials, and use the waste heat from the electric generators to provide temperature control for the methane-producing anaerobic digester as well as the chicken houses. The Commission concluded that the thermal energy used as an input back into the anaerobic digestion process effectively increases the efficiency of the electric production from the facility; but is not used to directly produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility pursuant to N.C.G.S. § 62-133.8(a)(1); and is not eligible for RECs. However, the thermal energy that is used to heat the chicken houses is eligible to earn RECs.
- Issued a declaratory ruling that: (1) biosolids, the organic material remaining after treatment of domestic sewage and combusted at the applicant's wastewater treatment plant, are a "renewable energy resource" as defined by N.C.G.S. § 62-133.8(a)(8); and (2) the applicant, a county water and sewer authority organized in 1992 pursuant to the North Carolina Water and Sewer Authorities Act, is specifically exempt from regulation as a public utility pursuant to N.C.G.S. § 62-3(23)(d).
- Accepted for registration as a new renewable energy facility a solar thermal hot water heating facility located in Mecklenburg County, North Carolina, used to heat two commercial swimming pools. The Commission concluded, however, that as an unmetered solar thermal facility, RECs earned based on the capacity of the solar panels are not eligible to meet the solar set-aside requirement of N.C.G.S. § 62-133.8(d). However, the Commission allowed the applicant to earn general thermal RECs based upon an engineering analysis of the energy from the unmetered solar thermal system that is actually required to heat the pools, which was determined to be substantially less than the capacity of the solar thermal panels.
- Issued an Order concluding that primary harvest wood products, including wood chips from whole trees, are "biomass resources" and "renewable energy resources" under N.C.G.S. § 62-133.8(a)(8). The Commission reasoned that

the General Assembly, by including several specific examples of biomass in the statute, did not intend to limit the scope of the term to those examples. Rather, the term “biomass” encompasses a broad category of resources and should not be limited absent express intent to do so. The Environmental Defense Fund and NCSEA appealed the Commission’s Order to the North Carolina Court of Appeals. On August 2, 2011, the Court of Appeals issued a decision affirming the Commission’s Order.

- Issued an Order declaring that yard waste and the percentage of RDF used as fuel are renewable energy resources, and that the percentage of Syngas produced from yard waste and RDF used as fuel is a renewable energy resource. The Commission held that yard waste is an organic material having a constantly replenished supply, and, thus, is a renewable resource under N.C.G.S. § 62-133.8(a)(8).
- Accepted for registration as a new renewable facility a CHP facility, determining that the portion of electricity produced by landfill gas will be eligible to earn RECs and the portion of waste steam produced from the electric turbines that is used as an input for a manufacturing process will be eligible to earn thermal RECs. However, the Commission also concluded that steam that bypasses the turbine generators and waste heat being used to pre-heat the feedwater for the boilers will not be used to directly produce electricity or useful, measureable thermal or mechanical energy at a retail electric customer’s facility pursuant to N.C.G.S. § 62-133.8(a)(1), and, therefore, will not be eligible to earn RECs.
- Accepted registration of residential solar thermal water heating facilities on over one thousand homes which were allowed to install meters on a representative sample of the homes, rather than on each home, to determine the number of British Thermal Units (BTUs) of thermal energy that will be produced and on which RECs will be earned, and assigned to the unmetered homes the thermal heat measures recorded on the metered homes.
- Issued an Order accepting the registrations of nine solar thermal facilities, but found that a request for a waiver of the requirement in N.C.G.S. § 62-133.8(d) that solar thermal energy be measured by a meter in order to produce RECs eligible to meet the solar set-aside requirement was inappropriate, disallowing the use of RETScreen Analysis Software (RETScreen) to calculate the estimated solar thermal production of each facility. The Commission notes that there was no cited or known legal authority by which the Commission is authorized to grant such a waiver. Further, the Commission concluded that the use of RETScreen is not appropriate because it estimates the total amount of solar thermal energy that could be produced, rather than the amount of energy actually used to heat water.
- Denied the registration of a thermal system as a new renewable energy facility based upon the fact that the system would be integrated into an existing

biomass facility and the thermal energy would be used to pre-heat the feed water entering the biomass-fueled boiler resulting in the use of less biomass fuel. The Commission concluded that it was appropriate to view the facility as one entity eligible to earn RECs on the electrical output of the biomass-fueled boiler, rather than two separate entities capable of earning RECs.

- Granted CPCNs with conditions and accepted registrations as new renewable energy facilities for a 300-MW wind facility in Pasquotank and Perquimans Counties and an 80-MW wind facility in Beaufort County.
- Issued an Order declaring that directed biogas is a renewable energy resource. The Commission's order states that for a facility to earn RECs on electricity created using directed biogas, appropriate attestations must be made and records kept regarding the source and amounts of biogas injected into the pipeline and used by the facility to avoid double counting. The Commission's order further notes that as provided in Commission Rule R8-67(d)(2) a facility utilizing directed biogas would earn RECs "based only upon the energy derived from renewable energy resources in proportion to the relative energy content of the fuels used." Finally, the Commission notes that each facility's registration will be considered on a case-by-case basis, and that the Commission had not addressed whether RECs earned would be subject to the out-of-state limitation on unbundled RECs under N.C.G.S. § 62-133.8(b)(2)(e).
- Issued an Order stating that the policy that only net output is eligible for the issuance of RECs was not based solely on the definition of "station service" in the Commission rules, but that N.C.G.S. § 62.133.8(a)(6) requires that RECs be derived from "electricity or equivalent energy" that is "supplied by a renewable energy facility." The Commission held that gross electricity used to power the facility itself cannot be considered electricity "supplied by a renewable energy facility." The Commission interpreted "station service" to encompass all electric demand consumed at the generation facility that would not exist but for the generation itself, including, but not limited to, lighting, office equipment, heating, and air-conditioning at the facility.
- Issued an Order finding that, because compensation could be built into alternative financial arrangements to recover the costs of electric generation, a scenario in which an electricity producer sold steam and gave away electricity must be considered "[p]roducing, generating, transmitting, delivering, or furnishing electricity ... to or for the public for compensation" under N.C.G.S. § 62-3(23)a.1. The Commission notes that were it to rule otherwise it would create multiple scenarios in which an electric generator could provide electrical services "free of charge" to a third party and build in compensation to recover its costs via other arrangements, thus, avoiding the statutory definition of a public utility in N.C.G.S. § 62-3(23)a.1.

- Issued an Order on Request for Declaratory Ruling addressing the eligible output, pursuant to S.L. 2010-195 (Senate Bill 886), to which triple credit is applied to any electric power or RECs generated by an eligible facility. The Commission held that, although the first 20 MW of biomass renewable energy facility generating capacity remained eligible for the triple credit, only the first 10 MW of biomass renewable energy facility generating capacity was eligible to earn additional credits to meet the poultry waste set-aside requirements in N.C.G.S. § 62-133.8(f). The Commission held that the limit was on the electric generating capacity, not the amount of energy or RECs that may be earned, and that RECs may be derived from both the electric generation and the waste heat used to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.
- Issued an Order accepting amended registrations of a 1.9-MW_{AC} directed biogas-fueled combined heat and power (CHP) facility and a 1.6-MW_{AC} biomass fueled CHP facility that would generate electricity through the pyrolysis of wood (the first of this type registered in the State). Both facilities were certified by the Secretary of State as being located in a “cleanfields renewable energy demonstration parks.”
- Issued an Order revoking the registrations of 63 facilities registered as renewable energy facilities or as new renewable energy facilities with the Commission. The owners of the 63 facilities listed in Appendices A and B of the Order did not complete their annual certifications on or before October 15, 2014, as required by the Commission’s September 9, 2014 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS; the owner must again register the facility with the Commission. An Errata Order was issued reducing the number of revocations to 61 facilities.
- Issued an Order Accepting Registration of Incremental Capacity as a New Renewable Energy Facility, finding that, consistent with previous Commission orders, the incremental capacity of Weyerhaeuser NR Company’s renovated CHP system, added subsequent to January 1, 2007, is a “new” renewable energy facility pursuant to N.C.G.S. § 62-133.8(a)(7). Weyerhaeuser was required to register a new project for the incremental portion in NC-RETS to facilitate the issuance of RECs, with 22.1% of the facility’s electric generation and 12.2% of the facility’s thermal generation reported for the new project and the remainder for the existing project.
- Issued an Order revoking the registrations of 127 facilities registered with the Commission as renewable energy facilities or as new renewable energy facilities. The owners of the 127 facilities did not complete their annual certifications on or before October 1, 2015, as required by the Commission’s

August 12, 2015 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS, the owner must again register the facility with the Commission.

- Issued an Order Accepting Registration of New Renewable Energy Facilities, accepting the registration of DEC's Buck and Dan River combined-cycle facilities as new renewable energy facilities. Consistent with previous Commission orders, the Commission found that when biogas derived from anaerobic digestion of animal waste is injected into the natural gas pipeline, nominated for use by a natural gas-fueled electric generating facility, and a proper showing can be made that it is displacing or offsetting conventional natural gas, it is a renewable energy resource pursuant to N.C.G.S. § 62-133.8(a)(5). Noting that Buck and Dan River were placed into service after January 1, 2007, the Commission concluded that those facilities are "new renewable energy facilities" pursuant to N.C.G.S. § 62-133.8(a)(7). The Commission further concluded that the RECs associated with the renewable energy generated at Buck and Dan River from directed biogas will not be deemed out-of-state RECs subject to the 25% limitation on the use for REPS compliance of unbundled out-of-state RECs.
- On November 15, 2016, the Commission issued an Order revoking the registrations of 112 facilities registered with the Commission as renewable energy facilities or as new renewable energy facilities. The owners of the 112 facilities did not complete their annual certifications on or before October 1, 2016, as required by the Commission's August 25, 2016 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS, the owner must again register the facility with the Commission. Additional Orders were issued which reduced the number of revocations to 107.
- On October 25, 2017, the Commission issued an Order revoking the registrations of 59 facilities registered with the Commission as renewable energy facilities or as new renewable energy facilities. The owners of the 59 facilities did not complete their annual certifications on or before October 1, 2017, as required by the Commission's August 30, 2017 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS, the owner must again register the facility with the Commission.

- On June 19, 2018, in Docket No. G-9, Sub 698, the Commission issued an Order approving a revised version of Piedmont Natural Gas Company, Inc.'s (Piedmont) proposed Appendix F, which sets forth the terms and conditions under which Piedmont will accept "alternative gas" into its system and deliver or redeliver it to Piedmont's customers. Alternative gas is defined, in summary, as gas capable of combustion in customer appliances or facilities which is similar in heat content and chemical characteristics to natural gas that is produced from traditional underground well sources. In proposing Appendix F, Piedmont stated that the need for establishing such terms and conditions has arisen due to the potential for sourcing supplies of methane from non-traditional suppliers, including landfills, swine waste-to-energy facilities, and poultry waste-to-energy facilities. Under the revised Appendix F approved by the Commission, and the related interconnection agreements between Piedmont and Optima KV, LLC, and between Piedmont and C2e Renewables NC, Piedmont would receive alternate gas from swine waste-to-energy projects as part of a three-year pilot program. The Commission also required detailed reporting from Piedmont related to technical and operational issues that would inform the Commission's future consideration of the issues involved. In approving the pilot program, the Commission recognized the advantages to the State of making use of alternative gas, including providing a cost effective and environmentally sound way for North Carolina swine and poultry producers to manage animal waste and providing the opportunity for electric power suppliers to comply with the swine and poultry waste set-aside requirements under the REPS. After the Commission issued its order, Piedmont and the North Carolina Pork Council sought clarification and reconsideration. On October 1, 2018, the Commission issued an Order Denying Motions for Reconsideration and Granting in Part Motion for Clarification (Reconsideration Order). That order denied the motions for reconsideration filed by NCPC and Piedmont. Further, it granted Piedmont's request to revise Appendix F: (1) to modify the timing of the filing of the semi-annual report required in Ordering Paragraph No. 9 of the Appendix F Order, and (2) to make Piedmont rather than the Alternative Gas suppliers responsible for measuring and reporting to the Commission on a monthly basis the daily quantities, heat content, and Wobbe value of the Alternative Gas received by Piedmont. On October 30, 2018, the Commission issued an Order Accepting Compliance Filing in Part and Requiring Revisions. The order revised the Interchangeability standard in Appendix F, required modifications to Appendix F and improved notifications to the Commission when Alternative Gas Quality Standards are out of compliance with Appendix F.

- On October 30, 2018, the Commission issued an Order revoking the registrations of 36 facilities registered with the Commission as renewable energy facilities or as new renewable energy facilities. The owners of the 36 facilities did not complete their annual certifications on or before October 1, 2017, as required by the Commission's August 7, 2018 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS, the owner must again register the facility with the Commission.

Since the October 1, 2019 REPS report was submitted, the Commission has issued a limited number of orders interpreting provisions of the REPS Statute regarding applications for registration of renewable energy facilities, as described below.

Order Revoking Registration of Renewable Energy Facilities and New Renewable Energy Facilities, Docket No. E-100, Sub 130 (February 26, 2020).

On February 26, 2020, the Commission issued an Order revoking the registrations of 48 facilities registered with the Commission as renewable energy facilities or as new renewable energy facilities. The owners of the 48 facilities did not complete their annual certifications on or before October 5, 2019, as required by the Commission's September 4, 2019 Order, nor had an annual certification been completed for these facilities as of the date of the Order. The Order states that should the owner of a facility whose registration has been revoked wish to have the energy output from its facility become eligible for compliance with the REPS, the owner must again register the facility with the Commission.

Order Giving Notice of Intent to Revoke Registration of Renewable Energy Facilities and New Renewable Energy Facilities, Docket No. E-100, Sub 130 (August 31, 2020).

On August 31, 2020, the Commission issued an Order giving notice of its intent to revoke the registration of 4 renewable energy facilities and 206 new renewable energy facilities because their owners had not completed or filed the annual certifications required each April 1, as detailed in Commission Rule R8-66(b). Facility owners were given until October 1, 2020, to file their annual certifications belatedly. Owners that do not complete the annual certifications face their facility's registrations being revoked pursuant to Commission Rule R8-66(f). The matter is pending before the Commission.

Order on Request for Declaratory Ruling, Docket No. SP-100, Sub 34 (November 18, 2019)

On November 18, 2019, the Commission issued an Order in Docket No. SP-100, Sub 34, finding that poultry carcasses or mortalities and the necessary carbon-based biomass material used to compost those carcasses or mortalities (Composting Material) should not be considered “poultry waste” for satisfaction of the poultry waste set-aside requirement of the REPS. The Commission determined that Composting Material is neither “poultry waste,” nor “poultry waste combined with . . . bedding material,” under the plain language of the REPS statute. Material which meets the statutory definition of poultry waste and poultry waste combined with either other poultry litter or poultry bedding, specifically identified in the statute, qualifies as poultry waste, but no other Composting Material or biomass material that is not itself poultry waste or that is not otherwise used as poultry bedding material is to be considered poultry waste.

North Carolina Renewable Energy Tracking System (NC-RETS)

In its February 29, 2008 Order in Docket No. E-100, Sub 113, the Commission concluded that REPS compliance would be determined by tracking RECs associated with renewable energy and energy efficiency (EE). In its Order, the Commission further concluded that a “third-party REC tracking system would be beneficial in assisting the Commission and stakeholders in tracking the creation, retirement and ownership of RECs for compliance with Senate Bill 3” and states that “[t]he Commission will begin immediately to identify an appropriate REC tracking system for North Carolina.” Pursuant to N.C.G.S. § 133.8(k), enacted in 2009, the Commission was required to develop, implement, and maintain an online REC tracking system no later than July 1, 2010, in order to verify the compliance of electric power suppliers with the REPS requirements.

On September 4, 2008, the Commission issued an Order in Docket No. E-100, Sub 121, initiating a new proceeding to define the requirements for a third-party REC tracking system, or registry, and to select an administrator. The Commission established a stakeholder process to finalize a Requirements Document for the tracking system.

After issuing an RFP and evaluating the bids received, the Commission signed a Memorandum of Agreement (MOA) with APX, Inc. (APX), on February 2, 2010, to develop and administer NC-RETS. Pursuant to the MOA, on July 1, 2010, APX successfully launched NC-RETS. By letter dated September 3, 2010, the Commission informed APX that, to the best of its knowledge, NC-RETS has performed in substantial conformance with the MOA and has no material defects. The Commission, therefore, authorized APX to begin billing North Carolina electric power suppliers and other users the fees that were established in the MOA.

Funding for NC-RETS is provided directly to APX by the electric power suppliers in North Carolina that are subject to the REPS requirements of Senate Bill 3 and is recovered from the suppliers' customers through the REPS incremental cost rider. Owners of renewable energy facilities and other NC-RETS users do not incur charges to open accounts, register projects, and create and transfer RECs, but will incur nominal fees to export RECs to other tracking systems or to retire RECs other than for REPS compliance.

At the end of 2019, each electric power supplier was required to place the RECs that it acquired to meet its 2019 REPS requirements into compliance accounts where the RECs are available for audit. The Commission will review each electric power suppliers' 2019 REPS compliance report; the associated RECs will be permanently retired. Members of the public can access the NC-RETS web site at www.ncrets.org. The site's "Resources" tab provides extensive information regarding REPS activities and NC-RETS account holders. NC-RETS also provides an electronic bulletin board where RECs can be offered for purchase.

- As of December 31, 2019, NC-RETS had issued 76,219,963 RECs and 34,203,499 EE certificates. These numbers could increase because renewable energy generators are allowed to enter historic production data for up to two years.
- As of September 1, 2020, 598 organizations, including electric power suppliers and owners of renewable energy facilities, had established accounts in NC-RETS.
- As of September 1, 2020, approximately 1312 renewable energy or new renewable energy facilities had been established as NC-RETS projects, enabling the issuance of RECs based on their energy production data.

Pursuant to the MOA, APX has been working with other registries in the United States, such as the Electric Reliability Council of Texas (ERCOT), to establish procedures whereby RECs that were issued in those registries may be transferred to NC-RETS. To date, such arrangements have been established with six such registries. Additionally, the Commission has established an on-going NC-RETS stakeholder group, providing a forum for resolution of issues and discussion of system improvements.

The original MOA with APX expired on December 31, 2013. Based on feedback received from stakeholders, the Commission extended the MOA with APX through 2017, and subsequently extended the MOA through 2020.

Environmental Impacts

Pursuant to N.C.G.S. § 62-133.8(j), the Commission was directed to consult with the North Carolina Department of Environmental Quality (DEQ) in preparing

its report and to include any public comments received regarding direct, secondary, and cumulative environmental impacts of the implementation of the REPS requirements of Senate Bill 3. The Commission has not identified, nor has it received from the public or DEQ, any public comments regarding direct, secondary, and cumulative environmental impacts of the implementation of the REPS provision of Senate Bill 3. DEQ, in response to the Commission's request, notes impacts on North Carolina's air, water and land quality. DEQ's full response is attached to this report as a part of Appendix 1.

ELECTRIC POWER SUPPLIER COMPLIANCE

Pursuant to Senate Bill 3, electric power suppliers are required, beginning in 2012, to meet an increasing percentage of their retail customers' energy needs by a combination of renewable energy resources and energy reductions from the implementation of EE and DSM measures. Also, pursuant to Senate Bill 3, starting in 2012, part of the REPS requirements must be met through poultry waste and swine waste (as discussed above this requirement has been amended by the Commission.) In addition, beginning in 2010 each electric power supplier was required to meet a certain percentage of its retail electric sales "by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat." N.C.G.S. § 62-133.8(d). An electric power supplier is defined as "a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State." N.C.G.S. § 62-133.8(a)(3). Described below are the REPS requirements for the various electric power suppliers and, to the extent reported to the Commission, the efforts of each toward REPS compliance.

Monitoring of Compliance with REPS Requirement

Monitoring of electric power supplier compliance with the REPS requirement of Senate Bill 3 is accomplished through annual filings with the Commission. The rules adopted by the Commission require each electric power supplier to file an annual REPS compliance plan and REPS compliance report to demonstrate reasonable plans for and actual compliance with the REPS requirement.

Compliance Plan

Pursuant to Commission Rule R8-67(b), on or before September 1 of each year, each electric power supplier is required to file with the Commission a REPS compliance plan providing, for at least the current and following two calendar years, specific information regarding its plan for complying with the REPS requirement of Senate Bill 3. The information required to be filed includes, for example, forecasted retail sales, RECs earned or purchased, EE measures implemented and projected impacts, avoided costs, incremental costs, and a comparison of projected costs to the annual per-account cost caps.

Compliance Report

Pursuant to Commission Rule R8-67(c), each electric power supplier is required to annually file with the Commission a REPS compliance report. While a

REPS compliance plan is a forward-looking forecast of an electric power supplier's REPS requirement and its plan for meeting that requirement, a REPS compliance report is an annual look back at the RECs earned or purchased and energy savings actually realized during the prior calendar year and the electric power supplier's actual progress toward meeting its REPS requirement. Thus, as part of this annual REPS compliance report, each electric power supplier is required to provide specific information regarding its experience during the prior calendar year, including, for example, RECs actually earned or purchased, retail sales, avoided costs, compliance costs, status of compliance with its REPS requirement, and RECs to be carried forward to future REPS compliance years. An electric power supplier must file with its REPS compliance report any supporting documentation as well as the direct testimony and exhibits of expert witnesses. The Commission will schedule a hearing to consider the REPS compliance report filed by each electric power supplier.

For each electric public utility, the Commission will consider the REPS compliance report and determine the extent of compliance with the REPS requirement at the same time as it considers cost recovery pursuant to the REPS incremental cost rider authorized in N.C.G.S. § 62-133.8(h). Each EMC and municipally owned electric utility, over which the Commission does not exercise ratemaking authority, is required to file its REPS compliance report on or before September 1 of each year.

Cost Recovery Rider

North Carolina General Statutes Section 62-133.8(h) authorizes each electric power supplier to establish an annual rider to recover the incremental costs incurred to comply with the REPS requirement and to fund certain research. The annual rider, however, may not exceed the following per-account annual charges:

| <u>Customer Class</u> | <u>2008-2011</u> | <u>2012-2014</u> | <u>2015 and thereafter</u> |
|-------------------------|------------------|------------------|----------------------------|
| Residential per account | \$10.00 | \$12.00 | \$27.00 |
| Commercial per account | \$50.00 | \$150.00 | \$150.00 |
| Industrial per account | \$500.00 | \$1,000.00 | \$1,000.00 |

Commission Rule R8-67(e) establishes a procedure under which the Commission will consider approval of a REPS rider for each electric public utility. The REPS rider operates similar to the fuel charge adjustment rider authorized in N.C.G.S. § 62-133.2. Each electric public utility is required to file its request for a REPS rider at the same time as it files the information required in its annual fuel charge adjustment proceeding, which varies for each utility. The test periods for both the REPS rider and the fuel charge adjustment rider are the same for each utility, as are the deadlines for publication of notice, intervention, and filing of testimony and exhibits. A hearing on the REPS rider will be scheduled to begin as soon as practicable after the hearing held by the Commission for the purpose of determining the utility's fuel charge adjustment rider. The burden of proof as to

whether the REPS costs were reasonable and prudently incurred shall be on the electric public utility. Like the fuel charge adjustment rider, the REPS rider is subject to an annual true-up, with the difference between reasonable and prudently incurred incremental costs and the revenues that were actually realized during the test period under the REPS rider then in effect reflected in a REPS experience modification factor (REPS EMF) rider. Pursuant to N.C.G.S. § 62-130(e), any overcollection under the REPS rider shall be refunded to a utility's customers with interest through operation of the REPS EMF rider.

Electric Public Utilities

There are three electric public utilities operating in North Carolina subject to the jurisdiction of the Commission: DEP, DEC, and Dominion. Although DEC and DEP underwent a merger in 2012, for REPS compliance purposes they continue to operate as two distinct entities.

REPS Requirement

North Carolina General Statutes Section 62-133.8(b) provides that each electric public utility in the State (DEC, DEP, and Dominion) shall be subject to a REPS requirement according to the following schedule:

| <u>Calendar Year</u> | <u>REPS Requirement</u> |
|----------------------|---|
| 2012 | 3% of prior year's North Carolina retail sales |
| 2015 | 6% of prior year's North Carolina retail sales |
| 2018 | 10% of prior year's North Carolina retail sales |
| 2021 and thereafter | 12.5% of prior year's North Carolina retail sales |

An electric public utility may meet the REPS requirement by any one or more of the following:

- Generate electric power at a new renewable energy facility.
- Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.
- Reduce energy consumption through the implementation of an EE measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to 25% of the requirements of this section through savings due to implementation of EE measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to 40% of the requirements of this section through savings due to implementation of EE measures.
- Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility

located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the RECs created pursuant to this paragraph to another electric public utility.

- Purchase RECs derived from in-state or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than 25% of the requirements of this section, provided that this limitation shall not apply to Dominion.
- Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an EE measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated RECs.
- Reduce energy consumption through “electricity demand reduction,” which is a voluntary reduction in the demand of a retail customer achieved by two-way communications devices that are under the real time control of the customer and the electric public utility.⁴

Duke Energy Progress, LLC (DEP)

Compliance Report

On June 11, 2019, in Docket No. E-2, Sub 1205, DEP filed its 2018 REPS compliance report and application for approval of its 2019 REPS cost recovery rider pursuant to N.C.G.S. § 62-133.8 and Commission Rule R8-67. By its application and testimony, DEP proposed to implement the following total REPS rates effective for service rendered on and after December 1, 2019: \$1.43 per month for residential customers; \$8.12 per month for general service and lighting customers; and \$58.67 per month for industrial customers. DEP’s proposed new REPS rates, if approved, would result in increases in the current REPS rates (including regulatory fee), as follows: \$0.01 per month for residential customers; \$0.16 per month for general service and lighting customers; and a decrease of \$(14.50) per month for industrial customers. In its 2018 REPS compliance report, DEP indicates that it acquired sufficient RECs to meet the 2018 requirement of 0.14% of its 2017 retail sales. DEP also indicates that it was able to meet the revised poultry waste set-aside requirement in 2018. Pursuant to the Commission’s October 8, 2018 Order in Docket No. E-100, Sub 113, DEP’s 2018

⁴ Section 1 of S.L. 2011-55 amended N.C.G.S. § 62-133.8(a) by adding a definition of “electricity demand reduction,” and Section 2 amended N.C.G.S. § 62-133.8(b)(2) by adding a new subsection (g) making electricity demand reduction a REPS resource, effective April 28, 2011.

swine waste set-aside requirement was modified to 0.02% of prior retail sales. On September 9, 2019, the Commission held a hearing on DEP's 2019 REPS compliance report and 2018 REPS cost recovery rider. On November 19, 2019, the Commission issued an order allowing DEP's proposed REPS rider charges to become effective December 1, 2019. In addition, the Commission found that DEP complied with the 2018 REPS requirements, including the solar set-aside requirements and the poultry waste set-aside requirements. Therefore, the Commission approved DEP's 2018 REPS compliance report and ordered that the RECs in DEP's 2018 compliance sub-account be retired.

On June 09, 2020, in Docket No. E-2, Sub 1251, DEP filed its 2019 REPS compliance report and application for approval of its 2020 REPS cost recovery rider pursuant to N.C.G.S. § 62-133.8 and Commission Rule R8-67. By its application and testimony, DEP proposed to implement the following total REPS rates effective for service rendered on and after December 1, 2020: \$1.29 per month for residential customers; \$6.98 per month for general service and lighting customers; and \$47.88 per month for industrial customers. DEP's proposed rates are below the annual per-account limits established pursuant to N.C.G.S. § 62-133.8(h)(4). DEP's proposed new REPS rates, if approved, would result in decreases in monthly REPS charges, including regulatory fee, as follows: \$(0.16) for residential customers; \$(1.27) for general service and lighting customers; and a decrease including regulatory fee of \$(11.70) for industrial customers. In its 2019 REPS compliance report, DEP indicates that it acquired sufficient RECs to meet the 2019 requirement of 10% of its 2018 retail sales. Additionally, DEP indicates that it acquired sufficient solar RECs to meet the 2019 requirement of 0.20% of its 2018 retail sales. Pursuant to the Commission's December 16, 2019 Order, as corrected on February 13, 2020, in Docket No. E-100, Sub 113, the 2019 swine waste set-aside requirement for electric public utilities was modified to 0.04% of 2018 retail sales and the 2019 aggregate poultry waste set-aside requirement for all electric power suppliers was modified to 500,000MWh for 2019. DEP indicates that it met the modified swine waste set aside and poultry waste set-aside requirements. DEP's 2019 REPS compliance report and application for approval of its 2020 REPS cost recovery rider are pending before the Commission.

Compliance Plan

On September 3 2019, in Docket No. E-100, Sub 157, DEP filed its 2019 REPS compliance plan as part of its 2019 Integrated Resource Plan (IRP) updates. In its plan, DEP indicates that its overall compliance strategy to meet the REPS requirements consisted of the following key components: (1) purchases of RECs; (2) purchases of renewable biogas to generate RECs; (3) constructing and operating Company-owned renewable facilities; (4) energy efficiency programs that will generate savings that can be counted towards obligation requirements; and (5) research studies to enhance its ability to comply in future years. On March 9, 2020, the Commission held a required public hearing on DEP's 2019 REPS compliance plan and 2019 IRP Updates. On April 6, 2020, the Commission

issued an Order accepting DEP's 2019 IRP Update Reports and 2019 REPS compliance plan.

On September 1, 2020, in Docket No. E-100, Sub 165, DEP filed its 2020 REPS compliance plan as part of its 2020 IRP. In its compliance plan, DEP details its REPS compliance obligation for 2020-2022, including the requirement to comply with the solar, swine waste, and poultry waste set-aside requirements. DEP calculates its solar set-aside requirements to be 75,877 RECs in 2020, estimates its solar set-aside requirements to be 75,739 RECs in 2021, and 75,423 RECs in 2022. DEP states that it has fully satisfied and exceeded the minimum solar set-aside requirements of 0.20% during the compliance planning period through a combination of power purchase agreements and company-owned solar facilities.

DEP estimates its swine waste set-aside requirements to be 26,577 RECs in 2020, 26,509 RECs in 2021, and 52,796 RECs in 2022. DEP identifies three primary methods for compliance with the swine waste set-aside requirement: (1) on-farm generation; (2) centralized digestion; and (3) directed, injected biogas. DEP states that it is in a position to comply with its swine waste set-aside requirement in 2020 but its ability to comply in 2021 and 2022 is dependent on the performance of swine waste-to-energy developers under current contracts, particular achievement of projected delivery requirements, commercial operation milestones, and the magnitude of the adverse impact of the COVID-19 pandemic on swine waste to energy production in North Carolina.

DEP estimates its poultry waste set-aside requirements to be 195,649 RECs in 2020, 251,548 RECs in 2021, and 251,548 RECs in 2022. As to compliance with the poultry waste set-aside requirements, DEP states that it continues to pursue various efforts to meet its compliance requirement, including: (1) direct negotiations for additional supplies of both in-state and out-of-state resources with multiple counterparties; (2) working diligently to understand the technological, permitting, and operational risks associated with various methods of producing poultry RECS and to aid developers in overcoming those risks, using contract amendments when necessary to adjust for more realistic outcomes; (3) exploring leveraging current biomass contracts by working with developers to add poultry waste to their fuel mix; (4) exploring adding thermal capabilities to current poultry sites to bolster REC production; (5) exploring poultry-derived directed biogas at facilities in North Carolina for use at its combined cycle plants; (6) utilizing the broker market for out-of-state poultry RECs available in the market; and (7) supporting research study through the Research Triangle Institute associated with biogas utilization in North Carolina. DEP states it is a position to comply with its poultry waste set-aside requirement for 2020 but its ability to procure sufficient RECs to meet these requirements in 2021 and 2022 is dependent on the performance of poultry waste-to-energy developers under current contracts, particularly achievement of projected delivery requirements.

DEP notes that one new poultry facility came online in 2019 and is working to ramp up production, but historical experience indicates that facilities usually experience some start-up issues and take time to reach full expected production levels. DEP's ability to comply in 2021 and 2022 is also dependent on facilities producing at their contracted levels, and suppliers have either delayed projects or lowered the volume of RECs to be produced. The Company is, nevertheless, encouraged by the growing use of thermal poultry RECs and the proposals that it has recently received from developers.

DEP states that its general REPS requirement, net of the set-asides discussed above, is estimated to be 3,495,720 RECs in 2020, 4,379,892 RECs in 2021, and 4,334,155 RECs in 2022. DEP notes several resource options available to the Company to meet its general requirement, including, maximum use of allowable EE savings (25%), hydroelectric power procured from suppliers, and a variety of biomass, wind, and solar resources. DEP states that it purchases RECs from multiple biomass facilities in the Carolinas, including landfill gas to energy facilities and biomass fueled combined heat and power facilities. DEP states it views the downward trend in solar equipment and installation costs as a positive trend and that it expects solar resources to contribute to compliance efforts beyond the solar set-aside minimum threshold. In addition, DEP plans to use the RECs acquired through the competitive procurement of renewable energy (CPRE) RFP solicitations as needed for its future REPS compliance requirements and has therefore include the planed MW allocation and timeline in its REPS compliance planning process. Acceptance of DEP's 2020 REPS compliance plan is pending before the Commission.

Duke Energy Carolinas, LLC (DEC)

Compliance Report

On February 25, 2020, in Docket No. E-7, Sub 1229, DEC filed its 2019 REPS compliance report and an application for approval of REPS rider charges to be effective September 1, 2020. By its application and testimony, DEC requested monthly REPS rates, not including regulatory fee, of: \$0.78 for residential customers; \$3.84 for general service and lighting customers; and \$18.51 for industrial customers-each of which is below the incremental per-account cost cap established in N.C.G.S. § 62-133.8(h). DEC's proposed new monthly REPS rates, if approved would result in the following decreases to DEC's current monthly REPS rates, including regulatory fee: \$(0.15) for residential customers; \$(0.83) for general service and lighting customers; and \$(3.86) for industrial customers. In its 2019 REPS compliance report, DEC indicates that it acquired sufficient RECs to meet the 2019 requirement of 10% of its 2018 retail sales. Additionally, DEC indicates that it acquired sufficient solar RECs to meet the 2019 requirement of 0.20% of its 2018 retail sales. Pursuant to the Commission's December 16, 2019 Order, as corrected on February 13, 2020, in Docket No. E-100, Sub 113, the 2019 swine waste set-aside requirement for electric public utilities was modified to

0.04% of 2018 retail sales and the 2019 aggregate poultry waste set-aside requirement for all electric power suppliers was modified to 500,000MWh for 2019. DEC indicates that it met the modified swine waste set aside and poultry waste set-aside requirements. On June 9, 2020, the Commission held a hearing remotely via Webex on DEC's 2019 REPS compliance report and REPS cost recovery application. On August 20, 2020, the Commission issued an order approving DEC's REPS riders, DEC's 2019 REPS compliance report, and retiring the RECs in DEC's 2019 compliance sub-account.

Compliance Plan

On September 3, 2019, in Docket No. E-100, Sub 157, DEC filed its 2019 REPS compliance plan as part of its 2019 Integrated Resource Plan (IRP) updates. In its REPS compliance plan, DEC indicates that its overall compliance strategy to meet the REPS requirements consisted of the following key components: (1) purchases of RECs; (2) purchases of renewable biogas to generate RECs; (3) constructing and operating Company-owned renewable facilities; (4) energy efficiency programs that will generate savings that can be counted towards the Company's REPS obligations; and (5) research studies to enhance its ability to comply in future years. DEC has agreed to provide REPS compliance services for the following wholesale customers, as allowed under N.C.G.S. § 62-133.8(c)(2)(e): Rutherford Electric Membership Corporation, Blue Ridge Electric Membership Corporation, Town of Dallas, Town of Forest City, and Town of Highlands. On March 9, 2020, the Commission held a required public hearing on DEC's 2019 REPS compliance plan and 2019 IRP Updates. On April 6, 2020, the Commission issued an Order accepting DEP's 2019 IRP Update Reports and 2019 REPS compliance plan.

On September 1, 2020, in Docket No. E-100, Sub 165, DEC filed its 2020 REPS compliance plan as part of its 2020 IRP. In its compliance plan, DEC details its REPS compliance obligation for 2020-2022, including the requirement to comply with the solar, swine waste, and poultry waste set-aside requirements. DEC calculates its solar set-aside requirements to be 122,532 RECs in 2020, estimates its solar set-aside requirements to be 121,238 RECs in 2021 and 121,403 RECs in 2022. DEC states that it has fully satisfied and exceeded the minimum solar set-aside requirements of 0.20% during the compliance planning period through a combination of power purchase agreements and company-owned facilities.

DEC estimates its swine waste set-aside requirements to be 42,888 RECs in 2020, 42,436 RECs in 2021, and 84,984 RECs in 2022. DEC identifies three primary methods for compliance with the swine waste set-aside requirement: (1) on-farm generation; (2) centralized digestion; and (3) directed, injected biogas. DEC states that it is in a position to comply with its swine waste set-aside requirements in 2020, but, its ability to comply in 2021 and 2022 is dependent on the performance of swine waste-to-energy developers under current contracts,

particularly achievement of projected delivery requirements and commercial operation milestones, and the magnitude of the adverse impact of the COVID-19 pandemic on swine waste to energy production in North Carolina.

DEC estimates its poultry waste set-aside requirements to be 313,499 RECs in 2020, 403,068 RECs in 2021, and 403,068 in 2022. As to compliance with the poultry waste set-aside requirements, DEC states that it continues to pursue various efforts to meet its compliance requirement, including: (1) direct negotiations for additional supplies of both in-state and out-of-state resources with multiple counterparties; (2) gaining an understanding of the technological, permitting, and operational risks associated with various methods to produce qualifying RECs; (3) exploring leveraging current biomass contracts by working with developers to add poultry waste to their fuel mix; (4) exploring adding thermal capabilities to current poultry sites to bolster REC production; (5) exploring poultry-derived directed biogas at facilities in North Carolina for use at its combined cycle plants; (6) utilizing its REC trader to search for out-of-state poultry RECs available in the market; and (7) supporting a research study through Research Triangle Institute associated with biogas utilization in North Carolina. DEC states that it is in a position to meet its poultry waste set-aside requirements in 2020, but its ability to procure sufficient RECs to meet its pro-rata share of the increased requirements in 2021 and 2022 is dependent on the performance of poultry waste-to-energy developers under current contracts, particularly achievement of projected delivery requirements.

DEP notes that one new poultry facility came online in 2019 and is working to ramp up production, but historical experience indicates that facilities usually experience some start-up issues and take time to reach full expected production levels. DEP's ability to comply in 2021 and 2022 is also dependent on facilities producing at their contracted levels, and suppliers have either delayed projects or lowered the volume of RECs to be produced. The Company is, nevertheless, encouraged by the growing use of thermal poultry RECs and the proposals that it has recently received from developers.

DEC states that its general REPS requirement, net of the set-asides discussed above, is estimated to be 5,647,482 RECs in 2020; 6,944,762 RECs in 2021 and 6,912,248 RECs in 2022. DEC notes several resource options available to the Company to meet its general requirement, including, maximum allowable use of EE savings (25%), hydroelectric power procured from suppliers and from its wholesale customers SEPA allocations, and a variety of biomass, wind and solar resources. DEC states that it purchases RECs from multiple biomass facilities in the Carolinas, including landfill gas to energy facilities and biomass fueled combined heat and power facilities. DEC states it views the downward trend in solar equipment and installation costs as a positive trend and that it expects solar resources to contribute to compliance efforts beyond the solar set-aside minimum threshold. In addition, DEC plans to use the RECs acquired through the competitive procurement of renewable energy (CPRE) RFP solicitations as

needed for its future REPS compliance requirements and has therefore include the planed MW allocation and timeline in its REPS compliance planning process. Acceptance of DEC's 2020 REPS compliance plan is pending before the Commission.

Dominion North Carolina Power (Dominion)

Compliance Report

On August 13, 2019, in Docket No. E-22, Sub 578, Dominion filed its application for approval of its proposed 2019 REPS cost recovery rider charges and its 2019 REPS compliance report. (for the 2018 compliance year). Dominion's REPS compliance report included compliance status for the Town of Windsor (Windsor) and was submitted with direct testimony and exhibits in support of Dominion's application for REPS cost recovery. By its application and testimony, Dominion requests recovery of \$1.247 million in incremental REPS compliance costs and proposes to implement the following total REPS rates, including regulatory fee, effective for service rendered on and after February 1, 2020: a \$0.55 charge per month for residential customers; a \$3.08 charge per month for commercial customers; and a \$20.83 charge per month for industrial customers. In addition, Dominion's REPS compliance report details its efforts to achieve compliance with the REPS requirements. On November 12, 2019, the Commission held a public hearing on Dominion's 2019 REPS compliance report and REPS cost recovery application. On January 24, 2020, the Commission issued an order approving Dominion's REPS riders, Dominion's 2019 REPS compliance report, and retiring the RECS in Dominion and Windsor's 2018 compliance sub-accounts.

On August 11, 2020, in Docket No. E-22, Sub 588, Dominion filed an application for approval of a 2020 REPS recovery rider and its 2020 REPS compliance report (for the 2019 compliance year). Dominion's REPS compliance report included compliance status for Windsor. By its application and testimony, Dominion requested approval of the following REPS rider charges, including regulatory fee, effective for service rendered on and after February 1, 2020: a \$0.25 charge per month for residential customers; a \$1.40 charge per month for commercial customers; and a \$9.36 charge per month for industrial customers. Dominion's 2020 REPS compliance report states that Dominion met its 2019 general REPS requirements (413,579 RECs) by purchasing eligible wind and biomass RECs and EECs and that Dominion met Windsor's requirements (4,516 RECs) by purchasing general obligation RECS and retiring 248 SEPA hydro RECs. Dominion's REPS compliance report further states that Dominion met its 2019 solar set-aside requirement (8,802 RECs) and the Town of Windsor's requirements (101 RECs) by purchasing solar RECs. Pursuant to the Commission's December 16, 2019 Order, as corrected on February 13, 2020, in Docket No. E-100, Sub 113, the 2019 swine waste set-aside requirement for electric public utilities was modified to 0.04% of 2018 retail sales and the 2019 aggregate poultry waste set-aside requirement for all electric power suppliers was

modified to 500,000MWh for 2019. Dominion indicates that it met its modified swine waste set-aside requirement (1,761 RECs) for 2019. Dominion also stated it met its poultry waste set-aside requirement (15,937 RECs) and Windsor's poultry waste set-aside requirement (182 RECs) for 2019. Approval of Dominion's REPS riders, Dominion's 2020 REPS compliance report, and retiring the RECS in Dominion and Windsor's 2019 compliance sub-accounts is pending before the Commission.

Compliance Plan

On August 29, 2019, in Docket No. E-100, Sub 157, Dominion filed its 2019 REPS compliance plan as part of its 2019 IRP updates. In its plan, Dominion indicates it will purchase RECs, use EE savings, and new company-generated renewable energy where economically feasible. Dominion continues to be responsible for meeting the REPS requirements for Windsor. On March 9, 2020, the Commission held a required public hearing on Dominion's 2019 REPS compliance plan and 2019 IRP Updates. On April 6, 2020, the Commission issued an Order accepting Dominion's 2019 IRP Update Reports and 2019 REPS compliance plan.

On May 1, 2020, in Docket No. E-100, Sub 165, Dominion filed its 2020 REPS compliance plan as part of its 2020 IRP. Dominion states that, during the 2020-2022 planning period, it plans to meet its general REPS requirements using RECs, EE savings, and new company-generated renewable energy where economically feasible. Dominion continues to be responsible for meeting the REPS requirements for Windsor. Dominion projects that it will meet the solar set-aside requirements for itself through 2022 as it has executed contracts for the sale of solar RECs sufficient to meet these requirements. Dominion further states that it has executed contracts with solar facilities located in North Carolina sufficient to meet Windsor's in-state compliance requirements for 2020 through 2022. Dominion states that it will continue to make all reasonable efforts to satisfy these requirements during the 2020-2022 planning period. As a result of Dominion's efforts to locate operational swine digesters in the continental United States, Dominion has sufficient RECs in NC-RETS to meet both Dominion and Windsor's swine waste set-aside requirements during the 2020-2022 planning period. In addition, Dominion states that, due to the high default rate with swine waste to energy contracts, Dominion intends to contract for RECs above and beyond the initial requirement to increase the probability of achieving and maintaining compliance and to bank any excess RECs for future compliance years. Dominion states that both Dominion and Windsor have sufficient poultry RECs in NC-RETS to meet the 2020-2022 requirements. Dominion has also continued to search for opportunities to purchase poultry waste RECs in North Carolina and throughout the continental United States and intends to contract for RECs above and beyond the initial requirement to increase the probability of maintaining compliance. This matter is still pending before the Commission.

EMCs and Municipally Owned Electric Utilities

There are thirty-one EMCs serving customers in North Carolina, including twenty-six that are headquartered in the state. Twenty-five of the EMCs are members of North Carolina EMC (NCEMC), a generation and transmission (G&T) services cooperative that provides wholesale power and other services to its members. NCEMC also serves as a utility compliance aggregator for 23 of its members⁵; the Town of Oak City, a wholesale customer of Edgecombe - Martin EMC; the Town of Fountain, a wholesale customer of Pitt & Green EMC; the Town of Enfield, a wholesale customer of Halifax EMC⁶; Mecklenburg EC, headquartered in Chase, Virginia; and Broad River EC, headquartered in Gaffney, South Carolina. Tennessee Valley Authority (TVA) serves as utility compliance aggregator for four wholesale customers serving retail customers in North Carolina: Blue Ridge Mountain EMC; Mountain Electric Coop, Inc.; Tri-State EMC; and Murphy Electric Power Board⁷. DEC serves as utility compliance aggregator for wholesale customers: Blue Ridge EMC; Rutherford EMC; and the Towns of Dallas, Forest City, and Highlands.⁸ Carolina Power Partners, LLC⁹, (CPP) serves as the utility compliance aggregator for the Towns of Winterville, Stantonsburg, Sharpsburg, Lucama, and Black Creek, as well as the Cities of Concord and Kings Mountain (CPP Municipalities). EnergyUnited files its own REPS compliance plans and REPS compliance reports.

In addition, there are seventy-two municipal and university-owned electric distribution systems serving customers in North Carolina. These systems are members of ElectriCities of North Carolina, Inc. (ElectriCities), an umbrella service organization. ElectriCities is a non-profit organization that provides many of the technical, administrative, and management services required by its municipally owned electric utility members in North Carolina, South Carolina, and Virginia. ElectriCities is a service organization for its members, not a power supplier or utility compliance aggregator. Fifty-one of the North Carolina municipalities are participants in either NCEMPA or NCMPA1, municipal power agencies that provide wholesale power to

⁵ On December 18, 2017, the Commission issued an Order authorizing NCEMC to serve as utility compliance aggregator on behalf of NCEMC's REPS Compliance Customers and to assume the REPS compliance services and related functions currently being performed by GreenCo effective January 1, 2018.

⁶ On December 17, 2018, the Commission issued an order authorizing NCEMC to serve as utility compliance aggregator on behalf of Halifax and Enfield beginning in its 2018 REPS compliance report and 2019 REPS compliance plan and for future years.

⁷ On September 7, 2010, the Commission allowed TVA to file annual REPS compliance plans and reports on behalf of its four wholesale customers that provide retail service to customers in North Carolina.

⁸ DEC's contracts to provide REPS compliance services for the Cities of Concord and Kings Mountain ended in December 2018.

⁹ On May 22, 2020, NTE Carolina's, LLC, informed the Commission of its name change from NTE Carolinas, LLC, to Carolina Power Partners, LLC.

and serve as utility compliance aggregators for their members¹⁰. FPWC and the Town of Waynesville file their own REPS compliance plans and reports. Six university-related members are not subject to the REPS reporting requirements and the remaining municipal members are referenced elsewhere in this section.

On October 18, 2019, the Commission granted NTE Carolina's, LLC, request to serve as a utility compliance aggregator on behalf of the Towns of Winterville, Stantonsburg, Sharpsburg, Lucama, and Black Creek, as well as the Cities of Concord and Kings Mountain.

REPS Requirement

North Carolina General Statutes Section 62-133.8(c) provides that each EMC or municipality that sells electric power to retail electric power customers in the state shall be subject to a REPS according to the following schedule:

| <u>Calendar Year</u> | <u>REPS Requirement</u> |
|----------------------|---|
| 2012 | 3% of prior year's North Carolina retail sales |
| 2015 | 6% of prior year's North Carolina retail sales |
| 2018 and thereafter | 10% of prior year's North Carolina retail sales |

Compliance with the REPS requirement is slightly different for an EMC or municipality than for an electric public utility. An EMC or municipality may meet the REPS requirement by any one or more of the following:

- Generate electric power at a new renewable energy facility.
- Reduce energy consumption through the implementation of DSM or EE measures.
- Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than 30% of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration (SEPA).
- Purchase RECs derived from in-state or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than 25% of the requirements of this section.
- Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose

¹⁰ By Orders issued August 27, 2008, the Commission allowed the fifty-one municipal members of the power agencies to file through NCEMPA and NCMPA1.

portfolio of supply and demand options meet the requirements of this section.

- Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of DSM or EE measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated RECs.
- Reduce energy consumption through “electricity demand reduction,” which is a voluntary reduction in the demand of a retail customer achieved by two-way communications devices that are under the real time control of the customer and electric power supplier.¹¹

Electric Membership Corporations

North Carolina Electric Membership Corporation (NCEMC)

By Orders issued in Docket No. E-100, Sub 118, the Commission authorized NCEMC to serve as utility compliance aggregator on behalf of 25 EMCs.¹² Those orders also authorized NCEMC to serve as utility compliance aggregator on behalf of Mecklenburg Electrical Cooperative, Broad River Electrical Cooperative, Oak City, and the Town of Fountain, which is a wholesale customer of Pitt & Greene EMC. As detailed in the Commissions prior reports, the role of utility compliance aggregator was previously provided by GreenCo Solutions Inc.

On August 29, 2019, in Docket No. E-100, Sub 163, NCEMC filed its 2018 REPS compliance report and 2019 REPS compliance plan. In its plan, NCEMC states that it intends to use its members’ allocations from SEPA, RECs purchased from both in-state and out-of-state renewable energy facilities, and EE savings from approved EE programs to meet its members’ REPS requirements. NCEMC states that the electric power suppliers will request a delay to the 2019 poultry and swine waste set-aside REPS requirements due to a lack of sufficient swine and poultry waste resources. In addition, NCEMC states that it will monitor the progress of the development of such resources and continue to make reasonable efforts to comply with the swine and poultry waste set-aside requirements. In its 2018 REPS compliance report, NCEMC states that it retired a total of 1,297,338 RECs to meet the REPS compliance requirements of its REPS compliance members and those of Mecklenburg and Broad River EMCs, which included 25,948 solar RECs to meet

¹¹ Section 1 of S.L. 2011-55 amended N.C.G.S. § 62-133.8(a) by adding a definition of “electricity demand reduction,” and Section 2 amended N.C.G.S. § 62-133.8(c)(2) by adding a new subsection (g) making electricity demand reduction a REPS resource, effective April 28, 2011.

¹² NCEMC’s REPS Compliance Members include Albemarle EMC, Brunswick EMC, Cape Hatteras EMC, Carteret-Craven EMC, Central EMC, Edgecombe-Martin EMC, Four County EMC, French Broad EMC, Haywood EMC, Jones-Onslow EMC, Lumbee River EMC, Pee Dee EMC, Piedmont EMC, Pitt & Greene EMC, Randolph EMC, Roanoke EMC, South River EMC, Surry-Yadkin EMC, Tideland EMC, Tri-County EMC, Union EMC, and Wake EMC.

the solar set-aside requirements and 29,433 poultry waste RECs to meet the poultry waste set-aside requirements. NCEMC notes that its swine waste set-aside requirements were delayed pursuant to the Commission's Order issued on October 8, 2018, in Docket No. E-100, Sub 113 (2018 Delay Order). In addition, NCEMC detailed the RECs associated with EE programs, totaling 266,580 RECs, that are attributed to EE and DSM programs. On September 16, 2020, the Commission issued an order approving NCEMC's 2018 REPS compliance report, accepting NCEMC's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in NCEMC's sub-accounts.

On August 31, 2020, in Docket No. E-100, Sub 168, NCEMC filed its 2019 REPS compliance report and 2020 REPS compliance plan. In its plan, NCEMC states that it intends to use its members' allocations from SEPA, RECs purchased from both in-state and out-of-state renewable energy facilities, and EE savings from approved EE programs to meet its members' REPS requirements. NCEMC states that the electric power suppliers are not expected to meet the swine waste set-aside requirement for 2020-2022 and will be requesting a modification to the 2020 swine waste set-aside REPS requirements due to a lack of sufficient swine resources. NCEMC states that it expects to meet the modified poultry waste set-aside requirement for 2020 but does not anticipate having sufficient contracts to satisfy the poultry requirements for 2021 and 2022. In its 2019 REPS compliance report, NCEMC states that it retired a total of 1,395,495 RECs to meet the REPS compliance requirements of its REPS compliance members and those of Mecklenburg and Broad River EMCs, which included 304,159 solar RECs to meet the solar set-aside requirements and 49,670 poultry waste RECs to meet the poultry waste set-aside requirements. NCEMC notes that its swine waste set-aside requirements were delayed and its poultry waste set-aside requirements were reduced pursuant to the Commission's Order issued on December 16, 2019 as corrected on February 13, 2020, in Docket No. E-100, Sub 113 (2019 Delay Order) In addition, NCEMC detailed the RECs associated with EE programs, totaling 186,198 RECs, that are attributed to EE and DSM programs. Approval of NCEMC's 2019 REPS compliance report, acceptance of NCEMC's 2020 REPS compliance plan and authorization to retire of 2019 RECs held in NCEMC's sub-accounts is pending before the Commission at this time.

EnergyUnited Electric Membership Corporation (EnergyUnited)

On August 28, 2019, in Docket No. E-100, Sub 163, EnergyUnited filed its 2018 REPS compliance report and 2019 REPS compliance plan. In its report, EnergyUnited states that it met its 2018 general REPS requirement (251,713 RECs), its solar set-aside requirements (5,035 RECs), and its poultry waste set-aside requirement (5,473 RECs). EnergyUnited's swine waste set-aside requirement was deferred until 2019. EnergyUnited has developed two approved Energy Efficiency Programs and continues to purchase RECs and consider development of PPAs in order to promote new renewable generation. In its plan, EnergyUnited states it intends to comply with its future REPS obligations through

its SEPA allocations, approved EE programs, and the purchase of RECs and renewable energy, including the purchase of renewable energy from Iredell Transmission, LLC (a landfill gas-powered generation facility). EnergyUnited states that it has entered into several contractual arrangements to purchase swine RECs; however, within the past year, EnergyUnited was informed that the swine and poultry operation that was expected to deliver significant RECs to meet EnergyUnited's requirements will not come to fruition, will not generate any swine energy at the current time and has no certainty with regard to swine REC viability in the future. EnergyUnited has contracted for the purchase of a significant number of out-of-state swine RECs that could be used to meet a portion of its future swine waste set-aside requirements for several years, but despite these efforts, EnergyUnited does not anticipate meeting its portion of the swine waste set-aside requirement for calendar year 2019 and will again be seeking a deferral from the Commission. EnergyUnited has contracted for the purchase of out-of-state poultry RECs which are banked for future requirements and have re-negotiated a contract to significantly increase the potential annual purchase of poultry RECs. Depending on production with the contracted party, which is expected to begin in the fall of 2019, EnergyUnited anticipates meeting poultry waste set-aside compliance requirements for future years. For compliance with the modified poultry set-aside requirements in 2015 through 2018, EnergyUnited made one-time purchases of in-state poultry RECs from other utilities across the state, which allowed it, in combination with banked in-state and out-of-state poultry RECs, to achieve compliance with the modified requirements of N.C.G.S. § 62-133.8(f) for 2018. Pursuant to the Commission's 2019 Delay Order, EnergyUnited will need to purchase additional poultry RECS in 2019. EnergyUnited displayed its anticipated annual REPS riders for compliance years 2019-2021 as \$3.60 for residential customers, \$18.36 for commercial customers, and \$184.44 for industrial customers. EnergyUnited states that it does not anticipate an increase in its rider during the next several years. On September 16, 2020, the Commission issued an order approving EnergyUnited's 2018 REPS compliance report, accepting EnergyUnited's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in EnergyUnited's sub-account.

On August 26, 2020, in Docket No. E-100, Sub 168, EnergyUnited filed its 2019 REPS compliance report and 2020 REPS compliance plan. In its report, EnergyUnited states that it met its 2019 general REPS requirement (272,329 RECs), its solar set-aside requirements (5,447 RECs), and its poultry waste set-aside requirement (9,693 RECs). EnergyUnited's swine waste set-aside requirement was deferred until 2020. EnergyUnited has developed two approved Energy Efficiency Programs and continues to purchase RECs and consider development of PPAs in order to promote new renewable generation. In its plan, EnergyUnited states it intends to comply with its future REPS obligations through its SEPA allocations, approved EE programs, and the purchase of RECs and renewable energy, including the purchase of renewable energy from Iredell Transmission, LLC (a landfill gas-powered generation facility). EnergyUnited states that it has participated with a group of NC electric power suppliers, as

approved by the Commission, to jointly procure and engage in collaborative efforts to obtain renewable energy or renewable energy certificates to satisfy the swine and poultry waste set-aside requirements. EnergyUnited has contracted for the purchase of a significant number of out-of-state swine RECs that could be used to meet a portion of its future swine waste set-aside requirements for several years, but despite these efforts, EnergyUnited does not anticipate meeting its portion of the swine waste set-aside requirement for 2020 and will again be seeking a deferral from the Commission. EnergyUnited, with the collaborative group, has also entered into several different poultry REC agreements with various suppliers, although those projects continue to strive to achieve desired outputs. EnergyUnited also contracted with an additional poultry RECs supplier to begin in 2023 which should provide for more security in compliance with its poultry RECs requirement in the coming years. EnergyUnited indicated its anticipated annual REPS riders for compliance years 2020-2022 as \$3.60 for residential customers, \$18.36 for commercial customers, and \$184.44 for industrial customers. EnergyUnited states that it does not anticipate an increase in its rider during the next several years. Approval of EnergyUnited's 2019 REPS compliance report, acceptance of EnergyUnited's 2020 REPS compliance plan and retirement of 2019 RECs held in EnergyUnited's sub-accounts is pending before the Commission.

Tennessee Valley Authority (TVA)

On September 7, 2010, in Docket No. E-100, Sub 129, the Commission issued an Order approving TVA's request to file an aggregated REPS compliance plan and REPS compliance report on behalf of its four wholesale customers serving retail customers in North Carolina: Blue Ridge Mountain EMC; Mountain Electric Coop, Inc.; Tri-State EMC; and Murphy Electric Power Board.

On October 22, 2019, pursuant to an extension of time granted by the Commission on August 27, 2019, in Docket No. E-100, Sub 163, TVA filed its 2019 REPS compliance plan and 2018 REPS compliance report. In its plan, TVA indicates its intent to fulfill the general REPS requirement in 2019 through 2021 with its SEPA allocations, purchase of out-of-state wind RECs, and the purchases of various in-state RECs. Regarding its cooperatives' solar set-aside requirement in years 2019 through 2021, TVA states that it plans to use its TVA Generation Partners solar site for meeting 100% of the cooperatives' solar set-aside requirements. TVA states that it is making reasonable efforts to procure potential and available swine RECs, but it believes that there are not sufficient amounts of such energy and RECs available to meet the 2019 swine waste set-aside requirements. TVA indicated it would be joining a group of electric suppliers in seeking to delay the swine waste set-aside for an additional year. The Commission's 2018 Delay Order provided a one-year delay of the swine waste set-aside requirement for electric power suppliers. In its report, TVA states it had satisfied its cooperatives' 2018 general REPS requirement with its SEPA allocations, purchase of out-of-state wind RECs, and the purchases of various in-state RECs and had satisfied its cooperatives' 2018 solar set-aside requirement

through the generation of solar energy. TVA notes that it was relieved of its 2018 swine waste set-aside requirements and had fulfilled its 2018 poultry waste set-aside requirement. On September 16, 2020, the Commission issued an order approving TVA's 2018 REPS compliance report, accepting TVA's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in TVA's sub-accounts.

On August 31, 2020, TVA, acting as utility compliance aggregator on behalf of Blue Ridge Mountain EMC, Mountain Electric Cooperative, Tri-State EMC, and Murphy Electric Power Board, filed its 2020 REPS compliance plan and 2019 REPS compliance report. In its plan, TVA indicates its intent to fulfill the general REPS requirement in 2020 through 2022 with its SEPA allocations, purchase of out-of-state wind RECs, and the purchases of various in-state RECs. With regard to its cooperatives' solar set-aside requirement in years 2020 through 2021, TVA stated that it plans to use its TVA Generation Partners solar site for meeting 100% of the cooperatives' solar set-aside requirements. TVA states that it has acquired a source for poultry RECs that will supply sufficient RECs for TVA to meet the current 2020 poultry waste set-aside requirement. TVA indicates that despite making reasonable efforts to procure swine RECs through multiple requests for offers, a lack of response indicates that there are insufficient swine waste resources available for TVA to meet the current 2020 swine waste set-aside requirement. Accordingly, TVA will be joining with other electric suppliers in filing a request to delay the swine waste set-aside requirement for an additional year. In its report, TVA states it has satisfied its cooperatives' 2019 general REPS requirement (78,171 RECs) with its SEPA allocations, purchase of out-of-state wind RECs, and the purchases of various in-state RECs and had satisfied its cooperatives' 2019 solar set-aside requirement (23,032 RECs) through the generation of solar energy. TVA notes that it was relieved of its 2019 swine waste set-aside requirements and had fulfilled its 2019 poultry waste set-aside requirement. Approval of TVA's 2019 REPS compliance report, acceptance of TVA's 2020 REPS compliance plan and authorization to retire 2019 RECs held in TVA's sub-accounts is pending before the Commission.

Municipally Owned Electric Utilities

North Carolina Eastern Municipal Power Agency (NCEMPA)

On August 28, 2019, in Docket No. E-100, Sub 163, NCEMPA filed, on behalf of its members, its 2019 REPS compliance plan and 2018 REPS compliance report. In its REPS compliance plan, NCEMPA states that its members have no plans to generate electric power at a renewable energy facility but will continue to meet their REPS requirements by purchasing RECs and through its members SEPA allocations. NCEMPA further states that it continues to implement EE programs, but it will no longer use EE as a method of REPS compliance, citing the costs of M&V, and the low number of RECs actually produced. NCEMPA states that it has entered into contracts to purchase various types of RECs, including

contracts for enough RECs to satisfy the solar set-aside requirement through 2021, and its pro rata share of the statewide aggregate of the poultry waste set-aside requirement through 2021. With regard to the swine waste set-aside requirements, NCEMPA states that it contracted for swine waste RECs and has taken delivery of a portion of these RECs; however, counterparty delays and operational failures continue to place NCEMPA in a position where it will be unable to meet its swine waste set-aside requirements in 2018. NCEMPA notes that the Commission's 2018 Delay Order delayed the swine waste set-aside requirement for another year. In its REPS compliance report, NCEMPA states that it met its 2018 general REPS requirement (701,304 RECs) through the purchase of bundled renewable energy from hydro generation sources and the purchase of solar, biomass, and poultry RECs. Additionally, NCEMPA states in its report that it met its 2018 solar set-aside requirement (14,027 RECs) by purchasing solar RECs and its 2018 poultry waste set-aside requirement (16,098 RECs) by purchasing poultry RECs and RECs available under S.L. 2011-279 (Senate Bill 886). NCEMPA shows in its REPS compliance report that its 2018 actual incremental compliance costs were well below the per-account cost cap. On September 16, 2020, the Commission issued an order approving NCEMPA's 2018 REPS compliance report, accepting NCEMPA's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in NCEMPA's sub-accounts.

On August 31, 2020, in Docket No. E-100, Sub 168, NCEMPA filed, on behalf of its members, its 2020 REPS compliance plan and 2019 REPS compliance report. In its REPS compliance plan, NCEMPA states that its members have no plans to generate electric power at a renewable energy facility but will continue to meet their REPS requirements by purchasing RECs and through its members SEPA allocations. NCEMPA further states that it continues to implement EE programs, but it no longer uses EE as a method of REPS compliance, citing the costs of M&V, and the low number of RECs actually produced. NCEMPA states that it has entered into contracts to purchase various types of RECs, including contracts for enough RECs to satisfy the solar set-aside requirement through 2022, and its pro rata share of the statewide aggregate of the poultry waste set-aside requirement through 2022. With regard to the swine waste set-aside requirements, NCEMPA states that it contracted for swine waste RECs and has taken delivery of a portion of these RECs; however, counterparty delays and operational failures continue to place NCEMPA in a position where it will be unable to meet its 2019 swine waste set-aside requirements. NCEMPA notes that the Commission's 2019 Delay Order delayed the swine waste set-aside requirements for 2019 for one year. In its REPS compliance report, NCEMPA states that it met its 2019 general REPS requirement (734,035 RECs) through the purchase of bundled renewable energy from hydro generation sources and the purchase of solar, biomass, and poultry RECs. Additionally, NCEMPA states in its report that it met its 2019 solar set-aside requirement (15,380 RECs) by purchasing solar RECs and its 2019 poultry waste set-aside requirement (27,156 RECs) by purchasing poultry RECs and RECs available under S.L. 2011-279 (Senate Bill 886). NCEMPA shows in its REPS compliance report that its 2019 actual incremental compliance costs were

well below the per-account cost cap. Approval of NCEMPA's 2019 REPS compliance report, acceptance of NCEMPA's 2020 REPS compliance plan and retirement of 2019 RECs held in NCEMPA's sub-accounts is currently pending before the Commission.

On July 15, 2020, Electricities, NCEMPA, and NCMPA1 (Power Agencies) filed a request to reopen NC-RETS retail sales inputs for 2018. In that request, the Power Agencies notified the Commission that Electricities discovered an error in the Power Agencies 2018 retail sales data submitted to NC-RETS. Specifically, 2018 retail sales for the Power Agencies were incorrectly entered into NC-RETS due to an error in the calculation methodology used in compiling total retail sales data. As a result, system losses were erroneously included in the inputted total sales number, when such losses should not have been included in calculating total sales. For 2018, NCEMPA inputted its members' total MWh sales as being 7,689,807 MWh, which erroneously includes their total system losses of 349,505 MWh - an overstatement of 4.55%. The correct total retail sales for NCEMPA's member municipalities in 2018 was 7,340,302 MWh. On August 31, 2020, the Commission issued an order allowing NCEMPA and NCMPA1 to update its 2018 total retail sales data in NC-RETS. In that order, the Commission specifically determined "that (1) any such adjustment shall not alter its load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement relied upon by any electric power supplier in its REPS and REPS EMF Rider or 2019 Compliance Plan, as applicable; and (2) any such adjustment shall not alter any electric power suppliers' load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021." NCEMPA and NCMPA1 were ordered to provide updated information regarding corrections to the agencies' retired RECs subaccounts no later than September 28, 2020.

North Carolina Municipal Power Agency No. 1 (NCMPA1)

On August 28, 2019, in Docket No. E-100, Sub 163, NCMPA1 filed its 2019 REPS compliance plan and 2018 REPS compliance report, on behalf of its member municipalities. In its plan, NCMPA1 states that it intends to meet its members' REPS requirements by investigating and developing new renewable energy facilities, purchasing RECs, and utilizing SEPA allocations. NCMPA1 states that it will continue to implement its current EE programs, but it will no longer use EE as a method of REPS compliance, citing the costs of M&V, the low number of RECs actually produced, and the availability of other REPS compliance methods. NCMPA1 states that it had entered into contracts to purchase various types of RECs and will continue to investigate the market for unbundled RECs as a cost-effective means of REPS compliance. In its REPS compliance plan, NCMPA1 states that it had entered into contracts for enough RECs to satisfy the solar set-aside requirements through 2021, and contracts for enough RECs to satisfy the poultry waste set-aside requirements through 2021. With regard to the swine waste set-aside requirements, NCMPA1 states that continued delays

among counterparties, terminated REC agreements with counterparties, and material delays and terminations in the operation of swine waste to energy projects has resulted in NCMPA1 projecting that it will not be able to meet its swine waste set-aside requirements in 2019 or beyond. In its REPS compliance report, NCMPA1 states that it met its 2018 general REPS requirement (493,303 RECs) by purchasing renewable energy from solar generation resources, purchase of bundled renewable energy from hydro generation resources, and through the purchase of solar, biomass, hydro and poultry RECs. Additionally, NCMPA1 states that it met its 2018 solar set-aside requirement (9,867 RECs) by purchasing electricity from solar generating facilities and through the purchase of solar RECs and met its 2018 poultry set-aside requirement (11,235 RECs) through the purchase of RECs. NCMPA1 states that its 2018 incremental costs were below the annual limit on incremental costs for REPS compliance. On September 16, 2020, the Commission issued an order approving NCMPA1's 2018 REPS compliance report, accepting NCMPA1's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in NCMPA1's sub-accounts.

On August 31, 2020, in Docket No. E-100, Sub 168, NCMPA1 filed its 2020 REPS compliance plan and 2019 REPS compliance report, on behalf of its member municipalities. In its plan, NCMPA1 states that it intends to meet its members' REPS requirements by investigating and developing new renewable energy facilities, purchasing RECs, and utilizing SEPA allocations. NCMPA1 states that it will continue to implement its current EE programs, but it no longer uses EE as a method of REPS compliance, citing the costs of M&V, the low number of RECs actually produced, and the availability of other REPS compliance methods. NCMPA1 states that it had entered into contracts to purchase various types of RECs and will continue to investigate the market for unbundled RECs as a cost-effective means of REPS compliance. In its REPS compliance plan, NCMPA1 states that it had entered into contracts for enough RECs to satisfy the solar set-aside requirements through 2022, and contracts for enough RECs to satisfy the poultry waste set-aside requirements through 2022. With regard to the swine waste set-aside requirements, NCMPA1 states that continued delays among counterparties, terminated REC agreements with counterparties, and material delays and terminations in the operation of swine waste to energy projects has resulted in NCMPA1 projecting that it will not be able to meet its swine waste set-aside requirements in 2019 or beyond. NCMPA1 notes the 2019 Delay Order delayed its requirement to meet swine waste set-asides for another year. In its REPS compliance report, NCMPA1 states that it met its 2019 general REPS requirement (517,705 RECs) by purchasing renewable energy from solar generation resources, purchase of bundled renewable energy from hydro generation resources, and through the purchase of solar, biomass, hydro and poultry RECs. Additionally, NCMPA1 states that it met its 2019 solar set-aside requirement (10,355 RECs) by purchasing electricity from solar generating facilities and through the purchase of solar RECs and met its 2019 poultry set-aside requirement (19,101 RECs) through the purchase of RECs. NCMPA1 states that its 2019 incremental costs were below the annual limit on incremental costs

for REPS compliance. Approval of NCMPA1's 2019 REPS compliance report, acceptance of NCMPA1's 2020 REPS compliance plan and authorization to retire 2019 RECs held in NCMPA1's sub-accounts is pending before the Commission at this time.

On July 15, 2020, ElectriCities, NCEMPA, and NCMPA1 (Power Agencies) filed a request to reopen NC-RETS retail sales inputs for 2018. In that request, the Power Agencies notified the Commission that ElectriCities discovered an error in the Power Agencies 2018 retail sales data submitted to NC-RETS. Specifically, 2018 retail sales for the Power Agencies were incorrectly entered into NC-RETS due to an error in the calculation methodology used in compiling total retail sales data. As a result, system losses were erroneously included in the inputted total sales number, when such losses should not have been included in calculating total sales. For 2018, NCMPA1 inputted that its members' total 2018 MWh sales were 5,394,312 MWh. That figure erroneously includes their total system losses of 217,267 MWh - an overstatement of 4.03%. The correct retail total sales for NCMPA1's member municipalities in 2018 was 5,177,045 MWh. On August 31, 2020, the Commission issued an order allowing NCEMPA and NCMPA1 to update its 2018 total retail sales data in NC-RETS. In that order, the Commission specifically determined "that (1) any such adjustment shall not alter its load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement relied upon by any electric power supplier in its REPS and REPS EMF Rider or 2019 Compliance Plan, as applicable; and (2) any such adjustment shall not alter any electric power suppliers' load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021." NCEMPA and NCMPA1 were ordered to provide updated information regarding corrections to the agencies' retired RECs subaccounts no later than September 28, 2020.

Fayetteville Public Works Commission (FPWC)

On August 30, 2019, in Docket No. E-100, Sub 163, FPWC filed its 2019 REPS compliance plan and 2018 REPS compliance report. In its REPS compliance plan, FPWC states that it intends to meet its REPS requirements by earning solar RECs through the generation of electric power attributable to its community solar program, as well as utilizing its SEPA allocations, implementing DSM and EE programs, and through the purchase of RECs. Further, FPWC notes that it continues to seek and consider all reasonable opportunities to engage in efforts to achieve compliance with the swine and poultry waste set-aside requirements. Finally, FPWC states that its incremental costs for REPS compliance are projected to be less than its per-account cost cap in 2019 through 2021. In its REPS compliance report, FPWC states that it is required to meet a 2018 general REPS requirement of 196,733 RECs, solar set-aside requirements of 3,935 solar RECs and poultry waste set-aside requirements of 4,668 poultry RECs. On September 16, 2020, the Commission issued an order approving FPWC's 2018 REPS compliance report, accepting FPWC's 2019 REPS

compliance plan and authorizing retirement of 2018 RECs held in FPWC's sub-account.

On August 31, 2020, in Docket No. E-100, Sub 168, FPWC filed its 2020 REPS compliance plan and 2019 REPS compliance report. In its REPS compliance plan, FPWC states that it intends to meet its REPS requirements by earning solar RECs through the generation of electric power attributable to its community solar program, as well as utilizing its SEPA allocations, implementing a Voltage Reduction Strategy, which is currently in the pilot stage, and through the purchase of RECs. Further, FPWC notes that it continues to seek and consider all reasonable opportunities to engage in efforts to achieve compliance with the swine and poultry waste set-aside requirements. FPWC intends to move, possibly jointly with other electric power suppliers who are obligated to purchase poultry waste and swine waste set-aside RECs to further modify and delay their poultry and swine waste REPS requirement for one additional year. Finally, FPWC states that its incremental costs for REPS compliance are projected to be less than its per-account cost cap in 2019 through 2021. In its REPS compliance report, FPWC states that it is required to meet a 2018 general REPS requirement of 208,263 RECs, solar set-aside requirements of 4,166 solar RECs and poultry waste set-aside requirements of 7,564 poultry RECs. FPWC notes that pursuant to the Commission's 2019 Delay Order, it is not required to meet a swine waste set-aside REC requirement for 2019. Approval of FPWC's 2019 REPS compliance report, acceptance of FPWC's 2020 REPS compliance plan and authority to retire 2019 RECs held in FPWC's sub-account is currently pending before the Commission.

Town of Waynesville (Waynesville)

On September 16, 2019, in Docket No. E-100, Sub 163, Waynesville filed its 2018 REPS compliance report and 2019 REPS compliance plan. In its plan, Waynesville states that it intends to use its allocations from SEPA, RECs purchases, and EE savings from approved EE programs to meet its REPS requirements. In its 2018 REPS compliance report, Waynesville states that it retired a total of 8,554 RECs to meet its REPS compliance requirements, which included 172 solar RECs to meet the solar set-aside requirements and 207 poultry waste RECs to meet the poultry waste set-aside requirements. On September 16, 2020, the Commission issued an order approving Waynesville's 2018 REPS compliance report, accepting Waynesville's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in Waynesville's sub-account.

On September 2, 2020, in Docket No. E-100, Sub 168, Waynesville filed its 2019 REPS compliance report and 2020 REPS compliance plan. Waynesville stated that it met its 2019 REPS compliance requirements by retiring a total of 8,597 RECs, which included 179 solar RECs to meet the solar set-aside requirements and 330 poultry waste set-aside RECs to meet its poultry REPS requirement. Waynesville indicated that its swine waste set-aside requirements for

2019 were zero as modified by the Commission's 2019 Delay Order. In its plan, Waynesville states that it expects to fully meet the solar set-aside requirement for the 2020, 2021, and 2022. However, Waynesville does not expect to meet either the swine waste set-aside or its poultry waste set-aside requirements for the planning period stating that due to extremely challenging conditions for a municipality of its size there is no market hub or REC clearinghouse where these RECs can be purchased on the open market. Waynesville indicates that it must approach developers that are building these projects and try to purchase a very small number of RECs which makes negotiating contracts and seeking supply agreements much more difficult. Waynesville will continue to work diligently to seek additional supply, but states that the path to compliance with both the swine and poultry waste set-aside requirements will continue to be challenging. Waynesville is reviewing appropriate measures to develop and offer its customers EE programs that will deliver savings and count toward its future REPS requirements. It also intends to use its allocations from SEPA to meet its REPS requirements. Approval of Waynesville's 2019 REPS compliance report, acceptance of Waynesville's 2020 REPS compliance plan and authority to retire 2019 RECs held in Waynesville's sub-account is currently pending before the Commission.

Carolina Power Partners, LLC, f/k/a NTE Carolinas, LLC

On September 3, 2019, NTE Carolinas, LLC (NTE Carolinas) filed a motion requesting that the Commission authorize it to serve as utility compliance aggregator on behalf of the Towns of Winterville, Stantonsburg, Sharpsburg, Lucama, and Black Creek (Towns), as well as the Cities of Concord and Kings Mountain (Cities), (jointly NTE Municipalities). On October 18, 2019, the Commission issued an order finding that based on the representation that NTE Carolinas is the full requirements wholesale electric provide for each of the NTE Municipalities, it finds good cause to authorize NTE Carolinas to serve as the utility compliance aggregator on behalf of the NTE Municipalities and to waive the obligations of each of the NTE Municipalities to annually file REPS compliance plans and REPS compliance reports pursuant to Commission Rule R8-67(b) and (c), respectively, so long as NTE Carolinas continues to serve as utility compliance aggregator on behalf of the NTE Municipalities.

On November 1, 2019, in Docket No. E-100, Sub 163, in accordance with Commission Order dated September 4, 2019, granting an extension of time, NTE Carolinas filed 2019 REPS compliance plans on behalf of its members and 2018 REPS compliance reports on behalf of the Towns. In its plan, NTE Carolinas states that the NC Municipalities have significant quantities of RECs obtain under their prior all-requirements supply contracts with DEP, and plan to satisfy their 2019-2021 compliance obligations using banked RECs. These RECs include in-state solar RECs, in-state swine waste RECs, poultry RECs, in-state biomass landfill methane, and in-state hydroelectric RECs. In its report NTE Carolinas states that it retired for the Towns for 2018, at total of 11,338 general RECs, 397 solar RECs, and 466 poultry RECs. Pursuant to the Commission's 2018 Delay Order, the

Towns were not required to meet swine waste set-aside RECs for 2018. As the Towns complied with their 2018 REPS obligations through retirement of RECs previously acquired from DEP, the actual costs of compliance are determined by the costs of acquiring those RECs under the former supply contracts with Duke, which costs were incurred prior to calendar year 2018. The 2018 REPS compliance report for the Cities was included in DEP's 2018 REPS compliance report.

On May 22, 2020, NTE Carolinas notified the Commission that it has changed its name from NTE Carolinas, LLC, to Carolina Power Partners, LLC (CPP). On September 16, 2020, the Commission issued an order approving CPP's 2018 REPS compliance report, accepting CPP's 2019 REPS compliance plan and authorizing retirement of 2018 RECs held in CPP's sub-accounts.

On August 31, 2020, CPP filed its 2019 REPS compliance report and 2020 REPS compliance plan on behalf of its members. In its plan, CPP states that it intends to use banked in-state solar RECs, in-state swine waste RECs, poultry RECs, in-state biomass landfill methane, and in-state hydroelectric RECs to comply with its 2019-2022 compliance obligations for each of its members. CPP states that it will use SEPA allocations for the Cities of Concord and Kings Mountain within the 30% limits. In its report CPP states that it met its 2019 requirement for general RECs and did not have a swine waste set-aside REPS obligation for 2019. CPP provided information confirming that it also met its RECs obligation for solar and poultry waste set-aside for 2019. Approval of CPP's 2019 REPS compliance report, acceptance of CPP's 2020 REPS compliance plan and authority to retire 2019 REC's in CPP's sub-accounts is pending with the Commission.

CONCLUSIONS

All the electric power suppliers have met the 2019 general REPS requirements and appear on track to meet the 2020 general REPS requirements. All the electric power suppliers have met the 2019 solar set-aside requirements and appear to be on track to meet the 2020 solar set-aside requirement. The Commission granted a joint motion to delay implementation of the 2019 swine waste set-aside requirement for one year - except for the electric public utilities – requiring them to meet a 0.04% swine waste set-aside for 2019. The electric public utilities met the 0.02% swine waste set-aside for 2018. Most electric power suppliers do not appear to be on track to meet the swine waste set-aside requirements for 2020 and have indicated they will request a modification in these requirements for 2020, as well as a delay in future increases in these requirements. In addition, after meeting the poultry waste set-aside requirement for the first time in 2014, the electric power suppliers met the poultry waste set-aside requirement of 170,000 MWh level each year since then. In 2018, electric power suppliers met an increased poultry waste set-aside requirement of 300,000 MWh and a requirement of 500,000 MWh in 2019.

APPENDICES

APPENDICES

1. Environmental Review

- Letter from Chair Charlotte A. Mitchell, North Carolina Utilities Commission, to Secretary Michael S. Regan, North Carolina Department of Environmental Quality (August 7, 2020)
- Letter from Assistant Secretary for Environment Shelia Holman, North Carolina Department of Environmental Quality, to Chair Charlotte A. Mitchell, North Carolina Utilities Commission (September 11, 2020)

2. Rulemaking Proceeding to Implement Session Law 2007-397

- Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief, Docket No. E-100, Sub 113 (December 16, 2019, Errata Order issued February 13, 2020)
- Order Establishing 2019, 2020, and 2021 Poultry Waste Set-Aside Requirement Allocation, Docket No. E-100, Sub 113 (December 16, 2019, Errata Order issued February 13, 2020)
- Order Amending Rule R8-65, Docket No. E-100, Sub 113 (August 26, 2020)
- Order Approving Update to 2018 Retail Sales Input and Maintaining Poultry Waste Set-Aside Allocations, Docket No. E-100, Sub 163 (August 31, 2020)

3. Renewable Energy Facility Registrations

- Order Revoking Registration of Renewable Energy Facilities and New Renewable Energy Facilities, Docket No. E-100, Sub 130 (February 26, 2020)
- Order Giving Notice of Intent to Revoke Registration of Renewable Energy Facilities and New Renewable Energy Facilities, Docket No. E-100, Sub 130 (August 31, 2020)
- Order on Request for Declaratory Ruling, Docket No. SP-100, Sub 34 (November 18, 2019)

APPENDIX 1



State of North Carolina Utilities Commission

COMMISSIONERS

CHARLOTTE A. MITCHELL, CHAIR
TONOLA D. BROWN-BLAND KIMBERLY W. DUFFLEY
LYONS GRAY JEFFREY A. HUGHES
DANIEL G. CLODFELTER FLOYD B. MCKISSICK, JR.

August 7, 2020

Secretary Michael S. Regan
N.C. Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

Dear Secretary Regan:

In August 2007, the North Carolina General Assembly enacted comprehensive energy legislation, Session Law 2007-397 (Senate Bill 3), which, among other things, established a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) for this State. As part of this legislation, the General Assembly requires the Utilities Commission to submit an annual report no later than October 1 of each year on the activities taken by the Commission to implement and by the electric power suppliers to comply with the REPS requirements. The Commission is further required pursuant to N.C. Gen. Stat. § 62-133.8(j) to consult with the Department of Environmental Quality and include in its report "any public comments received regarding direct, secondary, and cumulative environmental impacts of the implementation of" the REPS requirement.

The Commission is not aware of the receipt of any public comments related to this issue. In order to respond to the General Assembly, I am requesting that the Department provide to the Commission any information it may have "regarding direct, secondary, and cumulative environmental impacts of the implementation of" the REPS requirement, including any public comments received by the Department. Your response by September 8, 2020, is appreciated so that the Commission may meet its deadline.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Mitchell".

Charlotte A. Mitchell

cc: Sheila Holman, Assistant Secretary for the Environment, DEQ
Bill Lane, General Counsel, DEQ
Mike Abraczynski, Director, Division of Air Quality

STREET ADDRESS:
430 North Salisbury Street · Raleigh, NC 27603

MAILING ADDRESS:
4325 Mail Service Center · Raleigh, NC 27699-4300

Telephone: (919) 733-4249
Facsimile: (919) 733-7300



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

September 11, 2020

Ms. Charlotte A. Mitchell, Chair
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Re: Renewable Energy and Energy Efficiency Portfolio Standard

Dear Chairwoman Mitchell:

The following information is being provided in response to your letter dated August 7, 2020 to the Department of Environmental Quality (DEQ). It consists of an update to the September 10, 2019 report on the direct, secondary and cumulative environmental impacts, including any public comments received by DEQ on the implementation of the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS), enacted under S.L. 2007-397 (Senate Bill 3).

A. Electricity Generation Mix

Renewable energy (RE) resources including hydroelectric, biomass, biogas, solar and wind, along with energy efficiency measures, are eligible resources under the REPS.¹ Figure 1 shows North Carolina's net electric power generation from the utility and independent power producer sectors for 2007, the year the REPS became effective.² In 2007, only 2.8% of electric power was generated by renewable sources, primarily hydroelectric power. By 2019, 12% of electricity (15 million megawatt-hours (MWh)) was generated by RE with 5.5% generated by solar and 4.8% generated by hydroelectric power. The significant increase in RE generation over the past twelve years is due to the monetary incentives and favorable regulatory environment for these sources provided by the REPS, federal and state tax credits, declining costs of RE technologies, and favorable requirements in North Carolina under the federal Public Utility Regulatory Policies Act of 1978 (PURPA).

In addition to this change in renewable electricity generation, there was also a shift in the use of fossil fuels. In 2007, 62% of the electric power was generated by coal, while natural gas only accounted for 4% of the electric power generation.³ By 2019, natural gas generated 32%

¹ Solar consists of solar photovoltaic (PV) and solar thermal. Biomass includes waste wood, wood residue, black liquor solids and biosolid fuels such as poultry litter. Biogas includes landfill gas and biogas from swine operations.

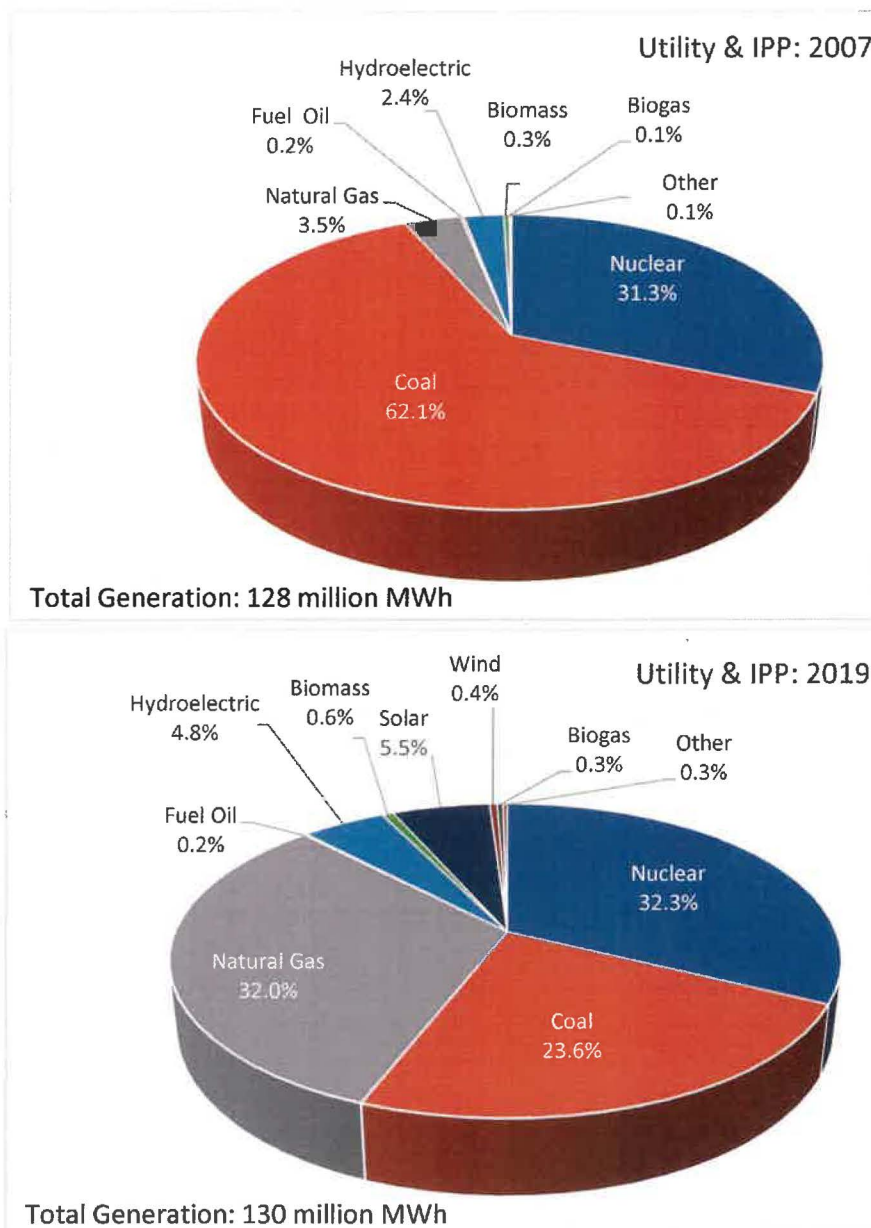
² Energy Information Administration (EIA) Form 923 Detailed Data, retrieved from <https://www.eia.gov/electricity/data/eia923/> 2019 data represents Form 923 Early Release Data dated June 18, 2020.

³ Energy Information Administration (EIA) Form 923 Detailed Data, <https://www.eia.gov/electricity/data/eia923/>.



and coal only generated 24% of the electric power in North Carolina. In twelve years, coal generation decreased from about 80 million MWh to 31 million MWh, while natural gas generation increased from about 5 MWh to 42 million MWh. The notable increase in natural gas generation between 2007 and 2019 is due to economic drivers, such as increased natural gas production from shale formations, lower natural gas prices, and federal and state regulations (such as the North Carolina Clean Smokestacks Act), which resulted in the replacement of smaller, older coal units with more efficient natural gas combined cycle plants.

Figure 1: Utility and Independent Power Producers (IPP): 2007 and 2019 Generation (MWh)



Source: US Energy Information Administration (EIA)



Table 1 shows the changes in generation for hydroelectric, biomass, biogas, solar and wind from 2007 to 2019 for the utility and independent power producers.⁴ Solar energy represented 7 million MWh (5.5% of total generation) in 2019. It is now at a similar level as hydroelectric power.⁵ There are now over 3,700 MW of utility-scale solar projects operating in North Carolina. A 208 MW onshore wind facility began operating in 2017 providing almost half a million MWh of generation. Biomass and biogas now represent about 1% of total generation.

Table 1. Change in Renewable Energy Electricity Generation in North Carolina from 2007 to 2019 in MWh

| Resource | 2007 | 2011 | 2013 | 2015 | 2017 | 2019 |
|---------------|-----------|-----------|-----------|-----------|-----------|-----------|
| Hydroelectric | 2,974,677 | 3,882,143 | 6,005,197 | 4,731,053 | 3,807,785 | 6,184,609 |
| Solar PV | | 17,380 | 297,395 | 1,295,833 | 4,996,411 | 7,184,159 |
| Wind | | | | | 470,743 | 523,139 |
| Biomass* | 432,033 | 611,417 | 884,270 | 718,271 | 802,351 | 716,957 |
| Biogas* | 85,745 | 336,680 | 337,055 | 467,672 | 604,084 | 564,628 |

* In the September 10, 2019 REPS report, the titles for these two resource categories were inadvertently switched. This table reports the generation for the correct resource.

Electricity generation from RE is expected to grow with the passing of House Bill 589 in 2017, which has the potential to add 2,660 MW of solar capacity, or approximately 4.6 million MWh per year of electricity generation in 2021.^{6,7} This would mean cumulative solar generation growing to over 10 million MWh of generation per year, compared to the 7 million MWh generated in 2019 per Table 1.

B. Air Pollutant Emissions Reductions

Figure 2 presents emissions reductions from 2007 to 2019. Based on the generation profile shown in Figure 1, it is estimated that the electric power sector had emission reductions of 96%, 53%, and 35% for sulfur dioxide (SO₂), nitrogen oxides (NO_x), and carbon dioxide (CO₂), respectively. These reductions are primarily due to the retirement of over 3,000 MW of coal power plants and installation of emissions controls on fossil fuel plants that are still operating. A small portion of these reductions are due to avoided fossil fuel generation resulting from REPS projects. The following sections present estimates of the amount of air pollution that was avoided due to REPS from 2007 through 2019.

⁴ EIA Detailed State Data, retrieved from <https://www.eia.gov/electricity/data/state/>. 2019 data represent Form 923 Early Release Data dated June 18, 2020.

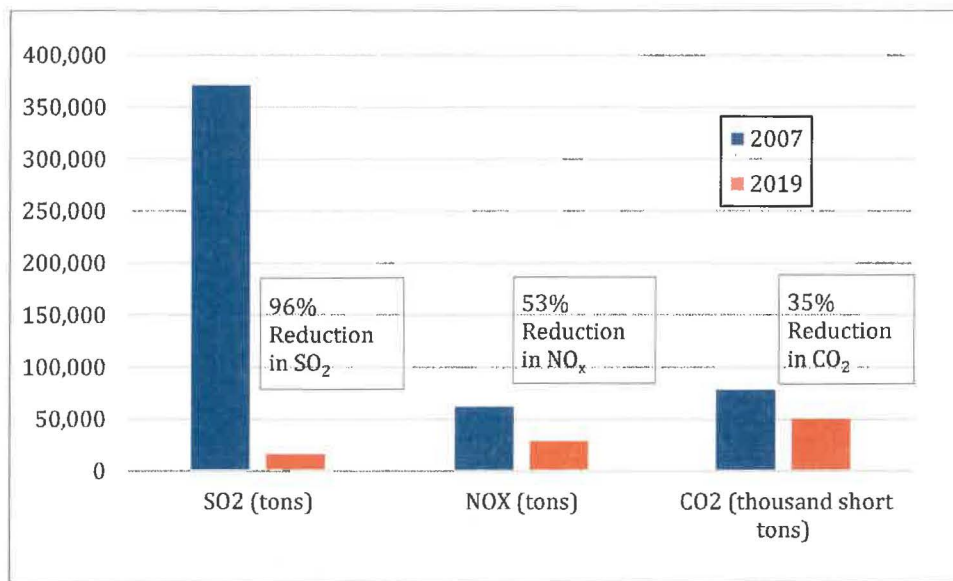
⁵ Hydroelectric generation varies from year to year based on the annual rainfall.

⁶ Session Law 2017-192, “An Act to Reform North Carolina’s Approach to Integration of Renewable Electricity Generation Through Amendment of Laws Related to Energy Policy and to Enact the Distributed Resources Access Act,” July 27, 2017, <https://www.ncleg.net/Sessions/2017/Bills/House/PDF/H589v6.pdf>.

⁷ Assuming a 20% capacity factor for solar photovoltaic generation.



Figure 2. North Carolina Power Plant Emissions in 2007 and 2019



Source: EPA Air Markets Program Database

Emission Reductions Due to Energy Efficiency Measures

Energy efficiency (EE) results in less demand for electricity generated by power plants; therefore, less air pollution is emitted from these power plants. To estimate the environmental benefits of EE programs, the NC North Carolina Renewable Energy Tracking System (NC RETS) is used. The NC RETS tracks the estimated amount of avoided electricity generation in MWh from EE programs operated by electricity retailers subject to the REPS.⁸ These EE programs are focused on residential and small commercial facilities.⁹ Table 2 shows the number of energy efficiency certificates (EECs) issued for each year from the NC RETS publicly available data. In 2019, North Carolina issued 5,658,772 MWh of EECs, which reduced retail sales of electricity by approximately 4%. This is the equivalent of a small coal utility power plant not operating.

The North Carolina Division of Air Quality (DAQ) estimated the CO₂, NO_x, and SO₂ emissions that were not emitted due to the avoided electricity generation resulting from EE measures. For this estimation, the total EECs issued in a given year are assumed equal to the avoided electrical generation in North Carolina during that year. The estimate also assumes that all the emissions reductions would occur in North Carolina. The U.S. Environmental Protection Agency (EPA) has developed average CO₂, NO_x, and SO₂ emission factors for power plants located in the State of North Carolina using the Emissions & Generation Resource Integrated Database (eGRID).¹⁰ Because these emission factors are available about every other year between 2007 and 2018, the

⁸ North Carolina Renewable Energy Tracking System, <http://www.ncrets.org/>.

⁹ Larger commercial and industrial facilities implement EE without assistance from the electricity retailers, therefore, avoided generation by these facilities is not tracked in NC RETS.

¹⁰ U.S. EPA, Emissions & Generation Resource Integrated Database (eGRID), available from <https://www.epa.gov/eGRID/emissions-generation-resource-integrated-database-egrid>, accessed August 2020.



DAQ interpolated North Carolina’s emission factors for years without values, and used the 2018 values to represent 2019. The air pollution not emitted by power plants was estimated as the avoided generation due to EE multiplied by the EPA eGRID emission factors.¹¹ This interpolation technique is new to this year’s report. In addition, the EECs are reconciled each year. Therefore, the generation and emissions values contained in previous reports may not match those shown in Table 2 for certain historical years.

Table 2. Energy Efficiency Certificates Issued and Estimated Avoided Air Pollution Emissions

| Year | EECs Or Avoided Generation (MWh) | CO ₂ Not Emitted (tons) | NO _x Not Emitted (tons) | SO ₂ Not Emitted (tons) |
|------|----------------------------------|------------------------------------|------------------------------------|------------------------------------|
| 2008 | 22,907 | 13,696 | 10 | 46 |
| 2009 | 80,008 | 46,266 | 29 | 79 |
| 2010 | 504,289 | 297,798 | 212 | 481 |
| 2011 | 1,134,040 | 634,228 | 476 | 836 |
| 2012 | 1,288,141 | 680,137 | 537 | 671 |
| 2013 | 2,119,916 | 1,078,895 | 807 | 917 |
| 2014 | 2,722,860 | 1,333,839 | 937 | 937 |
| 2015 | 6,218,251 | 2,871,549 | 1,937 | 1,761 |
| 2016 | 4,069,988 | 1,765,237 | 1,136 | 906 |
| 2017 | 4,812,048 | 2,005,437 | 1,304 | 931 |
| 2018 | 5,572,279 | 2,227,719 | 1,466 | 917 |
| 2019 | 5,658,772 | 2,262,298 | 1,488 | 931 |

The data in Table 2 show the reduction in emissions due to EE savings achieved through REPS. In 2019, EE measures resulted in 1,488 tons of NO_x and 931 tons of SO₂ not being emitted. The CO₂ not emitted due to EE measures is approximately 2.3 million tons, which is 4.5% of the total CO₂ emitted by power plants in North Carolina. This analysis shows that EE measures resulting from the REPS are significantly decreasing air pollution emitted in North Carolina.

Table 3 presents the 2018 eGRID emission rates per MWh for both North Carolina and the SERC Reliability Corporation / Virginia-Carolina Electricity Market Module Region (SRVC)’s grid region, which includes electric utilities operating in North Carolina, South Carolina, Virginia, and West Virginia.¹² North Carolina as a state now has *higher* emission rates for all three pollutants than the regional grid. North Carolina is no longer leading the region in CO₂, NO_x, or SO₂ emissions intensity as shown below.

¹¹ Note that the avoided generation includes electricity transmission line losses.

¹² Only a very small portion of West Virginia is included in the SRVC (containing one coal-fired power plant).



Table 3. 2018 eGRID Emission Rates for North Carolina and SRVC Region

| Year | Area | Annual CO₂ total output emission rate (lb/MWh) | Annual NO_x total output emission rate (lb/MWh) | Annual SO₂ total output emission rate (lb/MWh) |
|-------------|-------------|--|--|--|
| 2018 | NC | 799.6 | 0.526 | 0.329 |
| 2018 | SRVC | 743.3 | 0.437 | 0.263 |

Emission Reductions Due to Non-Emitting Renewable Energy Measures

The NC RETS also tracks the estimated amount of RE generation in MWh from projects receiving Renewable Energy Certificates (RECS). As of 2019, 93% of the installed RE capacity is in North Carolina. The REPS statute requires at least 75% of RECS to come from in state sources so North Carolina is exceeding this requirement and the majority of the benefits of this clean power are going to North Carolina's citizens and economy.

There are two categories of RE generation sources: 1) sources that combust fuel such as biomass and emit air pollution, and 2) sources that do not emit air pollution such as solar. The DAQ obtained the number of RECS issued for each year by RE project type from the NC RETS, then split the generation RECS into the emitting and non-emitting sources as shown in Table 4. In 2019, non-emitting RE sources generated a total of 6,445,573 MWh of electricity while RE sources that emit air pollution generated 5,092,945 MWh of electricity. This combined generation of over 11 million MWh of electricity is equivalent to a mid-sized utility coal power plant.

The DAQ estimated the reduction in emissions using the electricity generation from non-emitting RE projects and the EPA eGRID emission factors discussed in the previous section. The DAQ assumed that all the emissions reductions would occur in North Carolina. Table 4 presents a summary of reductions in emissions due to non-emitting RE generation projects achieved through the REPS. In 2019, non-emitting RE electricity generation resulted in 1,695 tons of NO_x and 1,060 tons of SO₂ not being emitted in the air. In addition, avoided CO₂ emissions are estimated at 2.6 million tons.

The annual avoided emissions in 2019 from both EE measures (shown in Table 2) and non-emitting RE (shown in Table 4) are summarized in Table 5. The total avoided CO₂ emissions from EE and RE in 2019 are roughly 9% of the total CO₂ emissions from North Carolina's electricity sector.¹³

¹³ Using EIA's most recent estimate of 2018 CO₂ emissions from North Carolina's electricity sector of 49.642 million metric tons obtained at <https://www.eia.gov/electricity/state/northcarolina/index.php>.



Table 4. Annual RECS Generated and Estimated Avoided Air Pollution Emissions

| Year | RECS from Emitting RE Sources* (MWh) | RECS from Non-Emitting RE Sources** (MWh) | CO ₂ Not-Emitted (tons) | NO _x Not-Emitted (tons) | SO ₂ Not-Emitted (tons) |
|------|--------------------------------------|---|------------------------------------|------------------------------------|------------------------------------|
| 2008 | 523,352 | 539,142 | 332,341 | 241 | 1,082 |
| 2009 | 705,098 | 790,184 | 456,941 | 287 | 778 |
| 2010 | 918,863 | 829,824 | 490,036 | 350 | 791 |
| 2011 | 2,290,003 | 719,672 | 402,487 | 302 | 531 |
| 2012 | 3,256,230 | 773,196 | 408,247 | 323 | 403 |
| 2013 | 4,005,084 | 1,420,290 | 722,832 | 541 | 614 |
| 2014 | 4,810,110 | 1,687,381 | 826,592 | 580 | 580 |
| 2015 | 4,442,271 | 2,131,664 | 984,389 | 664 | 604 |
| 2016 | 4,615,521 | 3,634,409 | 1,576,318 | 1,014 | 809 |
| 2017 | 4,891,762 | 4,848,953 | 2,020,817 | 1,314 | 938 |
| 2018 | 4,991,605 | 5,794,734 | 2,316,654 | 1,524 | 953 |
| 2019 | 5,092,945 | 6,445,573 | 2,576,850 | 1,695 | 1,060 |

* Emitting sources include biomass, cogeneration, and tire-derived fuel projects.

** Non-Emitting sources include hydropower, solar, and wind projects.

Table 5. Total Avoided Emissions Due to REPS in 2019

| REPS Program | RE & EE RECS (MWh) | CO ₂ Not Emitted (tons) | NO _x Not Emitted (tons) | SO ₂ Not Emitted (tons) |
|-----------------|--------------------|------------------------------------|------------------------------------|------------------------------------|
| Non-Emitting RE | 6,445,573 | 2,576,850 | 1,695 | 1,060 |
| EE Measures | 5,658,772 | 2,262,298 | 1,488 | 931 |
| Total | 12,104,345 | 4,839,148 | 3,183 | 1,991 |

C. Air Quality Permit Reviews

North Carolina General Statute § 62-133.8(g) requires a biomass combustion process at any new RE facility that delivers electric power to an electric power supplier to meet Best Available Control Technology (BACT). BACT is an emissions limitation for an air pollutant based on the maximum degree of emission reductions achievable for a facility considering energy, environmental, and economic impacts, and other costs. The DAQ continues to review air permit applications and make case-by-case BACT determinations for new RE facilities.

As of August 17, 2020, 35 facilities permitted or registered with the DAQ received RE credits under the REPS program. Since 2018, one facility stopped operating and no facilities have come online. Most of the permitted facilities capture and utilize landfill gas at municipal solid waste landfills as shown in Table 6. The second largest category of permitted and registered facilities utilize anaerobic digestion of swine waste to produce biogas at hog operations.



Table 6. Permitted Renewable Energy Facilities with BACT Limits

| Biomass Facility with BACT Limits | Number of Permitted or Registered Facilities |
|--|---|
| Biomass & Tire-Derived Fuels | 2 |
| Landfills | 16 |
| Swine Waste | 9 |
| Poultry Litter | 1 |
| Biomass & Poultry Litter | 7 |
| Total | 35 |

The DAQ continues to inspect and assure compliance for each BACT limit specified in a facility’s operating permit. All landfills are meeting their respective BACT limits. The two biomass facilities combusting tire-derived fuels have experienced some compliance challenges related to the SO₂ emissions. In December 2019, the DAQ assessed civil penalties against both facilities for violations of federal Prevention of Significant Deterioration regulations. Also, using its existing authority, the DAQ has either entered into or is the process of negotiating Special Orders by Consent (SOC’s) with both facilities to address ongoing SO₂ emissions issues and require specific emission reductions. As a condition of the most recent SOCs, both facilities are required to cease all plant operations by March 31, 2021.

In 2019, Duke Energy submitted to the DAQ permit applications for the H.F. Lee Steam Station, Buck Steam Station and Rockingham Combustion Turbine Facility to increase the operating hours for natural gas combustion turbines to help address challenges associated with solar photovoltaic (PV) generation. Duke Energy noted that increasing the operating hours for CTs would provide needed flexibility to support the operation of solar units including ramping and intermittent generation as documented in the September 10, 2019 REPS report. In that report, the DEQ noted that increasing the operating hours for the CTs would increase emissions and had the potential to negate the emissions reductions realized under the REPS. The DEQ noted that in its review of the permit applications it would evaluate alternative approaches for supporting solar PV generation that would not result in negative environmental impacts. Subsequently, on June 29, 2020, Duke Energy requested that these permit applications be rescinded, noting that conditions have evolved since the permit applications were submitted, and that it is prudent to reexamine the problem of how best to support solar energy operations and continue to evaluate alternatives.

On January 31, 2029, the Western North Carolina Regional Air Quality Agency in Buncombe County received an application from Duke Energy Progress to modify the permit for its Asheville power plant to include plant-wide applicability limits for particulate matter in accordance with New Source Review regulations. The modified permit was issued in May of 2020. This modification does not address specific operational changes to the existing CTs, but it allows for increased total PM and PM-10 emissions from these units since the total PM and PM-10 limits for those units were removed from the permit and replaced with facility-wide emissions



limits as part of the modification.¹⁴ Coal-fired generation at the Asheville plant was permanently retired and replaced with natural gas fired generation at the end of January of 2020.

D. Waste Management Permit Reviews

Thirty-two municipal solid waste landfills permitted by the Division of Waste Management utilize landfill gas (LFG) for energy projects. Approximately 60% are receiving RE credits under the REPS program. The majority of LFG collected at these facilities is used to generate electricity that is in turn sold to local power companies. The remaining uses are direct thermal projects that use LFG to heat nearby buildings or greenhouses or projects that involve LFG as fuel for boilers at neighboring manufacturing businesses. As reported last year, two projects are under development that will clean the landfill gas to pipeline quality and inject the gas into the pipeline for transportation and future sale. One existing project has issued a request for proposal to replace its gensets as they have reached the end of their useful life. Four projects indicated adding additional capacity or gensets due to increased gas generation as the landfill grows.

E. Swine Waste to Bioenergy

Biogas can be combusted on site to produce heat or electricity (waste-to-energy projects). The gas can also be treated and transmitted in natural gas pipelines as “renewable natural gas” (RNG) for combustion off-site to produce electricity. The potential benefits of producing biogas from swine waste include methane capture that would otherwise be emitted to the atmosphere, reducing odors from hog farms, the creation of new potential revenue streams, and the creation of jobs. The NC RETS reports more than 47,000 MWh of electricity was generated in 2019 from swine waste-derived biogas. Table 7 shows the number of registered swine waste-to-energy and RNG projects with RECS by location.

Table 7. 2019 Number of Swine Waste Facilities with RECS in NC RETS

| Project Type | North Carolina | Out-of-State | Total |
|-----------------------|-----------------------|---------------------|--------------|
| Waste-to-Energy | 8 | 8 | 16 |
| Renewable Natural Gas | 5 | 0 | 5 |
| Total | 13 | 8 | 21 |

During public forums for the North Carolina Clean Energy Plan, Energy Policy Council 2020 Biennial Report, and the Climate Change Risk Assessment and Resilience Plan, a number of stakeholders expressed concerns over air and water pollution from swine operations’ use of biogas technology that rely on lagoons and spray-field waste management systems. Specific concerns raised in opposition to swine waste biogas production are waterway pollution, noxious odors, and public health impacts for nearby and downstream communities, including communities with disproportionately large minority populations. Recommendations were developed for biogas that

¹⁴ The permit modification did not replace unit-specific emission limits with facility-wide emission limits for any other pollutants.



consider the concerns raised by stakeholders. These recommendations can be found in the North Carolina Clean Energy Plan Supporting Document Part 4 Stakeholder Engagement Process & Comments,¹⁵ Energy Policy Council 2020 Biennial Report,¹⁶ and in the North Carolina Climate Change Risk Assessment and Resilience Plan Appendix B: North Carolina Natural Working Lands Action Plan.¹⁷

The recommendations discussed above refer to an analysis being conducted by Research Triangle Institute (RTI) International in conjunction with Duke University and East Carolina University to quantify biogas opportunities within North Carolina. A preliminary report on the analysis conducted to date was submitted to the Energy Policy Council on August 8, 2020. The report gives the total biogas potential and the costs for development of RNG at single site locations. The costs for multi-farm systems and the analysis of the effects of biogas use on the climate, environment, and other societal impacts will be available when the final report is released in October of 2020. It will also recommend policy measures for biogas development and best uses of biogas.

F. Wind Energy

Onshore Wind Energy Development and Regulatory Environment

There is one wind turbine project registered in NC RETS as of August 2019: the Broyhill Wind Turbine located at Appalachian State University. As designed, the turbine has a capacity of 0.1 MW and can produce up to 147 MWh annually. As of 2019, one utility-scale wind energy facility (WEF) is in operation in the State. Located in Perquimans and Pasquotank counties near Elizabeth City, Avangrid’s Amazon Wind Farm, US East,¹⁸ operates 104 2-MW wind turbines. According to Avangrid, the facility spans 22,000 acres, and is leased from approximately 60 local landowners. Table 8 presents the actual generation from these facilities in 2019.^{19,20}

Table 8. Wind Power Capacity and Generation in North Carolina

| Facility | Summer Capacity (MW) | 2019 Actual Generation (MWh) |
|-----------------------|----------------------|------------------------------|
| Broyhill Wind Turbine | 0.1 | 12 |
| Amazon Wind Farm | 208 | 523,139 |

¹⁵ North Carolina Clean Energy Plan. <https://deq.nc.gov/energy-climate/climate-change/nc-climate-change-interagency-council/climate-change-clean-energy-16>.

¹⁶ North Carolina Energy Policy Council 2020 Biennial Report, Draft for Public Comment, <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-policy-council>.

¹⁷ North Carolina Climate Change Risk Assessment and Resilience Plan. <https://deq.nc.gov/energy-climate/climate-change/nc-climate-change-interagency-council/climate-change-clean-energy-17>.

¹⁸ Avangrid Renewables. (2017). Amazon Wind Farm US East. Retrieved from http://www.avangridrenewables.us/cs_amazon-wind-farm-us-east.html.

¹⁹ North Carolina Renewable Energy Tracking System, <http://www.ncrets.org/>.

²⁰ EIA Form 923 Detailed Data, retrieved from <https://www.eia.gov/electricity/data/eia923/>. 2019 data represents Form 923 Early Release Data dated June 18, 2020.



G. Summary

North Carolina has made great strides toward diversifying its energy portfolio in a manner that meets the needs of consumers and businesses, provides greater energy diversification, and grows the economy. This analysis of the REPS rule indicates that there have been substantial decreases in air pollutants between 2007 and 2019 due to avoided fossil fuel generation resulting from the implementation of the REPS, improving the health of many citizens and mitigating the impacts of climate change.

Sincerely,



Sheila Holman
Assistant Secretary for Environment

cc: Christopher Ayers, Executive Director, NC Utilities Commission Public Staff
Bill Lane, General Counsel, DEQ



APPENDIX 2

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Implement) ORDER MODIFYING THE SWINE
Session Law 2007-397) AND POULTRY WASTE SET-ASIDE
) REQUIREMENTS AND PROVIDING
) OTHER RELIEF

BY THE COMMISSION: On September 23, 2019, a motion to modify and delay the 2019 requirements of N.C. Gen. Stat. § 62-133.8(e) and (f) was filed jointly by Duke Energy Carolinas, LLC (DEC); Duke Energy Progress, LLC (DEP) (together, Duke); Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC); North Carolina Electric Membership Corporation (NCEMC); Public Works Commission of the City of Fayetteville (FPWC); EnergyUnited Electric Membership Corporation (EnergyUnited); the Tennessee Valley Authority (TVA); the Town of Waynesville; the Town of Windsor; North Carolina Eastern Municipal Power Agency (NCEMPA); and North Carolina Municipal Power Agency Number 1 (NCMPA1 and together with NCEMPA, Power Agencies) (hereinafter referred to collectively as the Joint Movants).¹ The Joint Movants seek Commission approval of the following requests: 1) to modify the requirements of North Carolina Gen. Stat. § 62-133.8(e) (Compliance With [North Carolina’s Renewable Energy and Energy Efficiency Portfolio Standard (REPS)] Requirement Through Use of Swine Waste Resources), as those requirements apply to DEC, DEP, and DENC, by lowering the 2018 compliance requirement to 0.04% of prior-year retail sales, delaying the scheduled increase to 0.07% of prior-year retail sales to begin in calendar year 2020, and delaying future increases by one year; 2) to modify the requirements of N.C.G.S. § 62-133.8(e), as those requirements apply to all other electric power suppliers, by delaying those requirements until calendar year 2020 and by delaying future increases in those requirements by one year; 3) to modify the requirements of N.C.G.S. § 62-133.8(f) (Compliance With REPS Requirement Through Use of Poultry Waste Resources) by lowering the 2019 statewide requirement to 500,000

¹ DEC states that it is also acting in its capacity as REPS compliance aggregator for Blue Ridge Electric Membership Corporation, Rutherford Electric Membership Corporation, the City of Dallas, the Town of Forest City, and the Town of Highlands. TVA states that it is acting in its capacity as REPS compliance aggregator for Blue Ridge Mountain Electric Membership Corporation, Mountain Electric Cooperative, Tri-State Electric Membership Corporation and Murphy Electric Power Board. NCEMPA states that it is acting in its capacity as REPS compliance aggregator for its 32 member municipalities, which are electric power suppliers. NCMPA1 states that it is acting in its capacity as REPS compliance aggregator for its 19 member municipalities, which are electric power suppliers. NTE appears as the REPS compliance aggregator for the following North Carolina municipal utilities: the Town of Black Creek, the Town of Lucama, the Town of Sharpsburg, the Town of Stantonsburg, the Town of Winterville, the City of Concord, and the City of Kings Mountain.

MWh and delaying subsequent increases in the requirement to 700,000 MWh in 2020 and 900,000 MWh in 2021; 3) to allow Joint Movants to bank any swine and/or poultry renewable energy certificates (RECs) previously or subsequently acquired for use in future compliance years; and 4) to allow Joint Movants to replace compliance with the poultry and swine waste requirements in 2019 with other compliance measures in accordance with N.C.G.S. § 62-133.8(b), (c), and (d). The Joint Movants state that they have individually and collectively made reasonable efforts to comply with the swine and poultry waste set-aside requirements, and argue that the relief sought is in the public interest. Finally, the Joint Movants request that the Commission consider and approve their motion without an evidentiary hearing because they believe that through required semiannual reports and stakeholder meetings, stakeholders and regulatory staff have ample information surrounding the Joint Movants' compliance efforts.

On October 24, 2019, the Commission issued an Order Requesting Comments.

Between November 7, 2019 and November 8, 2019, the North Carolina Poultry Federation (NCPF), the North Carolina Pork Council (NCPC), NTE Carolinas, LLC (NTE), Phibro, LLC (Phibro) and the Public Staff filed initial comments on the Joint Motion. Based on an initial review of those comments, the Commission issued an Order Requiring and Requesting Reply Comments, due on November 20, 2019.

On November 20, 2019, the following parties filed reply comments: NCEMC, Energy United, Phibro, DENC, Duke, FPWC, Power Agencies, NTE and the Public Staff. A summary of the initial and reply comments follow.

SUMMARY OF INITIAL COMMENTS

In its comments, NCPF states that it “does not oppose” the portion of the joint motion requesting to modify the requirements of N.C.G.S. § 62-133.8(f) by lowering the 2019 compliance requirement to 500,000 MWh and delaying the subsequent increases to 700,000 MWh in 2020 and to 900,000 MWh in 2021. NCPF limits its comments to the motion and its application to N.C.G.S. § 62-133.8(f), and takes no position with regard to banking poultry waste RECs and substituting other types of RECs for 2019 compliance purposes. In addition, NCPF stipulates and agrees that the Commission may enter an order on the motion on the basis of written submissions without the need for an evidentiary hearing. Finally, NCPF requests that the Commission “continue to monitor the process” and “continue to use its authority to motivate the parties to achieve compliance with the poultry waste set-aside as soon as practicable.”

In its comments, NCPC expresses some concern that the electric power suppliers' collective efforts have become too reliant on DEC, DEP, and DENC while other electric power suppliers' efforts have “come to rely upon [delay motions] to satisfy their statutory obligations”. NCPC states that with the compliance reports required by the Commission have become “formulaic and non-informative” and argue that “this minimalist effort towards compliance is even more concerning now that there is credible information in the record suggesting that certain electric power suppliers are not responding to requests for proposals (RFPs) and not taking on contracts for reasonably priced RECs based on the

belief that the annual Joint Motion will relieve them of their statutory obligations.² NCPD recognizes the difficulties associated with the electric power supplier's achieving compliance, but states that "electric power suppliers may be actively avoiding proposals and contracts based on the belief that annual waivers will be granted." NCPD further points to the Joint Movants petition as already setting the stage for compliance waivers in 2020 and 2021. Thus, NCPD urges the Commission to take steps to "develop and stimulate the market and assure future compliance with the swine waste set-aside". NCPD lays out four recommendation for the Commission to consider: 1) declaring that until compliance is achieved, price is not a "good faith" basis for rejecting qualifying swine waste RECs; 2) increase the maximum out of state set-aside percentage (currently established at 25%³) that can be utilized to meet compliance; 3) all RECs earned in the accounting period and all RECs banked up to that point should be applied and retired against the aggregate sector compliance goal without distinction based on the source of the RECs; and 4) the Public Staff should conduct an audit of compliance efforts targeting those electric power suppliers who have not shown any appreciable movement towards compliance over the last three years, including 2019.

In its initial comments, NTE states that that its municipalities are similarly-situated to the other cities and municipalities that are party to the motion in this docket. NTE opines that it has "engaged in reasonable efforts to obtain poultry and swine waste RECs to meet their compliance obligations" and for a lot of the same reasons as the joint movants, has "been unable to obtain additional swine and poultry waste RECs for 2019 compliance purposes." In summary, NTE states that it supports the request for relief, and agrees with the joint movants that it is in the public interest to grant the relief requested. NTE further requests that the Commission afford it the same relief as the Joint Movants.

In its initial comments, Phibro states that it does not take a position on the Joint Movants request for relief related to the poultry waste set-aside requirement. However, Phibro takes issue with the Joint Movants "claims that they have individually and collectively made reasonable efforts to comply with North Carolina's REPS requirements for swine waste resources." Phibro provides as evidence two specific events when Phibro either responded to an RFP or issued an RFP to sell out-of-state swine RECs to the Joint Movants at prices at least \$100 or greater per REC. The first instance, was in June of 2019 (June solicitation), where Phibro and one of the Joint Movants initially entered into an agreement to purchase 30 out-of-state swine RECS at an average price of \$110. This transaction ultimately fell through, according to Phibro, "as a result of a recent discussion

² This is referencing Phibro's in its initial comments in this docket pertaining to Phibro's interactions with one of the Joint Movants regarding an RFP's for Swine RECs. Phibro states on page 2 of its initial comments, filed on November 8, 2019, in this docket that "on or about June 10, 2019, one of the Joint Movants issued an RFP for in-state and out-of-state Swine RECs. Phibro responded offering 10 MWh swine RECs at \$100, 10 at \$110 and 10 at \$120. The Joint Movant initially indicated that it expected to purchase 30 swine RECs and asked Phibro to enter into one transaction at an average price of \$110 for the 30 RECs. However, before consummating the transaction, the Joint Movant told Phibro that it was no longer interested in purchasing any swine RECs from Phibro. One of the reasons stated was that, as a result of a recent discussion with other of the Joint Movants, this Joint Movant believed the Commission would likely grant relief from the obligation."

³ This does not apply to DENC pursuant to N.C.G.S. § 62-133.8(b)(2)(e).

with other of the Joint Movants, this Joint Movant believed the Commission would likely grant relief from the obligation.” The second instance, was in September 2019 (September RFP), when Phibro stated it sent an RFP for 200 out-of-state swine RECS to all “load serving entities” in North Carolina. Phibro stated that it placed a reserve price of \$100 per MWh on the auction, but received no response from the Joint Movants. As a result, Phibro states that it opposes the Joint Movants’ requested relief as related to the swine waste set-aside requirements. Additionally, Phibro states that it takes no position on the banking of swine or poultry RECs. Finally, Phibro requests that the Commission hold an evidentiary hearing to consider Phibro’s evidence in support of its view that the Joint Movants did not individually and collectively make reasonable efforts to comply with the REPS swine and poultry set-aside provisions.

The Public Staff, in its initial comments, states that the electric power suppliers’ semi-annual reports indicate that they are making good faith efforts to comply with the swine waste set-aside requirements, but will be unable to comply in 2019. The primary issue, in the Public Staff’s view, is whether the required retirement of swine waste RECs to meet a 0.04% requirement as proposed in the Joint Motion will excessively deplete the supply of RECs and make compliance excessively difficult in subsequent years. The Public Staff then details the reasons why it believes that conditions have now changed such that the Joint Movants’ request can be granted without making compliance in future years impractical.⁴ Based upon its review of this data, the Public Staff recommends that the Commission grant the Joint Movants’ requested modifications to the swine and poultry waste set-aside requirements.

SUMMARY OF REPLY COMMENTS

In its reply comments, NCEMC states that it has made reasonable efforts to comply with the swine and poultry waste set-asides, as evidenced by its semi-annual report. Despite these efforts, NCEMC states that it is not positioned to comply with the swine and poultry waste set-asides beyond what is set forth by the Joint Movants in this proceeding. In response to the claims made by Phibro, NCEMC responds that “NCEMC is not the unnamed Joint Movant and therefore cannot answer Phibro’s general allegations other than to assert that, even if Phibro’s allegations are proved, NCEMC and the uninvolved Joint Movants who have made reasonable efforts should not collectively be denied the relief requested.” Further, NCEMC states that it did receive Phibro’s RFP sent out in September 2019 offering out-of-state-swine RECs. However, NCEMC contends that it does not have a present need for out-of-state swine RECs, so it did not submit a proposal. With regard to Phibro’s request for a hearing, NCEMC opines that this request should not be granted due to the fact that Phibro failed to show that the Joint Movants would have collectively been able to fully comply with the swine waste set-aside had one or some of the Joint Movants purchased the out-of-state swine waste RECs from Phibro. Regarding the comments by the NCPD, NCEMC responds by stating that the NCPD comments rely heavily on those allegations of Phibro and notes that the NCPD does not oppose the Joint

⁴ The Public Staff’s comments includes data that is of a confidential nature, and is appropriately redacted from the public version of its comments. The Public Staff also filed under seal a version of its comments that includes the data in un-redacted form.

Movants motion. NCEMC further states that it does not support any of the four recommendations made by the NCPC. NCEMC concludes that even with Phibro's partial opposition, NCEMC believes that its efforts have been reasonable and that the requested relief should be granted.

In its reply comments, EnergyUnited states its support for the granting of the Joint Movants motion and also opposes the need for an evidentiary hearing on this matter given the evidence (annual compliance plans and compliance reports etc.) that is already available in this proceeding. EnergyUnited states that it issued no RFP's for out-of-state swine RECs during the year, but did receive an email solicitation for out-of-state swine RECs. With regard to that solicitation, EnergyUnited states that "the requested price per qualifying REC was much higher than the price for other qualifying swine waste RECs available in the market from other out-of-state producers." Thus, EnergyUnited did not submit a bid for those RECs. Further, EnergyUnited notes that it has contracts with other out-of-state suppliers at substantially lower prices than the solicitation. EnergyUnited voiced concern about requiring an electric supplier to pay prices for RECs that far exceed the price of comparable RECs from other sources. EnergyUnited expressed its belief that the price per REC is a good faith basis for rejecting an offer of any source. Further, EnergyUnited offers, that to the extent the Commission concludes that some additional guidance on pricing is warranted, the Commission could consider setting an upper limit on purchases, such as 5% or 10%. Finally, EnergyUnited notes the General Assembly's intent related to excessive prices on out-of-state RECs and points to the statutory cost cap on the annual use of such out-of-state RECs as evidence.

In its reply comments, Phibro reiterates its position regarding the denial of the Joint Movants request. Phibro states that the continual delaying of the REPS requirements "discourages investment in the very technologies that the North Carolina legislature obviously thought would be beneficial to the state of North Carolina." With that, Phibro requests that the Commission "put an end to the repeated cycle and effectuate the intent of the North Carolina legislature."

In its reply comments, DENC specifically responds to the comments made by the NCPC. DENC contends that the NCPC's recommendations are impractical and inconsistent with the practices DENC utilizes when developing its plans for REPS compliance. DENC states that it takes no position on the NCPC's first and fourth recommendations, but with regard to its second recommendation, DENC notes that it is not subject to the 25% out-of-state REC limit pursuant to N.C.G.S. § 62-133.8(b)(2)(e) and thus submits that any action the Commission takes on the NCPC's second recommendation should not apply to DENC. DENC's comments focus on the third recommendation by NCPC, which is to disregard use of the pro rata mechanism in determining REPS compliance, but instead all RECs earned in the accounting period and all RECs banked up to that point should be applied and retired against the aggregate sector compliance goal rather than by each electric power supplier's pro rata portion determined by its electricity sales. DENC states that this recommendation is inconsistent with the methodology approved nearly 10 years ago in this docket on March 31, 2010 (Pro Rata Order). DENC contends that the NCPC's recommendation disregards careful planning by DENC and overhauls the allocation method approved by the Commission

years ago with respect to calculating each utility's REPS requirements. DENC further opines that if accepted, the NCPC's third recommendation could potentially "result in wiping the slate clean for compliance purposes in future years for DENC, as the Company would be required to retire all of the banked swine-waste RECs it has acquired to date in order to cover a State-wide shortfall with respect to the aggregate requirement." In summary, DENC recommends the Commission grant the Joint Movants request and reject the NCPC's third recommendation.

In its reply comments, Duke disagrees with Phibro's assertion that it has not individually or jointly made reasonable efforts to comply with the REPS requirements for both the swine and poultry waste set-asides. Duke further states that its efforts are reflected in the semi-annual reports filed with the Commission in this docket, along with the fact that the level of swine waste set-aside compliance has grown to 0.04% in 2019\ (from 0.02% in 2018). Duke contends that it acted reasonably and prudently with respect to its decision to not purchase the out-of-state swine RECs from Phibro. Duke states it was not the party to which Phibro sought to sell 30 out-of-state swine RECs. With regard to the September RFP, Duke contends that it was prudent to not purchase RECs from Phibro, as the Duke further notes in its comments issues it had faced with the predecessor of Phibro, Blue Mountain Biogas (Blue Mountain). Duke had contracted to purchases RECs from Blue Mountain, but due to delays and other operational issues, ultimately terminated the contract.

Duke, then responds to the comments made by the NCPC. Duke responds first by stating that its compliance efforts are not in need of a new approach, as suggested by NCPC. Duke refutes NCPC's comment that "the electric suppliers are already setting the stage for compliance waiver requests in 2020 and 2021. See, Joint Motion at 14." Duke states that page 15 of the that same motion states that "This motion is not intended to address the Electric Suppliers' compliance with any REPS requirements beyond the 2019 compliance year" Duke notes its disagreement with NCPC's first recommendation related to rejecting RECs based on price. Duke states in its comments that it believes that it is not in the best interest of the customers to purchase RECs at above-market prices when cheaper RECs are available from other parties or sources. Duke additionally discusses NCPC's second recommendation related to modifying the 25% maximum for out-of-state REC purchases. Duke states that does not believe this would be a solution for all electric suppliers to meet compliance as it takes years for swine-to-waste energy projects to reach commercial operation and at this time, there are only a small number of market participants. Further, Duke notes that that varying the limit on allowable out-of-state RECs would make planning and forecasting future compliance requirements overly burdensome. Duke refutes the NCPC's third recommendation regarding compliance on an aggregate basis as well. Duke disagrees and states that to impose that the Joint Movants each retire their banked swine RECS, would "result in wiping the slate clean for compliance purposes in future years." This requirement would disrupt any progress the Joint Movants had made toward compliance and would penalize DEP, DEC and DENC, as they become the major contributor towards compliance. With regard to the fourth recommendation by NCPC, Duke offered no comments about the requirement that the Public Staff conduct an audit of the compliance efforts targeting electric power suppliers who have not shown any appreciable movement towards compliance over the last three

years, including 2019. Duke concluded its comments requesting the Commission deny Phibro's request for an evidentiary hearing and also deny the NCPC's recommendations.

In its reply comments, FPWC requests that the Commission deny the relief sought by the NCPC and Phibro in their comments. FPWC states that the relief that is sought by the NCPC is "neither warranted nor consistent with developing a swine waste REC market that will be viable on the long-term basis for both buyers and sellers." FPWC further states that with respect to Phibro's allegations of solicitations for swine RECS, FWPC neither was the electric power supplier whom was in contact to buy RECs from Phibro, nor was it one of the "load serving entities" that received an RFP to sell swine RECs. Finally, FPWC states that it has no records of every having any communications with Phibro prior to the filings in this instant proceeding.

In its reply comments, the Power Agencies assert that they have made good faith efforts allow their members to comply with their REPS obligations and that despite those efforts, their members have still not been able to achieve compliance with the REPS swine and poultry waste set-aside requirements. Next the Power Agencies respond to Phibro's comments. The Power Agencies attest that they are not the unnamed electric power supplier with whom Phibro had discussions regarding RFP solicitations for swine RECS. The Power Agencies note they did receive Phibro's September solicitation, but declined to submit a bid as the Power Agencies already had enough (25%) out-of-state swine RECs to meet the cap. The Power Agencies additionally note that the Power Agencies "have never rejected a proposal for the sale of in-state swine RECs based on the proposed REC price. While they are keenly interested in any opportunity to purchase in-state swine RECs, purchasing additional out-of-state swine RECs will do nothing to improve the Power Agencies' ability to comply with the swine waste set-aside." Regarding the comments of the NCPC, the Power Agencies speak to the NCPC comments and recommendations. The Power Agencies assert that the NCPC is wrong to suggest that the Power Agencies have not actively sought to achieve compliance with the swine waste set-aside requirement. The Power Agencies state that nothing is farther from the truth, "the Power Agencies will contract with anybody for in-state swine RECs, if they can get a counter-party to even enter into an agreement for delivery of such RECs." The Power Agencies further assert that "as described in their reports filed with the Commission, the Power Agencies have had in place contracts to procure their members' pro rata shares of in-state swine RECs for the past several years, and in every case, the counterparties have not been able to fulfill their obligations under those contracts." The Power Agencies additionally state that "abandoning the settled application of the requirements on a pro rata basis would do nothing to spur compliance." In summary, the Power Agencies request that the Commission not grant Phibro's request for an evidentiary hearing nor accept any of the NCPC's recommendations, but requests the Commission grant the Joint Movants motion in this proceeding.

In its reply comments, NTE responds to the comments of the NCPC by stating that NTE has not been taking a “passive approach” to compliance with regard to the swine waste set-aside compliance, but that NTE has undertaken efforts to spur the development of projects that would generate swine waste RECs for future compliance. NTE specifically discusses a proposed biogas project that was to be developed in Wilson County, NC (which was ultimately cancelled). NTE also responds to the comments of Phibro related to the September RFP that was purportedly sent to all NC “load serving entities.” NTE states that none of its member municipalities received this RFP from Phibro. In summary, NTE re-asserts that it has made reasonable efforts to comply with the swine and poultry waste set-asides and further requests that the Commission grant the Joint Movants motion.

In its reply comments, the Public Staff reiterates that its recommendation on the Joint Motion was based on its review of the electric power supplier’s June 2019 semi-annual reports filed in Docket No. E-100, Sub 113A as well as discussions it had with parties at the June 2019 animal waste stakeholder meeting, and the 2019 REPS compliance plans filed by the parties in September of 2019. The Public Staff notes that the two incidents discussed by Phibro in its comments (the June solicitation and September RFP) were not brought up in any of these filings or discussions. Also, the Public Staff notes that it anticipates that additional information about these events will be detailed in the December 2019 semi-annual reports filed by the electric power suppliers. The Public Staff further states that once these filings are received, it will review the information and conduct additional discovery as warranted. Further, the Public Staff asserts that for purposes of 2019 compliance, the Public Staff recommends that the Commission grant the relief requested by the Joint Movants.

Regarding the NCPC’s comments, the Public Staff asserts that it disagrees with the NCPC’s statement that the relief filings made by the electric power suppliers have become the “artifice the electric suppliers [other than DEC, DEP, and DENC] have come to rely on to satisfy their statutory obligations.” On the contrary, the Public Staff asserts that the “Commission’s careful consideration of each Electric Suppliers’ compliance efforts in prior years, and its limited use of the relief authorized in N.C.G.S. § 62-133.8(i)(2), to progressively implement the swine and poultry waste requirements for has been appropriate, based on challenges these animal waste-to-energy facilities have experienced both in North Carolina and across the country.” With regard to the NCPC recommendation that the Public Staff should be directed to conduct an audit of compliance efforts targeting those electric power suppliers who have not shown any appreciable movement towards compliance over the last three years, including 2019, the Public Staff submits that it already files comments on compliance plans, compliance reports, as well as comments in any relief proceeding and believes the current requirements to be reasonable. The Public Staff additionally commented on the NCPC’s recommendation that the Commission declare, that until compliance is achieved, that price is not a good faith basis for rejecting qualifying swine waste RECs. The Public Staff states that the Commission has previously addressed this issue and that in its December 1, 2015, Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2015 Delay Order) in this Docket, found that:

[I]t may be inappropriate for the electric power suppliers to reject proposals solely based on the price of RECs when there is ample room under the REPS cost-cap. The Commission has clearly stated that the set-aside requirements take priority and the General Assembly has established the reasonable limit an electric power supplier can spend for compliance with the REPS. Therefore, while the Commission does not intend to interject itself into negotiations, further monitoring of such negotiations may be necessary in future years. The failure to contract with swine waste developers is directly relevant to the question of whether the electric power suppliers have made a good faith effort to comply with the swine waste set-aside requirement.

2015 Delay Order at 5.

The Public Staff points out that as a result of that Order, the Commission made changes to the reporting requirements to require additional information regarding proposals being rejected and to provide a thorough discussion of the basis for rejection.

Regarding the recommendation of the NCPC that the out-of-state REC purchase limitation, currently of 25%, should be increased, the Public Staff agrees that it could be done, but notes that the current method of filing for relief, is more consistent with the goals set out by the General Assembly to promote the development of swine waste resources within the State of North Carolina.

Concerning the NCPC's recommendation that the compliance set-asides should be complied with on an aggregate basis, the Public Staff notes the Commission's Pro Rata Order, which agreed that the General Assembly established an aggregate obligation for swine and poultry waste set-aside requirements, but approved the Pro Rata Allocation Mechanism as "a reasonable and appropriate means for the electric power suppliers to meet the aggregate swine and poultry waste set-aside obligations." The Public Staff notes its belief that consistent with that Order that each electric power supplier should continue to be individually responsible for compliance of its pro rata share of the set-asides. Further, with regard to the Pork Council's position that all banked RECs should be retired against the aggregate compliance obligation without distinction based on the source of the RECs, the Public Staff states that implementing such a change in the mechanism for compliance with the aggregate requirements could be disruptive from both a compliance and cost recovery standpoint. The Public Staff notes its support for allowing the Electric Suppliers to continue banking some portion of their RECs to provide for a more consistent, sustainable level of compliance over time.

The Public Staff concludes its reply comments requesting that the Commission not require any evidentiary hearing on this matter and that the Commission direct the electric power suppliers to specifically describe in their December 2019 semi-annual report any interactions or discussions that it was party to with Phibro regarding the potential purchase of out-of-state RECs. This description should include a detailed description of the electric power suppliers' reasons for declining to purchase RECs from Phibro.

DISCUSSION

Pursuant to N.C.G.S. § 62-133.8(i)(2), the Commission, in developing rules implementing the REPS, shall:

Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.

Commission Rule R8-67(c)(5) states:

In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of N.C.G.S. § 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions.

The Commission has previously exercised this authority and delayed compliance with the swine and/or poultry waste set-aside requirements on several occasions by the following orders issued in this docket: the November 29, 2012 Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Granting Other Relief; the March 26, 2014 Final Order Modifying the Poultry and Swine Waste Set-Aside Requirements and Providing Other Relief; the November 13, 2014 Order Modifying the Swine Waste Set-Aside Requirement and Providing Other Relief (2014 Delay Order); the December 1, 2015 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2015 Delay Order); the October 17, 2016 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2016 Delay Order); and the October 16, 2017 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief (2017 Delay Order); the October 8, 2018 Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Relief (2018 Delay Order) (collectively, Delay Orders).

As an initial matter, the Commission considers Joint Movants' request to consider and approve their motion without the need for an evidentiary hearing. In support of this request, Joint Movants state that the compliance status for the swine and poultry waste set-aside requirements is essentially unchanged since the Commission issued its 2018 Delay Order. The motion is verified by Kendal C. Bowman, Vice President of Regulatory Affairs and Policy, North Carolina, for Duke Energy Corporation, pursuant to Commission Rule R1-7 on behalf of the Joint Movants. Phibro is the only party that specifically opposes this motion and has requested an evidentiary hearing to determine whether the electric power suppliers have made reasonable efforts to comply with the swine waste-set-aside requirements. As detailed above, Phibro alleges that it offered to sell out-of-state swine waste RECs to the electric power suppliers, but received no expressions of interest on

the part of the electric power suppliers. Phibro contends that by not contracting to purchase any swine waste RECs available, the electric power suppliers are “not making reasonable efforts to comply.” NCPD generally supports Phibro’s view.

The reply comments filed by some of the electric power suppliers addresses their decisions to not purchase these out-of-state swine RECs from Phibro, and disputes whether some of the electric power suppliers received Phibro’s communications inviting purchase of these RECs. The Public Staff states that none of the issues Phibro raised in its comments surfaced during the Public Staff’s investigation, but the Public Staff anticipates that the December 2019 semiannual report will address these issues. Ultimately, the Public Staff recommends that the Commission not hold an evidentiary hearing and that the Commission grant the Joint Movants’ requested modifications and delays in the swine waste set-aside requirements.

The Commission agrees with the Joint Movants and the Public Staff that the present request for modification and delay in the swine and poultry waste set-aside requirements may be decided without an evidentiary hearing. In reaching this decision, the Commission relies on considerations such as regulatory certainty and efficient implementation of the REPS requirements. In short, the timing of Phibro’s intervention in this proceeding and the relatively late date on which Phibro has presented its arguments to the Commission leaves no time for scheduling and conducting an evidentiary hearing before the end of the 2019 calendar year, at which time electric power suppliers need guidance from the Commission on their REPS compliance obligations. In addition, the issues Phibro raises are not unique to the 2019 compliance year and the remedy Phibro seeks can be granted for a future compliance year if the Commission determines such relief is in the public interest. Further, based on the representations by the Public Staff that the December 2019 semiannual report will address this issue and will be filed in Docket No. E-100, Sub 100, Sub 113A, the Commission concludes that the current process for deciding these issues through the semiannual reports and through verified filings remains appropriate. The Commission expects this report to contain a detailed analysis and description of the issues that Phibro has raised regarding the potential purchase of out-of-state RECs. Finally, after the filing of that report, should the Commission determine that a hearing is appropriate for the resolution of these issues, a hearing for that purpose can be scheduled well in advance of the end of the 2020 REPS compliance year.

The Commission next determines that the electric power suppliers have made reasonable efforts to comply with the REPS requirements and that granting the relief sought in the Joint Motion is in the public interest. First, the Commission agrees with the Joint Movants that the reasons underlying the relief provided through the Delay Orders parallels those that supported granting the relief sought in the present motion: despite efforts such as engaging swine and poultry waste-to-energy developers, RFPs, evaluating bids received, negotiating and executing long-term REC purchase agreements for these resources, processing interconnection requests from these generators, executing contracts for swine and poultry derived directed biogas, monitoring executed agreements, and, in some cases, further modifying REC purchase agreements to provide

developers additional reasonable opportunities for successful project execution, expending funds on research and development, and exploring out-of-state markets, long-term compliance with the poultry and swine waste set-aside requirements remains uncertain due to counterparty performance. Second, the Commission has carefully considered NCPC's recommendations, but is not persuaded that these recommendations should be adopted at this time. As explained by the Public Staff in its reply comments, the Commission has previously addressed most of the issues raised by NCPC. Having considered these issues again here, the Commission determines that the established procedure should continue at least for the purposes of 2019 REPS compliance. As stated in the 2015 Delay Order, "the Commission does not intend to interject itself into negotiations," but "further monitoring of such negotiations may be necessary in future years." The December 2019 semiannual report, and the possible opportunity for filing of comments on that report, will provide the Commission with more detailed information and an opportunity to decide if that time has come.

More specifically, the Commission finds that the State's electric power suppliers have made a reasonable effort to comply with the 2019 statewide swine waste set-aside requirements established by N.C.G.S. § 62-133.8(e), but will not be able to fully comply. The parties state that the primary challenge has been the shortage of existing market participants in the United States and the fact that few of those market participants have actual or direct experience developing or operating those biomass technologies used to generate electric power from poultry waste or swine waste. No party presented evidence that the aggregate 2019 swine waste set-aside requirement could be met. The Joint Motion reflects that DEC, DEP, and DENC realized success in securing sufficient resources for compliance with the Swine waste set-aside of 0.02% of prior-year retail sales for 2018. Further, DEC, DEP, and DENC argued that they are in a position to meet a modified swine waste set-aside requirement of 0.04% of prior retail sales even though the other electric power suppliers in the state are not in a similar position, as they continue to struggle meeting the compliance targets. The Public Staff agreed that DEC, DEP, and DENC could meet such a modified requirement without making future compliance impractical.

The Commission's Delay Orders have noted the electric power suppliers' reporting encouraging developments in the technology of power production from swine waste that, combined with the availability of RECs banked from current and prior years, would increase the likelihood that compliance with the swine waste set-aside requirements will be achieved at some point. Similar to the 2018 Delay Order, the Commission finds that the Joint Motion demonstrates that the point of achieving partial compliance with the swine waste set-aside requirements has arrived. In addition, the Commission's Delay Orders permitted the Joint Movants to bank RECs for several consecutive years. The Commission further finds that the cumulative effect of this banking has resulted in the ability for DEC, DEP, and DENC to comply with the modified swine waste set-aside requirement as requested by the Joint Movants. The Commission, therefore, concludes that the Joint Movants' requested modifications to lower the swine waste set-aside requirements, and to delay the scheduled increases in compliance by one year, as applied to DEC, DEP, and DENC, is in the public interest. To require the other electric

power suppliers to meet a similar requirement, however, would result in wiping the slate clean for compliance purposes in future years and make these smaller electric power suppliers' future compliance difficult or impossible. Therefore, consistent with the 2018 Delay Order, the Commission determines that it is in the public interest to delay entirely the 2019 swine waste set-aside requirements for one additional year, as applied to electric power suppliers other than DEC, DEP, and DENC, that the future increases in the swine waste set-aside requirement should be delayed, and that the electric power suppliers that have acquired swine waste RECs for 2019 REPS compliance should be allowed to bank such RECs for swine waste set-aside compliance in future years. Electric power suppliers should continue to make efforts to comply with the swine waste set-aside requirement as modified by this Order.

Finally, the Commission similarly finds that the State's electric power suppliers have made a reasonable effort to comply with the 2019 statewide poultry waste set-aside requirement established by N.C.G.S. § 62-133.8(f), but will not be able to comply fully. As with the swine waste set-aside requirement, compliance with the poultry waste set-aside requirement has been hindered by the fact that the technology of power production from poultry waste continues to be in its early stages of development and projects have experienced operational challenges. No party presented evidence that the aggregate 2019 poultry waste set-aside requirement of 700,000 MWh could be met; however, the parties agree that a modified compliance requirement of 500,000 MWh for 2019, 700,000 MWh for 2020, and 700,000 MWh for 2021 is achievable. The Commission determines that it is in the public interest to modify the requirements of N.C.G.S. § 62-133.8(f) as requested in the Joint Motion. Electric power suppliers should continue to make efforts to comply with the poultry waste set-aside requirements as modified by this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the swine waste set-aside requirements of N.C.G.S. § 62-133.8(e) for electric public utilities shall be, and are hereby, modified according to the following schedule:

| <u>Calendar Year</u> | <u>Requirement for Swine Waste Resources</u> |
|----------------------|--|
| 2019 | 0.04% |
| 2020-2021 | 0.07% |
| 2022-2023 | 0.14% |
| 2024 and thereafter | 0.20% |

Electric public utilities shall be allowed to bank any swine waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine waste set-aside requirement in 2019 with other compliance measures pursuant to N.C.G.S. § 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of N.C.G.S. § 62-133.8(d);

2. That the swine waste set-aside requirements of N.C.G.S. § 62-133.8(e) for electric membership corporations and municipalities shall be, and are hereby, modified according to the following schedule:

| <u>Calendar Year</u> | <u>Requirement for Swine Waste Resources</u> |
|----------------------|--|
| 2019 | 0.00% |
| 2020-2021 | 0.07% |
| 2022-2023 | 0.14% |
| 2024 and thereafter | 0.20% |

Electric membership corporations and municipalities shall be allowed to bank any swine waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine waste set-aside requirement in 2019 with other compliance measures pursuant to N.C.G.S. § 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of N.C.G.S. § 62-133.8(d);

3. That the poultry waste set-aside requirements of N.C.G.S. § 62-133.8(f) shall be, and are hereby, modified according to the following schedule:

| <u>Calendar Year</u> | <u>Requirement for Poultry Waste Resources</u> |
|----------------------|--|
| 2019 | 500,000 MWh |
| 2020 | 700,000 MWh |
| 2021 and thereafter | 900,000 MWh |

Electric power suppliers shall be allowed to bank any poultry waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the poultry waste set-aside requirement in 2019 with other compliance measures pursuant to N.C.G.S. § 62-133.8(b) and (c), including the use of solar RECs beyond the requirements of N.C.G.S. § 62-133.8(d);

4. That the electric power suppliers subject to the semiannual filing requirement shall continue to report on the schedule established in the 2015 Delay Order. These reports shall continue to include the information specified in Ordering Paragraph 3 of the Commission's 2015 Delay Order; and

5. That the 2019 seminannual report shall address the issues raised by Phibro regarding the potential purchase of out-of-state RECs.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of December, 2019.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk

Commissioner Jeffrey A. Hughes did not participate in this decision.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|------------------|---|
| In the Matter of Rulemaking to Implement Session Law 2007-397 |)))) | ORDER ESTABLISHING 2019, 2020, AND 2021 POULTRY WASTE SET-ASIDE REQUIREMENT ALLOCATION |
|---|------------------|---|

BY THE COMMISSION: On April 18, 2016, the Commission issued an Order Establishing Method of Allocating the Aggregate Poultry Waste Resource Set-Aside Requirement. Among other things, that Order established that starting with compliance year 2016, the aggregate poultry waste set-aside requirement of G.S. 62-133.8(f) shall be allocated among the electric power suppliers by averaging three years of historic retail sales (2013, 2014, and 2015), with the resulting allocation being held constant for three years (2016, 2017, and 2018). That Order further stated that this process would be repeated in 2019 for the next 3 year period.

The 2016, 2017, and 2018 retail sales data that have been reported to NC-RETS by electric power suppliers and utility compliance aggregators as required by Rule R8-67(h)(11) and the resulting load ratio shares calculated based upon that data are shown on Appendix A to this Order. Appendix A details the following data for each electric power supplier: retail electricity sales for 2016, 2017, and 2018; the average of those three years of retail sales; the load ratio share of the State's aggregate retail sales for those three years; and the corresponding 2019 poultry waste set-aside compliance requirement based upon an aggregate 2019 poultry waste set-aside requirement of 500,000 MWh as established by the Commission's Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief issued contemporaneous with this Order in this docket. That Order also established the annual aggregate poultry waste set-aside requirement for calendar years 2020 and thereafter as 700,000 MWh

Based upon the foregoing, the Commission finds good cause to require that the three years of retail sales data and the load ratio shares based upon that data shall be used to allocate the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021. Consistent with the 2019 Order, in this docket, this decision does not alter the annual reporting requirement of Commission Rule R8-67(h)(11), nor does it preclude an electric power supplier from requesting a waiver to correct its 2019 retail sales data. Such waiver, if granted, and correction would adjust an electric power supplier's general REPS obligation, but its load share ratio calculation and the resulting allocated share of the

aggregate poultry waste set-aside requirement for 2019, 2020, and 2021 shall remain unchanged.

IT IS, THEREFORE, ORDERED as follows:

1. That the aggregate poultry waste set-aside requirement for 2019, 2020 and 2021 shall be allocated among the electric power suppliers and utility compliance aggregators based on the load ratio share calculations shown in the spreadsheet attached as Appendix A to this Order;

2. That the NC-RETS Administrator shall allocate the aggregate poultry waste set-aside requirement for REPS compliance reporting within NC-RETS consistent with this Order; and

3. That this allocation process shall be repeated in 2022 for the next 3-year period.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of December, 2019.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk

Commissioner Jeffrey A. Hughes did not participate in this decision.

APPENDIX A
PAGE 1 of 2

| Account Holder | Electric Power Supplier | 2018 | 2017 | 2016 | 3-Year Total | Ratio | 2019 Requirement: 500,000 MWhs |
|--|--------------------------------|---------------|---------------|---------------|----------------|-------------|--------------------------------|
| NCMPA1 | Albemarle | 304,953.00 | 278,239.00 | 291,506.00 | 874,698.00 | 0.002167537 | 1,083.77 |
| North Carolina Electric Membership Corporation | Albemarle EMC | 231,507.38 | 213,330.29 | 214,203.60 | 659,041.27 | 0.001633131 | 816.57 |
| North Carolina Eastern Municipal Power Agency | Apex | 351,557.00 | 303,798.00 | 302,769.00 | 958,124.00 | 0.00237427 | 1,187.14 |
| North Carolina Eastern Municipal Power Agency | Ayden | 105,736.00 | 101,787.00 | 102,125.00 | 309,648.00 | 0.00076732 | 383.66 |
| North Carolina Eastern Municipal Power Agency | Belhaven | 16,895.00 | 16,211.00 | 16,413.00 | 49,519.00 | 0.00012271 | 61.36 |
| North Carolina Eastern Municipal Power Agency | Benson | 36,875.00 | 33,048.00 | 33,979.00 | 103,902.00 | 0.000257473 | 128.74 |
| Duke Energy Corporation | Blue Ridge Electric Membership | 1,136,139.00 | 1,047,634.82 | 1,056,978.55 | 3,240,752.37 | 0.008030717 | 4,015.36 |
| Tennessee Valley Authority | Blue Ridge Mtn EMC | 208,515.31 | 189,370.84 | 198,535.00 | 596,421.15 | 0.001477956 | 738.98 |
| NCMPA1 | Bostic | 3,462.00 | 3,242.00 | 3,474.00 | 10,178.00 | 2.52215E-05 | 12.61 |
| North Carolina Electric Membership Corporation | Broad River EC | 5,985.89 | 5,401.11 | 5,655.49 | 17,042.49 | 4.2232E-05 | 21.12 |
| North Carolina Electric Membership Corporation | Brunswick EMC | 1,428,570.36 | 1,328,154.55 | 1,335,612.07 | 4,092,336.98 | 0.010140978 | 5,070.49 |
| North Carolina Electric Membership Corporation | Cape Hatteras EC | 141,734.90 | 128,003.14 | 135,499.69 | 405,237.73 | 0.001004196 | 502.10 |
| North Carolina Electric Membership Corporation | Carteret-Craven EC | 617,871.74 | 574,406.33 | 580,732.45 | 1,773,010.52 | 0.004393593 | 2,196.80 |
| North Carolina Electric Membership Corporation | Central EMC | 442,134.52 | 410,500.03 | 417,146.22 | 1,269,780.77 | 0.003146569 | 1,573.28 |
| NCMPA1 | Cherryville | 53,051.00 | 48,447.00 | 50,457.00 | 151,955.00 | 0.000376551 | 188.28 |
| Duke Energy Corporation | City of Concord | 955,679.00 | 890,388.37 | 911,763.13 | 2,757,830.50 | 0.006834017 | 3,417.01 |
| Duke Energy Corporation | City of Kings Mountain | 144,153.00 | 144,760.20 | 142,935.22 | 431,848.42 | 0.001070138 | 535.07 |
| North Carolina Eastern Municipal Power Agency | Clayton | 119,952.00 | 103,500.00 | 102,182.00 | 325,634.00 | 0.000806934 | 403.47 |
| NCMPA1 | Cornelius | 58,110.00 | 53,639.00 | 59,952.00 | 171,701.00 | 0.000425482 | 212.74 |
| Dominion/NC Power | Dominion/NC Power | 4,400,784.00 | 4,167,444.00 | 4,294,053.00 | 12,862,281.00 | 0.031873258 | 15,936.63 |
| NCMPA1 | Drexel | 18,398.00 | 16,684.00 | 17,421.00 | 52,503.00 | 0.000130105 | 65.05 |
| Duke Energy Corporation | Duke Energy Carolinas | 59,480,703.00 | 56,012,298.69 | 57,542,362.27 | 173,035,363.96 | 0.428788706 | 214,394.35 |
| Progress Energy Electric Supplier | Duke Energy Progress | 38,687,268.00 | 36,829,898.57 | 37,272,480.00 | 112,789,646.57 | 0.279497355 | 139,748.68 |
| North Carolina Eastern Municipal Power Agency | Edenton | 106,710.00 | 95,379.00 | 93,958.00 | 296,047.00 | 0.000733617 | 366.81 |
| North Carolina Electric Membership Corporation | Edgecombe-Martin Co EMC | 238,684.49 | 224,158.85 | 223,856.84 | 686,700.18 | 0.001701671 | 850.84 |
| North Carolina Eastern Municipal Power Agency | Elizabeth City | 336,648.00 | 295,048.00 | 305,419.00 | 937,115.00 | 0.002322209 | 1,161.10 |
| EnergyUnited | EnergyUnited | 2,723,294.00 | 2,517,130.00 | 2,582,511.00 | 7,822,935.00 | 0.019385553 | 9,692.78 |
| North Carolina Eastern Municipal Power Agency | Farmville | 48,510.00 | 46,266.00 | 46,804.00 | 141,580.00 | 0.000350841 | 175.42 |
| Fayetteville PWC | Fayetteville PWC | 2,082,629.00 | 1,967,324.00 | 2,054,941.00 | 6,104,894.00 | 0.015128177 | 7,564.09 |
| North Carolina Electric Membership Corporation | Four County EMC | 959,993.51 | 891,997.53 | 899,756.74 | 2,751,747.78 | 0.006818944 | 3,409.47 |
| North Carolina Eastern Municipal Power Agency | Fremont | 12,410.00 | 12,624.00 | 11,590.00 | 36,624.00 | 9.07558E-05 | 45.38 |
| North Carolina Electric Membership Corporation | French Broad EMC | 533,225.01 | 502,644.73 | 502,011.44 | 1,537,881.18 | 0.003810932 | 1,905.47 |
| NCMPA1 | Gastonia | 762,016.00 | 659,886.00 | 675,378.00 | 2,097,280.00 | 0.005197146 | 2,598.57 |
| NCMPA1 | Granite Falls | 58,120.00 | 54,113.00 | 55,680.00 | 167,913.00 | 0.000416095 | 208.05 |
| North Carolina Eastern Municipal Power Agency | Greenville | 1,849,279.00 | 1,700,477.00 | 1,721,702.00 | 5,271,458.00 | 0.013062888 | 6,531.44 |
| Halifax Electric Membership Corporation | Halifax EMC | 187,942.46 | 150,613.00 | 154,084.99 | 492,640.45 | 0.001220783 | 610.39 |
| North Carolina Eastern Municipal Power Agency | Hamilton | 2,912.00 | 2,756.00 | 2,726.00 | 8,394.00 | 2.08007E-05 | 10.40 |
| North Carolina Electric Membership Corporation | Haywood EMC | 302,864.30 | 274,234.13 | 282,385.83 | 859,484.26 | 0.002129837 | 1,064.92 |
| North Carolina Eastern Municipal Power Agency | Hertford | 22,320.00 | 21,767.00 | 22,330.00 | 66,417.00 | 0.000164584 | 82.29 |
| NCMPA1 | High Point | 1,201,233.00 | 1,120,508.00 | 1,161,138.00 | 3,482,879.00 | 0.008630717 | 4,315.36 |
| North Carolina Eastern Municipal Power Agency | Hobgood | 2,830.00 | 2,781.00 | 2,830.00 | 8,441.00 | 2.09171E-05 | 10.46 |
| North Carolina Eastern Municipal Power Agency | Hookerton | 5,744.00 | 5,638.00 | 5,755.00 | 17,137.00 | 4.24662E-05 | 21.23 |
| NCMPA1 | Huntersville | 247,279.00 | 229,986.00 | 231,302.00 | 708,567.00 | 0.001755858 | 877.93 |
| North Carolina Electric Membership Corporation | Jones-Onslow EMC | 1,258,695.30 | 1,161,385.64 | 1,178,062.16 | 3,598,143.10 | 0.008916346 | 4,458.17 |
| North Carolina Eastern Municipal Power Agency | Kinston | 469,697.00 | 445,208.00 | 448,366.00 | 1,363,271.00 | 0.003378241 | 1,689.12 |
| North Carolina Eastern Municipal Power Agency | La Grange | 26,029.00 | 24,272.00 | 24,215.00 | 74,516.00 | 0.000184654 | 92.33 |
| NCMPA1 | Landis | 47,709.00 | 43,864.00 | 46,276.00 | 137,849.00 | 0.000341595 | 170.80 |
| North Carolina Eastern Municipal Power Agency | Laurinburg | 145,756.00 | 131,294.00 | 134,159.00 | 411,209.00 | 0.001018993 | 509.50 |

APPENDIX A
PAGE 2 of 2

| Account Holder | Electric Power Supplier | 2018 | 2017 | 2016 | 3-Year Total | Ratio | 2019 Requirement: 500,000 MWhts |
|--|--------------------------------|--------------|--------------|--------------|--------------------|---------------|---------------------------------|
| NCMPA1 | Lexington | 428,539.00 | 375,608.00 | 391,732.00 | 1,195,879.00 | 0.002963437 | 1,481.72 |
| NCMPA1 | Lincolnton | 66,294.00 | 48,791.00 | 58,498.00 | 173,583.00 | 0.000430146 | 215.07 |
| North Carolina Eastern Municipal Power Agency | Louisburg | 54,680.00 | 51,841.00 | 53,831.00 | 160,352.00 | 0.000397359 | 198.68 |
| North Carolina Electric Membership Corporation | Lumbee River EMC | 1,342,461.46 | 1,249,975.57 | 1,231,099.56 | 3,823,536.59 | 0.00947488 | 4,737.44 |
| North Carolina Eastern Municipal Power Agency | Lumberton | 291,470.00 | 239,383.00 | 270,856.00 | 801,709.00 | 0.001986668 | 993.33 |
| North Carolina Eastern Municipal Power Agency | Macclesfield | 2,656.00 | 2,885.00 | 2,966.00 | 8,507.00 | 2.10807E-05 | 10.54 |
| NCMPA1 | Maiden | 85,309.00 | 82,775.00 | 85,910.00 | 253,994.00 | 0.000629408 | 314.70 |
| North Carolina Electric Membership Corporation | Mecklenburg EC | 1,824.65 | 1,642.67 | 1,712.08 | 5,179.40 | 1.28348E-05 | 6.42 |
| NCMPA1 | Monroe | 734,807.00 | 707,395.00 | 717,263.00 | 2,159,465.00 | 0.005351243 | 2,675.62 |
| NCMPA1 | Morganton | 346,469.00 | 325,405.00 | 338,776.00 | 1,010,650.00 | 0.002504432 | 1,252.22 |
| Tennessee Valley Authority | Mountain Electric Cooperative | 270,522.73 | 248,998.78 | 260,817.00 | 780,338.51 | 0.001933711 | 966.86 |
| Tennessee Valley Authority | Murphy Power Board | 288,085.75 | 131,693.28 | 142,955.00 | 562,734.03 | 0.001394478 | 697.24 |
| North Carolina Eastern Municipal Power Agency | New Bern | 468,287.00 | 441,675.00 | 448,542.00 | 1,358,504.00 | 0.003366428 | 1,683.21 |
| NCMPA1 | Newton | 159,428.00 | 137,936.00 | 147,861.00 | 445,225.00 | 0.001103286 | 551.64 |
| North Carolina Electric Membership Corporation | Pee Dee EMC | 401,140.30 | 372,922.47 | 376,497.46 | 1,150,560.23 | 0.002851135 | 1,425.57 |
| North Carolina Electric Membership Corporation | Piedmont EMC | 502,457.64 | 466,504.44 | 480,916.36 | 1,449,878.44 | 0.003592858 | 1,796.43 |
| North Carolina Eastern Municipal Power Agency | Pikeville | 8,273.00 | 8,102.00 | 8,626.00 | 25,001.00 | 6.19535E-05 | 30.98 |
| North Carolina Eastern Municipal Power Agency | Pinetops | 18,671.00 | 18,054.00 | 18,121.00 | 54,846.00 | 0.000135911 | 67.96 |
| NCMPA1 | Pineville | 116,553.00 | 103,581.00 | 109,808.00 | 329,942.00 | 0.00081761 | 408.80 |
| North Carolina Electric Membership Corporation | Pitt & Greene EMC | 199,190.54 | 192,477.56 | 189,284.32 | 580,952.42 | 0.001439624 | 719.81 |
| North Carolina Electric Membership Corporation | Randolph EMC | 531,903.54 | 492,852.72 | 512,939.63 | 1,537,695.89 | 0.003810473 | 1,905.24 |
| North Carolina Eastern Municipal Power Agency | Red Springs | 33,423.00 | 33,324.00 | 33,580.00 | 100,327.00 | 0.000248614 | 124.31 |
| North Carolina Electric Membership Corporation | Roanoke EMC | 285,834.05 | 267,391.73 | 279,953.66 | 833,179.44 | 0.002064653 | 1,032.33 |
| North Carolina Eastern Municipal Power Agency | Robersonville | 22,919.00 | 22,862.00 | 21,004.00 | 66,785.00 | 0.000165496 | 82.75 |
| North Carolina Eastern Municipal Power Agency | Rocky Mount | 742,771.00 | 690,526.00 | 707,390.00 | 2,140,687.00 | 0.00530471 | 2,652.35 |
| Duke Energy Corporation | Rutherford Electric Membership | 1,338,559.00 | 1,205,639.27 | 1,251,792.52 | 3,795,990.79 | 0.00940662 | 4,703.31 |
| North Carolina Eastern Municipal Power Agency | Scotland Neck | 28,264.00 | 26,088.00 | 24,916.00 | 79,268.00 | 0.000196429 | 98.21 |
| North Carolina Eastern Municipal Power Agency | Selma | 72,755.00 | 65,088.00 | 67,316.00 | 205,159.00 | 0.000508392 | 254.20 |
| NCMPA1 | Shelby | 207,457.00 | 187,798.00 | 192,951.00 | 588,206.00 | 0.001457599 | 728.80 |
| North Carolina Eastern Municipal Power Agency | Smithfield | 179,611.00 | 168,346.00 | 172,874.00 | 520,831.00 | 0.001290641 | 645.32 |
| North Carolina Electric Membership Corporation | South River EMC | 838,447.91 | 789,728.05 | 805,729.59 | 2,433,905.55 | 0.006031317 | 3,015.66 |
| North Carolina Eastern Municipal Power Agency | Southport | 58,241.00 | 54,864.00 | 54,099.00 | 167,204.00 | 0.000414338 | 207.17 |
| NCMPA1 | Statesville | 495,125.00 | 455,129.00 | 452,830.00 | 1,403,084.00 | 0.0034769 | 1,738.45 |
| North Carolina Electric Membership Corporation | Surry-Yadkin EMC | 383,928.11 | 353,253.67 | 366,770.26 | 1,103,952.04 | 0.002735638 | 1,367.82 |
| North Carolina Eastern Municipal Power Agency | Tarboro | 239,412.00 | 220,317.00 | 238,813.00 | 698,542.00 | 0.001731016 | 865.51 |
| North Carolina Electric Membership Corporation | Tideland EMC | 361,785.74 | 344,022.64 | 348,354.13 | 1,054,162.51 | 0.002612258 | 1,306.13 |
| Progress Energy Electric Supplier | Town of Black Creek | 12,093.00 | | 11,463.00 | 23,556.00 | 5.83727E-05 | 29.19 |
| Duke Energy Corporation | Town of Dallas | 71,058.00 | 66,949.91 | 69,682.82 | 207,690.73 | 0.000514666 | 257.33 |
| Halifax Electric Membership Corporation | Town of Enfield | | 17,990.00 | 32,068.00 | 50,058.00 | 0.000124046 | 62.02 |
| Duke Energy Corporation | Town of Forest City | 109,436.00 | 110,125.77 | 105,819.82 | 325,381.59 | 0.000806309 | 403.15 |
| Duke Energy Corporation | TOWN OF FOUNTAIN | | - | | - | 0 | - |
| Progress Energy Electric Supplier | Town of Highlands | 40,996.00 | 40,554.02 | 40,996.33 | 122,546.35 | 0.000303675 | 151.84 |
| Progress Energy Electric Supplier | Town of Lucama | 18,609.00 | | 17,348.00 | 35,957.00 | 8.91029E-05 | 44.55 |
| Progress Energy Electric Supplier | Town of Sharpsburg | 17,328.00 | | 16,194.00 | 33,522.00 | 8.30689E-05 | 41.53 |
| Dominion/NC Power | Town of Stantonsburg | 19,820.00 | | 19,721.00 | 39,541.00 | 9.79842E-05 | 48.99 |
| Progress Energy Electric Supplier | Town of Windsor | 50,462.00 | 46,928.00 | 48,968.00 | 146,358.00 | 0.000362681 | 181.34 |
| North Carolina Electric Membership Corporation | Town of Winterville | 53,397.00 | | 48,874.00 | 102,271.00 | 0.000253432 | 126.72 |
| Tennessee Valley Authority | Tri-County EMC | 559,421.27 | 529,302.88 | 541,759.36 | 1,630,483.51 | 0.004040405 | 2,020.20 |
| North Carolina Electric Membership Corporation | Tri-State EMC | 14,585.96 | 12,737.44 | 13,322.00 | 40,645.40 | 0.000100721 | 50.36 |
| North Carolina Electric Membership Corporation | Union Power Cooperative | 1,392,458.27 | 1,278,005.44 | 1,335,691.98 | 4,006,155.69 | 0.009927418 | 4,963.71 |
| North Carolina Eastern Municipal Power Agency | Wake EMC | 804,884.37 | 747,869.86 | 732,471.00 | 2,285,225.23 | 0.005662882 | 2,831.44 |
| North Carolina Eastern Municipal Power Agency | Wake Forest | 172,502.00 | 152,840.00 | 152,587.00 | 477,929.00 | 0.001184328 | 592.16 |
| North Carolina Eastern Municipal Power Agency | Walstonburg | 1,677.00 | 1,663.00 | 1,812.00 | 5,152.00 | 1.27669E-05 | 6.38 |
| Town of Waynesville | Washington | 298,763.00 | 271,551.00 | 276,527.00 | 846,841.00 | 0.002098507 | 1,049.25 |
| North Carolina Eastern Municipal Power Agency | Waynesville | 89,630.50 | 85,537.50 | 90,743.00 | 265,911.00 | 0.000658938 | 329.47 |
| Wilson | Wilson | 1,335,572.00 | 1,201,775.00 | 1,282,627.00 | 3,819,974.00 | 0.009466052 | 4,733.03 |
| Totals | | | | | 403,544,593 | 1.0000 | 500,000 |

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Implement Session) ERRATA ORDER
Law 2007-397)

BY THE COMMISSION: On December 16, 2019, the Commission issued an order in this proceeding granting a motion by certain electric power suppliers to modify the swine and poultry waste set-aside requirements of the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS), N.C. Gen. Stat. §§ 62-133.8(e) and (f) (Delay Order). On the same date, the Commission issued an order allocating the revised aggregate poultry waste set-aside requirements for 2019, 2020, and 2021 among the electric power suppliers based upon their historic three-year average load ratio shares (Allocation Order).

As stated in the Delay Order, the Commission approved the request: (1) to modify the swine waste set-aside requirements as they apply to the electric public utilities by lowering the 2019 compliance requirement to 0.04% of prior-year retail sales, delaying the scheduled increase to 0.07% of prior-year retail sales to begin in calendar year 2020, and delaying future increases by one year; (2) to modify the swine waste set-aside requirements as they apply to all other electric power suppliers by delaying those requirements until calendar year 2020 and by delaying future increases in those requirements by one year; (3) to modify the aggregate poultry waste set-aside requirements for all electric power suppliers by lowering the 2019 statewide requirement to 500,000 MWh and delaying subsequent increases in the requirement to 700,000 MWh in 2020 and 900,000 MWh in 2021; (4) to allow electric power suppliers to bank any swine and poultry waste derived renewable energy certificates (RECs) previously or subsequently acquired for use in future compliance years; and (5) to allow electric power suppliers to replace compliance with the poultry and swine waste set-aside requirements in 2019 with other compliance measures in accordance with N.C.G.S. §§ 62-133.8(b), (c), and (d).

It has come to the Commission's attention that Ordering Paragraphs Nos. 1 and 2 in the Delay Order inadvertently stated incorrect dates for compliance with the revised swine waste set-aside requirements in 2023 and beyond. In addition, although Ordering Paragraph No. 3 of the Delay Order is correct, the revised aggregate poultry waste set-aside requirement for 2021 and beyond was inadvertently misstated in the final paragraph of that order. Lastly, although the allocation of the aggregate poultry waste set-aside requirement to be used for the next three years and the specific number of RECs required for compliance by each electric power supplier in 2019 is correctly stated in Appendix A of the Allocation Order, the revised aggregate poultry waste set-aside

requirement for 2021 and beyond was inadvertently misstated in the second paragraph of that order.

The Commission, therefore, finds good cause to issue this Errata Order to clearly restate the revised REPS swine and poultry waste set-aside requirements for 2019 and future years.

- The swine waste set-aside requirements of N.C.G.S. § 62-133.8(e) for electric public utilities are:

| <u>Calendar Year</u> | <u>Requirement for Swine Waste Resources</u> |
|----------------------|--|
| 2019 | 0.04% |
| 2020-2021 | 0.07% |
| 2022-2024 | 0.14% |
| 2025 and thereafter | 0.20% |

- The swine waste set-aside requirements of N.C.G.S. § 62-133.8(e) for electric membership corporations and municipalities are:

| <u>Calendar Year</u> | <u>Requirement for Swine Waste Resources</u> |
|----------------------|--|
| 2019 | 0.00% |
| 2020-2021 | 0.07% |
| 2022-2024 | 0.14% |
| 2025 and thereafter | 0.20% |

- The aggregate poultry waste set-aside requirements of N.C.G.S. § 62-133.8(f) for all electric power suppliers are:

| <u>Calendar Year</u> | <u>Requirement for Poultry Waste Resources</u> |
|----------------------|--|
| 2019 | 500,000 MWh |
| 2020 | 700,000 MWh |
| 2021 and thereafter | 900,000 MWh |

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of February, 2020.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 113
DOCKET NO. M-100, SUB 158

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|--|---|----------------|
| DOCKET NO. E-100, SUB 113 |) | |
| |) | |
| In the Matter of |) | |
| Rulemaking Proceeding to Implement |) | |
| Session Law 2007-397 |) | ORDER AMENDING |
| |) | RULE R8-65 |
| DOCKET NO. M-100, Sub 158 |) | |
| |) | |
| In the Matter of |) | |
| Investigation of Necessary and Appropriate |) | |
| Responses to the Novel Coronavirus |) | |
| COVID-19 |) | |

BY THE COMMISSION: Commission Rule R8-65 provides for the filing of a report of proposed construction (RPC) by persons not required to obtain a certificate of public convenience and necessity (CPCN) before beginning construction of an electric generating facility, including most facilities with a capacity of less than two megawatts.

Due to the ongoing COVID-19 State of Emergency, and in order to improve the efficiency of the RPC filing process, the Commission finds good cause to implement the following changes to the Rule R8-65 filing requirements:

- (1) Those persons who file hard copies of RPCs shall no longer provide the original and six copies. Instead they shall provide one original, verified copy. (The Commission made this change on a temporary basis in Docket No. M-100, Sub 158. With this order that change is now permanent.)
- (2) RPCs for solar photovoltaic systems wherein solar panels are mounted on the roof of a residential or commercial building shall no longer be required to include a color map or aerial photo.

These changes to Commission Rule R8-65 and the revised filing form are shown in Appendix A and are effective immediately. Clean copies of the amended rule and filing form are attached as Appendix B.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of August, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Janice H. Fulmore". The signature is written in a cursive style with a large initial "J" and a distinct "F".

Janice H. Fulmore, Deputy Clerk

Rule R8-65. REPORT BY PERSONS CONSTRUCTING ELECTRIC GENERATING FACILITIES EXEMPT FROM CERTIFICATION REQUIREMENT.

(a) All persons exempt from certification under G.S. 62-110.1(g) shall file with the Commission a report of the proposed construction of an electric generating facility before beginning construction of the facility. The report shall be in the form adopted by the Commission, shall include the information prescribed in subsection (g) below, and shall be signed and verified by the owner of the electric generating facility or by an individual duly authorized to act on behalf of the owner for the purpose of the filing. The facility owner shall also be required to report to the Commission the completion of each such facility by giving notice of the completion of construction to the Commission in accordance with section (i) of this Rule. Reports of proposed construction and notices of completion of construction shall be for informational purposes only, and shall not require action by the Commission or the Public Staff.

(b) Reports filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.

(c) The owner of the electric generating facility shall provide a copy of the report to the electric public utility, electric membership corporation, or municipality to which the generating facility is or will be interconnected. This requirement shall not apply to an offering utility, as defined in G.S. 62-126.3(10), with regard to an electric generating facility that is intended to be a community solar energy facility, as defined in G.S. 62-126.3(3).

(d) The owner of the electric generating facility shall file the report electronically or file an original ~~and 6 copies~~ of the report of proposed construction with the Chief Clerk of the Utilities Commission. The report shall be accompanied by the fee required by G.S. 62-300.

(e) Upon the filing of a report of proposed construction, the Chief Clerk will assign a new docket or sub-docket number to the filing.

(f) The Commission may order a hearing on the report of proposed construction upon its own motion or upon receipt of a complaint specifying the basis thereof. Otherwise, no acknowledgment of receipt of the report of proposed construction will be issued nor will any other further action be taken by the Commission.

(g) The Report.

- (1) The report shall be comprised of the following four exhibits:
 - (i) Exhibit 1 shall contain:

- a. The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
 - b. A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the report and, if a foreign corporation, whether domesticated in North Carolina; and
 - c. The full and correct name of the site owner and, if the owner is other than the facility owner, the facility owner's interest in the site.
- (ii) Exhibit 2 shall contain:
- a. A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, except such map or photo shall not be required for solar photovoltaic systems wherein solar panels are mounted on the roof of a residential or commercial building; and
 - b. The E911 street address, county in which the proposed facility will be physically located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
- (iii) Exhibit 3 shall contain:
- a. The nature of the generating facility, including the type and source of its power or fuel;
 - b. A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
 - c. The gross and net generating capacity of each unit and the entire facility in alternating current (AC);
 - d. The projected date on which the facility will come on line;
 - e. The facility owner's general plan for sale of the electricity to be generated, including the utility to which the facility owner plans to sell the electricity;
 - f. the service life of the project;
 - g. the projected annual sales in kilowatt-hours; and

- h. whether the facility owner intends to earn renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard, and, if the facility to be constructed is a community solar energy facility, as defined in G.S. 62-126.3(3), a statement that the renewable energy certificates will be offered to subscribers in a manner consistent with G.S. 62-126.8(e)(8) and the electric public utility's consumer solar energy facility program approved by the Commission.
 - (iv) Exhibit 4 shall contain the expected cost of the proposed facility.
 - (2) All reports shall be signed and verified by the facility owner or by an individual duly authorized to act on behalf of the facility owner for the purpose of the report.
 - (3) Falsification of or failure to disclose any required information in the report may be grounds for rejecting the report.
 - (4) Both before the time construction is completed and after, each facility owner shall advise both the Commission and the utility to which the generating facility is or will be interconnected of any plans to sell, transfer, or assign the generating facility or of any significant changes in the information set forth in subsection (g) of this Rule.
- (i) Notice of completion of construction of facility. Within thirty (30) days of the completion of construction of the facility, each facility owner shall notify the Commission that the construction of the facility is complete. This notice shall be made by filing a short, plain statement that construction of the facility is complete and the date on which the construction was completed.

DOCKET NO. _____ - _____, SUB _____

Filing Fee Tendered \$ _____

Report of Proposed Construction (RPC) – Commission Rule R8-65

Pursuant to G.S. 62-110.1(g), any person who seeks to construct an electric generating facility in North Carolina, and is exempt from the requirement to obtain a certificate of public convenience and necessity, is required to file this form and a notice of completion of the construction of the facility. This form may be accompanied by any exhibits or additional responses incorporated by reference thereto and attached to this form. This form must be accompanied by the required filing fee of \$50.00.

This form may be electronically filed. Please see www.ncuc.net for instructions.

If this form is filed by hard copy, the original ~~plus 6 copies~~ must be presented at or transmitted to the office of the Chief Clerk. Regardless of the method of delivery, this form is not deemed filed until it is received by the Chief Clerk, along with the required filing fee.

The mailing address is:

Chief Clerk
NC Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-432500

| Exhibits required by Rule R8-64(b) | | Applicant's Response |
|---|---|--|
| (1)(i) | Full and correct name of the owner of the facility | |
| | Facility name | |
| | Business address | |
| | E-mail address | |
| | Telephone number | |
| (ii) | The owner is (check one) | <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation |
| | If a partnership, the name and business address of each general partner | |
| | If a corporation, the state and date of incorporation | |
| | If a partnership, the name and address of each general partner (add additional sheets if necessary) | |

| | | |
|--------|--|--|
| | Owner's agent for purposes of this report, if applicable: | |
| | Agent's business address | |
| | Agent's e-mail address | |
| | Agent's telephone number | |
| (iii) | The full and correct name of the site owner and, if the site owner is other than the applicant, the applicant's legal interest in the site | |
| | | |
| (2)(i) | Attach a color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system (found at www.gis.ncdcr.gov/hpoweb/) is preferred. <u>Rooftop solar installations are not required to file a map or photo.</u> | |
| (ii) | E911 street address of the proposed facility | |
| | County in which the proposed facility will be physically located | |
| | GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree | |
| | | |
| (3)(i) | The nature of the facility, including its technology, and the source of its power and fuel(s) | |
| (ii) | A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation | |
| (iii) | The gross and net projected maximum dependable capacity of the facility in megawatts – Alternating Current | |

| | | |
|--------|--|----|
| | The facility's nameplate capacity in megawatts – Alternating Current | |
| (iv) | The projected date on which the facility will come on line | |
| (v) | The applicant's general plan for sale of the electricity to be generated, including the name of utility to which the applicant plans to sell the electricity | |
| (vi) | Any provisions for wheeling of the electricity, if applicable | |
| (vii) | Arrangements for firm, non-firm, or emergency generation, if applicable | |
| (viii) | The service life of the project | |
| (ix) | The projected annual sales in kilowatt-hours | |
| (x) | Whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| | | |
| (4) | The expected cost of the proposed facility | \$ |

Confidentiality

If an applicant considers certain of the required information above to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

Verification

All reports shall be signed and verified (notarized) by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the report. A blank verification page is attached below.

VERIFICATION

STATE OF _____ COUNTY OF _____

Signature of Owner's Representative or Agent

Title of Representative or Agent

Typed or Printed Name of Representative or Agent

The above named person personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing report and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this _____ day of _____, 20 _____

My Commission Expires: _____

Signature of Notary Public

Name of Notary Public – Typed or Printed

~~This original verification must be affixed to the original report, and a copy of this verification must be affixed to each of the copies that are also submitted to the Commission.~~

Rule R8-65. REPORT BY PERSONS CONSTRUCTING ELECTRIC GENERATING FACILITIES EXEMPT FROM CERTIFICATION REQUIREMENT.

(a) All persons exempt from certification under G.S. 62-110.1(g) shall file with the Commission a report of the proposed construction of an electric generating facility before beginning construction of the facility. The report shall be in the form adopted by the Commission, shall include the information prescribed in subsection (g) below, and shall be signed and verified by the owner of the electric generating facility or by an individual duly authorized to act on behalf of the owner for the purpose of the filing. The facility owner shall also be required to report to the Commission the completion of each such facility by giving notice of the completion of construction to the Commission in accordance with section (i) of this Rule. Reports of proposed construction and notices of completion of construction shall be for informational purposes only, and shall not require action by the Commission or the Public Staff.

(b) Reports filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.

(c) The owner of the electric generating facility shall provide a copy of the report to the electric public utility, electric membership corporation, or municipality to which the generating facility is or will be interconnected. This requirement shall not apply to an offering utility, as defined in G.S. 62-126.3(10), with regard to an electric generating facility that is intended to be a community solar energy facility, as defined in G.S. 62-126.3(3).

(d) The owner of the electric generating facility shall file the report electronically or file an original of the report of proposed construction with the Chief Clerk of the Utilities Commission. The report shall be accompanied by the fee required by G.S. 62-300.

(e) Upon the filing of a report of proposed construction, the Chief Clerk will assign a new docket or sub-docket number to the filing.

(f) The Commission may order a hearing on the report of proposed construction upon its own motion or upon receipt of a complaint specifying the basis thereof. Otherwise, no acknowledgment of receipt of the report of proposed construction will be issued nor will any other further action be taken by the Commission.

(g) The Report.

- (1) The report shall be comprised of the following four exhibits:
 - (i) Exhibit 1 shall contain:

- a. The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
 - b. A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the report and, if a foreign corporation, whether domesticated in North Carolina; and
 - c. The full and correct name of the site owner and, if the owner is other than the facility owner, the facility owner's interest in the site.
- (ii) Exhibit 2 shall contain:
- a. A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, except such map or photo shall not be required for solar photovoltaic systems wherein solar panels are mounted on the roof of a residential or commercial building; and
 - b. The E911 street address, county in which the proposed facility will be physically located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
- (iii) Exhibit 3 shall contain:
- a. The nature of the generating facility, including the type and source of its power or fuel;
 - b. A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
 - c. The gross and net generating capacity of each unit and the entire facility in alternating current (AC);
 - d. The projected date on which the facility will come on line;
 - e. The facility owner's general plan for sale of the electricity to be generated, including the utility to which the facility owner plans to sell the electricity;
 - f. the service life of the project;
 - g. the projected annual sales in kilowatt-hours; and

DOCKET NO. _____ - _____, SUB _____

Filing Fee Tendered \$ _____

Report of Proposed Construction (RPC) – Commission Rule R8-65

Pursuant to G.S. 62-110.1(g), any person who seeks to construct an electric generating facility in North Carolina, and is exempt from the requirement to obtain a certificate of public convenience and necessity, is required to file this form and a notice of completion of the construction of the facility. This form may be accompanied by any exhibits or additional responses incorporated by reference thereto and attached to this form. This form must be accompanied by the required filing fee of \$50.00.

This form may be electronically filed. Please see www.ncuc.net for instructions.

If this form is filed by hard copy, the original must be presented at or transmitted to the office of the Chief Clerk. Regardless of the method of delivery, this form is not deemed filed until it is received by the Chief Clerk, along with the required filing fee.

The mailing address is:

Chief Clerk
NC Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

| Exhibits required by Rule R8-64(b) | | Applicant's Response |
|---|---|--|
| (1)(i) | Full and correct name of the owner of the facility | |
| | Facility name | |
| | Business address | |
| | E-mail address | |
| | Telephone number | |
| (ii) | The owner is (check one) | <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation |
| | If a partnership, the name and business address of each general partner | |
| | If a corporation, the state and date of incorporation | |
| | If a partnership, the name and address of each general partner (add additional sheets if necessary) | |

| | | |
|--------|---|--|
| | Owner's agent for purposes of this report, if applicable: | |
| | Agent's business address | |
| | Agent's e-mail address | |
| | Agent's telephone number | |
| (iii) | The full and correct name of the site owner and, if the site owner is other than the applicant, the applicant's legal interest in the site | |
| | | |
| (2)(i) | Attach a color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system (found at www.gis.ncdcr.gov/hpoweb/) is preferred. Rooftop solar installations are not required to file a map or photo. | |
| (ii) | E911 street address of the proposed facility | |
| | County in which the proposed facility will be physically located | |
| | GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree | |
| | | |
| (3)(i) | The nature of the facility, including its technology, and the source of its power and fuel(s) | |
| (ii) | A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation | |
| (iii) | The gross and net projected maximum dependable capacity of the facility in megawatts – Alternating Current | |

| | | |
|--------|--|----|
| | The facility's nameplate capacity in megawatts – Alternating Current | |
| (iv) | The projected date on which the facility will come on line | |
| (v) | The applicant's general plan for sale of the electricity to be generated, including the name of utility to which the applicant plans to sell the electricity | |
| (vi) | Any provisions for wheeling of the electricity, if applicable | |
| (vii) | Arrangements for firm, non-firm, or emergency generation, if applicable | |
| (viii) | The service life of the project | |
| (ix) | The projected annual sales in kilowatt-hours | |
| (x) | Whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| | | |
| (4) | The expected cost of the proposed facility | \$ |

Confidentiality

If an applicant considers certain of the required information above to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

Verification

All reports shall be signed and verified (notarized) by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the report. A blank verification page is attached below.

VERIFICATION

STATE OF _____ COUNTY OF _____

Signature of Owner's Representative or Agent

Title of Representative or Agent

Typed or Printed Name of Representative or Agent

The above named person personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing report and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this _____ day of _____, 20 _____

My Commission Expires: _____

Signature of Notary Public

Name of Notary Public – Typed or Printed

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 163

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|--------------------------------|---|-----------------------------|
| In the Matter of |) | |
| 2019 REPS Compliance Plans and |) | ORDER APPROVING UPDATE TO |
| 2018 REPS Compliance Reports |) | 2018 RETAIL SALES INPUT AND |
| |) | MAINTAINING POULTRY WASTE |
| |) | SET-ASIDE ALLOCATIONS |

BY THE COMMISSION: On July 15, 2020, ElectriCities of North Carolina, Inc (ElectriCities), North Carolina Eastern Municipal Power Agency (NCEMPA), and North Carolina Municipal Power Agency Number 1 (NCMPA1) (jointly Petitioners) filed a request to reopen NC-RETS Retail Sales Inputs for 2018. As a basis for this request, ElectriCities informed the Commission that it recently discovered an error in the 2018 retail sales data submitted to NC-RETS by NCEMPA and NCMPA1. NCEMPA incorrectly included total system losses of 349,505 MWh in its members' 2018 retail sales, an overstatement of 4.55%; and NCMPA1 incorrectly included total system losses of 217,267 MWh in its members' 2018 retail sales, an overstatement of 4.03%. Petitioners state that if the error is not corrected, these overstatements of 2018 retail sales would cause the municipal members of the power agencies to overretire RECs associated with their upcoming 2019 REPS Report.

Commission Rule R8-67(h)(11) states, in part:

Each electric power supplier, or its utility compliance aggregator, shall, within 60 days of NC-RETS beginning operations, and by June 1 of each subsequent year, enter its previous year's retail electricity sales into NC-RETS, which sales will be used by NC-RETS to calculate each electric power supplier's REPS obligations and NC-RETS charges.

On April 18, 2016, in Docket No. E-100, Sub 113 (Sub 113), the Commission issued an Order Establishing Method of Allocating the Aggregate Poultry Waste Resource Set-Aside Requirement (Allocation Method Order). Among other things, that Order established that starting with compliance year 2016 the aggregate poultry waste set-aside requirement of N.C.G.S. § 62-133.8(f) shall be allocated among the electric power suppliers by averaging three years of historic retail sales (2013, 2014, and 2015), with the resulting allocation being held constant for three years (2016, 2017, and 2018). The Allocation Method Order also stated that this process would be repeated in 2019 for the next three-year period.

By order dated December 15, 2015, in the Sub 113 docket the Commission made clear that "if a regulated entity cannot comply [with the requirement to report retail sales by June 1], it must ask the Commission for a waiver." Additionally, the Commission stated

that under circumstances where retail sales data was improperly reported, “the electric power suppliers’ . . . poultry waste set-aside obligations remain unchanged.” The Commission reiterated its position in further orders in Sub 113 dated August 5, 2016, and December 16, 2019, stating again that while an electric power supplier may request a waiver to correct a prior year’s retail sales data, “[s]uch waiver, if granted, and correction would adjust an electric power supplier’s general REPS obligation, but its load ratio share calculation and the resulting allocated share of the aggregate poultry waste set-aside requirement . . . shall remain unchanged.”

On December 16, 2019, in the Sub 113 docket, the Commission issued an Order Establishing 2019, 2020, and 2021 Poultry Waste Set-Aside Requirement Allocation (2019 Allocation Order) based on the 2016, 2017, and 2018 retail sales data reported to NC-RETS by electric power suppliers and utility compliance aggregators as required by Commission Rule R8-67(h)(11). As part of the 2019 Allocation Order, the Commission provided each electric power supplier’s retail electricity sales for 2016, 2017, and 2018; the average of those three years of retail sales; the load ratio share of the State’s aggregate retail sales for those three years; and the corresponding 2019 poultry waste set-aside REPS compliance requirement based upon an aggregate 2019 poultry waste set-aside requirement of 500,000 MWh as established by the Commission’s Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief issued contemporaneously with the 2019 Allocation Order.

The Commission first notes that while Petitioners did not explicitly request a waiver to correct retail sales data after the June 1 deadline, the Commission will accept Petitioners’ letter requesting to reopen the 2018 NC-RETS retail energy sales inputs as such a waiver and will treat it accordingly. Based on the foregoing, the entire record in this proceeding, and the orders issued in Sub 113 addressing this issue, the Commission finds good cause to allow Petitioners to update their members’ 2018 retail sales data with NC-RETS. While the Commission recognizes that an adjustment to the Petitioners’ 2018 retail sales data will create an adjustment to Petitioners’ general REPS obligation, the Commission finds that (1) any such adjustment shall not alter its load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement relied upon by any electric power supplier in its REPS and REPS EMF Rider or 2019 Compliance Plan, as applicable; and (2) any such adjustment shall not alter any electric power suppliers’ load ratio share calculation nor the resulting allocated share of the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021. As this is not the first time Petitioners have requested to update retail sales data, the Commission encourages Petitioners to review their process for reporting this data to find where improvements may be made to increase the accuracy and timeliness of the reported annual data.

IT IS, THEREFORE, ORDERED as follows:

1. That ElectriCities of North Carolina, Inc., North Carolina Eastern Municipal Power Agency, and North Carolina Municipal Power Agency Number 1 shall work with the NC-RETS administrator to adjust the 2018 retail sales data and general RECs subaccounts as soon as possible, but no later than September 14, 2020;

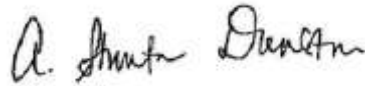
2. That the NC-RETS administrator shall submit a report to the Commission in Docket No. E-7, Sub 163 as to the status of Petitioners' 2018 retail sales adjustments and corrections to Petitioners' retired general RECs subaccounts as soon as possible after the adjustments have been completed, but no later than September 28, 2020; and

3. That Petitioners' load ratio share calculation and the resulting allocated share of the aggregate poultry waste set-aside requirement for 2019, 2020, and 2021 shall remain unchanged.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of August, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "A. Shonta Dunston".

A. Shonta Dunston, Deputy Clerk

APPENDIX 3

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 130
DOCKET NO. SP-332, SUB 0
DOCKET NO. SP-3630, SUB 1
DOCKET NO. SP-523, SUB 1
DOCKET NO. SP-445, SUB 0
DOCKET NO. SP-404, SUB 0
DOCKET NO. SP-64, SUB 1
DOCKET NO. SP-85, SUB 1
DOCKET NO. SP-782, SUB 0
DOCKET NO. SP-782, SUB 1
DOCKET NO. SP-782, SUB 2
DOCKET NO. SP-782, SUB 3
DOCKET NO. EMP-95, SUB 0
DOCKET NO. EMP-96, SUB 0
DOCKET NO. EMP-97, SUB 0
DOCKET NO. RET-27, SUB 0
DOCKET NO. SP-833, SUB 0
DOCKET NO. SP-833, SUB 1
DOCKET NO. SP-891, SUB 0
DOCKET NO. SP-1012, SUB 0
DOCKET NO. SP-1506, SUB 0
DOCKET NO. SP-2811, SUB 0
DOCKET NO. SP-3241, SUB 0
DOCKET NO. SP-3473, SUB 0
DOCKET NO. SP-3687, SUB 0
DOCKET NO. SP-3868, SUB 1
DOCKET NO. SP-4001, SUB 0
DOCKET NO. SP-4042, SUB 0
DOCKET NO. SP-4693, SUB 0
DOCKET NO. SP-4912, SUB 0
DOCKET NO. SP-5070, SUB 0
DOCKET NO. SP-5098, SUB 1
DOCKET NO. SP-5100, SUB 1
DOCKET NO. SP-5108, SUB 0
DOCKET NO. SP-5701, SUB 0
DOCKET NO. SP-7010, SUB 0
DOCKET NO. SP-7718, SUB 0
DOCKET NO. SP-7785, SUB 0
DOCKET NO. SP-7844, SUB 0
DOCKET NO. SP-7984, SUB 0
DOCKET NO. SP-8120, SUB 0
DOCKET NO. SP-8203, SUB 0

DOCKET NO. SP-8288, SUB 0
DOCKET NO. SP-8468, SUB 0
DOCKET NO. SP-8684, SUB 0
DOCKET NO. SP-8921, SUB 0
DOCKET NO. SP-9392, SUB 0
DOCKET NO. SP-9898, SUB 0
DOCKET NO. SP-10425, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|------------------------------|
| In the Matter of |) | |
| Revocation of Registration of Renewable |) | ORDER REVOKING REGISTRATION |
| Energy Facilities and New Renewable |) | OF RENEWABLE ENERGY |
| Energy Facilities Pursuant to |) | FACILITIES AND NEW RENEWABLE |
| Rule R8-66(f) – 2019 |) | ENERGY FACILITIES |

BY THE COMMISSION: On September 4, 2019, the Commission issued an order giving notice of its intent to revoke the registration of 87 renewable energy facilities and new renewable energy facilities because the owners had not completed or filed the annual certification required each April 1 as detailed in Commission Rule R8-66(b)(9). According to Commission records, and records maintained in the North Carolina Renewable Energy Tracking System (NC-RETS), the owners of the 48 renewable energy facilities and new renewable energy facilities listed in Appendices A and B did not complete their annual certification on or before October 5, 2019, as required by the Commission's September 4, 2019 Order, nor has an annual certification been completed for these facilities as of the date of this Order.

The Commission, therefore, finds good cause to revoke the registrations of the 48 facilities listed in Appendices A and B effective October 5, 2019.

IT IS, THEREFORE, ORDERED as follows:

1. That the registrations previously approved by the Commission for the 48 facilities listed in Appendices A and B shall be, and are hereby, revoked effective October 5, 2019;
2. That the NC-RETS Administrator shall not allow the owners of the facilities listed in Appendices A and B to establish those facilities as "projects" in NC-RETS;
3. That the NC-RETS Administrator shall not allow any NC-RETS account holder to import from the facilities listed in Appendices A and B renewable energy certificates (RECs) that are dated October 5, 2019 or later;
4. That any RECs dated October 5, 2019, or later earned by one of the facilities listed in Appendices A and B whose registration has been revoked pursuant to

this Order are ineligible to be used by an electric power supplier for compliance with the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard;

5. That in the future, should the owner of a facility whose registration has been revoked pursuant to this Order wish to have the energy output from its facility become eligible for compliance with the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, the owner must again register the facility with the Commission;

6. That the NC-RETS Administrator shall post a copy of this Order on the home page of the NC-RETS website;

7. That the Chief Clerk shall send a copy of this Order to the NC-RETS Administrator; and

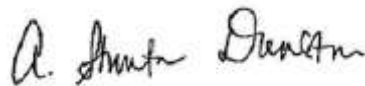
8. That the Chief Clerk shall serve a copy of this Order on all parties in Docket No. E-100, Sub 113; and

9. That the Chief Clerk shall serve a copy of this Order on each of the renewable energy facilities and new renewable energy facilities listed on Appendix A and Appendix B hereto by means of United States certified mail, return receipt requested.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of February, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, appearing to read "A. Shonta Dunston".

A. Shonta Dunston, Deputy Clerk

| Revocation of Registered Facilities (NC-RETS Participants) | | |
|---|----------------------------|--------------|
| Docket Number | Facility Owner | State |
| SP-332, Sub 0 | Barkley Sexton Energy, LLC | NC |
| SP-3630, Sub 1 | SAIA Charlotte Terminal | NC |
| SP-523, Sub 1 | Chapel Hill Tire | NC |
| SP-445, Sub 0 | Inman Mills | NC |
| SP-404, Sub 0 | Landfair Farms, LLC | NC |
| SP-64, Sub 1 | Ray Ward | NC |
| SP-85, Sub 1 | South Yadkin Power, Inc. | NC |
| | | |

| Revocation of Registered Facilities (Non NC-RETS Participants) | | |
|---|--|-------|
| Docket Number | Facility Owner | State |
| SP-782, Sub 0 | Solar Star California II, LLC | CA |
| SP-782, Sub 1 | Solar Star California II, LLC | CA |
| SP-782, Sub 2 | Solar Star California II, LLC | CA |
| SP-782, Sub 3 | Solar Star California II, LLC | CA |
| EMP-95, Sub 0 | Bobcat Bluff Wind Project, LLC | NC |
| EMP-96, Sub 0 | TX Hereford Wind Project, LLC | NC |
| EMP-97, Sub 0 | Longhorn Wind Project, LLC | NC |
| RET-27, Sub 0 | Gaston County Schools | NC |
| SP-833, Sub 0 | Tony Smith | NC |
| SP-833, Sub 1 | Tony Smith | NC |
| SP-891, Sub 0 | Criterion Powers Partners, LLC | NC |
| SP-1012, Sub 0 | Public Library of Charlotte & Mecklenburg County | NC |
| SP-1506, Sub 0 | Fibrominn, LLC | NC |
| SP-2811, Sub 0 | Mark and Janet Hosey | NC |
| SP-3241, Sub 0 | Sun-Power Systems, Inc. | NC |
| SP-3473, Sub 0 | Palmetto Solar, LLC | NC |
| SP-3687, Sub 0 | Innovative Solar 53, LLC | NC |
| SP-3868, Sub 1 | Pleasant Grove Solar, LLC | NC |
| SP-4001, Sub 0 | Harvest Solar 1, LLC | NC |
| SP-4042, Sub 0 | SolarGreen Ahoskie-North, LLC | NC |
| SP-4693, Sub 0 | Harvest Greenville I, LLC | NC |
| SP-4912, Sub 0 | Soy Solar, LLC | NC |
| SP-5070, Sub 0 | Icarus Solar, LLC | NC |
| SP-5098, Sub 1 | Shine Solar I, LLC | NC |
| SP-5100, Sub 1 | Fire Solar I, LLC | NC |
| SP-5108, Sub 0 | Doug Stuber | NC |
| SP-5701, Sub 0 | David Rubinow | NC |
| SP-7010, Sub 0 | Jackson Solar, LLC | NC |
| SP-7718, Sub 0 | Hopskin Solar, LLC | NC |
| SP-7785, Sub 0 | Norris Solar Farm, LLC | NC |
| SP-7844, Sub 0 | Spencer Mountain Hydropower, LLC | NC |
| SP-7984, Sub 0 | Hwy 97 Solar, LLC | NC |
| SP-8120, Sub 0 | Warren Solar Farm, LLC | NC |
| SP-8203, Sub 0 | C&C Solar, LLC | NC |
| SP-8288, Sub 0 | Marigold Solar, LLC | NC |
| SP-8468, Sub 0 | Eversfield Solar Farm, LLC | NC |
| SP-8684, Sub 0 | Independence Solar, LLC | NC |
| SP-8921, Sub 1 | Stacy Pontarollo | NC |
| SP-9392, Sub 0 | Ellington Branch Farm Solar, LLC | NC |

| | | |
|-----------------|-------------------------|----|
| SP-9898, Sub 0 | Cape Holiday Solar, LLC | NC |
| SP-10425, Sub 0 | Gray Rock Solar, LLC | NC |

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 130

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revocation of Registration of Renewable Energy Facilities and New Renewable Energy Facilities Pursuant to Rule R8-66(f) - 2020) ORDER GIVING NOTICE OF INTENT TO REVOKE REGISTRATION OF RENEWABLE ENERGY FACILITIES AND NEW RENEWABLE ENERGY FACILITIES

BY THE COMMISSION: Pursuant to Commission Rule R8-66(b), for renewable energy certificates (RECs) earned by a renewable energy facility or new renewable energy facility to be eligible for use by an electric power supplier for compliance with the Renewable Energy and Energy Efficiency Portfolio Standard (REPS), the owner of the facility shall register it with the Commission as a renewable energy facility or new renewable energy facility and thereafter file an annual certification of compliance with the conditions of continuation of the registration. Each Commission order approving the registration of a renewable energy facility or new renewable energy facility states that the owner of the facility shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year. Specifically, Commission Rule R8-66(b)(9) states that annual certifications are due April 1 of each year, and that owners of facilities that are registered as projects in the North Carolina Renewable Energy Tracking System (NC-RETS) may complete their annual certification electronically via the NC-RETS system. Pursuant to Commission Rule R8-66(f)(5), failure to file an annual certification may result in the revocation of a facility's registration.

According to records maintained in NC-RETS, 33 renewable energy facilities and/or new renewable energy facilities registered in NC-RETS (listed in Appendix A of this Order) have not completed the on-line annual certification that was due April 1, 2020. In addition, 177 renewable energy facilities and/or new renewable energy facilities that are registered with the Commission, but that are not registered as projects in NC-RETS (listed in Appendix B of this Order) have not filed with the Commission the annual certification that was due April 1, 2020.

The Commission, therefore, finds good cause to notice its intent to revoke, as of October 1, 2020, the registration of any facility listed in Appendix A of this Order, unless the owner of the facility completes the on-line certification on or before that date. Further, the Commission finds good cause to notice its intent to revoke, as of October 1, 2020, the registration of any facility listed in Appendix B of this Order, unless the owner of the facility files the verified certification required by Rule R8-66(b) (attached as

Appendix C of this Order) on or before that date. Finally, the Commission concludes that it is appropriate to waive the 2020 annual certification requirement in Rule R8-66(b) for recently registered facilities that received orders accepting a registration statement after January 1, 2020.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission shall issue orders revoking the registration of any renewable energy facilities or new renewable energy facilities listed in Appendix A as of October 1, 2020, unless the owner of the facility completes the on-line certification required by Rule R8-66(b) on or before that date;

2. That the Commission shall issue orders revoking the registration of any renewable energy facility or new renewable energy facility listed in Appendix B as of October 1, 2020, unless the owner of the facility files the verified certification required by Rule R8-66(b) (attached as Appendix C of this Order) on or before that date;

3. That the NC-RETS Administrator shall not import any RECs from a renewable energy facility or new renewable energy facility listed in Appendix B until the owner of the facility has filed with the Commission the certification required by Rule R8-66(b) and this Order;

4. That the Chief Clerk shall serve a copy of this Order on the owner of each facility listed in Appendices A and B by certified mail, return receipt requested;

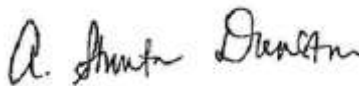
5. That the Chief Clerk shall distribute a copy of this Order to all of the parties in Docket No. E-100, Sub 113.; and

6. That the Chief Clerk shall transmit a copy of this Order to the NC-RETS Administrator.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of August, 2020.

NORTH CAROLINA UTILITIES COMMISSION



A. Shonta Dunston, Deputy Clerk

| Registered Facilities Pending Revocation (NC-RETS Participants) | | |
|--|-----------------------------------|--------------|
| Docket Number | Facility Owner | State |
| SP-2736, Sub 0 | Ashley Solar Farm, LLC | NC |
| SP-1330, Sub 0 | Lemuel D. Black | NC |
| SP-5, Sub 1 | Bruce Cox | NC |
| SP-960, Sub 0 | Carolina Tractor & Equipment Co. | NC |
| SP-451, Sub 0 | Aquenergy Systems, Inc. | NC |
| SP-451, Sub 1 | Aquenergy Systems, Inc. | NC |
| SP-451, Sub 2 | Aquenergy Systems, Inc. | NC |
| SP-83, Sub 1 | Mill Shoals Hydro Company, Inc. | NC |
| SP-447, Sub 0 | Pelzer Hydro Company | NC |
| SP-447, Sub 1 | Pelzer Hydro Company | NC |
| SP-1015, Sub 1 | Commonwealth Brands, Inc. | NC |
| SP-2524, Sub 0 | Amethyst Solar, LLC | NC |
| SP-2218, Sub 0 | Audrey Solar, LLC | NC |
| SP-1965, Sub 0 | Milo Solar, LLC | NC |
| SP-1967, Sub 0 | Minnie Solar, LLC | NC |
| SP-2156, Sub 0 | Owen Solar, LLC | NC |
| SP-2061, Sub 0 | Sophie Solar, LLC | NC |
| SP-2573, Sub 0 | Star Solar, LLC | NC |
| SP-2482, Sub 0 | Congolina, LLC | NC |
| SP-4, Sub 4 | Deep River Hydro, Inc. | NC |
| SP-1525, Sub 0 | First Citizens Bank | NC |
| SP-460, Sub 0 | L&S Water Power, Inc. | NC |
| SP-3405, Sub 0 | Lang Solar Farm, LLC | NC |
| SP-3523, Sub 0 | Leon Parker | NC |
| SP-798, Sub 0 | Pine Hurst Farm Acres Partnership | NC |
| SP-294, Sub 0 | Raymond Pengelly | NC |
| SP-1103, Sub 0 | RES Ag – DM2-1, LLC | NC |
| SP-1106, Sub 0 | RES Ag – DM4-3, LLC | NC |
| SP-883, Sub 0 | Ronnie Powers | NC |
| SP-3930, Sub 0 | Strikeleather Farm, LLC | NC |
| E-37, sub 1 | Town of Lake Lure | NC |

| | | |
|----------------|----------------------|----|
| SP-2561, Sub 0 | Town of Mars Hill | NC |
| SP-3145, Sub 0 | Yadkin 601 Farm, LLC | NC |

| Registered Facilities Pending Revocation (Non NC-RETS Participants) | | |
|--|-------------------------------|--------------|
| Docket Number | Facility Owner | State |
| EMP-20, Sub 1 | Exelon Wind 4, LLC | TX |
| EMP-21, Sub 1 | Exelon Wind 9, LLC | TX |
| EMP-22, Sub 1 | Exelon Wind 10, LLC | TX |
| EMP-30, Sub1 | Story Wind, LLC | IA |
| EMP-68, Sub 0 | Minco Wind III, LLC | OK |
| EMP-73, Sub 0 | Fenton Power Partners, LLC | MN |
| EMP-93, Sub 0 | Wilkinson Solar, LLC | NC |
| RET-4, Sub 0 | FLS YK Farm, LLC | NC |
| RET-4, Sub 1 | FLS YK Farm, LLC | NC |
| RET-4, Sub 3 | FLS YK Farm, LLC | NC |
| RET-5, Sub 0 | FLS YK Farm, LLC/YMCA | NC |
| RET-8, Sub 25 | FLS YK Farm, LLC | NC |
| RET-8, Sub 26 | FLS YK Farm, LLC | NC |
| RET-11, Sub 0 | Camp Rock for Boys | NC |
| RET-13, Sub 0 | Green Sage Coffeehouse & Cafe | NC |
| RET-14, Sub 0 | The Market Place Restaurant | NC |
| RET-15, Sub 0 | The Pisgah Inn | NC |
| RET-16, Sub 0 | Kananga Conferences, Inc. | NC |
| RET-17, Sub 0 | Biowheels | NC |
| RET-18, Sub 0 | West End Bakery | NC |
| RET-19, Sub 0 | Mighty Good Eats | NC |
| RET-24, Sub 1 | FLS Solar 60, LLC | NC |
| RET-24, Sub 2 | FLS Solar 60, LLC | NC |
| RET-25, Sub 1 | Newport Fayetteville, LLC | NC |
| RET-30, Sub 0 | FLS Owner III, LLC | NC |
| RET-31, Sub 0 | FLS Owner VII, LLC | NC |
| RET-32, Sub 0 | FLS Owner IV, LLC | NC |
| RET-33, Sub 0 | Appalachian State University | NC |
| RET-33, Sub 4 | Appalachian State University | NC |
| SP-123, Sub 3 | Hydro Dyne Industries, Inc. | NC |
| SP-203, Sub 1 | Aquesta Bank | NC |
| SP-203, Sub 2 | Aquesta Bank | NC |
| SP-283, Sub 4 | Appalachian State University | NC |

| | | |
|----------------|--------------------------------|----|
| SP-283, Sub 5 | Appalachian State University | NC |
| SP-283, Sub 6 | Appalachian State University | NC |
| SP-283, Sub 7 | Appalachian State University | NC |
| SP-283, Sub 12 | Appalachian State University | NC |
| SP-283, Sub 13 | Appalachian State University | NC |
| SP-1336, Sub 0 | Raymond Wisniewski | PA |
| SP-1375, Sub 0 | Wright of Thomasville | NC |
| SP-1413, Sub 2 | Paul Kazmer | NC |
| SP-1754, Sub 0 | Alamance Community College | NC |
| SP-2092, Sub 0 | Rick Sylvester | NC |
| SP-2094, Sub 1 | Town of Cary | NC |
| SP-2239, Sub 0 | Telexpress, Inc. | NC |
| SP-2239, Sub 1 | Telexpress, Inc. | NC |
| SP-2413, Sub 0 | Pitt Electric, LLC | NC |
| SP-2820, Sub 0 | South Atlantic Services, Inc. | NC |
| SP-2962, Sub 0 | Lucky Clay Farms, LLC | NC |
| SP-2962, Sub 1 | Lucky Clay Farms, LLC | NC |
| SP-2962, Sub 2 | Lucky Clay Farms, LLC | NC |
| SP-2962, Sub 3 | Lucky Clay Farms, LLC | NC |
| SP-3109, Sub 0 | Industrial Centers, LLC | NC |
| SP-3116, Sub 1 | Wayne Cooley | NC |
| SP-3345, Sub 1 | Duke University | NC |
| SP-3540, Sub 0 | ESA Hendersonville NC, LLC | NC |
| SP-3606, Sub 0 | Battleboro Solar, LLC | NC |
| SP-3701, Sub 0 | Mount Olive I, LLC | NC |
| SP-3810, Sub 0 | Sabattus Solar, LLC | NC |
| SP-3825, Sub 0 | Osborne Brothers Electric, LLC | NC |
| SP-3853, Sub 0 | Perdue Farms, Inc. | NC |
| SP-4092, Sub 0 | Wilkesboro HydroPower, LLC | NC |
| SP-4192, Sub 0 | Chocowinty Farm, LLC | NC |
| SP-4280, Sub 0 | Caswell Solar, LLC | NC |
| SP-4440, Sub 0 | Spring Hope Solar 2, LLC | NC |
| SP-4535, sub 0 | James Miller | NC |
| SP-4607, Sub 0 | Northern Cardinal Solar, LLC | NC |
| SP-4616, Sub 0 | Chickenfoot Solar, LLC | NC |
| SP-4619, Sub 0 | 233 Randolph 74 Solar, LLC | NC |
| SP-4654, Sub 0 | Snake Solar, LLC | NC |

| | | |
|----------------|------------------------------------|----|
| SP-4689, Sub 0 | ESA Elm City NC, LLC | NC |
| SP-4752, Sub 0 | ESA Princeton 2 NC, LLC | NC |
| SP-4927, Sub 0 | Daniela & Thomas Doyle | NC |
| SP-4970, Sub 0 | Country Farm Solar, LLC | NC |
| SP-5041, Sub 0 | Brooke Solar, LLC | NC |
| SP-5042, Sub 0 | Izia Solar, LLC | NC |
| SP-5048, Sub 0 | Iga Solar, LLC | NC |
| SP-5051, Sub 0 | Wilfork Solar, LLC | NC |
| SP-5059, Sub 0 | Higgins Solar, LLC | NC |
| SP-5076, Sub 0 | Blue Bird Solar, LLC | NC |
| SP-5122, Sub 0 | Homer Siding Solar Farm, LLC | NC |
| SP-5136, Sub 0 | TWC Administration, LLC | NC |
| SP-5152, Sub 0 | ESA Henderson 2, LLC | NC |
| SP-5190, Sub 0 | Daniel Kluthe | NC |
| SP-5240, Sub 0 | Red Cedar Solar, LLC | NC |
| SP-5241, Sub 0 | Red Toad Phase 2 Buffalo Road, LLC | NC |
| SP-5245, Sub 0 | Turn Smith Solar, LLC | NC |
| SP-5250, Sub 0 | Runaway Farm, LLC | NC |
| SP-5262, Sub 0 | Henry Gibson Solar, LLC | NC |
| SP-5263, Sub 0 | Centerville Church Solar, LLC | NC |
| SP-5265, Sub 0 | Daniel Solar, LLC | NC |
| SP-5267, Sub 0 | Whiskey Solar, LLC | NC |
| SP-5389, Sub 0 | Wilson Solar Farm 7, LLC | NC |
| SP-5390, Sub 0 | Wilson Solar Farm 6, LLC | NC |
| SP-5391, Sub 0 | Wilson Solar Farm 5, LLC | NC |
| SP-5392, Sub 0 | Wilson Solar Farm 4, LLC | NC |
| SP-5393, Sub 0 | Wilson Solar Farm 3, LLC | NC |
| SP-5394 Sub 0 | Wilson Solar Farm 2, LLC | NC |
| SP-5395, Sub 0 | Wilson Solar Farm 1, LLC | NC |
| SP-5442, Sub 0 | Edenton Airport Solar, LLC | NC |
| SP-5574, Sub 0 | Megan Lynch | NC |
| SP-5577, Sub 0 | Whiteville Solar 1, LLC | NC |
| SP-5594, Sub 0 | Tolson Solar, LLC | NC |
| SP-5637, Sub 0 | Trinity Solar, LLC | NC |
| SP-5738, Sub 0 | Mule Farm Solar, LLC | NC |
| SP-5820, Sub 0 | Burrows Farm, LLC | NC |
| SP-6544, Sub 0 | Climax Solar Project, LLC | NC |

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-100, SUB 34

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---------------------------------------|---|----------------------|
| In the Matter of | | |
| Request for Declaratory Ruling by PHW |) | |
| Energy, LLC that Partially Composted |) | ORDER ON REQUEST FOR |
| Poultry Carcasses are Poultry Waste |) | DECLARATORY RULING |
| Resources under N.C.G.S. § 62-133.8 |) | |

BY THE COMMISSION: On March 27, 2019, in the above-captioned proceeding, PHW Energy, LLC (PHW Energy), filed a petition seeking a declaratory ruling from the Commission that (1) the carcasses of deceased poultry when combined with typical carbon-based biomass composting materials such as wood chips or sawdust (where such composting materials do not exceed sixty percent (60%) of the total weight of the mixture), can be processed into a material which qualifies in its entirety as “poultry waste” for the purposes of N.C.G.S. § 62-133.8(f) (the poultry waste set-aside requirement of the renewable energy and energy efficiency portfolio standard), and thus (2) the electric power generated by all such material, when combusted or used in an anaerobic digestion process, qualifies for use by electric power suppliers against the poultry waste set-aside requirement.

On April 9, 2019, the Commission issued an Order granting the petition to intervene filed by the North Carolina Poultry Federation (Poultry Federation).

On May 3, 2019, the Commission issued an Order requesting comments.

On May 17, 2019, the Poultry Federation and the Public Staff filed comments.

On May 29, 2019, PHW Energy filed reply comments. Included with its comments was a request that the Commission schedule oral arguments in this proceeding.

On June 19, 2019, the Commission issued an Order scheduling oral arguments in this proceeding on July 1, 2019.

On July 1, 2019, this matter came on for oral argument as scheduled.

On July 8 and 9, 2019, the Public Staff and PHW Energy, respectively, made post-hearing filings.

SUMMARY OF THE PARTIES' COMMENTS

Petition of PHW Energy

In its petition seeking a declaratory ruling, PHW Energy provides a policy background on North Carolina's Renewable Energy and Energy Efficiency Portfolio Standard (REPS), noting that the Commission has delayed or modified the poultry waste set-aside requirements on multiple occasions due to difficulties that electric power suppliers are having meeting these requirements. PHW Energy also cites to the enactment of Session Law 2017-192 (House Bill 589) as containing several provisions that PHW Energy argues are intended to encourage poultry waste power generation. PHW Energy next argues that "poultry waste," as that term is used in N.C.G.S. § 62-133.8(f), includes all types of waste derived from raising and processing poultry and that there is no basis for limiting or excluding certain types of poultry waste from the operation of the statute. Specifically, PHW Energy argues that qualifying the mixture of poultry mortalities and composting material as "poultry waste" furthers the policy objectives of the REPS and the intent of House Bill 589 to increase the production of poultry waste renewable energy resources and other state policy objectives.

Citing the affidavit of R. Douglas Meckes, North Carolina State Veterinarian, which is attached to its petition, PHW Energy states that in the normal course of raising poultry, a number of the animals die on farms prior to being taken to processing facilities and that the carcasses of these animals are usually disposed of on-site. In addition, PHW Energy states that natural disasters can create "massive numbers" of mortalities in a short period of time that cannot be disposed of in the normal course of farming best practices.

PHW Energy argues that the composting of these mortalities is both an environmentally sound means of disposal of the carcasses and a method of producing renewable energy certificates (RECs) consistent with the policy goals of the REPS. PHW Energy offers that "poultry waste" is not expressly defined, but N.C.G.S. § 62-133.8(f) provides that poultry waste may include wood shavings, straw, rice hulls, or other bedding materials. As such, PHW Energy argues that poultry farming best practices result in poultry manure and these materials being inextricably mixed together, and that such best practices were, or at least would have been, recognized by the legislature. PHW Energy next cites several Commission orders,¹ in which it views the Commission as having "consistently interpreted 'poultry waste' broadly to implement the goals of" the REPS. PHW Energy concludes that approving the use of the mixture of mortalities and composting material as poultry waste is substantially similar to the Commission's orders approving the use of "Press Cake" or "DAF Cake," and that the Commission's reasoning in those orders is similarly applicable to this request.

PHW Energy next argues that the entire weight and mass of the fuel — both carcass remains and necessary composting carbon-based material — be classified as

¹ See In re Request for a Declaratory Ruling by PHW Energy, LLC, Docket no. SP-100, Sub 33 (April 24, 2018) (the "Press Cake" order); In re Request for a Declaratory Ruling by BioEnergy Technologies, LLC, Docket no. SP-100, Sub 26 (October 12, 2010) (the "DAF Cake" order).

“poultry waste.” PHW Energy supports its argument by stating that agricultural best practices for the disposal of carcasses call for partial or complete composting, and that the composted material cannot be readily separated. PHW Energy further argues that had the legislature been aware of the potential for using partially decomposed poultry carcasses as a fuel source at the time that the REPS legislation was drafted, it would have been expressly included as “poultry waste” for the same reasons that carbon-based “bedding material” was included. PHW Energy next argues that composting is necessary for the fuel handling purposes. Finally, PHW Energy reiterates that through the composting process the carcass molecules and composting molecules comprising the fuels are indistinguishable and cannot be separated and measured, and argues that, in this respect, the fuel is exactly like the combination of poultry manure and wood shavings, straw, rice hulls, or other bedding material that qualify as poultry waste pursuant to N.C.G.S. § 62-133.8(f).

In conclusion, PHW Energy requests that the Commission determine and declare that the carcasses of deceased poultry, when combined with typical composting materials such as wood chips or sawdust, can be processed into a material which qualifies in its entirety as “poultry waste” for the purposes of N.C.G.S. § 62-133.8(f) and that the electric power generated by that fuel, when combusted or used in an anaerobic digestion process, qualifies for the poultry waste set-aside requirements in proportion to the percentage of energy attributable to that fuel.

Comments of the Poultry Federation

In its comments, the Poultry Federation argues that the full weight of the processed fuel mixture should be considered “poultry waste” under the REPS. In support of its argument, the Poultry Federation states that composting is the best practice for disposal of mortalities that occur in normal poultry farming operations, which the Poultry Federation states is undisputed and supported by the affidavits of Robert L. Ford, Executive Director of the Poultry Federation and R. Douglas Meckes, DVM, both of which are attached to and made a part of the Poultry Federation’s comments. The Poultry Federation further states that during the typical composting process, the poultry mortalities and carbon materials are not weighed separately prior to being combined, although an “ideal mixture,” according to the standards in the academic materials that are of record in this proceeding, would consist of approximately 60% animal carcass to 40% carbon-based material. In addition, the Poultry Federation states that once the partially-composed poultry mortalities have been processed by PHW Energy into a product suitable for delivery and conversion into fuel, the animal and plant materials have been so inextricably intertwined that they can no longer be differentiated from one another, let alone be separately measured. Thus, the Poultry Federation reiterates, the combined weight of the fuel mixture created from the poultry mortalities and carbon-based composting materials should be considered “poultry waste” under the REPS.

Comments of the Public Staff

In its comments, the Public Staff provides a summary of PHW Energy's petition for declaratory ruling and discusses the arguments made therein. In the discussion of PHW Energy's arguments, the Public Staff states that it disagrees with PHW Energy that the mixing of poultry mortalities with composting materials results in a mixture that is inextricable, or impossible to separate out into their constituent parts for purposes of determining the RECs earned from the respective heat content of each renewable energy resource.

The Public Staff argues that, as with other multi-fuel facilities, Commission Rule R8-66(b)(3) provides the appropriate framework for making this determination. Contrary to PHW Energy's view, the Public Staff argues that it is appropriate to first evaluate the inputs to the composted mortalities to determine whether they individually would be considered a renewable energy resource and, to the extent they would be used to meet an animal waste set-aside requirement, whether they would individually qualify for that resource type. However, the Public Staff agrees with PHW Energy that both the poultry mortalities and the composting materials listed (wood chips or sawdust) would be considered a "biomass resource" and therefore be considered a renewable energy resource. The Public Staff also recognizes that the poultry mortalities are a byproduct of animal agricultural production, and thus are appropriately considered an animal waste product within the definition of a biomass resource, and similarly, wood chips and sawdust fall within the definition of wood waste.

In response to PHW Energy's reliance on the Commission's Press Cake order, the Public Staff states that, unlike the organic material resulting from rendering or processing of poultry products (which the Commission determined qualifies as "poultry waste"), the composting material described by PHW Energy, while a renewable energy resource, would not by itself be considered a poultry waste product unless it had previously been used as bedding material. The Public Staff, therefore, again asserts that to the extent a waste stream from poultry operations can be delineated from other renewable energy resources the energy content from those separate resources should be the relevant factor for determining the percentage of energy attributable to each fuel type for REC calculation purposes. While the Public Staff acknowledges that the mixing of the two materials may improve the decomposition process and help address biosecurity issues, these positive benefits of the composting process do not result in an increased amount of energy from poultry waste being generated. In response to PHW Energy's reliance on the provisions of House Bill 589, the Public Staff agrees with PHW Energy as to the provisions enacted by that legislation; however, the Public Staff states that this legislation did not modify or expand the definition of "poultry waste."

In conclusion, the Public Staff recommends that the Commission make the following determinations that: (1) poultry carcasses are an organic waste material that constitute "poultry waste" for the purposes of N.C.G.S. § 62-133.8(f); (2) composted mortalities consisting of poultry carcasses combined with other biomass bedding material, qualifies as a renewable energy resource; and (3) the resulting electric power or thermal

output generated by the use of such combined material as a fuel, when combusted or used in an anaerobic digestion process, qualifies for earning renewable energy certificates (RECs) that may be used by electric power suppliers to comply with the poultry waste set-aside requirement only in proportion to the percentage of energy attributable to the poultry waste material, subject to review by the Commission and the Public Staff.

Reply Comments of PHW Energy

In its reply comments, PHW Energy states that the position of the Public Staff differs from that of PHW Energy and the Poultry Federation on a “somewhat narrow issue,” that is, in the measurement of the weight of the poultry waste resource for the purposes of calculating RECs. PHW Energy argues that it has demonstrated that both poultry farming best practices and by the nature of the mechanical process PHW proposes to utilize to convert the poultry mortalities into a useable fuel, and the constituent animal and plant components of the fuel cannot be readily weighed or separated. PHW Energy describes the Public Staff’s position as urging that the animal waste product and the plant based biomass material can be measured separately, and that only the weight of the poultry mortalities — and not the weight of the carbon-based composting materials with which they are mixed — should be considered a “poultry waste resource” in calculating RECs.

In response to the Public Staff, PHW Energy states that poultry farmers are not measuring separate precise weights of the poultry carcasses and the carbon-based materials mixed into the farm site compost pile, and argues that asking poultry farmers to do so would place an undue burden on poultry farming operations and result in costly inefficiencies. Accordingly, PHW Energy argues that it is impractical for poultry farmers to “evaluate the inputs to the composted mortalities” with any meaningful degree of accuracy. PHW Energy also argues that it would be similarly impractical to measure separately the weights of the poultry mortalities and the carbon-based composting materials at the processing facility — alleging that once the combined materials have been gathered from the farm site and delivered for processing the poultry mortalities are in varying states of decomposition. Thus, PHW Energy states that just as no one tries, or would be able to, separate and weigh poultry manure from bedding material—it all arrives at the power plant mixed together and is weighed there—the same circumstances and considerations should apply to the combined material at issue here.

In addition, PHW Energy argues that due to the impracticability of measuring the animal and plant components of the partially-decomposed mixture at the farm level or prior to processing, this measurement should be based on suppliers’ certification of compliance with poultry farming composting best practices. These best practices, PHW Energy states, dictate that pre-composted poultry mortalities should be, on average, approximately 40% of the total weight of the combined mixture, with the carbon-based composting material making up the remaining 60%. While acknowledging that these ratios may vary, PHW Energy argues that the variation is “not unlike” the variations that would occur in a mixture of poultry manure and bedding material and that this further illustrates why requiring separation and weighing of the components of the combined

mixture is impractical. In PHW Energy's view, the crux of the Public Staff's comments comes down to whether the waste stream from poultry operations can be delineated from other renewable energy resources, and argues that in this instance the constituent components of the mixture cannot be reasonably delineated from one another — either at the farm level or at the point of processing.

PHW Energy next argues that, to the extent that the Public Staff is worried about abuse resulting from adoption of PHW Energy's position, several factors ameliorate that concern. First, PHW Energy agrees that a monthly attestation as to the average minimum of 40% use of poultry in the fuel mixture be required. Second, PHW Energy argues that processing facilities should be subject to field audits by the Public Staff to confirm that the operations are consistent with the attestations. Third, PHW Energy argues that the fats from the mortalities may improve the fuel handling and other fuel characteristics of otherwise un-mixed composting material. Fourth, PHW Energy argues that the cost of the poultry mortalities input from the farmers (who need to get rid of this waste product) is expected to be less than the cost of procuring the necessary composting material.

Finally, PHW Energy again notes that the Poultry Federation's comments support its requested relief and argues that this relief is consistent with the REPS and Commission decisions interpreting that statute. PHW Energy requested oral arguments, which the Commission allowed.

ORAL ARGUMENT

This matter came on for oral argument as scheduled. The parties presented their arguments, reiterated the positions set out in their comments, and responded to questions from the Commission. The Commission appreciates the effort that the parties undertook to participate in the oral argument. In addition, the parties made certain post-hearing filings as requested at the oral argument.

DISCUSSION AND CONCLUSIONS

Based on the foregoing and the entire record herein, the Commission agrees with the Public Staff and concludes that the full weight of the processed fuel mixture — both the poultry carcasses or mortalities and the necessary carbon-based biomass material used to compost those poultry carcasses or mortalities (composting material) — should not be considered "poultry waste" under the poultry waste set-aside requirement of the renewable energy and energy efficiency portfolio standard (REPS). The composting material is neither "poultry waste," nor "poultry waste combined with...bedding material," under the plain language of the statute. Even were the language of the statute ambiguous — and the Commission does not conclude that it is — the legislature did not intend for composting material to be considered poultry waste. These conclusions are entirely consistent with the Commission's orders interpreting the plain language of the REPS statute.

First, the Commission agrees with the Public Staff and concludes that the composting material is neither “poultry waste,” nor “poultry waste combined with...bedding material,” under the plain language of the statute.

The primary purpose of statutory interpretation is to give effect to the intent of the legislature. Lunsford v. Mills, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014). “When the language of a statute is clear and unambiguous, there is no room for judicial construction, and...[the language must be given] its plain and definite meaning.” State v. Jones, 358 N.C. 473, 477, 598 S.E.2d 125, 128 (2004); see also Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 518, 597 S.E.2d 717, 722 (2004). Courts should “give effect to the words actually used in a statute and should neither delete words used nor insert words not used in the relevant statutory language during the statutory construction process.” Midrex Techs., Inc., v. N.C. Dep’t of Revenue, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016). And “[w]here words of a statute are not defined, [it is] presume[d] that the legislature intended to give them their ordinary meaning determined according to the context in which those words are ordinarily used.” Reg’l Acceptance Corp. v. Powers, 327 N.C. 274, 278, 394 S.E.2d 147, 149 (1990).

The relevant language of N.C.G.S. § 62-133.8(f) provides that

[f]or calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours of the total electric power sold to retail electric customers in the State...shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material.

(Emphasis added). The highlighted language identifies what is ordinarily known as poultry litter, commonly consisting of a mixture of poultry excreta, spilled feed, feathers, and material used as bedding. Bedding materials common to the industry include wood shavings, straw, rice hulls, sawdust, peanut hulls, shredded sugar cane, and other dry, absorbent, low-cost organic materials. The primary function of bedding material is its use in poultry houses or containment buildings to absorb and release moisture which in turn limits the production of ammonia and harmful pathogens.

As an initial matter, there is little doubt — and no dispute between the parties — that the poultry carcasses or mortalities are themselves a form of “poultry waste.” They are organic material comprised primarily of organic animal waste or residues and that result from the ordinary rendering or processing of poultry products — which the Commission has previously determined qualifies as “poultry waste.” See Order on Request for Declaratory Ruling, In re Request for a Declaratory Ruling by BioEnergy Technologies, LLC, Docket no. SP-100, Sub 26 (October 12, 2010).

But, conversely, the Commission concludes that any ordinary biomass, wood waste, or composting material used to compost these mortalities is not “poultry waste” and does not qualify as such. It certainly is not a poultry material or any other form of manure or animal waste. It also is not bedding material under the plain language of the

statute. As PHW Energy candidly admits, this material never sees the inside of a poultry house or containment building and is not used as bedding material. (See Tr. Vol. I, pp. 23-25) PHW Energy also admits that there could be materials other than bedding material used in the composting process. (Id. at 25) And, most importantly, “composting material” is not specifically identified in the statute. Consequently, the full weight of the combined material cannot be considered “poultry waste” under the statute, even if later combined with poultry waste — on- or off-site.

The mere fact that the composting material in question is of a material that could have been — but was not — used as bedding material does not change this conclusion. Neither does labeling it “bedding material” when it was not so used. To this end, the Commission finds instructive Appalachian Materials, LLC v. Watauga Cty., ___ N.C. App. ___, ___, 822 S.E.2d 57, 61 (2018), disc. review denied, 372 N.C. 108, 824 S.E.2d 419 (2019). There, our Court of Appeals determined that a building called the “Margarett E. Gragg Education Center” was not considered an “educational facility” for purposes of the statute because it was not used as one of the specific types of schools or institutions identified in the statute. Of course the Watauga County Schools system could have used the building in this manner but did not. And its use not its label is what mattered. Cf. In re N.T., 214 N.C. App. 136, 142-45, 715 S.E.2d 183, 187-89 (2011) (determining that an airsoft pistol was not a “gun” for purposes of the statute).

Also, the legislature here could have included “composting material” among the materials that may be combined with poultry waste. Similarly, the legislature could have included any other biomass resource, without limitation and to include any other agricultural, animal, or wood waste, or energy crop or pulping liquor (material it had previously identified in the definitional section of the same statute) as additional materials that can be combined with poultry waste. See N.C.G.S. § 62-133.8(a); see also N.C. Baptist Hosps., Inc. v. Mitchell, 323 N.C. 528, 538, 374 S.E.2d 844, 849 (1988) (noting “[t]here is no doubt that the legislature knows how to draft such language when it chooses to do so”). That it did not,² and instead only explicitly identified “bedding material[s],” only further underscores this conclusion. Falin v. Roberts Co. Field Servs., 245 N.C. App. 144, 150, 782 S.E.2d 75, 79-80 (2016) (“The legislature could have chosen to write the statute to include distance....This the legislature did not do.”); see also Evans v. Diaz, 333 N.C. 774, 780, 430 S.E.2d 244, 247 (1993) (“[W]hen a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list.”).

Second, and in response to some of the parties’ arguments which appear to either conflate or confuse this question with the first, the Commission concludes that even if the language of the statute were ambiguous — and, again, the Commission does not so conclude — the legislature did not intend for composting material to be considered either

² PHW Energy apparently recognizes this in arguing that had the legislature been aware of the potential for using partially decomposed poultry carcasses as a fuel source at the time that the REPS legislation was drafted, it would have been expressly included as “poultry waste” for the same reasons that “bedding material” was included. But recognizing that it was not so included defeats PHW Energy’s argument.

“poultry waste,” or “poultry waste combined with...bedding material,” for purposes of the statute.

The “canon of statutory construction, noscitur a sociis, instructs that ‘associated words explain and limit each other. When a word used in a statute is ambiguous or vague, its meaning may be made clear and specific by considering the company in which it is found and the meaning of the terms which are associated with it.’” Jeffries v. Cty. of Harnett, ___ N.C. App. ___, 817 S.E.2d 36, 50 (2018) (citation omitted), disc. review denied, 372 N.C. 297, 826 S.E.2d 710 (2019). Relatedly, the ejusdem generis rule counsels that

where general words follow a designation of particular subjects or things, the meaning of the general words will ordinarily be presumed to be, and construed as, restricted by the particular designations and as including only things of the same kind, character and nature as those specifically enumerated.

Id. (citing State v. Lee, 277 N.C. 242, 244, 176 S.E.2d 772, 774 (1970)); see also Norfolk and Western R. Co. v. Train Dispatchers, 499 U.S. 117, 129, 113 L. Ed. 2d 95, 107 (1991) (“Under the principle of ejusdem generis, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration.”).

Applying these principles, the illustrative examples of “wood shavings, straw, [and] rice hulls,” when read together with the inclusive phrase tying these examples together — “or other bedding material” — shows that the legislature intended to allow only non-poultry waste materials that are used as bedding material to be included or combined with, and thus also considered as, poultry waste. Cf. Lee, 277 N.C. at 244-45, 176 S.E.2d at 774 (interpreting the phrase “or other like weapons”). Conversely, it did not intend that ordinary wood waste or composting material that was not so used would be a “poultry waste” resource for purposes of the statute. See Jeffries, ___ N.C. App. at ___, 817 S.E.2d at 50 (“that subdivision (2a) explicitly lists ‘farming’ and ‘ranching’ but not ‘hunting’ implies that shooting activities, even when related to hunting, were not contemplated as ‘agritourism’”). Again, the highlighted statutory language describes only to what is commonly understood to be poultry litter; this language is not a catch-all that was meant to apply to any type of composting material one might be able to combine with any type of poultry waste in some form or fashion.

The Commission finds further support for the same by examining the entirety of N.C.G.S. § 62-133.8 — each “word[] and phrase[]...[in] context” and “as a composite whole” — “so as to harmonize [its individual] provisions...” Duke Power Co. v. High Point, 69 N.C. App. 378, 387, 317 S.E.2d 701, 706 (1984). Therein appear broader — more generalized — provisions which set out the general REPS requirements for ordinary biomass, and which aptly capture the composting material at issue. See N.C.G.S. §§ 62-133.8(b) and (c). The Commission and the Court of Appeals each previously determined that these broader provisions applied even to wood derived from whole trees, and that

“[a]ll wood fuel...thus is a ‘biomass resource’ and a ‘renewable energy resource’” for purposes of § 62-133.8(b). See State ex rel. Utils. Comm’n v. EDF, 214 N.C. App. 364, 369, 716 S.E.2d 370, 373 (2011). And, indeed, the composting material would still qualify for these ordinary REPS requirements.

In contrast, the more specific statutory provision now at issue allows for other more specific REPS requirements to be met only by way of “poultry waste combined with...[types of] bedding material.” See § 62-133.8(d); see also State ex rel. Utils. Comm’n v. Lumbee River Elec. Membership Corp., 275 N.C. 250, 260, 166 S.E.2d 663, 670 (1969) (“In such situation the specially treated situation is regarded as an exception to the general provision.”); accord Lowder v. All Star Mills, Inc., 301 N.C. 561, 579, 273 S.E.2d 247, 257 (1981). As such, and again, this language was not meant to apply to any type of composting material one might be able to combine with any type of poultry waste in some form or fashion, nor does it apply to material that might have been but was not actually used as bedding material.

This conclusion is further supported by considering the consequences of PHW Energy’s interpretation. See Alberti v. Manufactured Homes, Inc., 329 N.C. 727, 732, 407 S.E.2d 819, 822 (1991) (“Legislative intent may [also] be inferred from...the consequences which would follow...”); accord Frye Reg’l Med. Ctr. v. Hunt, 350 N.C. 39, 45, 510 S.E.2d 159, 163 (1999). Under PHW Energy’s interpretation, any type or amount of ordinary wood fuel must necessarily be considered poultry waste the moment it is combined with some amount of poultry waste. See, e.g., Ayers v. Board of Adjustment, 113 N.C. App. 528, 531-32, 439 S.E.2d 199, 201-02 (1994) (finding the narrower definition of “forestry” “avoids the illogical result of allowing intermediate timber processing operations and transportation depots in a district intended for low density residential and agricultural purposes”). This necessarily leads to what the Commission considers an absurd result: that a single chicken beak could be tossed onto a pile of wood chips right before it was burned — even un-composted and miles away from the poultry house — and, *a la* Rumpelstiltskin, the whole pile of straw would turn to gold. Under PHW Energy’s broader reading, nearly all of the poultry waste REPS requirement could thus be satisfied by burning ordinary wood chips. But see Campbell v. First Baptist Church, 298 N.C. 476, 484, 259 S.E.2d 558, 564 (1979) (“A court should always construe the provisions of a statute in a manner which will tend to prevent it from being circumvented.”); accord Carolina Power & Light, 358 N.C. at 518, 597 S.E.2d at 722 (“If the language is ambiguous or unclear, the reviewing court must construe the statute in an attempt not to defeat or impair the object of the statute...”).

PHW Energy cautions that it would not act in this manner and the Commission accepts that representation. But the question here is not what PHW Energy or others might do in light of this declaratory ruling but whether the legislature intended any type of composting material to be considered poultry waste once so combined. The Commission concludes that the legislature did not intend to allow for this result.

Third, the Commission finds PHW Energy’s argument that the Commission has previously taken a broader or more expansive view of the provisions of the REPS statute

unpersuasive. To the contrary, the Commission views its conclusion here as consistent with, and supported by, its prior orders interpreting the REPS statute.

For example, in both the Press Cake and DAF Cake orders, the Commission concluded that the organic waste material resulting from the rendering or processing of swine or poultry products qualified as “swine waste” or “poultry waste”; the Commission also allowed the same when, for example, that material was combusted or combined with swine manure or with poultry manure, wood shavings, straw, rice hulls, or other bedding material. See In re Request for a Declaratory Ruling by PHW Energy, LLC, Docket no. SP-100, Sub 33 (April 24, 2018) (the “Press Cake” order); In re Request for a Declaratory Ruling by BioEnergy Technologies, LLC, Docket no. SP-100, Sub 26 (October 12, 2010) (the “DAF Cake” order). In numerous orders accepting registration statements for new renewable energy facilities, the Commission has routinely acknowledged this by limiting the earning of swine or poultry waste RECs to the electric or thermal energy generated by that material, in proportion to the percentage of energy attributable to it (except that swine waste RECs can only be derived from electrical, and not thermal, energy). See, e.g., Order Accepting Amended Registration of New Renewable Energy Facility, In re Application of North Carolina Renewable Power-Lumberton, LLC, Docket no. SP-5640, Sub 0 (December 27, 2018); Order Accepting Registration of New Renewable Energy Facility, In re Application of American Proteins, Inc., Docket no. SP-3816, Sub 0 (December 16, 2015).

But that is only to say that material which meets the statutory definition of poultry waste is poultry waste. Similarly, poultry waste when combined with either other poultry waste (e.g., poultry manure), or the bedding material specifically identified in the statute, also qualifies as poultry waste under the plain language of the statute. In none of these orders, however, did the Commission conclude that any other biomass material that was not itself poultry waste or that was not otherwise used as bedding material was also to be considered poultry waste.

And the Commission concludes no differently here. Again, as explained above, the composting material at issue here is neither “poultry waste” nor “bedding material” under the plain language of the statute. Its combination with poultry waste does not change that calculus, or transform that entirety into poultry waste for purposes of the poultry waste set-aside REPS requirement.

Fourth, the Commission does not find persuasive PHW Energy’s other arguments: first that poultry farmers are not at this time measuring separately the weights of the poultry carcasses and the composting material, and second that asking poultry farmers to do so is impractical and would place an undue burden on poultry farming operations. The Commission accepts the undisputed evidence that most, perhaps all, poultry farmers do not currently weigh the composting mixture’s inputs separately. The Commission also accepts that many farmers do not currently own the scales or other equipment necessary to do so (or other equipment that might measure the energy outputs for the different mixed materials), or that this equipment might constitute an additional expense. Yet the Commission sees no reason why such practices or expenditures constitute an undue

burden on a farmer or company seeking to collect or sell poultry waste to be consumed by a registered renewable energy facility to earn RECs that may be retired against an electric power supplier's REPS obligations.

Any practices or equipment required to do so are little different than similar practices or expenditures that farmers or companies undergo or incur in order to collect, sell, or measure other swine or poultry waste resources. Surely these farmers did not have all of the appropriate equipment already built on site in which to collect or otherwise process DAF Cake for its specific use as a fuel; to harvest or combine Press Cake with poultry litter in order to further its combustion; or — e.g., the canals, tanks, or other infrastructure — to harvest or combust directed biogas from swine waste resources. Instead, they had to outlay some infrastructural expenses. Relatedly, the onus to separately measure the energy outputs from a mixed source fuel is no different than the onus that currently falls upon any multi-fuel facility to reasonably identify and certify what portion of the energy produced is derived from the renewable resource in question. This type of tracking is central to maintaining the integrity in the administration of the REPS requirements.

And, again, the Commission's earlier orders are consistent with this consideration. The Commission has repeatedly limited the RECs earned by these facilities only to that energy derived from the renewable energy resources in proportion to the relative energy contents of the fuels used. See, e.g., Order Accepting Registration of New Renewable Energy Facility, In re Application of American Proteins, Inc., Docket no. SP-3816, Sub 0 (December 16, 2015); accord Order Accepting Amended Registration of New Renewable Energy Facility, In re Application of North Carolina Renewable Power-Lumberton, LLC, Docket no. SP-5640, Sub 0 (December 27, 2018) (concluding that "because NCRP-Lumberton is using multiple fuels...the facility shall earn RECs based only upon the energy derived from the various renewable energy resources in proportion to the relative energy of the fuels used."); Order Accepting Registration of New Renewable Energy Facility, In re Application of Sumter Heat & Power, LLC, Docket no. SP-5380, Sub 0 (December 15, 2015) (concluding that "if any organic material other than poultry waste is used in the anaerobic digester," limiting the RECs earned to "only that portion of the electricity generated from the biogas that is derived from poultry waste"); see also Order Accepting Registration of New Renewable Energy Facility, In re Application of Green Energy Solutions NV, Inc., Docket no. SP-578, Sub 0 (January 20, 2010) ("To support the issuance of RECs, GES, therefore, will be required to provide evidence as to how it will determine the percent of biogas attributable to...poultry waste...versus the percent derived from other biomass sources.").

Yet whether or not the Commission agreed with PHW Energy and thought it impractical to measure separately these different sources' weights, the only question before the Commission is one of statutory interpretation; the question is not what are best, most reasonable, least costly, or most convenient, practices for the poultry farming industry. Regardless of whether the resultant "incongruity was intentional," unwise, or even the "inadvertent result of hasty draftsmanship," "the wisdom of the General Assembly's legislative enactments is not a proper concern [for the Commission]." State

v. Fowler, 197 N.C. App. 1, 30, 676 S.E.2d 523, 546 (2009) (citation omitted), disc. review denied, 364 N.C. 129, 696 S.E.2d 695 (2010); see also In re N.T., 214 N.C. App. 136, 144, 715 S.E.2d 183, 188 (2011) (“It is critical...that the courts not assume the role of legislatures. Normally, questions regarding public policy are for legislative determination.”) (internal quotation and citation omitted).

Lastly, the Commission notes and finds helpful the Public Staff’s recommendation (see Tr. Vol. I, pp. 55-57) that the Commission approve and qualify for the earning of poultry-waste RECs only the reasonably-determined percentage of the energy attributable to the poultry carcasses or mortalities portion of the combined material, and allow for attestation of the same, subject to review by the Commission and the Public Staff. The Commission further notes that this recommended action would be consistent with its earlier orders. But PHW Energy has not asked us to determine or set such a ratio, or to otherwise limit this combined material when it is combusted or used in an anaerobic digestion process to some lesser-determined amount than its entirety — and in fact specifically declined that option. (See Tr. Vol. I, p. 50; see also id. at 40-41, 43-45, 49 (arguing that such “an allocation [would not be] commercially viable”)) Consequently, the Commission concludes that this question is not squarely presented in this proceeding and, therefore, declines to adopt the Public Staff’s recommendation.

In sum, for the reasons set out above and after careful consideration of the entire record herein, the Commission agrees with the Public Staff and concludes that the composting material portion of the processed fuel mixture is not “poultry waste” as that term is defined and intended to be understood pursuant to N.C.G.S. § 62-133.8(f), and, therefore, does not qualify for the earning of poultry-waste RECs.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of November, 2019.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk

Commissioner Daniel G. Clodfelter concurs.

Commissioners Kimberly W. Duffley and Jeffrey A. Hughes did not participate in this decision.

DOCKET NO. E-100, SUB 34

Commissioner Daniel G. Clodfelter, concurring:

I concur fully in the result reached by the Commission. While I also join in most of the Commission's analysis, on one point I differ. It is evident that the Commission's 2010 decision relating to the treatment of DAF Cake in SP-100 sub 26 and its subsequent 2018 decision relating to Press Cake in SP-100 sub 33, the latter being based on the reasoning of the 2010 order, were wrongly decided. Under the proper statutory interpretation analysis, the terms "swine waste" and "poultry waste" do not mean "waste" which is — in the words of the SP-100 sub 26 decision — in some manner derived from the rendering or processing of "swine" or "poultry" products. Rather, in proper context, the terms "swine waste" and "poultry waste" mean only waste produced by swine or poultry, i.e. excrement and other droppings. See Polaroid Corp. v. Offerman, 349 N.C. 290, 297, 507 S.E.2d 284, 290 (1998) ("[U]ndefined words are accorded their plain meaning so long as it is reasonable."). That is because the two-word phrases "swine waste" and "poultry waste" must be read together as single terms — not separated into component words for the purpose of expanding the scope of the statutory definition. Cf. Wake Cares, Inc. v. Wake County Bd. of Educ., 363 N.C. 165, 171-72, 675 S.E.2d 345, 350 (2009) (noting that the term "uniform" qualifies the word "system" in that single phrase and does not act to qualify other words in the statute, e.g., requiring that the school's calendar year be uniform); see also Jolly v. Wright, 300 N.C. 83, 86, 265 S.E.2d 135, 139 (1980) ("Words and phrases of a statute may not be interpreted out of context; rather, individual expressions must be interpreted as part of a composite whole...").

For the term "poultry waste," in particular, that conclusion is further made plain by the statute's use of additional language. If the terms were otherwise intended to embrace all manner of organic wastes derived from or generated in the course of hog and poultry farming and processing, it would have been unnecessary for the legislature to add the qualifying clause in N.C. Gen. Stat. § 62-133.8(f) allowing that the "poultry waste" be combined with what is commonly referred to as poultry litter or bedding. See, e.g., Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 251-16, 388 S.E.2d 134, 140-41 (1990) (looking to additional language in the statute to show that the contested term could not have meant to include the additional meaning recognized elsewhere); see also Jolly, 300 N.C. at 86, 265 S.E.2d at 139 ("[A] statute must be construed, if possible, so as to give effect to every provision, it being presumed that the Legislature did not intend any of the statute's provisions to be surplusage."). The phrase therefore cannot include organic material generated during the rendering or processing of swine or poultry for subsequent use or consumption. These wastes and the animal carcasses themselves may indeed be "biomass," but they are not "poultry waste" within the plain language or intended scope of N.C.G.S. § 62-133.8(f).

| | | |
|----------------|----------------------------------|----|
| SP-6696, Sub 0 | Airlie Solar Farm, LLC | NC |
| SP-6990, Sub 0 | Moyer Solar, LLC | NC |
| SP-7065, Sub 0 | Wyse Fork Solar, Farm LLC | NC |
| SP-7104, Sub 0 | Charity Solar Farm, LLC | NC |
| SP-7126, Sub 0 | HCE Columbus I, LLC | NC |
| SP-7131, Sub 0 | HCE Columbus II, LLC | NC |
| SP-7164, Sub 0 | Boston Farm, LLC | NC |
| SP-7189, Sub 0 | Arthur Solar 2, LLC | NC |
| SP-7200, Sub 0 | Lucky Clays Farm & Forestry, LLC | NC |
| SP-7433, Sub 0 | Miller Chapel Solar Farm, LLC | NC |
| SP-7487, Sub 0 | ESA Goldsboro, LLC | NC |
| SP-7579, Sub 0 | Hubble Solar, LLC | NC |
| SP-7625, Sub 0 | Slider Solar, LLC | NC |
| SP-7641, Sub 0 | Hood Solar Farm, LLC | NC |
| SP-7687, Sub 0 | Greensboro Eco System, LLC | NC |
| SP-7734, Sub 0 | Stagecoach Solar, LLC | NC |
| SP-7736, Sub 0 | Saxapahaw Solar, LLC | NC |
| SP-7737, Sub 0 | Eastway Solar, LLC | NC |
| SP-7762, Sub0 | Ransom, LLC | NC |
| SP-7776, Sub 0 | Country Club Solar, LLC | NC |
| SP-7781, Sub 0 | Bear Poplar Solar, LLC | NC |
| SP-7797, Sub 0 | Clarksbury Solar, LLC | NC |
| SP-7798, Sub 0 | Ellisboro Solar, LLC | NC |
| SP-7828, Sub 0 | Wendell Solar Farm, LLC | NC |
| SP-7893, Sub 0 | Tamarama Solar, LLC | NC |
| SP-7915, Sub 0 | Tides Lane Farm Solar, LLC | NC |
| SP-7916, Sub 0 | Sellers Farm Solar, LLC | NC |
| SP-7917, Sub 0 | Anjuna Solar, LLC | NC |
| SP-7918, Sub 0 | Beckwith Solar, LLC | NC |
| SP-7920, Sub 0 | Coogee Solar, LLC | NC |
| SP-7925, Sub 0 | McGrigor Farm Solar, LLC | NC |
| SP-7926, Sub 0 | Baytree Solar, LLC | NC |
| SP-7927, Sub 0 | Boylston Solar, LLC | NC |
| SP-7976, Sub 0 | Osecola Solar, LLC | NC |
| SP-7992, Sub 0 | Woodgriff Solar Farm, LLC | NC |
| SP-8022, Sub 0 | Winters Solar, LLC | NC |
| SP-8025, Sub 0 | Tamworth Holdings, LLC | NC |

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| SP-8038, Sub 0 | Marchpast Solar, LLC | NC |
| SP-8061, Sub 0 | Crooked Run Solar, LLC | NC |
| SP-8105, Sub 0 | Thanksgiving Fire Solar Farm, LLC | NC |
| SP-8106, Sub 0 | Ramp Solar, LLC | NC |
| SP-8130, Sub 0 | Story Creek Farm Solar, LLC | NC |
| SP-8191, Sub 0 | Gamble Solar, LLC | NC |
| SP-8363, Sub 0 | Morgan Sellers Solar, LLC | NC |
| SP-8398, Sub 0 | Tanager Holdings, LLC | NC |
| SP-8431, Sub 0 | Saw Solar, LLC | NC |
| SP-8498, Sub 0 | Hawtree Creek Farm Solar, LLC | NC |
| SP-8583, Sub 0 | Parker Solar Farm, LLC | NC |
| SP-8644, Sub 0 | Camp Springs Solar, LLC | NC |
| SP-8741, Sub 0 | Lick Creek Solar, LLC | NC |
| SP-8744, Sub 0 | NTE Carolinas Solar, LLC | NC |
| SP-8754, Sub 0 | Union Solar, LLC | NC |
| SP-8765, Sub 0 | Gideon Solar, LLC | NC |
| SP-8845, Sub 0 | Gastonia Solar Center, LLC | NC |
| SP-9068, Sub 0 | Mapleton /Solar, LLC | NC |
| SP-9100, Sub 0 | Robbins Solar, LLC | NC |
| SP-9418, Sub 0 | Lenova (United States), Inc. | NC |
| SP-9418, Sub 2 | Lenova (United States), Inc. | NC |
| SP-9418, Sub 3 | Lenova (United States), Inc. | NC |
| SP-9418, Sub 4 | Lenova (United States), Inc. | NC |
| SP-9418, Sub 6 | Lenova (United States), Inc. | NC |
| SP-9418, Sub 7 | Lenova (United States), Inc. | NC |
| SP-9901, Sub 0 | Barton Solar, LLC | NC |
| SP-10180, Sub 0 | Gonzales Winery Sales | CA |
| SP-10182, Sub 0, | Green Valley Solar, LLC | CA |
| SP-10183, Sub 0 | Auburn Solar, LLC | CA |
| SP-10184, Sub 0 | COR Solar, LLC | CA |
| SP-10444, Sub 0 | Coust Solar, LLC | NC |
| SP-11169, Sub 0 | TES Kinston Solar 23, LLC | NC |
| SP-16459, Sub 0 | House Swartz, LLC | NC |

Annual Certification of Compliance with the Requirements of Commission Rule R8-66 for the Continuation of the Registration of a Renewable Energy Facility or New Renewable Energy Facility.

Docket No. _____ - _____

Facility Owner: _____

| | | |
|---------------------------------|--------------------------------|--|
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <p>I certify that the facility is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.</p> |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <p>I certify that the facility satisfies the requirements of G.S. 62-133.8(a)(5) or (7) as a (select one): Renewable Energy Facility</p> <p>and that the facility will be operated as a (select one): Renewable Energy Facility</p> <p>To determine whether your facility meets either of these definitions, you should check your registration order or consult your legal counsel.</p> |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <p>I certify that 1) my organization is not simultaneously under contract with NC GreenPower to sell our RECs emanating from the same electricity production being tracked in NC-RETS; and 2) any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates.</p> |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <p>I certify that I consent to the auditing of my organization's books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agree to provide the Public Staff and the Commission access to our books and records, wherever they are located, and to the facility.</p> |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <p>I certify that I am the owner of the renewable energy facility or am duly authorized to act on behalf of the owner for the purpose of this filing.</p> |

(Signature)

(Title)

(Name - Printed or Typed)

(Date)

VERIFICATION

STATE OF _____ COUNTY OF _____

_____, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing certification and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this _____ day of _____, 20_____.

My Commission Expires: _____

Signature of Notary Public

Name of Notary Public – Typed or Printed

The name of the person who completes and signs the certification must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. This original verification must be affixed to the original certification, and a copy of this verification must be affixed to each of the 15 copies that are also submitted to the Commission at:

Chief Clerk's Office
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300