

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH  
DOCKET NO. E-100, SUB 101

<http://starw1.ncuc.net/NCUC/portal/ncuc/page/Dockets/portal.aspx>

Petition for Approval of Revisions to Generator Interconnection Standards

Draft of proposed changes with respect to surety being an option for interconnection security

**2014 12-22 Revised North Carolina interconnection procedures proposal**

6.3 Financial Security Arrangements

~~At least 20 Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the Utility's Interconnection Facilities and Upgrades, Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility, at the Interconnection Customer's option, a guarantee, a surety bond,~~ a letter of credit or other form of financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.

6.3.2 The letter of credit ~~or surety bond~~ must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.

6.3.3 The Utility may waive the security requirements if its credit policies show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of credit-worthiness from the Interconnection Customer.

## **2014 11-21 Ecoplexus Comments Initial**

### **3. Consider adopting specific provisions of the SGIP or SGIA.**

If the Commission is not inclined to adopt the federal SGIP in its entirety, or the SGIA, Ecoplexus recommends that the Commission consider adopting the following standards from the federal SGIP or provisions from the SGIA, in the interest of clarity, enforceability and, ultimately, efficiency. Specifically, Ecoplexus recommends that the Commission consider the following provisions from the federal SGIP and SGIA:

#### **Financial Security Arrangements.**

Section 6.3 of the SGIA allows the interconnection customer to provide to the interconnecting utility a guarantee, a surety bond, letter of credit or other form of security prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the interconnection facilities and any necessary network upgrades in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the interconnecting utility's interconnection facilities and any necessary upgrades. The security is reduced on a dollar-for-dollar basis for payments made to the utility during the term of the interconnection agreement. At present the North Carolina utilities have disparate practices regarding the acceptance of financial security to cover costs for the design, procurement, installation, or construction of interconnection facilities and necessary upgrades, although all of the North Carolina utilities require payment in full of the costs for constructing, designing, procuring, and installing the applicable portion of the interconnecting utility's interconnection facilities and any necessary upgrades prior to beginning such work. Ecoplexus has already executed Interconnection Agreements and provided surety bonds to secure all agreed upon interconnection charges for those projects located within the service territory of Dominion North Carolina Power. Ecoplexus has requested to take this same approach for project located in the service territories of the other utilities, but, to date, has not been authorized to do so.

Indeed the currently approved North Carolina Interconnection Agreement is clear on this issue. Specifically, Section 6.3, Financial Security Arrangements, provides as follows:

At least 20 Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the Utility's Interconnection Facilities and Upgrades, the Interconnection Customer shall provide the Utility, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term.

This process is widely used in other states with great success and has already been allowed by some of the North Carolina utilities. This option should continue to be utilized in North Carolina.

## **2014 12-19 North Carolina Sustainable Energy Association Reply**

NCSEA's Proposed Redline of Utilities' Proposed Section 5.2.4 and NCSEA's Proposed Glossary Definition of "Financial Security"

5.2.4 The Final Interconnection Agreement shall specify milestones for payment and/or provision of any Financial Security that is required prior to the start of design and construction of Upgrades and Interconnection Facilities. Payment and/or Financial Security must be received by close of business sixty (60) Calendar Days after the date the Interconnection Agreement is delivered to the Interconnection Customer for signature, where failure to comply results in the Interconnection Request being deemed withdrawn.

Financial Security - A letter of credit or other financial arrangement that is both (a) reasonably acceptable to the Utility and (b) consistent with the Uniform Commercial Code of North Carolina (N.C. Gen. Stat. Chapter 25). Such letter of credit or other qualifying financial arrangement shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and Upgrades. In lieu of a letter of credit or other qualifying financial arrangement, the Utility may deem Financial Security to exist where its credit policies show that the financial risks involved are de minimus or where the Utility's policies allow the acceptance of an alternate showing of credit-worthiness from the Interconnection Customer.

**Note: Surety is not identified as an option**

## **2014 12-22 Ecoplexus Comments Reply**

**<http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=96a2aeec-ca60-46da-91b4-b757fd2ee574>**

### **4. The Commission should clarify that financial security may be used to satisfy payment obligations.**

Currently, the Utilities employ different practices regarding the use of financial security to satisfy payment obligations. To this end, Ecoplexus respectfully requests that the Commission allow the interconnection customer the option of providing to the utility a guarantee, a surety bond, letter of credit or other form of security prior to the commencement of the design, procurement, installation, or construction of the Interconnection Facilities and any Upgrades (both Distribution and Network, as defined in Attachment 1, Glossary of Terms, to the RNCIPP) in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the interconnecting utility's interconnection facilities and any necessary upgrades. The currently-approved North Carolina Interconnection Agreement is clear on this issue. Specifically, Section 6.3, Financial Security Arrangements, provides as follows:

At least 20 Business Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the Utility's Interconnection Facilities and Upgrades, the Interconnection Customer shall provide the Utility, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term.

While RNCIPP contemplates the use of financial security, Section 5.2.4 does not make clear that the customer may post security to cover the costs for constructing, designing, procuring, and installing the Interconnection Facilities and Upgrades.

Additionally, the Utilities have proposed to strike the option of using a surety bond in the proposed Interconnection Agreement attached to the RNCIPP. See Section 6.3, Attachment 8, RNCIPP. During the stakeholder discussion, Ecoplexus questioned the justification for the proposed removal of the option of using a surety bond as financial security. No reasonable explanation was provided at that time. No explanation was provided in the Utilities' Initial Comments. It is Ecoplexus' experience that bonds are widely accepted financial security in all markets, as they are 100% guaranteed. For example, surety bonds are accepted by all of the utilities in California and by Georgia Power. Ecoplexus urges the Commission to reject the proposed removal of this very practical and reasonable option for interconnection customers.

Ecoplexus recognizes that the requirement of pre-payment for charges, discussed in Paragraph 3 above, and the limited use of security proposed by the Utilities may be aimed at unclogging the queue. However, Ecoplexus notes that obtaining financial security, such as a letter of credit or a surety bond, require that the interconnection customer be both creditworthy and have a healthy balance sheet, in addition to demonstrated experience in successfully completing projects and meeting financial obligations. No surety company would issue a bond unless comfortable that a project will be financed and completed. Therefore, the objective of separating viable projects from unviable projects, and unclogging the queue, will still be accomplished without requiring the interconnection customer to make a significant cash payment to the interconnecting utility.

2014 12-22 Duke Energy to North Carolina Utilities Commission on Interconnection Standards Revision

<http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=d6d4df38-31c3-438a-8a39-e216eec10158>

In response to Ecoplexus' critique of DEC's and DEP's approach to financial Security, the Utilities believe Ecoplexus' concern can be boiled down to "DNCP has accepted Ecoplexus' surety bond financial security in the past, while DEC and DEP have not found it commercially reasonable and acceptable." The Utilities note that under both the existing NC Interconnection Procedures, IA § 6.3, and throughout the Revised RNCIPP, financial security arrangements must be reasonably acceptable to the interconnecting utility. During the stakeholder process, DEC and DEP have emphasized their companies' credit policy does not accept surety bonds as financial security for generation interconnection facilities or for retail residential idle development facilities.

This is because they view a surety bond instrument as more akin to an insurance product with little guaranteed protection for the utility's investment. In other words, if a customer stops paying the premium on the surety bond, it is canceled, no longer effective, and the utility then has no recourse to recover its expended cost upon expiration of the agreement for installation of facilities. Recognizing this deficiency (and also that DNCP has accepted surety bonds in some circumstances in the past), the Revised RNCIPP attempts to provide flexibility by clarifying that financial security may include "a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina." See Revised RNCIPP, Glossary Definition of "Financial Security" and IA § 6.3. Per the Revised RNCIPP, all three Utilities continue to offer letters of credit from a mutually agreeable financial institution as an available financial security option. The Utilities believe this is a commercially reasonable position and request approval of the updated financial security references included in the revised RNCIPP.

2014 12-22 Public Staff Comments

<http://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=d179519f-890d-4e84-a2a5-d54a5e3bbe6c>

Turning now to the prepayment aspects of the current proposal, the Public Staff notes that much of the detail regarding payments for construction is in the Interconnection Agreement, about which there has been little discussion up to this point in the stakeholder process.<sup>24</sup> The Public Staff believes that the North Carolina Interconnection Procedures should contain the basic requirements so that important aspects of the process are not only in the Interconnection Agreement. In this regard, the Public Staff supports the inclusion of the definition of “Financial Security” that it understands NCSEA will propose in its reply comments.

It is the Public Staff’s understanding that other than Ecoplexus, the parties support the concept of “prepayment.” However, it is also the Public Staff’s understanding that, while the Utilities support the use of financial security for the Interconnection Facility Charge, they oppose its use for Upgrades Charges. Section 6.3 of the currently approved North Carolina Interconnection Agreement provide for the use of financial security in the form of a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. It further provides that such security can be used for both the Utility’s Interconnection Facilities and Upgrades and that it shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. Given that the proposal is to make payment (or the posting of financial security) required earlier in the process, it seems counterproductive to reduce the possibility of using financial security, particularly as limited to forms that are consistent with the Uniform Commercial Code of North Carolina and the other protections that are included in the Interconnection Agreement (and now proposed by the Public Staff to be moved to the Interconnection Procedures).

These protections include a requirement that the guarantee be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.