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BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2020-___-E

IN RE: Catalina Solar, LLC,	)	
	)	
Petitioner,	)	
	)	**PETITION**
Dominion Energy South Carolina,	)	(§58-27-980)
Inc.,	)	(§58-27-460)
Respondent.	)	

INTRODUCTION

Catalina Solar, LLC (hereinafter as, the "Project", or "Petitioner") is a South Carolina limited liability company whose sole business is the development of a solar photovoltaic electric generation facility located in Batesburg, in Saluda County, South Carolina.

The Project received an Interconnection Agreement, ("IA") as is outlined hereinbelow, from Dominion Energy South Carolina, Inc. ("DESC").The tendered IA requires the Project to execute an Interconnection Agreement on May 26, 2020 and tender an initial milestone payment of $50,000 and a Letter of Credit for the amount of $2,757,000 to DESC on July 29, 2020.[1] Because DESC will not permit the Project to utilize a Surety Bond as Financial Security under the Agreement, consistent with South Carolina Generator Interconnection Procedures for State Jurisdictional Interconnection ("SCGIP"), the Project will be unable to execute the IA.

Specifically, Petitioner requests, pursuant to S.C. Code §58-27-980, (1976, as amended), that this Commission exercise its supervisory authority, granted by the South Carolina General Assembly and described as being, "Full Power and Authority", and Section 12.1 of the IA, to require Respondent DESC to allow the Project's use of a Surety Bond as Financial Security required under the terms of the IA.

The Project's Petition, pursuant to this Commission's Regulation R. 103-825, and other applicable Rules and Regulations follows.

[1] The draft Interconnection Milestones originally tendered to Petitioner prior to the Construction Planning Meeting held on April 20, 2020 required the Project to tender a Milestone payment of $1,378,500 to DESC on July 29, 2020. DESC subsequently modified the Interconnection Milestone Schedule in the delivered executable Interconnection Agreement on May 11, 2020 that included the Letter of Credit requirement referenced herein.

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PETITION

Petitioner.

Catalina Solar, LLC – The Facility is a Qualifying Facility as defined under the Public Utility Regulatory Policies Act, 16 U.S.C. §§ 824a-3, *et seq.* ("PURPA"), and implementing regulations of the Federal Energy Regulatory Commission. The Facility has a nameplate capacity of 74,970 kW AC. The parent Company for the Project is Cypress Creek Renewables, LLC, ("Cypress Creek").

Background for Petition.

DESC tendered an executable IA to Catalina Solar on May 11, 2020. The SCGIP requires the Project to execute an Interconnection Agreement by May 26, 2020.

The IA calls for the construction of Interconnection Facilities for the project at an estimated cost of $2,757,000. Although the project cannot go online until certain previously-planned Upgrades to DESC's system are completed, Catalina Solar is not required to construct any Upgrades. Because the Project must wait on the construction of these other previously-planned Upgrades, no significant work under the IA will commence until September 1, 2021, more than fifteen months after the execution of the IA. Procurement of long-lead time materials (the first significant expenditure by DESC under the IA) would not begin until December 2, 2021.

Section 6.1 of the IA requires the Project to pay the cost of Interconnection Facilities pursuant to the milestone schedule in Appendix 4 of the IA. Section 6.3 and Appendix 4 separately require the project to provide, by **July 29, 2020**, financial security for interconnection costs in the form of "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 South Carolina." The amount of financial security required for the IA is $2,757,000.

Catalina Solar has requested to provide the required Financial Security in the form of a Surety Bond consistent wth the Uniform Commercial Code of South Carolina. However, DESC has refused to accept a Surety Bond, and maintains that the only form of Financial Security it will accept is a Letter of Credit ("LC") or cash pre-payment of 50% of the estimated interconnection costs, which for Catalina Solar equates to a cash payment of $1,378,500.

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DESC's Unreasonable Refusal to Allow a Surety Bond for Financial Security.

Letters of Credit ("LCs") and surety bonds are two commonly-used forms of financial assurance. An LC is a document provided by a bank or other financial institution that not only guarantees a payment from a principal to an beneficiary, but most often allows the obligee to further demand and immediately receive such payment without a reasonable review, based on "pay on demand" language common to LCs.

A surety bond is an agreement that legally binds together the principal who needs the bond (which in this case would be Catalina Solar), an obligee who requires the bond (DESC), and a surety company that provides the bond. The bond guarantees that the principal will act in accordance with an underlying contract (in this case an interconnection agreement) and that if the principal verifiably fails to perform payment will be made from the surety to the obligee.

Surety bonds provide a high level of security and DESC accepts surety bonds as an acceptable form of security under its Power Purchase Agreements ("PPAs") with Qualifying Facilities. This Commission recently **required** Duke Energy Carolinas LLC and Duke Energy Progress LLC to accept surety bonds as performance security under its PPAs, rejecting the utility's objections about the difficulty of collecting on surety bonds. Docket Nos. 2019-185-E and 2019-186-E, Order No. 2019-881(A) (Jan. 2, 2020) at 137-139. In addition, DESC's affiliate compay Virginia Electric and Power Company d/b/a Dominion Energy Virginia accepts surety bonds as financial security under Interconnection Agreements. In fact, Catalina Solar's parent company Cypress Creek Renewables is developing a solar project in Virginia, which is providing IA financial security to Dominion in the form of a surety bond for approximately $1.75 million under an Interconnection Agreement executed in September 2019.

Although obligees generally prefer LCs due to the "pay on demand" language (meaning that payment under the LC will be made with no questions asked), surety bonds provide a substantially similar level of assurance for the obligee. And from a practical perspective, it is far more burdensome for most projects to obtain an LC, because the issuer of an LC often requires the customer to post the equivalent or near-equivalent cash

value to secure the LC itself. In other words, in this case, the financial requirements for posting a $2,757,000 LC are equivalent to making a cash payment of that amount. The longer the LC must be maintained, the greater the expense of maintaining that cash outlay. Surety bonds, on the other hand, are significantly less expensive to obtain than LCs, providing material relief to the project owner while offering comparable security to the obligee.

It was Unreasonable for DESC to Reject the Use of a Surety Bond as Financial Assurance for the Project.

Under the SCGIP, an Interconnection Customer has the right to use any form of financial security "reasonably acceptable" to the utility. The unusual circumstances of the Catalina Solar project make the use of surety bond as financial security reasonable, and furthermore makes it unreasonable for DESC not to accept a surety bond. There are two reasons for this. First, there is a very long time between execution of Catalina's IA and any work actually being performed. This means that financial security must be maintained for a very long time before DESC actually begins spending money on the project. As discussed, carrying a large LC for a long period of time is expensive and burdensome for the customer.

Second, the interconnection work under the IA consists solely of Interconnection Facilities, which consist of "facilities and equipment between the Generating Facility and the Point of Interconnection." Interconnection Facilities are specific to the Project and would not be used by any other project. If the Project were to be cancelled, there would be no need to construct these Interconnection Facilities, and DESC would not be required to spend any money on them.

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Interconnection Facilities stand in contrast to Upgrades, which are "required additions and modifications to the Utility's System" triggered by a project. Upgrades may be relied on by other Projects, including those later in DESC's interconnection queue. So if Catalina Solar had been assigned Upgrades and the Project were cancelled, those Upgrades might still need to be constructed if they were relied on by other projects. However, unlike most projects with an extended construction schedule, Catalina's IA does not call for the construction of any Upgrades.

The fact that there are no Upgrades for the Project means that the only obligation that DESC might need financial security to cover would be money actually spent on Catalina's Interconnection Facilities. However, the IA requires Catalina Solar, in addition to posting financial security, to make cash payments to cover interconnection costs <u>in advance of those costs being expended by DESC.</u> Consequently there is no reason for DESC to require the extremely high level of financial assurance provided by an LC.

Because an LC (as opposed to surety bond) is an extremely burdensome form of financial assurance, and because a surety bond provides ample financial security for DESC's obligations in this situation, it is commercially unreasonable for DESC to reject Catalina's request to use a surety bond and require it to post an LC. This is contrary to Section 6.3 of the Interconnection Agreement and the SCGIP, and DESC should be required to accept Catalina's offer of a surety bond as financial security.

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Basis for Petition.

S.C. Code Section 58-27-460

Under S.C. Code Section 58-27-460, this Commission has the authority to promulgate and review standards for the interconnection of renewable energy facilities, pursuant to which authority it promulgated and supervises implementation of the SCGIP.

S.C. Code Section 58-27-980

This Commission can grant the relief sought by Petitioner, because this Commission has the following broad statutory authority as to a Utility's Contracts,

> "No contract… shall be exempt from alteration, **control**, **regulation** and establishment by the Commission, when in its judgment the public interest so requires…" (emphasis supplied)

And,

> "…unless [a Contract, in this case, the Company's Interconnection Agreement] be subject to amendment, modification, change or annulment by the Commission…" S.C. Code Ann. §58-27-980, (1976, as amended).

South Carolina Supreme Court Decisions

- The Public Service Commission of South Carolina is considered the **Expert**, designated by the South Carolina General Assembly to make policy determinations regarding utility rates. Kiawah Property v. Public Service, 597 SE 2nd 145 (2004), (emphasis supplied)
- The Commission sits as the trier of facts, **akin to a jury of experts**, Hamm v. SC Public Service Commission 422 SE 2d 110 (1992), (emphasis supplied), and it is appropriate that this Commission provide an interpretation of the application of the SCGIP, as to the use of a Surety Bond for a Milestone payment(s).

Because Respondent DESC is subject to the jurisdiction of this Commission, and specifically the "Control and Regulation" of this Commission, it is in the Public Interest that Respondent DESC be required to utilize the SCGIP, consistent with the SCGIP's provisions.

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Relief Sought.

The Project respectfully requests that this Commission exercise its Control and Regulation of the IA tendered by the Respondent DESC to the Project, to allow a Milestone payment(s) by the Project by way of a Surety Bond, consistent with the SCGIP, and grant other necessary revisions to the IA, consistent with the Project's request for relief. This Commission's decision will give the Project the right to provide a Surety Bond for a Milestone payment(s), as is contemplated under the SCGIP.

DESC is named as a Respondent, because DESC will be affected by future Orders of this Commission in this matter, but the relief sought is expressly from this Commission and not DESC, because of DESC's position that DESC cannot allow the type of relief sought by the Project.

Reservation of Rights.

The Project expressly and broadly reserves all of the Project's rights, previously and as of the date of this filing and going forward, generally as to the Project's queue position and the tendered IA and specifically, as to a Surety Bond for Financial Security to be tendered under the IA.

Petitioner is represented by counsel in this proceeding:

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CONCLUSION

Based on this Petition and the Project's Motion to Maintain Status Quo, of even date, and this Commission's supervisory authority for Control and Regulation of the IA, as outlined in detail hereinabove, this Commission should inquire of this matter and provide an interpretation of the application of the SCGIP generally and specifically, as to the Project's use of a Surety Bondfor Financial Security and Order the following relief.

WHEREFORE, Petitioner prays for the following relief:

a. That this Commission exercise its Control and Regulation of the IA tendered by the Respondent DESC to allow the Project to use a Surety Bond for Financial Security, consistent with the SCGIP;

b. That this Commission grant other necessary revisions to the IA consistent with the Project's request for relief; and

c. THAT THIS COMMISSION GRANT SUCH OTHER AND FURTHER RELIEF AS IS JUST AND PROPER.

Respectfully Submitted,

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As Counsel for Catalina Solar, LLC.

May 22, 2020

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