

Public Staff Securitization Consultant RFQ
Questions received Dec. 11 and Dec. 13, 2024
Responses provided Dec. 16, 2024

Question(s):

Scope:

Seeking clarification on the tasks associated with testimony. On page 2, the RFQ states that “Securitization Consultant will review and analyze the storm cost securitization petitions of both DEC and DEP, pursuant to N.C.G.S. § 62-172, and present testimony on the Public Staff’s position” and on page 3, item 13 “Attend, and if necessary, testify at evidentiary hearings before the Commission.”

1. Can you clarify which tasks should be included in “testimony”? Please confirm that this is expected to include: drafting discovery questions and reviewing responses, writing pre-written filed testimony, responding to discovery on testimony, drafting rebuttal testimony, attending and participating in hearings, and supporting brief writing
 - a. Should the budget include all of these tasks? Should the budget assume two proceedings with separate testimonies?

Response:

Please see the “Scope of Work” (pp. 2-5 of the RFQ). The budget should include the tasks within the Scope of Work. The Companies prepare rebuttal testimony, the Public Staff does not. Therefore, the Public Staff will only be sponsoring one set of pre-filed testimony.

On December 2, 2024, the Companies filed a consolidated petition for approval of storm recovery costs (see Docket Nos. E-2, Sub 1362, and E-7, Sub 1321) that is being investigated and review by the Public Staff, led by the Public Staff Accounting Division. That petition included a request for expedited review that the Commission has subsequently granted (see: <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=c5f522d2-f8af-478a-911a-980ecc09404c>).

The Public Staff anticipates that the Companies will file a petition for financing order on or around February 3, 2025, for which the Securitization Consultant’s expertise is being sought.

Question(s):

Procedures:

1. Page 1 states that "compensation and expenses...shall be paid by the utility or utilities participating in said proceedings". Please provide more information on this process.
 - a. Is this work funded by intervenor funding?
 - b. Would the awarded consultant send bills to the Public Staff for the Public Staff to forward to the utilities?

c. When would the consultant be paid by the utilities?

Response:

See the handling of invoices and payment information provided in “Source and Availability of Funds” provision, RFQ pp. 7-8. Also see N.C.G.S. 62-172(a)(6)f that defines “Financing costs” to include “Any costs incurred by the Commission or public staff for any outside consultants or counsel retained in connection with the securitization of storm recovery costs.”

2. Would travel and in-person attendance at hearings (or otherwise) be required?

Response:

Yes, if a Securitization Consultant prefiles testimony and the witness(es) is not excused and the hearing occurs, travel will be required for an in-person hearing before the Commission in Raleigh. We do not anticipate any other travel for the Securitization Consultant.

3. Does the Public Staff have a budget range in mind for this work?

a. Should the budget be broken out by task or by milestone? Are there specific tasks/milestones that should be included?

b. How many weekly meetings should be included in the budget?

c. Should the budget be broken out by utility filing? i.e., separate budgets for DEC filing and for DEP filing?

Response:

While the Public Staff does not have a set budget, the Public Staff anticipates competitive responses to this RFQ, and cost is a factor. The prospective Securitization Consultant should provide sufficient detail to allow the Public Staff to determine if the prospective Securitization Consultant can best fulfill the Scope of Work. The Public Staff anticipates an average of at least one meeting per week for the duration of the engagement, with some weeks being busier than others.

Major milestones include discovery deadline, testimony filing deadline, responses to discovery on Public Staff-sponsored testimony, selection of potential cross and redirect examination exhibits and other hearing preparation, and the hearing date.

In light of the consolidated proceeding, the not-to-exceed budget is for the entire engagement, not per utility.

4. Can you provide samples of the confidentiality agreements that the chosen consultant will sign with the utilities or other parties?

Response:

An old sample of the utilities’ Confidentiality Agreement is attached. Any Confidentiality Agreement of the utilities’ or intervenors is and will be within the purview of those entities and the Securitization Consultant.



Old Sample
CA.docx

5. Page 6 of the RFQ asks for a statement saying that we accept all the provisions, terms, and conditions of the RFQ. Would your office be open to requests for minor edits to the terms? Our firm would be happy to provide specific requests in the proposal.

Response:

The Public Staff will review proposed revisions, though the Public Staff does not anticipate any revisions to the standard Terms & Conditions.

6. To ensure that respondents have sufficient time to write proposals with your answers to questions in mind, would your office be able to provide an extension so that proposals are due on 1/10?

Response:

Due to the compressed nature of this proceeding, the Public Staff is not extending the timeframe for responses to the RFQ.

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is entered into effective this ___ day of _____ (the “Effective Date”), by and among Duke Energy Carolinas, LLC, a North Carolina limited liability company (“Duke Energy Carolinas”), Duke Energy Progress, LLC, a North Carolina limited liability company (“Duke Energy Progress”), the Public Staff of the North Carolina Utilities Commission (“Public Staff”), and the Public Staff’s consultant _____ (the “Public Staff Consultant”). Duke Energy Carolinas, Duke Energy Progress, and the Public Staff Consultant are hereinafter referred to individually as a “Party,” and collectively as the “Parties.” Duke Energy Carolinas and Duke Energy Progress are referred to collectively as “Utilities” and singularly as “Utility.”

RECITALS

WHEREAS, each Utility filed petitions for storm cost securitization with the North Carolina Utilities Commission (the “Commission”);

WHEREAS, the Public Staff has selected the Public Staff Consultant to assist with review of each Utility’s petition (“Storm Securitization Matters”);

WHEREAS, certain written, verbal or electronic information to be disclosed by the Utilities to the Public Staff Consultant contains proprietary, confidential and competitive information of the Utilities and third parties and is thus exempt from public disclosure pursuant to N.C. Gen. Stat. § 132-1.2 (the “Protected Information”);

WHEREAS, the Public Staff Consultant will need to review the Protected Information;

WHEREAS, the Public Staff Consultant may share the Protected Information from the Utilities with the Public Staff; and the Public Staff will be obligated to maintain the confidentiality of that Protected Information subject to the terms of the Comprehensive Confidentiality Agreements between the Public Staff and the Utilities; and

WHEREAS, pursuant to the terms contained herein, the Utilities agree to provide the Public Staff Consultant access to the Utilities’ Protected Information;

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. Protected Information; Exclusions. Duke Energy Carolinas and Duke Energy Progress shall mark all written and electronic responses containing Protected Information “Confidential.” Further, the Utilities shall provide the Public Staff Consultant with written notice of any verbal disclosures that contain Protected Information and are thus subject to the terms of this Agreement not later than ten (10) business days after initial disclosure by the Utilities. Notwithstanding the foregoing, Protected Information shall not include:

- (1) Information that is now generally known or available on an unrestricted basis to the public or which becomes so known or available on an unrestricted basis without the fault of the Public Staff Consultant; or
- (2) Information that is acquired on an unrestricted basis from any third party, provided that the Public Staff Consultant does not know or have reason to know that such information was acquired under an obligation of confidentiality.

2. Disclosure Restrictions. The Public Staff Consultant shall not disclose or otherwise release any Protected Information to any third parties without the prior written consent of the Utilities in their sole discretion; provided, however, that the Protected Information may be filed with the Commission under seal. Prior to any planned disclosure or release of any Protected Information, including information in any document filed or testimony given to the Commission or released to any party to the Storm Securitization Matters, the Public Staff and/or the Public Staff Consultant shall provide Duke Energy Carolinas and/or Duke Energy Progress with prior written notice of the proposed disclosure (the "Proposed Disclosure"). If either Utility does not approve of the Proposed Disclosure, the Parties shall use reasonable efforts to reach agreement on an appropriate methodology for the release. If the parties are unable to reach an agreement on (i) the Proposed Disclosure, or (ii) the Utility's designation of any information as "Protected Information," the matter shall be submitted to the Commission for resolution.

3. Limited Use. The Protected Information shall be used solely for the purpose of participating in the Storm Securitization Matters. The Protected Information will be provided only to the Public Staff Consultant, and any employee or agent of him, who has a need to know such information in connection with these proceedings and will not be reproduced unless the requirements in Paragraph 5 herein are complied with; provided, however, that the Protected Information may be reproduced for the purpose of using the Protected Information under seal consistent with Paragraph 2 above. Each Party to this Agreement shall take all steps necessary to protect the Protected Information, including any copies thereof, and to prevent any disclosure or use not expressly provided for in this Agreement.

4. Remedies. In addition to any sanctions that may be imposed by the Commission for a violation of this Agreement, either Utility may take any actions available at law or at equity for a breach of this Agreement. Each person executing this Agreement agrees that monetary damages would not be a sufficient remedy for any breach of the obligations under this Agreement and that each Utility shall be entitled, in addition to any other remedies which might otherwise be available to it, to specific performance and injunctive or other equitable relief in the courts of North Carolina or other court of competent jurisdiction as a remedy for the commission or continuance of any such breach or anticipated breach. The Parties and each person executing this Agreement further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The Utilities' remedies for breach caused by the Public Staff Consultant shall be solely against the Public Staff Consultant, and the Public Staff shall be liable only for its own breaches and not those of the Public Staff Consultant.

5. Employee and Agent Agreements. Any individual reviewing Protected Information on behalf of the Public Staff Consultant shall be an employee or agent of the Public Staff Consultant and shall sign an Acknowledgment and Agreement form substantially in the form attached as Exhibit A hereto (“Acknowledgement”). The Acknowledgement shall be delivered to the Utilities prior to such review, and by executing the Acknowledgement, the signatory shall be subject to and shall abide by the terms of this Agreement. A true original copy (PDF is acceptable) of each such Acknowledgment shall be provided to counsel for the Utilities prior to any individual accessing the Utilities’ Protected Information.

6. Return and/or Destruction of Protected Information. Except as may be otherwise agreed in writing, the Parties agree that within ninety (90) days after the issuance of a final order by the Commission in these Dockets, the Public Staff Consultant shall destroy or return all copies of the Protected Information to the Utilities. The return of the Protected Information includes surrender of all permitted copies and duplicates and notes and other material made from the Protected Information. Upon written request of either Utility, the Public Staff Consultant shall certify in writing that the requirements of the preceding sentences have been satisfied in full. Notwithstanding the return or destruction of any Protected Information, the Public Staff Consultant will continue to be bound by terms of this Agreement as provided herein. Notwithstanding the foregoing provisions, the Public Staff Consultant may provide the Public Staff with access to and copies of whatever is provided to the Public Staff Consultant, and those records may be used by the Public Staff for any proceedings within the statutory authority of the Public Staff (with the Protected Information being subject to the Comprehensive Confidentiality Agreements between the Public Staff and the Utilities).

7. Authority. The undersigned individuals represent that they are authorized to sign this Agreement on behalf of their respective employers.

8. Notices. Notices required or permitted by this Agreement shall be served by certified mail, return receipt requested, reputable overnight courier service, or electronic mail, to the following notice addresses:

For the Utilities:

For the Public Staff Consultant:

For the Public Staff:

The foregoing notice addresses may be changed by written notice given in accordance with this Agreement. Notices given hereunder shall be effective upon receipt.

9. Severability; Waiver. If any part of this Agreement is held by a court of competent jurisdiction to be illegal or contrary to public policy or otherwise unenforceable, such invalid or unenforceable part shall be deemed modified or eliminated to the extent which, in the court’s opinion, is necessary to make the remainder of the Agreement enforceable. The waiver by a Party of any right hereunder will not be considered a waiver thereof unless expressly waived in a writing

signed by the waiving Party. No single waiver will be considered a continuing or subsequent waiver.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to the principles of conflicts of laws thereof.

11. Counterparts; Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures hereto shall be deemed original signatures.

OLD SAMPLE

The Parties hereto have executed this Agreement, or caused this Agreement to be executed on its behalf, all as of the day and year first above written.

OLD SAMPLE

Exhibit A

ACKNOWLEDGMENT AND AGREEMENT

The undersigned, _____, is an employee or agent of _____, and hereby acknowledges receipt and an opportunity to review that certain Confidentiality Agreement entered into by and among Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, the Public Staff of the North Carolina Utilities Commission, and _____, dated the __ day of _____ (the "Agreement"). The undersigned further agrees to be bound by the terms of the Agreement in consideration for receiving Protected Information pursuant thereto.

This Acknowledgment and Agreement is made effective this ____ day of _____.

By: _____

Title: _____

OLD SAMPLE