

Article 6B.

Distributed Resources Access Act.

**§ 62-126.1. Title.**

This Article may be cited as the "Distributed Resources Access Act." (2017-192, s. 6(a).)

**§ 62-126.2. Declaration of policy.**

The General Assembly of North Carolina finds that as a matter of public policy it is in the interest of the State to encourage the leasing of solar energy facilities for retail customers and subscription to shared community solar energy facilities. The General Assembly further finds and declares that in encouraging the leasing of and subscription to solar energy facilities pursuant to this act, cross-subsidization should be avoided by holding harmless electric public utilities' customers that do not participate in such arrangements. (2017-192, s. 6(a).)

**§ 62-126.3. Definitions.**

For purposes of this Article, the following definitions apply:

- (1) Affiliate. – Any entity directly or indirectly controlling or controlled by or under direct or indirect common control with an electric power supplier.
- (2) Commission. – The North Carolina Utilities Commission.
- (3) Community solar energy facility. – A solar energy facility whose output is shared through subscriptions.
- (4) Customer generator lessee. – A lessee of a solar energy facility.
- (5) Electric generator lessor. – The owner of solar energy facility that leases the facility to a customer generator lessee, including any agents who act on behalf of the electric generator lessor. For purposes of this Article, an electric generator lessor shall not be considered a public utility under G.S. 62-3(23).
- (6) Electric power supplier. – A public utility, an electric membership corporation, or a municipality that sells electric power to retail electric customers in the State.
- (7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that sells electric power to retail electric customers in the State.
- (8) Maximum annual peak demand. – The maximum single hour of electric demand actually occurring or estimated to occur at a premises.
- (9) Net metering. – To use electrical metering equipment to measure the difference between the electrical energy supplied to a retail electric customer by an electric power supplier and the electrical energy supplied by the retail electric customer to the electric power supplier over the applicable billing period.
- (10) Offering utility. – Any electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017. The term shall not include any other electric public utility, electric membership corporation, or municipal electric supplier authorized to provide retail electric service within the State. An offering utility's participation in this Article as an electric generator lessor shall not otherwise alter its status as a public utility with respect to any other provision of this Chapter. An offering utility's participation in this Article shall be regulated pursuant to the provisions of this Article.
- (11) Person. – The same meaning as provided by G.S. 62-3(21).

- (12) Premises. – The building, structure, farm, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, farms, or facilities that are located on one tract or contiguous tracts of land and that are utilized by one electric customer for commercial, industrial, institutional, or governmental purposes shall constitute one "premises," unless the electric service to the building, structures, farms, or facilities are separately metered and charged.
- (13) Property. – The tract of land on which the premises is located, together with all the adjacent contiguous tracts of land utilized by the same retail electric customer.
- (14) Solar energy facility. – A electric generating facility leased to a customer generator lessee that meets the following requirements:
  - a. Generates electricity from a solar photovoltaic system and related equipment that uses solar energy to generate electricity.
  - b. Is limited to a capacity of (i) not more than the lesser of 1,000 kilowatts (kW) or one hundred percent (100%) of contract demand if a nonresidential customer or (ii) not more than 20 kilowatts (kW) or one hundred percent (100%) of estimated electrical demand if a residential customer.
  - c. Is located on a premises owned, operated, leased, or otherwise controlled by the customer generator lessee that is also the premises served by the solar energy facility.
  - d. Is interconnected and operates in parallel phase and synchronization with an offering utility authorized by the Commission to provide retail electric service to the premises and has been approved for interconnection and parallel operation by that public utility.
  - e. Is intended only to offset no more than one hundred percent (100%) of the customer generator lessee's own retail electrical energy consumption at the premises.
  - f. Meets all applicable safety, performance, interconnection, and reliability standards established by the Commission, the public utility, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the Federal Energy Regulatory Commission, and any local governing authorities.
- (15) Subscription. – A contract between a subscriber and the owner of a community solar energy facility that allows a subscriber to receive a bill credit for the electricity generated by a community solar energy facility in proportion to the electricity generated. (2017-192, s. 6(a).)

**§ 62-126.4. Commission to establish net metering rates.**

- (a) Each electric public utility shall file for Commission approval revised net metering rates for electric customers that (i) own a renewable energy facility for that person's own primary use or (ii) are customer generator lessees.
- (b) The rates shall be nondiscriminatory and established only after an investigation of the costs and benefits of customer-sited generation. The Commission shall establish net metering rates

under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service. Such rates may include fixed monthly energy and demand charges.

(c) Until the rates have been approved by the Commission as required by this section, the rate shall be the applicable net metering rate in place at the time the facility interconnects. Retail customers that own and install an on-site renewable energy facility and interconnect to the grid prior to the date the Commission approves new metering rates may elect to continue net metering under the net metering rate in effect at the time of interconnection until January 1, 2027. (2017-192, s. 6(a).)

#### **§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

(a) An offering utility and its affiliates may be deemed to be electric generator lessors and may offer leases to solar energy facilities only within the offering utility's own assigned service area or, in the case of an affiliate, the service area assigned to an affiliated offering utility. The costs an offering public utility incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating utility customers through rates, and the Commission shall not have any jurisdiction over the financial terms of such leases. An offering utility, and the customer generator lessees that lease facilities from it, may participate on an equal basis with other lessors and lessees and in any approved incentive program offered by the utility to its customers.

(b) An electric generator lessor that owns a solar energy facility within the assigned service area of an offering utility and that is located on a premises owned or leased by a customer generator lessee shall be permitted to lease such facility exclusively to a customer generator lessee under a lease, provided that the electric generator lessor complies with the terms, conditions, and restrictions set forth within this section and holds a valid certificate issued by the Commission pursuant to G.S. 62-126.7. An electric generator lessor shall not be considered a "public utility" under G.S. 62-3(23) if the solar energy facility is only made available to a customer generator lessee under a lease that conforms to the requirements of G.S. 62-126.6 for the customer generator lessee's use on its premises where the solar energy facility is located to serve the electric energy requirements of that particular premises, including to enable the customer generator lessee to obtain a credit for the electricity generated under an applicable net metering tariff or to engage in the sale of excess energy from the solar energy facility to an offering utility.

(c) Any lease of a solar energy facility not entered into pursuant to this section is prohibited and any electric generator lessor that enters into a lease outside of an offering utility's program implemented pursuant to this section or otherwise enters into a contract or agreement where payments are based upon the electric output of a solar energy facility shall be considered a "public utility" under G.S. 62-3(23) and be in violation of the franchised service rights of the offering utility or any other electric power supplier authorized to provide retail electric service in the State. This section does not authorize the sale of electricity from solar energy facilities directly to any customer of an offering utility or other electric power supplier by the owner of a solar energy facility. The electrical output from any solar energy facility leased pursuant to this program shall be the sole and exclusive property of the customer generator lessee.

(d) The total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to this section shall not exceed one percent (1%) of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The offering utility may refuse to interconnect customers that would result in this limitation being exceeded. Each offering utility shall establish a program for new installations of

leased equipment to permit the reservation of capacity by customer generator lessees, whether participating in a public utility or nonutility lessor's leasing program, on its system, including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer generator lessees may apply for, receive, and hold reservations to participate in the offering utility's leasing program. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises.

(e) To comply with the terms of this section, each customer generator lessor's solar energy facility shall serve only one premises and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the interconnecting offering utility, subject to the participation limitations set forth in subsection (a) of this section. (2017-192, s. 6(a).)

**§ 62-126.6. Electric customer generator leasing requirements; disclosures; records.**

(a) A lease agreement offered by an electric generator lessor must meet the following requirements:

- (1) Be signed and dated by the retail electric customer. Any agreement that contains blank spaces when signed by the retail electric customer is voidable at the option of the retail electric customer until the solar energy facility is installed.
- (2) Be in at least 12-point type.
- (3) Include a provision granting the retail electric customer the right to rescind the agreement for a period of not less than three business days after the agreement is signed by the retail electric customer.
- (4) Provide a description of the solar energy facility, including the make and model of the solar energy facility's major components, and a guarantee concerning energy production output that the solar energy facility will provide over the expected life of the agreement.
- (5) Separately set forth the following items, as applicable:
  - a. The total cost to the retail electric customer under the lease agreement for the solar energy facility over the life of the agreement.
  - b. Any interest, installation fees, document preparation fees, service fees, or other costs to be paid by the retail electric customer.
  - c. The total number of payments, including the interest, the payment frequency, the estimated amount of the payment expressed in dollars, and the payment due date over the leased term.
- (6) Identify any State or federal tax incentives that are included in the calculation of lease payments.
- (7) Disclose whether the warranty or maintenance obligations related to the solar energy facility may be sold or transferred to a third party.
- (8) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer, if a transfer of the lease agreement is subject to any restrictions pursuant to the agreement on the retail electric customer's ability to modify or transfer ownership of a solar energy facility, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the solar energy facility is subject to review or approval by a third party, the agreement must identify the name, address, and

- telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.
- (9) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer, if a modification or transfer of ownership of the real property to which the solar energy facility is or will be affixed is subject to any restrictions pursuant to the agreement on the retail electric customer's ability to modify or transfer ownership of the real property to which the solar energy facility is installed or affixed, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the real property to which the solar energy facility is affixed or installed is subject to review or approval by a third party, the agreement must identify the name, address, and telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.
  - (10) Provide a full and accurate summary of the total costs under the agreement for maintaining and operating the solar energy facility over the life of the solar energy facility, including financing, maintenance, and construction costs related to the solar energy facility.
  - (11) If the agreement contains an estimate of the retail electric customer's future utility charges based on projected utility rates after the installation of a solar energy facility, provide an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs. The comparative estimates must be calculated based on the same utility rates.
  - (12) Include a disclosure, the receipt of which shall be separately acknowledged by the retail electric customer that states: "Utility rates and utility rate structures are subject to change. These changes cannot be accurately predicted and projected savings from your solar energy facility are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative, or regulatory action."

(b) Before the maintenance or warranty obligations of a solar energy facility under an existing lease agreement are transferred, the person who is currently obligated to maintain or warrant the solar energy facility must disclose the name, address, and telephone number of the person who will be assuming the maintenance or warranty of the solar energy facility.

(c) If the electric generator lessor's marketing materials contain an estimate of the retail electric customer's future utility charges based on projected utility rates after the installation of a solar energy facility, the marketing materials must contain an estimate of the retail electric customer's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs. (2017-192, s. 6(a).)

#### **§ 62-126.7. Commission authority over electric generator lessors.**

(a) No person shall engage in the leasing of a solar energy facility without having applied for and obtained a certificate authorizing those operations from the Commission. The application for a certificate of authority to engage in business as an electric generator lessor shall be made in a

form prescribed by the Commission and accompanied by the fee required pursuant to G.S. 62-300(a)(16).

(b) In acting upon the application for a certificate of authority to engage in business as an electric generator lessor, the Commission shall take into account the State's interest in encouraging the leasing of solar electric generation facilities and avoidance of cross-subsidization as declared by the policy objectives of this Article as provided in G.S. 62-126.2, as well as the policy of the State, as provided in G.S. 62-2(a). The Commission shall issue a certificate of authority to engage in business as an electric generator lessor if the Commission finds that the applicant is fit, willing, and able to conduct that business in accordance with the provisions of this Article. The certificate shall be effective from the date issued unless otherwise specified therein and shall remain in effect until terminated under the terms thereof, or until suspended or revoked as herein provided.

(c) As a condition for issuance and continuation of a certificate of authority for an electric generator lessor, the applicant shall certify to the Commission all of the following:

- (1) The applicant will register with the Commission each solar energy facility that the applicant leases to a customer generator lessee.
- (2) That each lease of a solar energy facility that the applicant offers or accepts will comply with the provisions of this Article.
- (3) The applicant will consent to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State.
- (4) That the applicant will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers.

(d) Upon the request of an electric public utility, an electric membership corporation, the Public Staff, a customer generator lessee, or person having an interest in the electric generator lessor's conduct of its business, the Commission may review the certificate to determine whether the electric generator lessor is conducting business in compliance with this Article. After notice to the electric generator lessor, the Commission may suspend the certificate and enter upon a hearing to determine whether the certificate should be revoked. After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a suspension of a certificate, or revoke a certificate.

(e) It shall be a violation of law punishable by a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence for any person to either directly or indirectly do any of the following:

- (1) Solicit business as a lessor of solar energy facilities without a valid certificate issued under this section or otherwise in violation of the terms of this Article.
- (2) Engage in any unfair or deceptive practice in the leasing of solar energy facilities or otherwise violate the requirements of G.S. 62-126.6.
- (3) Operate in violation of the terms of the certificate issued by this Article. (2017-192, s. 6(a).)

#### **§ 62-126.8. Community solar energy facilities.**

(a) Each offering utility shall file a plan with the Commission to offer a community solar energy facility program for participation by its retail customers. The community solar energy facility program shall be designed so that each community solar energy facility offsets the energy

use of not less than five subscribers and no single subscriber has more than a forty percent (40%) interest. The offering utility shall make its community solar energy facility program available on a first-come, first-served basis until the total nameplate generating capacity of those facilities equals 20 megawatts (MW).

(b) A community solar energy facility shall have a nameplate capacity of no more than five megawatts (MW). Each subscription shall be sized to represent at least 200 watts (W) of the community solar energy facility's generating capacity and to supply no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each subscriber at the subscriber's premises.

(c) A community solar energy facility must be located in the service territory of the offering utility filing the plan. Subscribers shall be located in the State of North Carolina and the same county or a county contiguous to where the facility is located. The electric public utility may file a request for Commission approval for an exemption from the location requirement of this subsection and the Commission may approve the request for a facility located up to 75 miles from the county of the subscribers, if the Commission deems the exemption to be in the public interest.

(d) The offering utility shall credit the subscribers to its community solar energy facility for all subscribed shares of energy generated by the facility at the avoided cost rate.

(e) The Commission may approve, disapprove, or modify a community solar energy facility program. The program shall meet all of the following requirements:

- (1) Establish uniform standards and processes for the community solar energy facilities that allow the electric public utility to recover reasonable interconnection costs, administrative costs, fixed costs, and variable costs associated with each community solar energy facility, including purchase expenses if a power purchase agreement is elected as the method of energy procurement by the offering utility.
- (2) Be consistent with the public interest.
- (3) Identify the information that must be provided to potential subscribers to ensure fair disclosure of future costs and benefits of subscriptions.
- (4) Include a program implementation schedule.
- (5) Identify all proposed rules and charges.
- (6) Describe how the program will be promoted.
- (7) Hold harmless customers of the electric public utility who do not subscribe to a community solar energy facility.
- (8) Allow subscribers to have the option to own the renewable energy certificates produced by the community solar energy facility. (2017-192, s. 6(a).)

#### **§ 62-126.9. Scope of leasing program by municipalities.**

(a) A municipality that sells electric power to retail customers in the State may elect, by action of its governing council or commission, to be deemed to be an electric generator lessor and may offer leases to solar energy facilities located within the municipality's service territory. The costs a municipality incurs in marketing, installing, owning, or maintaining leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating municipality retail customers through rates.

(b) Provided the municipality has elected to offer a leasing program, an electric generator lessor that owns a solar energy facility within a municipality's service territory and that is located on a premises owned or leased by a customer generator lessee shall be permitted to lease such

facility exclusively to a customer generator lessee pursuant to a lease under terms and conditions approved by the municipality and holds a valid certificate issued by the Commission pursuant to G.S. 62-126.7. Notwithstanding this subsection, a municipality acting as an electric generator lessor shall not be required to comply with G.S. 62-126.7.

(c) An electric generator lessor, including a municipality acting as an electric generator lessor, shall not be considered a "public utility" under G.S. 62-3(23) if the solar energy facilities are only made available to a customer generator lessee under a lease that conforms to the requirements of G.S. 62-126.6 for the customer generator lessee's use of the customer generator lessee's premises where the solar energy facility is located to serve the electric energy requirements of that particular premises, including to enable the customer generator lessee to obtain a credit under an applicable net metering tariff or to engage in the sale of excess energy from the solar energy facility to the municipality; provided, however, that the provisions of G.S. 62-126.4 shall not apply to a municipality or other electric generator lessor that offers leases to solar energy facilities located within the municipality's service territory pursuant to this section. Any net metering tariffs adopted by such municipality shall be adopted by its governing council or commission in accordance with the rate-setting procedures set forth in Article 16 of Chapter 160A of the General Statutes.

(d) Any lease of a solar energy facility in a municipal electric service area not entered into pursuant to this section is prohibited. This section does not authorize the sale of electricity from solar energy facilities directly to any customer of a municipality by the owner of a solar energy facility. The electrical output from any eligible renewable electric generation facility leased pursuant to this section shall be the sole and exclusive property of the customer generator lessee.

(e) Each eligible solar energy facility shall serve only one premises and shall not serve multiple customer generator lessees or multiple premises. The customer generator lessee must enroll in the applicable rate schedule made available by the municipality, subject to the participation limitations set forth in subsection (a) of this section. (2017-192, s. 6(a).)

#### **§ 62-126.10. Rules.**

The Commission shall adopt rules to implement the provisions of this Article. (2017-192, s. 6(a).)