

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP-118, SUB 0  
DOCKET NO. EMP-118, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. EMP-118, SUB 0	)	
	)	
In the Matter of	)	
Application of Timbermill Wind, LLC, for	)	
a Certificate of Public Convenience and	)	
Necessity to Construct a Merchant Plant	)	
Wind Energy Facility in Chowan County,	)	ORDER ACKNOWLEDGING
North Carolina and Registration as a	)	FILINGS AS PUBLIC COMMENTS
New Renewable Energy Facility	)	
	)	
DOCKET NO. EMP-118, SUB 1	)	
	)	
In the Matter of	)	
Application of Timbermill Wind, LLC for a	)	
Certificate of Environmental Compatibility	)	
and Public Convenience and Necessity to	)	
Construct Transmission Line in Chowan	)	
County, North Carolina	)	

BY THE CHAIR: On July 22, 2021, the Commission issued an Order Consolidating Dockets, Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice in the above-captioned dockets. In that order, among other actions, the Commission consolidated the two dockets, set a deadline for petitions to intervene of September 29, 2021, and scheduled a public witness hearing on October 14, 2021.

On July 27, 2021, Mr. Patrick Flynn filed a letter with the Commission stating that he and his wife, Mrs. Belinda Flynn (Petitioners), are not represented by an attorney and are filing public comments regarding Docket No. EMP-118, Sub 1. Petitioners request to appear as public witnesses for the hearing. On July 30, 2021, Petitioners filed additional comments raising environmental concerns about the proposed Facility.

On August 11, 2021, the Applicant filed a Motion to Deny Petition to Intervene. The Applicant cites Commission Rule R1-22, which provides that “no person may appear in a representative capacity other than an attorney at law, duly qualified and entitled to practice before the Supreme Court of the State of North Carolina.” The Applicant asserts that Mr. Flynn cannot appear in a representative capacity for his wife, and that therefore the Commission should deny the Petition. Further, the Applicant cites to Commission

Rule R1-19, which provides that any person having an interest in a Commission proceeding may become a party thereto by filing a verified petition that includes “a clear, concise statement of the nature of the petitioner’s interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues in the proceeding.” The Applicant argues that the Commission should deny the Petition since it is unverified.

The Applicant cites Commission precedent on intervention holding that while the ability to intervene under Commission Rule 1-19 is “generous,” it is “not unlimited.” Order Denying Petition to Intervene, *Duke Energy Carolinas, LLC – Investigation of Existing Rates and Charges*, Docket No. E-7, Sub 828, at 3 (Sept. 13, 2007). To be granted intervention, a petitioner must demonstrate a real interest in the proceeding, more than an incidental or casual concern that the general public would share. Order Denying Petition to Intervene, *Dominion North Carolina Power – Investigation of Existing Rates and Charges*, Docket No. E-22, Sub 412 (May 13, 2004); Order Denying Petition to Intervene and Allowing Limited Amicus Curiae Status, *Complaint of Frontier Communications of the Carolinas LLC Against French Broad Electric Membership Corp.*, Docket No. EC-46, Sub 45 (July 8, 2021). According to the Applicant, the Petition does not articulate a real interest or concern specific to Petitioners and only raises incidental concerns that the public may share and that are not unique or specific to Petitioners. The Applicant states that the appropriate venue for these objections and concerns is the public witness hearing scheduled for October 14, 2021, for the purpose of receiving public witness testimony regarding the applications. The Applicant requests that the Commission deny the Petition to Intervene.

On October 4, 2021, Petitioners filed additional comments in these dockets in a document entitled “Petition for Investigation and Rulemaking of Timbermill Wind, LLC’s Certificate of Environmental Compatibility and Public Convenience Application.” Petitioners’ filing appears to be in response to the Public Staff testimony filed on September 29, 2021. Petitioners note that Public Staff witness Thomas did not address their Petition in the Public Staff testimony. Petitioners reiterate that the Commission has not addressed their comments in Docket No. E-100, Sub 171 and assert that that proceeding “takes precedence” over this docket. Petitioners assert that they challenge “the ownership authority of Renewable Energy Facilities outside North Carolina.” Petitioners refute witness Thomas’s testimony that recent site plan changes did not add or remove any property parcels within the site and seem to say that the site plan on file with the application and information that the Applicant presented to Chowan County commissioners on August 2, 2021, are inconsistent. Petitioners assert that they have standing in this matter as abutting property owners. Petitioners also raise questions regarding witness Thomas’s testimony regarding decommissioning of the Facility and note that witness Thomas points out that the Applicant had informed Chowan County that the Facility would use 3.6 MW turbines but references 4.2 MW turbines in the application. Petitioners again request that the Commission deny the Applicant’s applications for CPCNs and resolve issues raised in Docket No. E-100, Sub 171 before considering proposed energy facilities. Petitioners assert that failure to do so will violate the due process rights of Petitioners and/or any North Carolina citizen opposing the approval of the application for the proposed Facility.

Considering the foregoing and the record in this proceeding, the Chair finds good cause to deny Petitioners' Petition to Intervene and treat Petitioners' filings as public comments in this docket. Pursuant to Commission Rule R1-19, any person having an interest in a Commission proceeding may become a party thereto by filing a verified petition that includes, among other things, "a clear, concise statement of the nature of the petitioner's interest in the subject matter proceeding and the way and manner in which such interest is affected by the issues in the proceeding."

The Chair finds persuasive the arguments of the Applicant that Petitioners have not demonstrated a real interest, specific to them, in this proceeding, but instead have articulated broad and incidental concerns that the general public might share. This is true despite Petitioners' property abutting some of the property leased for the proposed Facility. The concerns Petitioners raise, such as rate increases, economic benefits for Chowan County, the need for the proposed Facility, this Commission's mission, and environmental impacts of the proposed Facility, are issues of general applicability and not of particular individual concern to Petitioners.

That said, the Commission does not take Petitioners' concerns lightly and welcomes their participation at the public witness hearing scheduled for October 14, 2021, as they requested in their filings dated July 25, 2021, and July 26, 2021. In the unlikely event that the public witness hearing is canceled for any reason, the Chair confirms that Petitioners' filings are part of the record in this proceeding and will be given the weight and consideration appropriate for public comments. See Order Denying Petition to Intervene, *Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2018*, Docket No. E-100, Sub 158 (Jan. 18, 2019) (denying petition to intervene for failure to demonstrate a real interest in the proceeding, noting the opportunity to testify at a public witness hearing, and entering the filed supporting documents into the record as a consumer statement of position).

IT IS, THEREFORE, ORDERED as follows:

1. That the Petition to Intervene of Mr. and Mrs. Flynn is denied; and
2. That Petitioners' filings will be treated as public comments in the record for these dockets.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of October, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Joann R. Snyder, Deputy Clerk