

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of                          |  |
| Petition to Revise Commission Rules R8-63 | )  |
| and R8-64                                 | )  |
|   | )  |
|   | <b>Public Staff Response to<br/>NCSEA Motion to Stay</b> |

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and hereby responds to the North Carolina Sustainable Energy Association’s (NCSEA) Motion to Stay Proceedings Pending Appeal. The Public Staff respectfully requests that the Commission reject NCSEA’s Motion to Stay and issue an order seeking comments on the petition. In support of this response, the Public Staff shows the following:

BACKGROUND

1. On August 19, 2021, the Public Staff filed a Petition to Revise Commission Rules R8-63 and R8-64 (Petition). In support of its Petition, the Public Staff stated that it has seen a steady increase in the number of electric merchant plant (EMP) applications that may either trigger affected system costs in Dominion Energy North Carolina’s (DENC) service territory or are seeking to enter the transition queue in the Duke Energy Carolinas, LLC (DEC) or Duke Energy Progress, LLC (DEP, together Duke) service territories. The Public Staff explained that facilities applying for a Certificate of Public Convenience and Necessity (CPCN) in constrained areas pursuant to Commission Rule R8-63 may trigger

significant network upgrades. The Public Staff also explained that it has seen an increasing number of applications for CPCN renewals and amendments by small power producers, and that Commission Rule R8-64 should be amended to clarify issues related to those applications. The Public Staff requested that the Commission establish an expedited comment period on the rule revisions.

2. On August 26, 2021, NCSEA filed a Motion to Stay the Proceedings Pending Appeal. NCSEA states that the Friesian matter<sup>1</sup> is now pending before the North Carolina Court of Appeals. NCSEA notes that, together with the North Carolina Clean Energy Business Alliance, it filed a joint Notice of Appeal and Exceptions on August 10, 2020. In its Notice of Appeal and Exceptions, it set forth exceptions stating the Commission's April 21, 2020, Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility issued in Docket No. EMP-105, Sub 0 (Friesian Order) inappropriately considered Federal Energy Regulatory Commission (FERC)-jurisdictional costs and that the Commission considering network upgrades and the levelized cost of transmission (LCOT) in determining whether to approve a CPCN application falls outside of the Commission rules.

#### RESPONSE TO MOTION TO STAY

3. In its Motion to Stay, NCSEA argues that the "outcome of the appeal will materially affect the underlying Friesian Proceeding, including, potentially, the Friesian Order upon which the Public Staff cites and relies on in their petition" and

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<sup>1</sup> NCSEA is referring to the appeal of the final order of the Commission in Docket No. EMP-105, Sub 0 docketed at the North Carolina Court of Appeals, State of NC Ex. Rel. Utils. Comm'n v. Friesian Holdings, LLC, COA 20-867.

that “NCSEA believes that it would create more problems to move forward with this amendment to the underlying rules which may be undone or otherwise contorted by a pending appellate decision.”

4. First, while the Public Staff acknowledges that the Friesian Order is currently under appeal, the proposed revisions to Commission Rule R8-63 are intended to standardize and streamline the application process for merchant generators. Currently, the Commission asks an applicant applying for a CPCN pursuant to Commission Rule R8-63 to file additional testimony regarding network upgrades, interconnection studies, and cost information. The Public Staff also asks for this information in discovery requests to the applicant. By revising the rule to make it consistent with current Commission practice and Public Staff discovery, applicants will be put on notice regarding the need for cost information to be addressed in the CPCN application.

5. Second, with respect to timing, it is uncertain whether a court decision related to the Friesian Order, whether it be the North Carolina Court of Appeals or, potentially, the North Carolina Supreme Court, will actually result in changes to the Commission’s underlying order. The Commission should not delay acting on the Petition as a result of an anticipated court ruling that may or may not result in a reconsideration of the Friesian Order at some undetermined point in the future.

6. Third, while NCSEA believes that revising the rules “would create more problems,”<sup>2</sup> the Public Staff respectfully disagrees. Currently, pursuant to

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<sup>2</sup> NCSEA Motion to Stay, at 5.

Commission Rule R8-63, the Public Staff is required to make a recommendation on the completeness of a merchant generator CPCN application in ten business days.<sup>3</sup> The Public Staff has stated in testimony and motions in recent EMP dockets that it needs additional interconnection study or affected system study reports, including network upgrade cost information, to calculate the LCOT and to make a recommendation on the application. In cases where that information is not yet available, the Public Staff has asked to stay the proceedings or hold the application in abeyance pending receipt of those studies and associated cost information.<sup>4</sup> Rather than causing problems, a standardized and streamlined process for applying for and evaluating merchant generator CPCN applications would provide much needed guidance on complex issues being raised in numerous ongoing and future CPCN application reviews.

7. As the Commission is aware and as is addressed in the Public Staff's Petition, there are many constrained areas in the DENC and Duke service territories, and network upgrades assigned to merchant generating facilities have the potential to shift significant costs to ratepayers. Also, Duke is moving away from serial interconnection studies to grouping studies as part of its queue reform proposal. The revised North Carolina Interconnection Procedures to implement Duke's queue reform were recently approved by this Commission and became effective August 20, 2021.<sup>5</sup> It is appropriate at this time for the Commission to

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<sup>3</sup> Commission Rule R8-63(d).

<sup>4</sup> See *e.g.*, Docket No. EMP-102, Sub 1, Testimony of Dustin Metz, at 4 (July 7, 2021); Docket No. EMP-116, Sub 0, Notice of Completeness and Motion to Stay (July 27, 2021); and, EMP-117, Sub 0, Notice of Completeness and Motion to Stay (July 7, 2021) (denied by Order Scheduling Hearings, Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (August 12, 2021)

<sup>5</sup> Docket No. E-100, Sub 101, Order Implementing Queue Reform (Aug. 19, 2021).

consider rule revisions to Commission Rule R8-63 to put merchant generators on notice that intend to participate in the transitional and later interconnection grouping studies that certain study and cost information will be needed to evaluate their application for a CPCN. It is also appropriate for the Commission to consider rule revisions to Commission Rule R8-64 at this time, as small power producers increasingly seek clarity concerning the renewal and amendment of CPCNs.

Therefore, the Public Staff request that the Commission deny NCSEA's Motion to Stay and direct intervening parties to file comments in an expedited manner as described in the Petition.

Respectfully submitted this the 1st day of September, 2021.

PUBLIC STAFF  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this Response has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 1st day of September, 2021.

Electronically submitted  
/s/ Layla Cummings