

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-114, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Oak Trail Solar, LLC, for a)
Certificate of Public Convenience and) ORDER GRANTING
Necessity to Construct a 100-MW Solar) MOTION FOR LIMITED
Facility in Currituck County, North Carolina) CONSTRUCTION AUTHORITY

BY THE COMMISSION PANEL: On September 17, 2020, Oak Trail Solar, LLC (Applicant) filed an application pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63 for a certificate of public convenience and necessity (CPCN) to construct a solar photovoltaic (PV) electric generating facility with a capacity of up to 100 MW_{AC} to be located in Currituck County, North Carolina and to be operated as a merchant generating facility (Facility).

On September 29, 2020, the Public Staff filed a Notice of Completeness stating that it had reviewed the Application in accordance with Commission Rule R8-62(d) and considered the Application to be complete. The Public Staff also requested that the Commission issue a procedural order.

On December 14, 2020, the Commission issued an Order Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (First Scheduling Order).

On December 16, 2020, the Commission issued an Errata Order correcting an error in the First Scheduling Order.

On December 18, 2020, the Commission issued an Order Scheduling Public Witness Hearing, Revising Deadlines Related to Public Witness Hearing and Revising Required Public Notice (Second Scheduling Order).

The parties have filed testimony and exhibits in accordance with the deadlines established in the Second Scheduling Order.

On May 17, 2021, the Commission held a remote hearing for the purpose of receiving expert witness testimony.

On June 11, 2021, the Commission issued an Order Requiring Proposed Orders in the docket.

On July 14, 2021, the Applicant filed its proposed order.

On July 14, 2021, the Public Staff filed its proposed order. In the cover letter to the proposed order, the Public Staff noted its recommendations in two other pending dockets pertaining to merchant plant facilities: EMP-102, Sub 1 and EMP-117, Sub 0. The Public Staff stated that it has recommended that the CPCN requests in both of those dockets be held in abeyance pending the outcome of a complaint proceeding that Edgcombe Solar, LLC initiated at the Federal Energy Regulatory Commission (FERC) challenging certain 2020 amendments that Duke Energy Progress (DEP) and other affiliated utilities made to their Affected System Operating Agreement templates. The Public Staff suggested that the Commission consider holding this docket in abeyance as well.

On July 20, 2021, the Applicant filed a letter objecting to the Public Staff's suggestion that the Commission hold its CPCN application in abeyance indefinitely, stating that a delay would cause "significant and potentially irreparable harm" to the project.

On September 1, 2021, the Applicant filed a Motion for Limited Construction Authority (Motion). The Applicant seeks permission to begin limited construction activities, including the construction of perimeter fencing, erosion control measure, pile installation, wiring, equipment pads, racking, module installation, clearing and grading, switchyard/substation pad and access road installment, driveway and project road installment including culverts, stormwater management facilities, trenching and installation of cable, underground boring, installation of electrical poles, water well installation, and screening and landscaping improvements.

In its Motion, the Applicant states that it understands that any construction undergone pursuant to this request will be undertaken without prejudice to any Commission action concerning the Application, and that the Applicant assumes all risks regarding the Commission's disposition of the application. The Applicant further asserts in its Motion that the requested relief is critical to completing construction of the Facility in accordance with timing requirements established pursuant to contractual obligations of the Applicant and its affiliates. Specifically, the Applicant asserts that it will have a deadline under its Interconnection Construction Service Agreement (ICSA) to provide Dominion Energy North Carolina (DENC) with a switchyard pad by February 1, 2022, so that DENC can begin construction of a new three breaker 230kV switching station within the Facility site that will be necessary to connect the Facility to the transmission system. The Applicant states that there are several other contractual milestones it must meet soon under various agreements, including the ICSA, the Interconnection Service Agreement, and the agreement the Applicant has with a customer for the Facility's eventual output.

Considering the foregoing, the Commission Panel finds good cause to grant the Motion for Limited Construction Authority, subject to the Applicant's understanding that any construction performed before the Commission's granting of a CPCN for the proposed Facility is undertaken at the Applicant's own risk and subject to the Commission's future actions on the application.

IT IS, THEREFORE, SO ORDERED as follows:

1. That Applicant is hereby granted the authority to engage in construction of perimeter fencing, erosion control measure, pile installation, wiring, equipment pads, racking, module installation, clearing and grading, switchyard/substation pad and access road installment, driveway and project road installment including culverts, stormwater management facilities, trenching and installation of cable, underground boring, installation of electrical poles, water well installation, and screening and landscaping improvements;


2. That Applicant shall bear all costs and other risks of the limited construction activities in the amendment area, and, specifically, the risk that the Commission may deny Applicant's application for a certificate of public convenience and necessity to construct the facility; and

3. That his Order is based on the unique facts and circumstances involved in this docket and shall not be cited by Applicant or any other party as precedent in support of a request for future Commission action.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of September, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Lindsey A. Worley, Acting Deputy Clerk