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November 9, 2021

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**RE: *In the matter of the Application for a Conditional Certificate
of Public Convenience and Necessity for Juno Solar, LLC
Docket No. EMP-116, Sub 0
REBUTTAL TESTIMONY OF STEVEN J. LEVITAS***

Dear Ms. Dunston:

On behalf of Juno Solar, LLC, in the above referenced matter and docket, I herewith provide the Rebuttal Testimony of Steven J. Levitas in support of the Application for a Conditional Certificate of Public Convenience and Necessity.

Please let us know if you will want or need paper copies of this filing, the number of copies of same, and we will promptly provide.

Thank you for your assistance with this application. Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

/s/ Karen M. Kemerait

Karen M. Kemerait

pbb

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Ms. A. Shonta Dunston
Chief Clerk
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Enclosures

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Nov 09 2021

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION
JUNO SOLAR, LLC
DOCKET NO. EMP-116, SUB 0**

**REBUTTAL TESTIMONY
OF
STEVEN J. LEVITAS**

November 9, 2021

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Steven J. Levitas. My business address is 130 Roberts Street,
3 Asheville, North Carolina 28801.

4 **Q. WHAT IS YOUR OCCUPATION?**

5 **A.** I am the Senior Vice President for Regulatory and Government Affairs at Pine Gate
6 Renewables, LLC (“Pine Gate”).

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **EXPERIENCE.**

9 **A.** I received a B.A. from the University of North Carolina at Chapel Hill in 1976 and
10 a J.D. with Honors from Harvard Law School in 1982. After clerking for a federal
11 district court judge, I spent four and one-half years as a commercial litigator before
12 becoming Director and Senior Attorney in the North Carolina office of the
13 Environmental Defense Fund, a national public interest advocacy organization. In
14 1993, North Carolina Governor Jim Hunt appointed me to serve as Deputy
15 Secretary of the North Carolina Department of Environment, Health, and Natural
16 Resources. Following my four-year tenure in that position, I spent the next twenty
17 years as a partner in two private law firms where my practice was focused on
18 environmental and energy matters. During the last six of those years, a particular
19 emphasis of my practice was representing renewable energy companies.

20 In January of 2016, I became Vice President for Business Affairs and
21 General Counsel for FLS Energy, Inc. (“FLS”), a North Carolina-based utility scale
22 solar developer. At FLS, I was responsible for all legal, regulatory, and business

1 development activities of the company, including the negotiation of a wide variety
2 of contracts relating to our business. In January of 2017, following the acquisition
3 of FLS by Cypress Creek Renewables (“Cypress Creek”), I was appointed to the
4 position of Senior Vice President for Regulatory Affairs and Strategy at Cypress
5 Creek, a position I held until joining Pine Gate in September of 2019. At Cypress
6 Creek, I was responsible for and managed all aspects of policy, regulatory, and
7 government affairs activity.

8 **Q. PLEASE DESCRIBE PINE GATE.**

9 **A.** Pine Gate is a utility-scale solar development company headquartered in Asheville,
10 North Carolina, with experience developing and building solar projects throughout
11 the United States. We are currently developing projects in more than 20 states, but
12 the Carolinas remain our largest and most important market. We currently have 43
13 projects in operation in the Carolinas totaling 470 megawatts (“MW”) AC, 25 of
14 which totaling 172 MW AC are in North Carolina. Our national development
15 pipeline is over 10 gigawatts (“GW”), of which 3.2 GW are projects in the
16 Carolinas, including over 2.4 GW in North Carolina. Our past and currently
17 planned investment in North Carolina is in excess of \$4.8 billion.

18 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

19 **A.** I am testifying on behalf of Juno Solar, LLC (“Juno Solar”).

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
21 **PROCEEDING?**

1 A. The primary purposes of my testimony are to explain the importance of finding a
2 solution to the “Catch 22” problem for merchant plant projects described in Juno
3 Solar’s Conditional Certificate of Public Convenience and Necessity (“CPCN”)
4 application, and to rebut the Public Staff’s new position that the levelized cost of
5 transmission (“LCOT”) test might not be the appropriate test for determining the
6 reasonableness of network upgrade costs for merchant plant facilities.

7 **Q. ARE YOU SPONSORING ANY EXHIBITS?**

8 A. Yes. I am sponsoring Exhibit SJL-1.

9 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND**
10 **RECOMMENDATIONS.**

11 A. As previously recommended by the Public Staff and approved by the Commission,
12 the Commission should apply the LCOT test to Juno Solar’s Conditional CPCN
13 application to determine the reasonableness of the network upgrade costs and any
14 affected system costs. The Commission should also approve Juno Solar’s CPCN
15 with enforceable conditions that will ensure that North Carolina ratepayers will not
16 be subject to reimbursement for unreasonable network upgrade and affected system
17 costs, while at the same time not subjecting Juno Solar to enormous financial
18 penalties in the event of the denial of a CPCN application in the future.

19 **Q. PLEASE DESCRIBE YOUR INVOLVEMENT IN THE STAKEHOLDER**
20 **PROCESS FOR DUKE’S FERC QUEUE REFORM PROPOSAL.**

21 A. I was extensively involved in Duke Energy Progress, LLC’s and Duke Energy
22 Carolinas, LLC’s (together, “Duke”) FERC-jurisdictional queue reform

1 stakeholder process, as well as Duke’s North Carolina-jurisdictional queue reform
2 process, as one of the primary spokespersons and drafters on behalf of the
3 Carolinas Clean Energy Business Association (“CCEBA”). I attended almost all
4 of the stakeholder meetings, I was intricately involved in developing and
5 negotiating solutions for issues that arose with respect to Duke’s queue reform
6 proposal, and I drafted detailed comments on and revisions to the various
7 iterations of Duke’s proposed modifications to the state and federal
8 Interconnection Procedures.

9 **Q. DURING THE STAKEHOLDER PROCESS, DID YOU IDENTIFY THE**
10 **“CATCH-22” PROBLEM PRESENTED BY THE PROPOSED**
11 **PROCEDURES FOR FERC-JURISDICTIONAL INTERCONNECTION**
12 **CUSTOMERS AS A RESULT OF THE COMMISSION’S PRECEDENTS**
13 **ON CPCN APPLICATIONS BY SUCH CUSTOMERS?**

14 **A.** Yes. During multiple stakeholder teleconferences, all of which I believe were
15 attended by representatives of the Public Staff, I explained the “Catch 22”
16 problem. I pointed out that a FERC-jurisdictional Interconnection Customer that
17 enters Phase 2 of the Transitional Cluster Study must make substantial
18 performance security payment and faces a withdrawal penalty well in excess of \$1
19 million if it exits the study process. Among the reasons that an Interconnection
20 Customer might need to withdraw from the study process is if the Commission
21 were to deny a CPCN application or revoke a CPCN. As demonstrated by the
22 Commission’s decision for Friesian Holdings, LLC’s (“Friesian”) CPCN

1 application in Docket No. EMP-105, Sub 0,¹ the Commission could decide to
2 deny a CPCN where it believes that the LCOT for required network upgrades
3 assigned to the Interconnection Customer (which under Duke Energy’s FERC-
4 approved OATT and Large Generator Interconnection Agreement are reimbursed
5 in part by North Carolina retail customers) are too high. However, the
6 Interconnection Customer cannot know its network upgrade costs and thus its
7 LCOT until it has been through the Transitional Cluster Study, and will not even
8 have an estimate of those costs from Duke until the end of Phase 1 of the study
9 process. Thus the “Catch 22.”

10 **Q. WHY DOES THAT SITUATION PRESENT A PROBLEM FOR**
11 **INTERCONNECTION CUSTOMERS?**

12 **A.** In the Friesian CPCN application proceeding and in other proceedings, the
13 Commission has made it clear that it will deny a CPCN to a FERC-jurisdictional
14 Interconnection Customer based solely on the fact that FERC’s crediting policy
15 requires the utility and its ratepayers to reimburse the customer for network
16 upgrade costs. In Friesian, the Commission adopted the position advanced by the
17 Public Staff—the Commission ruled that where it deems such reimbursable costs
18 to be unreasonable, it will find that the proposed project does not satisfy the
19 “public convenience” prong of the CPCN statute, N.C. Gen. Stat. § 62-110.1. In

¹ See Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility issued on June 11, 2020 in Docket No. EMP-105, Sub 0.

1 other merchant plant dockets, the Public Staff and the Commission have
2 suggested that it might be appropriate to revoke a previously issued CPCN to a
3 merchant plant where reimbursable costs deemed unreasonable by the
4 Commission are identified after the issuance of the CPCN. Therefore, the Catch-
5 22 is as follows: (i) Duke cannot provide the finalized network upgrade costs of a
6 FERC-jurisdictional project in the Transitional Cluster Study until after
7 completion of the Phase 2 study, but (ii) if the Commission's CPCN decision for
8 the project is not made until after those costs have been determined in Phase 2
9 study (and the remainder of the study process) and the Commission denies the
10 CPCN because it deems such costs to be unreasonable, the customer runs the risk
11 of having to pay a withdrawal penalty equal to nine times its study costs, which is
12 likely to be \$1 to \$2 million.

13 That result would be manifestly unjust and would likely discourage
14 FERC-jurisdictional Interconnection Customers from participating in the
15 Transitional Cluster Study (or the Definitive Interconnection System Impact
16 Study), thereby reducing the potential to spread the very large cost of resolving
17 Duke Energy's significant transmission system constraints and to remove a major
18 impediment to achieving the goals of S.L. 2021-165 ("H.B. 951"). This
19 unacceptable outcome can be avoided with the Conditional CPCN approach
20 proposed by Juno Solar.

21 **Q. DID YOU PROPOSE ANY POTENTIAL SOLUTIONS TO THIS**
22 **PROBLEM DURING THE STAKEHOLDER PROCESS?**

1 **A.** Yes. On several occasions, I explained the problem in detail and then proposed
2 two potential solutions. The first solution was to modify the Interconnection
3 Procedures to allow a FERC-jurisdictional Interconnection Customer to withdraw
4 from the study process without penalty if the Commission were to deny its CPCN
5 application based on the network upgrade costs assigned to the project. Duke
6 made it clear that that it would not support this approach because any such
7 withdrawal might require restudy of the remaining projects in the study, which
8 would adversely affect those customers. My alternative proposed solution was
9 the one presented in Juno’s CPCN application—that the Commission issue a
10 CPCN conditioned on its reimbursable network upgrade costs coming below a
11 specific and reasonable LCOT value.

12 **Q. DID DUKE, THE PUBLIC STAFF, OR ANY OTHER STAKEHOLDER**
13 **OBJECT TO YOUR ALTERNATIVE PROPOSAL?**

14 **A.** No. No stakeholder, including the Public Staff, raised any objection or concern
15 about this proposed solution to the “Catch 22” problem. In fact, even though the
16 Public Staff was well aware of CCEBA’s significant concern about this issue, at
17 no time during any stakeholder meeting or in any separate communication did any
18 representative of the Public Staff express an objection to my proposal.

19 **Q. DO YOU AGREE WITH WITNESS METZ’S STATEMENT AT PAGES 5-**
20 **6 OF HIS TESTIMONY THAT THE CONDITIONAL CPCN SOUGHT BY**
21 **JUNO SOLAR DOES NOT SOLVE THE “CATCH-22” PROBLEM?**

1 A. No, I do not. Mr. Metz incorrectly states that even with a conditional CPCN,
2 Juno Solar would be subject to the same withdrawal penalty if its network
3 upgrade costs as determined in the Transitional Cluster Study exceed an LCOT of
4 \$4.00/MWh, resulting in termination of its CPCN. Like other participants in the
5 Transitional Cluster Study, Juno Solar will receive an initial estimate of its
6 allocated network upgrade costs after Phase 1 of the study process. If at this point
7 those costs result in an LCOT for Juno Solar that is greater than \$4.00/MWh, the
8 CPCN will terminate and Juno Solar can withdraw from the queue without
9 penalty. In addition, if in subsequent phases of study Juno Solar's network
10 upgrade costs as identified in Phase 1 increase by more than 25%, it can also
11 withdraw from the queue without penalty. If an increase of less than 25% in
12 Juno Solar's Phase 1 allocated network upgrade costs would cause its LCOT to
13 exceed \$4.00/MWh, Juno Solar will likely withdraw from the queue at that point
14 without penalty rather than risk the possibility that a subsequent increase in its
15 network upgrade costs could cause its CPCN to terminate.

16 **Q. DO YOU AGREE WITH WITNESS METZ'S STATEMENT AT PAGE 33**
17 **OF HIS TESTIMONY THAT THE POTENTIAL WITHDRAWAL OF**
18 **JUNO SOLAR FROM THE QUEUE IN THE CASE OF HIGH UPGRADE**
19 **COSTS HAS THE POTENTIAL TO UNDERMINE THE TRANSITIONAL**
20 **CLUSTER STUDY PROCESS?**

21 A. No, I do not. As I just explained, Juno Solar will make the decision whether to
22 remain in the Transitional Cluster Study process at the end of Phase 1, just like all

1 other participants in the study. Duke has repeatedly stated that many participants
2 may withdraw at this stage in the process and has designed the Transitional
3 Cluster Study to accommodate that eventuality. Juno Solar is certainly not unique
4 in this regard. I should also note that if Juno Solar were to participate in the
5 Transitional Cluster Study without a conditional CPCN—and accept the
6 unreasonable burden of a massive withdrawal penalty in the event of CPCN
7 denial—the disruption to the study process from its subsequent withdrawal would
8 be far greater.

9 **Q. PLEASE EXPLAIN LCOT.**

10 **A.** LCOT is a metric utilized in the utility industry for evaluating the network
11 upgrade costs of a generation project in light of the expected output of the project
12 over its anticipated useful life. LCOT is calculated by dividing the project's
13 network upgrade costs in dollars by its presumed lifetime production in megawatt
14 hours.

15 **Q. WHY HAS JUNO SOLAR PROPOSED A CPCN CONDITIONED ON A**
16 **REASONABLE LCOT VALUE?**

17 **A.** Both the Public Staff and the Commission have identified LCOT as the test for
18 evaluating the reasonableness of reimbursable network upgrade costs for FERC-
19 jurisdictional Interconnection Customers. Specifically, in the Friesian Order
20 issued on June 11, 2020, the Commission noted: “Public Staff witnesses
21 Lawrence and Metz argued that a levelized cost of transmission (LCOT)
22 analysis provides a tool to evaluate the reasonableness of the upgrade costs

1 associated with certain generating technologies. They cited to a 2019 study by
2 Lawrence Berkeley National Laboratory (LBNL Study) that reviewed
3 interconnection cost studies for renewable energy facilities on a nationwide
4 basis, doing so by calculating LCOT value.” (Friesian Order, p. 15) The
5 Commission proceeded to state that “the Commission views the LCOT
6 analysis performed by the Public Staff as a benchmark of the reasonableness
7 of the network upgrades relative to other similar transmission investments
8 made to interconnect generating facilities in North Carolina.” (Friesian Order,
9 p. 23)

10 In addition, in the Commission’s November 13, 2020 Order granting a
11 CPCN to the proposed Edgecombe Solar, LLC merchant plant in Docket No.
12 EMP-101, Sub 0, the Commission again used the LCOT metric to assess the
13 reasonableness of upgrades required to the DEP system by the project. The
14 Commission concluded that an LCOT of \$6.00 per MWh for such upgrades (plus
15 the cost of unreimbursed upgrades in PJM) was “not unreasonably out of line with
16 the 2019 Lawrence Berkeley National Laboratory interconnection cost study
17 (LBNL Study), on which the Commission has relied to place LCOT calculations
18 in perspective with data from other balancing authorities.” The Commission
19 further concluded that “[i]n view of the total cost of the Facility, ... the siting of
20 the Applicant’s facility in this area is not inconsistent with the Commission’s
21 obligation under N.C. Gen. Stat. § 62-110.1(d) for the provisions of ‘reliable,
22 efficient and economical service’ in the state.” (*See Order Issuing Certificate for*

1 *Merchant Generating Facility*, Docket No. EMP-101, Sub 0 (Nov. 13,
2 2020).) The Commission also relied on an LCOT analysis to determine the
3 reasonableness of upgrade costs in orders granting a merchant CPCN in Docket
4 No. EMP-114, Sub 0 (*Order Issuing Certificate for Merchant Generating Facility*
5 (Oct. 8, 2021)) and renewing a merchant plant CPCN in Docket No. EMP-92, Sub
6 0 (Aug. 3, 2021). In none of these instances did the Commission consider the cost
7 of upgrades that might be associated with other proposed projects, except to note
8 where upgrade costs might be shared with such projects.

9 **Q. HAVE YOU PERSONALLY BEEN INVOLVED IN CONVERSATIONS**
10 **WITH THE PUBLIC STAFF REGARDING THE REASONABLENESS OF**
11 **FERC-JURISDICTIONAL NETWORK UPGRADE COSTS?**

12 **A.** Yes. On multiple occasions prior to this proceeding, I asked the Public Staff to
13 confirm their position about the reasonableness test for FERC-jurisdictional
14 network upgrade costs. On all of those occasions, the Public Staff confirmed the
15 position that they took in the Friesian proceeding—that reasonableness should be
16 determined based on a comparison of the project’s LCOT to industry benchmarks.
17 Exhibit SJL-1 is a true copy of one such communication on this subject that I
18 received from Layla Cummings, attorney for the Public Staff.

19 **Q. IS THE PUBLIC STAFF SEEKING IN THIS PROCEEDING TO MODIFY**
20 **ITS PRIOR POSITION ON THE REASONABLENESS TEST?**

21 **A.** It appears that the Public Staff is attempting to fundamentally change its position
22 in this proceeding. The primary basis for the Public Staff’s objection to Juno

1 Solar's Conditional CPCN application is that it would enable the Commission to
2 accept a specific LCOT value as being reasonable for this particular project. The
3 Public Staff seeks to prevent the Commission from determining a reasonable
4 LCOT value for Juno Solar by arguing for the first time that even if the LCOT for
5 a FERC-jurisdictional customer's reimbursable network upgrade costs are
6 reasonable by industry standards, it might nevertheless be appropriate for the
7 Commission to deny a CPCN for the project. Specifically, the Public Staff is
8 suggesting that it might be appropriate to deny Juno's CPCN application if either
9 (i) the total cost of its assigned network upgrades or (ii) the total cost of
10 reimbursable network upgrades for all FERC-jurisdictional projects in the
11 Transitional Cluster are deemed to be unreasonably high (by some undefined
12 standard). (See Public Staff Witness Metz Testimony, pp. 6, 18, 20)

13 **Q. DO YOU AGREE WITH THE PUBLIC STAFF'S POSITION ON THIS**
14 **ISSUE?**

15 **A.** No. In addition to being a complete reversal of the position it has repeatedly
16 taken in the past, I question whether the Public Staff's position can be legally
17 justified. The Public Staff has repeatedly acknowledged that the Commission
18 may not, consistent with FERC's crediting policy, deny CPCNs to all FERC-
19 jurisdictional projects simply because any reimbursement of network upgrade
20 costs by ratepayers would be required. Rather, the Public Staff has advocated that
21 the Commission must apply some rational and reasonable test (*i.e.*, LCOT) in
22 making such decisions. The effect of the Public Staff's new position would be

1 that the Commission could arbitrarily deny CPCNs to larger merchant plant
2 projects relative to smaller projects, even if the required upgrade costs were
3 reasonable by industry standards, or the Commission could impose an arbitrary
4 limit on the number of permissible FERC-jurisdictional projects because of their
5 aggregate impact. In my opinion, neither outcome is constitutionally permissible.

6 **Q. APART FROM THE PUBLIC STAFF'S ATTEMPT TO CHANGE THE**
7 **REASONABLENESS TEST, HAS THE PUBLIC STAFF ARTICULATED**
8 **A RATIONAL BASIS FOR DENIAL OF THE CONDITIONAL CPCN**
9 **REQUESTED BY JUNO SOLAR?**

10 **A.** No, they have not. As a procedural matter, the Public Staff seems to have some
11 vague concern about whether Juno Solar can be held to the agreed-upon
12 conditions of the CPCN, even though Juno Solar has expressly proposed and
13 agreed to them. But the Public Staff has failed to articulate any legal basis to
14 substantiate their concern that the conditions might not be enforceable. More
15 substantively, the Public Staff seems to be concerned that the issuance of a
16 Conditional CPCN based on an LCOT cap could effectively establish a bright-line
17 LCOT value. However, given the unique nature of each merchant plant project,
18 the Commission could certainly make it clear, as it has done in other contexts, that
19 the acceptance of a particular LCOT cap in this case has no precedential value for
20 other merchant plant CPCN applications.

21 **Q. DO YOU AGREE WITH THE PUBLIC STAFF THAT THE ISSUANCE**
22 **OF A CONDITIONAL CPCN SHIFTS RISK TO THE RATEPAYERS?**

1 **A.** No, I do not. As an initial matter, I would note that the Public Staff uses the
2 concept of risk shifting in an ambiguous and inconsistent way. At page 5 of Mr.
3 Metz’s testimony, he asserts that “the Applicant is seeking to shift risk from itself
4 to ratepayers,” but does not explain what that risk is or how it is being shifted.
5 Because of this lack of clarity, Juno Solar tendered a data request to the Public
6 Staff asking for an explanation of the allegation of risk shifting. The Public
7 Staff’s primary response did not address risk shifting at all but referred to the *cost*
8 shifting that necessarily results from FERC’s crediting policy. As previously
9 noted, and as the Public Staff itself has acknowledged, the Commission may not
10 lawfully refuse to certificate *all* FERC jurisdictional projects to which the
11 crediting policy would apply. So the mere fact of the cost allocation resulting
12 from the crediting policy without more cannot be the basis for denying Juno
13 Solar’s CPCN. The Public Staff then offers a second explanation: the risk to
14 ratepayers is that the total cost of upgrades for all FERC-jurisdictional projects in
15 the Transitional Cluster Study could be a high number. But that is not a risk
16 caused by Juno Solar or its Conditional CPCN application or one for which Juno
17 Solar can be held accountable. Finally, at pages 8-9 and 33 of his testimony, Mr.
18 Metz suggests another form of risk—that due to changes in project design, Juno
19 Solar’s LCOT could increase during the design or construction process.

20 However, that issue is a red herring: under the CPCN that Juno seeks, if
21 its calculated LCOT ever exceeds \$4.00/MWh at any time before execution of an
22 interconnection agreement, the CPCN would automatically terminate. (It is

1 unclear whether the Public Staff is suggesting that a CPCN for a FERC-
2 jurisdictional project should be revocable after construction on the project begins
3 or after the project has commenced commercial operation due to changes in
4 LCOT, but such a policy would be unprecedented and unreasonable in the
5 extreme.)

6 Contrary to the Public Staff's assertion, Juno Solar has proposed a
7 reasonable condition to the CPCN to ensure that the ratepayers will not have to
8 provide reimbursement for unreasonably high network upgrade costs and affected
9 system costs. Juno Solar's proposed condition will ensure that the LCOT for any
10 assigned network upgrades and affected system costs from the study processes
11 will be no greater than \$4.00 per MWh. Thus, with a Conditional CPCN, Juno
12 Solar will be able to enter the Transitional Cluster and incur the associated
13 financial exposure without an unacceptable level of uncertainty about whether the
14 issued CPCN will remain in effect, and the conditions to Juno Solar's CPCN
15 application will provide ample protection for the ratepayers from unreasonable
16 network upgrade and affected system costs being passed onto them.

17 **Q. DOES PUBLIC STAFF WITNESS METZ IMPLY THAT THE JUNO**
18 **SOLAR PROJECT HAS BEEN IMPRUDENTLY SITED?**

19 **A.** It appears so. At page 33 of his testimony, Mr. Metz states, with apparent
20 criticism, that the Juno Solar project has been sited "in a known transmission
21 constrained area of the DEP system, and high network upgrade costs are likely."

22 **Q. HOW DO YOU RESPOND TO THAT STATEMENT?**

1 **A.** Juno Solar was sited at its proposed location for the express purpose of seeking to
2 help solve what is arguably the biggest impediment to large-scale solar
3 development in the state and, in my opinion, the biggest obstacle to achieving the
4 carbon-reduction mandate of H.B. 951. The need for significant network
5 upgrades to the DEP system in Southeastern North Carolina has been well
6 documented, and Duke has confirmed the importance of these upgrades to its
7 overall system planning. In the wake of the Commission’s denial of the Friesian
8 CPCN application, I had numerous conversations with representatives of the
9 Public Staff and Duke about an alternative approach for solving this problem. All
10 parties agreed that the most promising solution was to try to get as many
11 megawatts as possible from projects dependent on these upgrades into the
12 Transitional Cluster Study process so that the cost could be spread as broadly as
13 possible. While it was understood that this would likely involve a mix of state-
14 jurisdictional and FERC-jurisdictional projects, such that FERC’s crediting policy
15 would still come into play, the hope was, and remains, that, as a result of the cost
16 spreading and absorption of costs by state-jurisdictional projects, the LCOT for
17 the FERC-jurisdictional projects would be reasonable. Based on these
18 conversations, Pine Gate and its development partners have actively sought to
19 identify and develop projects like Juno Solar that could participate in this cost
20 sharing.

21 **Q.** **DO YOU AGREE WITH PUBLIC STAFF WITNESS METZ’S**
22 **STATEMENT AT PAGES 14-15 OF HIS TESTIMONY THAT THE**

1 **PUBLIC STAFF’S POSITION IN THE FRIESIAN PROCEEDING WAS**
2 **THAT ISSUANCE OF THE CPCN IN THAT CASE “WOULD RESULT IN**
3 **COSTLY OVERBUILDING AND INEFFICIENT PLANNING OF THE**
4 **TRANSMISSION SYSTEM”?**

5 **A.** No, I do not. The Public Staff’s position in that case was that FERC’s crediting
6 policy would result in an unacceptably high cost to North Carolina retail
7 ratepayers. While the Public Staff argued that the applicant, even with supporting
8 statements from Duke, had not met its burden of proving the network upgrades in
9 question were essential to advancing the public interest objectives claimed by the
10 applicant, the Public Staff did not argue, let alone put on any supporting evidence,
11 that the network upgrades at issue there were unneeded or inefficient.

12 **Q.** **WHAT IS THE PUBLIC STAFF’S FINAL RECOMMENDATION TO THE**
13 **COMMISSION?**

14 **A.** The Public Staff’s final recommendation is that the Commission should deny
15 Juno Solar’s Conditional CPCN, without prejudice, and allow Juno Solar to refile
16 its application once the interconnection studies have been completed. (Public
17 Staff Testimony, p. 35)

18 **Q.** **DO YOU AGREE WITH THE PUBLIC STAFF’S FINAL**
19 **RECOMMENDATION?**

20 **A.** No. As I have explained, Juno Solar would face extreme prejudice and hardship
21 if it were required to withdraw from the queue due to denial of its CPCN
22 application after becoming subject to a withdrawal penalty well in excess of \$1

1 million. Even with the payment of that penalty, Juno's withdrawal would be
2 disruptive to the Transitional Cluster Study process and other Interconnection
3 Customers. Juno Solar has proposed a reasonable solution that presents
4 absolutely no risk to ratepayers. What is really going on in this proceeding is that
5 the Public Staff is seeking to advance a new onerous and unlawful test for CPCN
6 issuance for FERC-jurisdictional Interconnection Customers. Rather than
7 accepting the LCOT test previously advanced by the Public Staff and adopted by
8 the Commission—and that the Public Staff has repeatedly stated is the applicable
9 test—it now contends that the Commission can and should deny a CPCN to a
10 single FERC-jurisdictional project where the aggregate costs of multiple FERC-
11 jurisdictional projects is deemed to be excessive. I urge the Commission not to
12 adopt that unreasonable and unlawful policy.

13 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A.** Yes.

From: Steve Levitas
Sent: Thursday, April 22, 2021 1:11 PM
To: 'Cummings, Layla' <Layla.Cummings@psncuc.nc.gov>; Josey, Robert <Robert.Josey@psncuc.nc.gov>
Subject: RE: [External] LCOT

Thanks Layla. Sorry that I didn't recall the prior communications and information. We'll take a look and let you know if we have any questions. And understood on case-by-case. As I mentioned, we'll be in touch in connection with the new FERC-jurisdictional CPCN filing we plan to make in which we plan to address LCOT.

Steve Levitas
Senior Vice President for Regulatory and Government Affairs

Cell: 919-749-2953



From: Cummings, Layla <Layla.Cummings@psncuc.nc.gov>
Sent: Thursday, April 22, 2021 12:52 PM
To: Steve Levitas <slevitas@pgrenewables.com>; Josey, Robert <Robert.Josey@psncuc.nc.gov>
Subject: RE: [External] LCOT

!! External: This email has originated from outside of Pine Gate Renewables

Steve,

The methodology the Public Staff uses to develop the LCOT calculation comes directly from the LBNL report attached to the joint Metz and Lawrence testimony in the Friesian docket (exhibit 2) and can be found on LBNL's website [here](#). We sent you an example spreadsheet calculation for Friesian in December (email attached). You can see that the formula in row 21 of the spreadsheet matches the formula found on page 7 of the LBNL report.

As we have discussed before and stated in testimony, we consider the LCOT a benchmark for reasonableness and we do not have a target number that we have set as reasonable. We think that should be determined on a case by case basis. Please let us know if you have any further questions.

Thanks, Layla

From: Steve Levitas <slevitas@pgrenewables.com>
Sent: Wednesday, April 21, 2021 3:50 PM
To: Cummings, Layla <Layla.Cummings@psncuc.nc.gov>; Josey, Robert <Robert.Josey@psncuc.nc.gov>
Subject: [External] LCOT

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Greetings, In connection with our prior conversations about LCOT for FERC-jurisdictional projects, can you provide me with the detailed methodology that Public Staff has used to calculate LCOT? It would be helpful if we could get on the same page on this as soon as possible. We are working towards making a conditional CPCN application of the sort we have discussed, some time in the near future and want to run that past you before we file. Many thanks. S.

Steve Levitas
Senior Vice President for Regulatory and Government Affairs

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