STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition to Revise Commission Rules R8-63 and R8-64	))	**REPLY COMMENTS OF THE** **PUBLIC STAFF**

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following reply comments concerning the proposed revisions to Commission Rules R8-63 and R8-64, Attachments A and B to the Commission's April 1, 2024 Order Requesting Comments.

1. On August 19, 2021, the Public Staff filed a Petition to Amend Commission Rules R8-63 and R8-64 (Petition), which govern the application and review process for certificates of public convenience and necessity (CPCNs) sought by (1) merchant generators, (2) Competitive Procurement of Renewable Energy (CPRE) Program participants, and (3) and Qualifying Facilities (QFs).

2. On September 20, 2021, the Commission issued its first Order Requesting Comments. Intervention was granted to the following parties: the Carolina Clean Energy Business Association (CCEBA); the North Carolina Sustainable Energy Association (NCSEA); the Carolina Industrial Group for Fair Utility Rates I, II, and III (collectively, CIGFUR); and the Carolina Utility Customers Association, Inc. (CUCA).

3. On November 2, 2021, CCEBA and NCSEA filed initial comments.

4. On December 14, 2021, the Public Staff, CIGFUR, CCEBA, and NCSEA filed reply comments.

5. On April 1, 2024, the Commission issued a second Order Requesting Comments, setting forth the Commission's proposed revisions to Rules R8-63 and R8-64 as Attachments A and B, respectively. In its order, the Commission noted that its proposed revisions "reflect the Commission's review of the record in this proceeding as well as the Commission's experience gained in recent CPCN application proceedings" and are "intended to formalize application requirements, increase the efficiency of the application process, and, ultimately, provide the Commission with the evidence necessary for a determination of whether granting an application is the in [sic] public interest." The Commission ordered that parties may file initial comments by May 1, 2024, and reply comments by May 15, 2024.

6. On April 29, 2024, SunEnergy1, LLC (SunEnergy1), filed a petition seeking to intervene; a motion seeking to extend the deadline for filing initial comments from May 1, 2024, to May 15, 2024; and a motion seeking to extend the deadline for filing reply comments from May 15, 2024, to May 31, 2024. On May 1, 2024, the Commission allowed SunEnergy1's intervention and its requested extensions.

7. On May 15, 2024, CCEBA, the North Carolina Electric Membership Corporation (NCEMC),[1] NCSEA, SunEnergy1,[2] and the Public Staff filed initial comments in the above-captioned docket.

8. On May 30, 2024, the Public Staff filed a motion seeking to extend the deadline for filing reply comments from May 31, 2024, until June 14, 2024. On May 31, 2024, the Commission allowed the Public Staff's requested extension.

PUBLIC STAFF'S RESPONSE TO INITIAL COMMENTS

i. Rules R8-63 and R8-64

NCSEA recommended that the Commission require the interconnecting utility and the applicable affected system operator (ASO), once they are determined to be affected, to automatically be made parties to CPCN proceedings under R8-63 and R8-64. The Public Staff supports the inclusion of the interconnecting utility and ASO as parties to the CPCN proceeding but emphasizes that the burden of proof remains with the applicant. The Public Staff notes, however, that NCSEA's redlined revisions to R8-63(d) making the Public Staff a party to an EMP proceeding upon the receipt of an application are unnecessary, as the Public Staff is required to intervene in CPCN proceedings under N.C. Gen. Stat. § 62-110.1 and is automatically granted intervention pursuant to Rule R1-

[1] On May 15, 2024, NCEMC also filed its petition to intervene, which was allowed by the Commission on May 23, 2024.

[2] SunEnergy1's comments appeared in the docket on May 16, 2024. On May 20, 2024, SunEnergy1 filed a motion requesting that the Commission accept and deem its comments as timely filed, explaining that it filed and served its comments shortly after 5:00 p.m. on May 15, 2024. On May 23, 2024, the Commission allowed SunEnergy1's motion.

19(e). In addition, the Public Staff does not support NCSEA's proposed revisions to R8-63(d) that provide that, upon a determination that a CPCN application is not complete, the Commission may require that the missing information be filed by the interconnecting utility or ASO, rather than the applicant. As discussed below, it is the sole responsibility of the applicant to provide the information required under the rule with its application, and such burden should not be shifted to a utility.

CCEBA notes that the Commission's proposed changes to Rule R8-63(b)(2)(ii) and proposed Rule R8-64(b)(2)(ii) would require identification of the approximate center of the proposed facility to the nearest one ten-thousandth of a degree. In CCEBA's view, this level of precision is both unneeded and difficult to provide. CCEBA proposes that the requirement remain at one thousandth of a degree and that applicants be given the option to identify the location of the substation of the facility rather than the "center" of the facility, which it says can be difficult to determine on an irregular property.

The Public Staff generally agrees that the proposed change to "one ten-thousandth of a degree" is unnecessary for larger facilities (e.g., merchant power plants) and agrees with CCEBA's proposal to maintain these provisions as they currently stand. The Public Staff further recommends that instead of allowing applicants to provide the location of the substation of the facility, as proposed by CCEBA, that the rules require the "latitude and longitude of the point of interconnection and the *approximate center* of the proposed facility to the nearest one thousandth of a degree." The Public Staff's proposal should address CCEBA's concerns regarding the difficulty of pinpointing the "center" of a facility on an

irregular property, while also providing information sufficient to demonstrate the location of the facility.

ii. Rule R8-63

R8-63(b) – Application

NCSEA proposes that Rule R8-63(b) be revised to add the following language:

> To the extent that the applicant reasonably believes that certain required information is under the control of the interconnecting utility or an Affected System Operator and does not intend to include such information at the time the application is filed, the applicant must label such information clearly and either provide an explanation of why either the interconnecting utility or Affected System Operator is the appropriate party to provide such information or provide a description of how it plans to attain such information and provide it to the Commission.[3]

While the Public Staff supports the inclusion of the interconnecting utility and ASO as parties to the CPCN proceeding, as stated earlier, the Public Staff does not support this new language proposed by NCSEA. It is the applicant's responsibility to provide all information required under the rule as part of its application, and this responsibility should not be passed on to the utilities, nor should the Commission or the Public Staff be tasked with conducting discovery on the utility on the applicant's behalf. However, while the Public Staff does not support the overarching language proposed above, the Public Staff does

[3]NCSEA Initial Comments at 3.

recommend flexibility regarding specific requirements in R8-63(b), as detailed below.

R8-63(b)(3) – Application, Exhibit 3

NCSEA states that R8-63(b)(3)(iv) requires information that "the local utility, not the applicant, is in the best position to provide."[4] NCSEA also states that R8-63(b)(3)(ix)-(xi) and (xiii)-(xiv) require information that is "beyond the scope of relevancy for consideration of a CPCN, with some of this information beyond the control or possession of the applicant, as well."[5]

With respect to the assertion regarding relevance, the Public Staff disagrees. The information required under these provisions – the applicant's plans for sale, any provisions for wheeling of the electricity, arrangements for firm, non-firm, or emergency generation, projected annual sales, and any plans for renewable energy certificates (RECs) – are relevant to the Commission's determination and concern the economics of the project and its overall need. In addition, two of these provisions only require the requested information "if applicable."

With respect to the assertion regarding information "beyond the control or possession of the applicant," the Public Staff reiterates that it is the applicant's responsibility to provide all information relevant to its project, and that applicants

[4] *Id.* at 6.

[5] *Id.* at 6.

should be able to provide the information required under R8-63(b)(3). The Public Staff agrees, however, with SunEnergy1's proposal that the information required pursuant to R8-63(b)(3)(ix) and (xiv) regarding off-take and REC sales include the caveat that this information be provided "if available."

R8-63(b)(5) – Application, Exhibit 5

The Commission's proposed Rule R8-63(b)(5) requires that an application include information regarding construction costs, studies by interconnecting utilities and ASOs, network upgrade costs and affected system costs, a calculation of the Levelized Cost of Transmission (LCOT), and information regarding benefits to ratepayers of transmission upgrades attributed to the proposed facility. NCSEA, CCEBA, and SunEnergy1 each expressed concern regarding these provisions.

NCSEA stated that R8-63(b)(5) would require applicants to provide lengthy studies conducted and controlled by a utility, and expressed concern regarding the length of time such studies take to complete, as well as the burden placed on the applicant to continue receiving help from the interconnecting utility or ASO throughout that period. NCSEA also stated that R8-63(b)(vii) would place the burden on the applicant to collect large amounts of data across many sources, "most if not all of which are controlled by either the interconnecting utility or ASO."[6]

[6] *Id.* at 6-7.

CCEBA stated that the requirements in R8-63(b)(5) "require significant additional information which will not be available at the time the CPCN is sought."[7] CCEBA further stated that requiring the *completion* of multiple studies performed by third parties "would impose a burden on applicants which is greater than warranted by the concerns sought to be addressed by the rule changes."[8] In addition, CCEBA notes that many of these requirements "would have the effect of subjecting CPCN applicants to huge penalties" if they must withdraw from the interconnection queue because their CPCN is denied.[9] CCEBA therefore stated that the rule should be clarified to require information "reasonably available to the applicant."[10]

SunEnergy1 similarly expressed concerns regarding R8-63(b)(5). With respect to the requirement to provide an affected system study or a statement that there are no affected system impacts or required upgrades, SunEnergy1 stated that it is unreasonable to require an applicant to delay filing an application until such a study has been prepared or such a statement is available. It further stated that it is "untenable and unnecessary" to delay action on a CPCN until there is absolute certainty regarding affected system costs, and that a delay in obtaining a

[7] CCEBA Initial Comments at 3.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 4.

CPCN until after affected system costs are fully developed will make it "prohibitively difficult to develop merchant solar projects in North Carolina."[11]

SunEnergy1 also argued, based on the current status of PJM and Duke's transmission systems, that the Commission does not at this time "need to take the most conservative approach possible to affected system upgrades, at the cost of potentially shutting down merchant plant development in North Carolina."[12] SunEnergy1 also stated that there is significant uncertainty regarding how the Commission weights LCOT values in its decision-making in a CPCN proceeding, and proposed that the rule specify that an applicant be permitted to provide alternative LCOT calculations based on the allocated cost of upgrades. In addition, like NCSEA, SunEnergy1 disagreed with the requirement that CPCN applicants, not utilities, quantify the benefits to ratepayers of transmission upgrades attributed to the applicant's proposed project.[13] According to SunEnergy1, "[u]tilities alone have this information or the ability to develop it."[14] SunEnergy1 therefore stated that the requirement in R8-63(b)(5)(vii) should be removed from the rule, or, if the Commission chooses to maintain that requirement, that the relevant utilities be made parties to the proceeding.[15]

[11] SunEnergy1 Initial Comments at 4, 7-8.

[12] *Id.* at 8-11.

[13] *Id.* at 13-15.

[14] *Id.* at 13.

[15] *Id.* at 15.

The parties' comments highlight the complexities of North Carolina's evolving electric grid. The Public Staff generally supports the Commission's proposed Rule R8-63(b)(5) and emphasizes that the information requested is important for the Public Staff's review of a CPCN application and ultimate recommendation to the Commission, as it concerns the impact of proposed projects on ratepayers and the transmission system. The Public Staff suggests that, in order to balance the need for oversight and the practicality of application requirements, if any required study or information is not applicable to the project or not available for any reason, the applicant so indicate in its application, and that information will be taken into consideration by the Commission and the Public Staff in determining completeness of the application.

The Public Staff also agrees with SunEnergy1 that a feasibility study is optional and may not be available in every situation. Therefore, the Public Staff recommends revising R8-63(b)(5)(ii) to require that a feasibility study must be provided *if completed*. The Public Staff also recommends that the information required under R8-63(b)(5)(vii), which requires applicants to detail the transmission upgrades attributable to their projects and any resulting benefits to ratepayers, be optional. In other words, applicants can, if they wish to provide such information to support their application, provide a description of any benefits to be received by ratepayers from any transmission upgrades attributable to their projects.

R8-63(b)(6) – Application, Exhibit 6

R8-63(b)(6) requires additional information regarding the need for the facility, the interconnection and operation of the facility, and the impact of the facility on the purchasing utility or a discussion of the applicant's off-take plans, as well as certain agreements and contracts. SunEnergy1 commented that many of the requirements in R8-63(b)(6) do not fit with merchant plant offtake. CCEBA stated generally that this portion of the rule imposes substantial requirements to obtain information from utilities and potential off-takers, "much of which may not be readily available to an applicant.[16] NCSEA also commented that much of Rule R8-63(b)(6) would require the applicant to "gather, analyze, and provide the Commission data about statewide or regional needs, including information on the effect on utility-controlled assets that are beyond the knowledge or control of the applicant."[17]

The Public Staff supports the Commission's proposed Rule R8-63(b)(6) and emphasizes that the information contained therein concerns the need for a project, the project's impact on the transmission system, and the project's impact on the purchasing utility's operations and resource planning, if applicable. Such information is important to the evaluation of a CPCN application and maintenance of a reliable grid, and applicants should be expected to provide this information.

[16] CCEBA Initial Comments at 4.

[17] NCSEA Initial Comments at 7.

R8-63(e) – The Certificate

With respect to the Commission's proposed revisions to R8-63(e), SunEnergy1 stated that it would be helpful to include in the rule an illustrative list of changes that either do or do not require amendments to a CPCN application. The Public Staff would support inclusion of such a list, and notes that its original proposed R8-63 revisions, as filed on August 19, 2021, included examples of changes that would require amendments and changes that would only require notice to the Commission.[18]

With respect to R8-63(e)(3), which outlines the process for the expiration and renewal of CPCNs, NCSEA argued that requiring re-compliance with the full requirements of R8-63(b) would be duplicative and would in some circumstances punish an applicant waiting on an interconnecting utility or ASO to complete interconnection of the applicant's facility.[19] NCSEA instead recommended a "streamlined renewal process."[20] The Public Staff, however, supports the requirement for re-compliance with the full requirements of R8-63(b). Over the course of three years, factors such as interconnection impacts and changes in land ownership can significantly alter the landscape of a project. It is essential to ensure that all stakeholders, including any new landowners, have up-to-date information regarding the project, its need, its impact on the existing electric system, and its

[18] Docket No. E-100, Sub 176, Public Staff Petition to Amend Rules R8-63 and R8-64, at Attachment A (Aug. 19, 2021).

[19] NCSEA Initial Comments at 7.

[20] *Id.*

impact on ratepayers. Requiring re-compliance with the full requirements of R8-63(b) reflects a prudent approach given the evolving nature of transmission and resource planning.

Also with respect to R8-63(e)(3), CCEBA commented that providing that a CPCN expires if the applicant does not begin construction within three years of receiving a CPCN would impose additional administrative burden on solar developers, the Public Staff, and the Commission, as many renewal requests could be avoided if projects were instead given five years to begin construction. CCEBA argues that this increased administrative burden is "unnecessary and without concomitant benefit."[21] The Public Staff, however, supports the inclusion of a provision that a CPCN expires if a facility does not begin construction within three years of receiving its CPCN. Requiring projects to begin construction within three years promotes shovel-ready projects and will likely reduce the number of stagnant projects consuming the resources of the Commission. Further, if a merchant facility completes its required interconnection studies prior to filing its CPCN application, as required in the revised R8-63, the facility should be able to begin construction within three years of receiving its CPCN.

CCEBA also states that the following language in R8-63(e)(3)(i) is vague and should be clarified: "a description of any construction progress prior to the expiration of the certificate." The Public Staff, however, believes that this language

[21] CCEBA Comments at 4-5.

should be given its plain meaning, and that applicants should use their best judgment in determining what information to provide pursuant to this requirement.

SunEnergy1 also stated that notice to the Commission regarding changes to a facility should only be required for "significant" changes, rather than any revisions to the information set forth in subsections (b)(1) through (b)(8) of R8-63, as provided in the Commission's revised R8-63(e)(4). CCEBA similarly expressed concern regarding the broad scope of R8-63(e)(4). The Public Staff agrees that not all changes to a facility rise to the level of requiring notice to the Commission, and that only "significant" changes (e.g., change in ownership, capacity, or facility footprint) should be noticed.

R8-63(f) – Reporting

SunEnergy1 proposed that Rule R8-63(f) be revised to clarify that an applicant with a pending application should file updated study costs and LCOT figures within 30 days of receipt. The Public Staff agrees with this proposed revision.

iii. R8-64

R8-64(a) – Scope

NCSEA commented that clarity may be needed with regard to Rule R8-64(a)(1) concerning the applicability of the rule to continuing solar procurements pursuant to S.L. 2021-165 (House Bill 951 or HB 951) and the Commission's Order Adopting Initial Carbon Plan and Providing Direction for Future Planning, issued in

Docket No. E-100, Sub 179, now that CPRE program has concluded. CCEBA noted the same concern, stating that the provision in Rule R8-64(a)(1) that encompasses applicants seeking the benefits of the Public Utilities Regulatory Policies Act (PURPA) does not save the rule given that there are many benefits of PURPA which may or may not necessitate a CPCN application. CCEBA proposed that Rule R8-64(a)(1) be amended to clarify that it applies to parties selling to the utility as part of a Request for Proposals (RFP) authorized by the Commission under a Carbon Plan consistent with state law, including HB 951.

The Public Staff agrees with NCSEA and CCEBA that it would be beneficial to update Rule R8-64(a)(1) now that CPRE has concluded. Therefore, the Public Staff supports CCEBA's proposal to amend Rule R8-64(a)(1) to state that it applies to parties selling to a utility as part of a competitive procurement or equivalent in addition to QFs for which the owners are seeking the benefits of PURPA.

R8-64(b) – Application

In addition, NCSEA opposes the Commission's proposed Rule R8-64(b)(6)(iii)(e), which requires the applicant to provide "[a]ll studies associated with interconnection of the facility," on the basis that this requirement would violate FERC's interpretation that it is the establishment of a legally enforceable obligation (LEO) that turns on "the QF's commitment, and not the utility's actions," thereby impermissibly placing the utility's actions in control of the formation of an LEO for a small power producer. CCEBA proposed that, in the interest of efficiency, an

applicant be permitted to simply identify the Definitive Interconnection System Impact Study (DISIS) cluster studies relevant to its interconnection.

The Public Staff supports an amendment to Rule R8-64(b)(6)(iii)(e) requiring applicants that are not the entity financially responsible for any necessary upgrades to provide all studies associated with the electrical interconnection study with the incumbent utility. The Public Staff recommends that R8-64(b)(6)(iii)(e) be amended as follows: "If the applicant is not responsible for the cost for all upgrades, the applicant must provide all studies associated with interconnection of the facility, a list of all interconnection upgrades and Interconnection Facilities, their costs, and the name of the entity responsible for each cost." Applicants filing under PURPA are responsible for the cost of their interconnection upgrades. Applicants that are part of a competitive procurement have the cost of their interconnection upgrades factored into the total cost of their bid. The proposed amendment is a fair balance with a shift to a cluster study process, and the power flow study process is mostly outside the scope and control of an applicant seeking a CPCN under R8-64.

CONCLUSION

The Public Staff appreciates the opportunity to comment on the Commission's proposed revisions to R8-63 and R8-64 and respectfully requests that the Commission take the foregoing comments into consideration as it finalizes its rulemaking in this proceeding.

Respectfully submitted, this, the 14th day of June, 2024.

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CERTIFICATE OF SERVICE

I certify that a copy of these reply comments 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 14th day of June, 2024.

Electronically submitted
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