

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 134

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing Requirements for New Electric Generators	) ) ) )	ORDER AMENDING RULES AND REQUESTING COMMENTS ON ADDITIONAL PROPOSED RULE CHANGES
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BY THE COMMISSION: On September 8, 2014, the Commission issued an Order Requesting Comments on Proposed Rule Changes in which it requested comments on proposed amendments to Commission Rules R8-61, R8-63, and R8-64. The proposed rule changes were intended to “facilitate more efficient review by government agencies and the general public of the potential environmental, cost, and fuel security impacts of proposed new electric generation facilities.”

Subsequently, the Commission received comments from Carolinas Public Gas Association, Greenville Utilities Commission, City of Rocky Mount, City of Wilson, City of Monroe and City of Shelby (Public Gas Systems); Dominion North Carolina Power (Dominion); North Carolina Sustainable Energy Association (NCSEA); and the Public Staff. Duke Energy Carolinas, LLC and Duke Energy Progress, Inc., jointly filed a letter stating that they had reviewed the proposed changes and had no comments.

**SUMMARY OF COMMENTS**

**Public Gas Systems**

The Public Gas Systems assert that new gas-fueled power plants should be required to demonstrate that they have secured long-term firm gas supply and pipeline capacity prior to beginning construction. They note that North Carolina has experienced an increased demand for gas as a fuel for electric generation, and that “as this trend continues and new natural gas-fueled power plants are proposed, their impact on the natural gas market should be taken into account.” They state:

During normal operating and weather conditions, there is currently sufficient natural gas supply and pipeline capacity for electric generation facilities to operate without adverse impact to existing natural gas consuming customers. However, as reliance on natural gas for electric generation grows, the current market framework and infrastructure cannot ensure reliability, especially during extreme weather conditions.

The Public Gas Systems state further that they have seen many manufacturing customers that used natural gas year round close their operations.

This shift in the economy has changed their [the Public Gas Systems] load profile to be more sensitive to temperature changes, as a greater percentage of their customers now use natural gas for space and water heating rather than for manufacturing. In addition ... [t]hey have less pipe in which line pack can be stored or used to accommodate demand fluctuations. They serve less geographic territory over which temperatures may differ to allow system gas to be re-distributed. And they have few interruptible customers that can be curtailed to manage demand swings. All of these factors have made gas supply management increasingly difficult for the Public Gas Systems.

Upon information and belief, many electric generation facilities do not purchase year-round firm pipeline capacity or enter into non-interruptible contracts so as to avoid the required demand charges and instead arrange by contract for delivery of natural gas “just-in-time” as needed – often at peak-energy-usage periods. This new entrant in the wholesale gas market has changed the supply and demand dynamics, with adverse impacts on the traditional market participants such as the Public Gas Systems.

An example of an adverse impact to the market occurred during the January and February 2014 “polar vortex” periods. During those times, temperatures plunged far below normal for several days, and the Public Gas Systems needed to buy additional natural gas and capacity on the spot market to meet their customers’ demand. During January 2014, Transco Zone 5 (North Carolina) gas prices averaged over \$24 per dekatherm (Dt) per day, with seven days exceeding \$40 per Dt, and a one-day spike of \$118. This compares with the previous January in 2012 [sic] when the average daily price for the month was \$4.42 per Dt. At least one Public Gas System had to purchase natural gas on the spot market in Zone 6 NNY at \$123 per dekatherm.

. . .

This rulemaking docket for new electric generation facilities provide[s] the Commission with an opportunity to send a clear signal that future electric generation facilities will need to secure firm pipeline capacity and to participate in efforts to improve pipeline infrastructure and enhance long-term reliability.

The Public Gas Systems express support for rule changes proposed by the Commission that would require electric power supplier applicants for natural gas-fired facilities with a capacity of 300 megawatts (MW) or more to provide “a map showing the

proximity of the facility to existing natural gas facilities; a description of dedicated gas facilities to be constructed to serve the facility and any filed agreements, service contracts, or tariffs for interstate pipeline capacity.” (Currently, this provision only applies to merchant facilities, not public utilities.) The Public Gas Systems also supported the proposed change that would require applications for certificates of public convenience and necessity (CPCN) qualifying co-generators and small power producers to include “the nature of the generating facility, including the type and source of its power or fuel.” The Public Gas Systems stated that this additional information will help reveal the extent that new generation facilities will impact the wholesale natural gas market as a whole and the collateral effects they may have on other market participants.

Similarly, the Public Gas Systems state that they support the proposed new requirement for new gas-fired generators owned by public utilities to file “a statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site.” They also supported the proposed requirement that applicants demonstrate arrangements made or planned to assure a dependable fuel supply.

### Dominion

Dominion expresses concern that applicants would be required to provide detailed financial information 120 days prior to a CPCN filing. This is an existing requirement for facilities that are 300 MW or larger. The Commission’s proposed rule change would: (1) require all CPCN applications that are filed by public utilities to include the financial information, not just those for plants of 300 MW or more; and (2) allow the utility to file the information with the CPCN, rather than 120 days in advance (as is currently required pursuant to Rule R8-61 for plants 300 MW and larger).

Regarding Rule R8-63, which governs filing requirements for merchant plants, Dominion states that the current requirement in Section (e)(3) should be changed. This provision requires an applicant to pursue a certificate renewal if the applicant does not begin construction within two years after the date the Commission grants the certificate. Dominion stated that “the timeframe of two years for renewal of a CPCN may be better at three years or greater. The Company’s concern is that some permits take so long to obtain that if the certificate expires there could be additional delays of another 2 years to “re-obtain” various permits.”

### NCSEA

NCSEA makes several recommendations. The first relates to the existing filing requirements for small power producer CPCN applications and renewable energy registrations. NCSEA notes that both Rule R8-64(b)(2) and R8-66(b)(1)(iii) require the applicant to provide the facility’s “projected dependable capacity.” NCSEA states that it appears that renewable energy project developers are construing the phrase differently, depending on whether they are filing for a CPCN or registering as a renewable energy facility. NCSEA stated that when owners are registering renewable energy facilities that

have intermittent capacity (wind and solar), they frequently interpret the phrase “projected dependable capacity” to mean “projected dispatchable capacity.” For non-dispatchable projects, owners are frequently reporting zero “projected dependable capacity.” In contrast, developers of wind and solar projects that apply for a CPCN frequently interpret “projected dependable capacity” to mean “maximum nameplate capacity,” according to NCSEA. Subsequently, applicants are providing the additional, more detailed information required under Rule R8-64 when a project’s nameplate capacity is more than 5 MW.

NCSEA, therefore, recommends that the Commission revise Rule R8-64(b)(2) so that it conforms to current practice by replacing the phrase “projected dependable capacity” with the phrase “maximum nameplate capacity.”

NCSEA notes that the Commission’s current CPCN rules for merchant plants allow developers to designate some information as confidential. Rule R8-63(c) states:

Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

NCSEA recommends that the Commission add this same provision to Rule R8-64, the rule addressing CPCN applications for small power producers and co-generators.

NCSEA recommends a revision to the notice provision of Rule R8-64(c)(1), which currently states:

The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed ...

NCSEA notes that in many parts of the State, local daily newspapers of general circulation no longer exist, and that the General Assembly revised G.S. 62-82(a) during its 2013 session (Session Law 2013-410, Section 29) to remove the word “daily” from a parallel statutory requirement. NCSEA recommends that the Commission similarly remove the word “daily” from R8-64(c)(1).

NCSEA recommends that the Commission no longer require small power producer and co-generation facility developers to provide 12 copies of their applications, if the developer makes its filing electronically. Finally, NCSEA states that the current Rule R8-64 requires CPCN applications for small power producers and co-generators to include “a detailed explanation of the anticipated kilowatt and kilowatt-hour outputs,

on-peak and off-peak, for each month of the year.” NCSEA recommends that the Commission’s rules be amended such that applicants would be required to state “the specific on-peak and off-peak hours underlying the applicant’s quantification of anticipated kilowatt and kilowatt-hour outputs.”

### Public Staff

The Public Staff provides a “redline” of many minor but useful changes. In addition, the Public Staff proposes several substantive changes. First, the Public Staff suggests the following amendment to Rule R8-64 (CPCNs for small power producers and co-generators):

In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a projected dependable capacity of 5 megawatts or more available for such sale or construct a solar photovoltaic facility with an alternating current (AC) capacity of 25 megawatts or greater shall include in the application the following three additional exhibits:<sup>1</sup>

NCSEA also references this rule provision via a footnote:

If the Commission is interested in making substantive changes, it could consider increasing the threshold to 10 or 20 megawatts. Some of NCSEA’s members have suggested that this might be an appropriate revision given the evolving North Carolina marketplace. Such a change would streamline more filings and, in turn, reduce the time spent by the

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<sup>1</sup> These three exhibits require an applicant to file:

1. A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application.
2. Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project.
3. A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility’s capacity, reserves, generation mix, capacity expansion plan, and avoided costs.
4. The most current available balance sheet of the applicant.
5. The most current available income statement of the applicant.
6. An economic feasibility study of the project.
7. A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application.
8. A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year.
9. A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser.
10. A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.

clerk's office reviewing filings to ensure all exhibits are attached and rule-compliant.

Further, the Public Staff recommends that Rule R8-64 be amended so that each electric utility would be required to "provide on its website a mailing address to which the application and notice should be mailed." The Public Staff also recommends that Rule R8-64 be amended so that:

If the applicant does not file the affidavit of publication and certificate of service within six months of the Commission's publication order, the Commission will automatically dismiss the application.

The Public Staff does not provide an explanation for this proposed change. The Public Staff recommended amending Rules R8-63 and 64 to clarify that applicants should provide the size of their proposed facilities in terms of megawatts of "alternating current." The Public Staff also proposed to delete the annual progress reports required in Rule R8-64, "consistent with the comments filed by the Public Staff on July 29, 2014 in Docket No. E-100, Sub 113 that interconnection and construction progress reports should be filed by the utilities...."

The Public Staff recommends that, because CPCN applications for small power producers and co-generators under Rule R8-64 are not required to be filed by a member of the Bar of the State of North Carolina, the Commission should adopt an application form for this rule, as well as for Rule R8-65 (Report by Persons Constructing Electric Generating Facilities Exempt from Certification Requirements) and R8-66 (Registration of Renewable Energy Facilities; Annual Filing Requirements). In addition, the Public Staff recommends that the Commission merge the requirements of Rules R8-64 and 65 so that a facility owner "can seek the benefits of R8-66 and 64 or 65 with one application."

## DISCUSSION AND CONCLUSIONS

The Commission has carefully considered the Public Gas Systems' recommendation that all new gas-fueled electric generation facilities be required to secure long-term firm gas supplies and pipeline capacity. While at first blush this recommendation appears to have merit, the Commission notes that the Public Gas Systems appear to be criticizing electric generators for engaging in gas purchasing practices that they themselves also follow. Specifically, purchasing gas and pipeline capacity on the spot market when "absolutely necessary" because of extreme weather events that were not contemplated and which do not occur often. Second, some gas-fired electric generators are peaking plants, and might only be needed to serve customers during the summer when air conditioning use is high. At such times, gas capacity tends to be available, even on the spot market. The fuel procurement practices for an electric generating plant should mirror the role that the plant will play in the public utility's fleet of plants. It might not be necessary for every natural gas-fired plant to have 20-year firm supply and pipeline capacity commitments. The rule changes that the

Commission proposed in its September 8, 2014 Order include new requirements for electric public utilities to include in their CPCN applications:

A statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site.

They would also be subject to this new requirement:

In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated gas facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity ...

The Commission concludes that these new provisions should be adequate to ensure that fuel supply issues are thoroughly discussed during the CPCN process for new electric generators. In addition, if the Commission were to adopt the Public Gas Systems' recommendation, there is a real possibility that electric utilities and their customers would be paying more and the Public Gas Systems and their customers would be paying less for pipeline capacity than is fair. It is the responsibility of the Public Gas Systems to ensure that there is adequate pipeline capacity available to serve their firm, heat-sensitive customers, even on the coldest of days. The Public Gas Systems should not rely on the Commission to order electric utilities to contract for excess gas pipeline capacity, which would result in additional costs being passed onto utility electric ratepayers to the benefit of Public Gas Systems' customers. Therefore, the Commission will decline to adopt the Public Gas Systems' recommendation that all new gas-fueled electric generation facilities be required to secure long-term firm gas supplies and pipeline capacity.

Regarding Dominion's suggestion that the deadline for beginning construction pursuant to a CPCN be extended from the current two years to three years for merchant developers, the Commission finds this suggestion to be reasonable given the complexities of securing all of the permits needed for a generating facility, and will adopt Dominion's recommendation. As to Dominion's concerns regarding an applicant's obligation to file financial information, the changes being approved today would actually ease that requirement somewhat. Today, applicants seeking approval for a plant of 300 MW or more must file financial information 120 days in advance of their CPCN application. Under the changes approved today, that information would become part of the CPCN application itself.

The Commission carefully considered the recommendations made by NCSEA. NCSEA suggests amending Rule R8-64(b)(2) so that applicants would be reporting their "maximum nameplate capacity." The Commission finds that it would be instructive and helpful to have a proposed facility's capacity reported both in terms of maximum nameplate capacity and in terms of projected dependable capacity, as the rule requires

today. The Commission will, therefore, add that requirement and clarify that applicants should provide the information as megawatts alternating current, as discussed below.

The Commission agrees with NCSEA's recommendation that would allow small power producers and co-generators to designate some information as confidential, as well as its suggestion to remove the requirement to provide notice via a daily newspaper. The Commission will adopt those proposed changes. NCSEA's recommendation that these applicants also be relieved of filing paper copies if they file electronically is unnecessary. Commission Rule R1-28(b) provides that, with limited exceptions, those making electronic filings do not need to also file paper copies. Finally, NCSEA recommends that Rule R8-64 be amended so that applicants include the specific hours that they consider to be on-peak and off-peak. The Commission finds that this recommendation has merit and will adopt it.

The Commission has reviewed the comments as well as the proposed rule changes submitted by the Public Staff. The Public Staff provides many minor but useful edits that the Commission will adopt. In addition, the Public Staff proposed several substantive changes. In terms of the Public Staff's proposal to raise the threshold in Rule R8-64(b)(2) that triggers the need for solar photovoltaic developers to file additional information, the Commission supports this change and agrees with NCSEA that such a change would streamline the process. However, the Commission will re-word the change somewhat to be more clear, as shown below:

~~In addition to the information required above, A~~an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity, and whose facility will have a projected dependable nameplate capacity of 5 megawatts alternating current or more, and whose facility is not a solar photovoltaic facility, ~~available for such sales~~ shall include in the application ~~the following information and three additional exhibits: as described in R8-64(b)(6)(i), (ii), and (iii) below, except that an applicant who desires to enter into a contract of 5 years or more for the sale of electricity from a solar photovoltaic facility of 25 megawatts alternating current or more shall also include the three additional exhibits referenced herein.~~

The Public Staff recommended amending Rules R8-63 and 64 to clarify that applicants should provide the size of their proposed facilities in terms of megawatts of "alternating current." The Commission will adopt those changes but also seeks comments as to whether it would be preferable to instead amend Commission Rule R8-2, so that all capacity reporting under Rule R8 (Electric Light & Power) would be in terms of alternating current, as shown below:

#### **Rule R8-2. DEFINITIONS.**

In the interpretation of these rules the word "utility" shall be taken to mean any person, firm or corporation engaged in the business of supplying electric current to domestic, commercial, or industrial users within this



State except a municipality or electric membership corporation organized under G.S. 117-6 et seq. and the word "consumer" shall be taken to mean any person, firm, corporation, municipality, or other political subdivision of the State supplied by any such utility. Unless specifically stated otherwise, capacity of generation facilities is provided in alternating current (AC) delivered at the point of interconnection to the distribution or transmission facilities.

The Public Staff submits substantial changes to Rules R8-65 and R8-66, which are beyond the scope of the Commission's September 8, 2014 Order. Therefore, the Commission will ask the Public Staff to file additional information explaining the need for these changes. The Commission specifically welcomes the Public Staff providing more information on how the requirements of Rules R8-64 and 65 could be "merged." The Public Staff is also invited to file additional information as to the need to dismiss applications under Rule R8-64 after six months if an applicant has not yet filed its affidavit showing publication of notice.

Finally, the Public Staff proposes to delete the annual progress reports required in Rule R8-64(e). The Commission will decline to address that issue in this proceeding, as it is pending in Docket No. E-100, Sub 113.

IT IS, THEREFORE, ORDERED as follows:

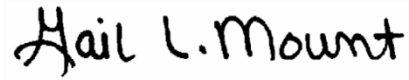
1. That, consistent with the findings in this Order and as provided in Appendix A (black-lined) and Appendix B (changes incorporated), the Commission hereby amends Rules R8-61, 63 and 64, effective January 1, 2015;
2. That the Public Staff is requested to file an explanation of its proposed changes to Rules R8-65 and 66, on or before December 15, 2014;
3. That other parties may also propose changes to Rules R8-65 and 66 on or before December 15, 2014;
4. That all parties are invited to comment on the Commission's proposal to amend Rule R8-2 on or before December 15, 2014; and

5. That Parties may file reply comments on or before January 16, 2015.

ISSUED BY ORDER OF THE COMMISSION

This the 4<sup>th</sup> day of November, 2014.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Gail L. Mount". The signature is written in a cursive, flowing style.

Gail L. Mount, Chief Clerk

**Rule R8-61. PRELIMINARY PLANS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR CONSTRUCTION OF ELECTRIC GENERATION AND RELATED TRANSMISSION FACILITIES IN NORTH CAROLINA; CONSTRUCTION OF OUT-OF-STATE ELECTRIC GENERATING FACILITIES; PROGRESS REPORTS AND ONGOING REVIEWS OF CONSTRUCTION; PROJECT DEVELOPMENT COST REVIEWS FOR NUCLEAR GENERATING FACILITIES.**

- (a) A public utility or other person that plans to build an electricity generating facility with a nameplate capacity of 300 megawatts (alternating current) or more shall file with the Commission and the Department of the Environment and Natural Resources its preliminary plans ~~Information to be filed at least 120 or more days before the filing of an application, by a public utility or other person, for a certificate of public convenience and necessity. The preliminary plans for generating facilities with capacity of 300 MW or more shall include the following exhibits:~~
- (1) Exhibit 1 shall contain the following site information:
    - ~~(i) Available site information (including A color maps or aerial photo (a U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred) and description), preliminary estimates of initial and ultimate development, a drawing showing the proposed site boundary and layout relative to the map, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;~~
    - ~~(2) (ii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree;~~
    - ~~(iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site;~~
    - ~~(iv) Justification for the adoption of the site selected, and general information describing the other locations considered;~~
    - ~~(3) (v) As appropriate, preliminary information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, and local population and general load center data to the extent known;~~
    - ~~(4) A statement of the need for the facility, including information on loads and generating capability;~~
    - ~~(5) (vi) A description of investigations completed, in progress, or proposed involving the subject site;~~
    - ~~(6) (vii) A statement of existing or proposed plans known to the applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site;~~

- ~~(7) A statement of existing or proposed environmental evaluation programs to meet the applicable air and water quality standards;~~  
~~(viii) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated gas facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;~~  
~~(ix) A brief general description of practicable transmission line routes emanating from the site, including a color map showing their general location; and~~  
~~(x) The gross, net, and nameplate generating capacity of each unit and the entire facility's total projected dependable capacity in alternating current (AC).~~

(2) Exhibit 2 shall contain the following permitting information:

- ~~(i9) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals; and~~  
~~(10) A statement of estimated cost information, including plans and related transmission capital cost (initial core costs for nuclear units); all operating expenses by categories, including fuel costs and total generating cost per net kWh at plant; and information concerning capacity factor, heat rate, and plant service life. Furnish comparative cost including related transmission cost of other final alternatives considered; and~~  
  
(ii) A statement of existing or proposed environmental evaluation programs to meet the applicable air and water quality standards.

(3) Exhibit 3 shall include a:

- ~~(11) A schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.~~

(b) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) in order to construct a generating facility in North Carolina, a public utility shall include the following information exhibits supported by relevant testimony:

(1) Exhibit 1 shall contain the following resource planning information:

- ~~(i4) The utility's most recent biennial report and the most recent annual report (as defined in filed pursuant to Rule R8-60), of the utility plus any proposals by the utility to update said reports;~~  
~~(ii2) The extent to which the proposed construction facility would conform to the utility's most recent biennial report and the most recent annual report (as defined in that was filed pursuant to Rule R8-60);~~  
~~(iii3) A statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site. Support for any utility proposals to~~

~~update its most recent biennial report and its most recent annual report (as defined in Rule R8-60);~~

~~(iv) An explanation of the need for the facility, including information on energy and capacity forecasts; and~~

~~(v) An explanation of how the proposed facility meets the identified energy and capacity needs, including the anticipated facility capacity factor, heat rate, and service life.~~

(2) Exhibit 2 shall contain

(4) Updates, if any, to the siting and permitting information as listed in Rule R8-61(a) information, with updates as necessary for facilities that are 300 megawatts (alternating current) nameplate capacity or more, and for which this information had already been filed.

(3) Exhibit 3 shall contain the following cost information for the proposed facility, and for the final alternatives that the applicant considered:

(i) An estimate of the construction costs for the generating facility, including the costs for new substation(s) and transmission line(s), and upgrades to existing substations(s) and transmission lines(s). For nuclear plants, construction costs shall include the plant's first core fuel load;

(ii) Estimated construction costs expressed as dollars per megawatt of capacity;

(iii) Estimated annual operating expenses by category, including fuel costs;

(iv) Estimated annual operating expenses expressed as dollars per net megawatt-hour.

(v) The projected cost of each major component of the generating facility and the projected schedule for incurring those costs;

(vi) The projected effect of investment in the generating facility on the utility's overall revenue requirement for each year during the construction period;

(vii) The anticipated in-service expenses associated with the generating facility for the 12-month period of time following commencement of commercial operation of the facility; and

(viii) The anticipated impact the facility will have on customer rates.

(4) Exhibit 4 shall contain the following construction information:

i. (8) The anticipated construction schedule for the generating facility;

ii. (9) The specific type of units selected for the generating facility; the suppliers of the major components of the facility; the basis for selecting the type of units, major components, and suppliers; and arrangements made or planned to assure a dependable the adequacy of fuel supply;

iii. (10) The qualifications and selection process of principal contractors and suppliers for construction of the generating facility, other than those listed in Item (9ii) above; and

- ~~(11) Resource and fuel diversity and reasonably anticipated future operating costs, including the anticipated in-service expenses associated with the generating facility for the 12-month period of time following commencement of commercial operation of the facility;~~
- ~~iv.~~(12) Risk factors related to the construction and operation of the generating facility, including a verified statement as to whether the facility will be capable of operating during the lowest temperature that has been recorded in the area using information from the National Weather Service Automated Surface Observing System (ASOS) First Order Station in Asheville, Charlotte, Greensboro, Hatteras, Raleigh or Wilmington, depending upon the station that is located closest to where the plant will be located; and.
- (5) If the facility is a coal or nuclear-fueled facility, the application shall include Exhibit 5, which shall contain
- ~~(13) If the application is for a coal or nuclear generating facility,~~ information demonstrating that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest.
- (c) The public utility shall submit a progress report and any revision in the construction cost estimate during each year of construction according to a schedule established by the Commission.
- (d) Upon the request of the public utility or upon the Commission's own motion, the Commission may conduct an ongoing review of construction of the generating facility as the construction proceeds.
- (e) A public utility requesting an ongoing review of construction of the generating facility pursuant to G.S. 62-110.1(f) shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity by the Commission; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause. Upon the filing of a request for an ongoing review, the Commission shall establish a schedule of hearings. The hearings shall be held no more often than every 12 months. The Commission shall also establish the time period to be reviewed during each hearing. The purpose of each ongoing review hearing is to determine the reasonableness and prudence of the costs incurred by the public utility during the period under review and to determine whether the certificate should remain in effect or be modified or revoked. The public utility shall have the burden of proof to demonstrate that all costs incurred are reasonable and prudent.
- (f) A public utility may file an application pursuant to G.S. 62-110.6 requesting the Commission to determine the need for an out-of-state electric generating facility that is intended to serve retail customers in North Carolina. If need for the generating facility is

established, the Commission shall also approve an estimate of the construction costs and construction schedule for such facility. The application may be filed at any time after an application for a certificate of public convenience and necessity or license for construction of the generating facility has been filed in the state in which the facility will be sited. The application shall be supported by relevant testimony and shall include the information required by subsection (b) of this Rule to the extent such information is relevant to the showing of need for the generating facility and the estimated construction costs and proposed construction schedule for the generating facility. The public utility shall submit a progress report and any revision in the construction cost estimate for the out-of-state electric generating facility during each year of construction according to a schedule established by the Commission.

(g) If the Commission makes a determination of need pursuant to G.S. 62-110.6 and subsection (f) of this Rule, the provisions of subsections (d) and (e) of this Rule shall apply to a request by a public utility for an ongoing review of construction of a generating facility to be constructed in another state that is intended to serve retail customers in North Carolina. An electric public utility shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity or license by the state commission in which the out-of-state generating facility is to be constructed; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause.

(h) A public utility may file an application pursuant to G.S. 62-110.7 requesting the Commission to review the public utility's decision to incur project development costs for a potential in-state or out-of-state nuclear generating facility that is intended to serve retail electric customers in North Carolina. The application, supported by relevant testimony, shall be filed prior to the filing of an application for a certificate to construct the facility.

**Rule R8-63. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR MERCHANT PLANT; PROGRESS REPORTS.**

(a) Scope of Rule.

- (1) This rule applies to an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) by any person seeking to construct a merchant plant in North Carolina.
- (2) For purposes of this rule, the term "merchant plant" means an electric generating facility, other than one that qualifies for and seeks the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156, the output of which will be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility pursuant to G.S. 62-133.
- (3) Persons filing under this rule are not subject to the requirements of Rule ~~R1-37~~ or Rule R8-61 or R8-64.

(b) Application.

(4) The application shall contain ~~all of the exhibits listed below, which shall contain the~~ information hereinafter required, with each exhibit and item labeled as set out below. Any additional information may be included at the end of the application.

(1) Exhibit 1 shall contain the following information about t~~The~~  
a~~Applicant:~~

- (i) The full and correct name, business address, ~~and~~ business telephone number and electronic mailing address of the applicant;
- (ii) A description of the applicant, including the identities of its principal participant(s) and officers, and the name and business address of a person authorized to act as corporate agent or to whom correspondence should be directed; ~~and~~
- (iii) A copy of the applicant's most recent annual report to stockholders, which may be attached as an exhibit, or, if the applicant is not publicly traded, its most recent balance sheet and income statement. If the applicant is a newly formed entity with little history, this information should be provided for its parent company, equity partner, and/or the other participant(s) in the project; and
- (iv) Information about generating facilities in the Southeastern Electric Reliability Council region which the applicant or an affiliate has any ownership interest in and/or the ability to control through leases, contracts, options, and/or other arrangements and information about certificates that have been granted for any such facilities not yet constructed.

(2) Exhibit 2 shall contain the following information about t~~The~~  
proposed f~~Facility:~~

- (i) The nature of the proposed generating facility, including its type, fuel, ~~size, and~~ expected service life, and the gross, net, and nameplate generating capacity of each generating unit and the entire facility, as well as the facility's total projected dependable capacity, in megawatts (alternating current); the anticipated beginning date for construction; the expected commercial operation date; and estimated construction costs;
- (ii) ~~A detailed description of the location of the generating facility, including a~~ color map or aerial photo (a U.S. Geological Survey map or aerial photo map prepared via the State's geographic information system is preferred) showing the ~~with the location marked;~~
- (iii) ~~A drawing showing the proposed site~~ boundary and layout relative to the map provided pursuant to (B)(ii), with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary,



planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;

- (iii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
  - (iv) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;
  - (v) A list of all needed federal, state, and local approvals related to the facility and site, identified by title and the nature of the needed approval; a copy of such approvals or a report of their status; and a copy of any application related to eligible facility and/or exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992, including attachments and subsequent amendments, if any; and
  - (vi) A ~~general~~ description of the transmission facilities to which the facility will interconnect, and a color map showing their general location. If additional facilities are needed, a statement regarding have access or whether the applicant would need to ~~necessity of acquiring~~ rights-of-way for new facilities; and.
  - (vii) ~~Information about generating facilities in the Southeastern Electric Reliability Council region which the applicant or an affiliate has any ownership interest in and/or the ability to control through leases, contracts, options, and/or other arrangements and information about certificates that have been granted for any such facilities not yet constructed.~~
- (~~C3~~) ~~Statement of Need:~~ A Exhibit 3 shall provide a description of the need for the facility in the state and/or region, with supporting documentation.
- (~~24~~) The application shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant.
- (~~35~~) The application shall be accompanied by prefiled direct testimony incorporating and supporting the application.
- (~~46~~) The Chief Clerk will deliver ~~ten (10) copies~~ a copy of the application to the Clearinghouse Coordinator in the Department of Administration for distribution to State agencies having an interest in the proposed generating facility.
- (~~57~~) Contemporaneous with the filing of the application with the Commission, all applicants proposing a generating facility that will use natural gas must provide written notice of the filing to the natural gas local distribution

company or municipal gas system providing service or franchised to provide service at the location of the proposed generating facility.

(c) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

(d) Procedure upon Receipt of Application. No later than ten (10) business days after the application is filed with the Commission, the Public Staff shall, and any other party in interest may, file with the Commission and serve upon the applicant a notice regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information. Upon receipt of all required information, the Commission will promptly issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.

(e) The Certificate.

- (1) The certificate shall specify the name and address of the certificate holder; the type, ~~size~~capacity, and location of the facility; and the conditions, if any, upon which the certificate is granted.
- (2) The certificate shall be subject to revocation if (a) any of the federal, state, or local licenses or permits required for construction and operation of the generating facility ~~is are~~ not obtained or, having been obtained, ~~is~~ are revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30) days' written notice and opportunity to cure.
- (3) The certificate must be renewed if the applicant does not begin construction within ~~two~~ three years after the date of the Commission order granting the certificate.
- (4) A certificate holder must notify the Commission in writing of any plans to sell, transfer, or assign the certificate and the generating facility.

(f) Reporting. All applicants must submit annual progress reports and any revisions in cost estimates, as required by G.S. 62-110.1(f) until construction is completed.

**R8-64 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY QUALIFYING COGENERATOR OR SMALL POWER PRODUCER; PROGRESS REPORTS.**

(a) Scope of Rule.

- (1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or

- a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18) or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).
- (2) For purposes of this rule, the term "person" shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.
  - (3) The construction of a facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.
  - (4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.
- (b) The Application.
- (4) ~~The application shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the Commission requires. It shall contain, among other things, the following information, either embodied in the application or attached thereto as~~ comprised of the following five exhibits:
- (1) Exhibit 1 shall contain:
- (i) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
  - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina; and
  - (iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site. ;The nature of the generating facility, including the type and source of its power or fuel;
- (2) Exhibit 2 shall contain:
- (iv) A color map or aerial photo showing Tthe location of the generating facility site in relation to set forth in terms of local highways, streets, rivers, streams, or and other generally known local landmarks, together with a map, such as a county road map, with the proposed location of major equipment indicated on the map or photomap, including: ; and a drawing showing: (1) the proposed site layout relative to the map; (2) all major equipment, including the generator,

- fuel handling equipment, plant distribution system, and startup equipment; ~~(3) the site boundary; and (4) planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities; A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred; and~~
- ~~(v) The ownership of the site and, if the owner is other than the applicant, the applicant's interest in the site;~~
  - (ii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.

(3) Exhibit 3 shall contain:

- (i) The nature of the generating facility, including the type and source of its power or fuel;
- ~~(vii)~~ A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
- ~~(viii)~~ The gross and net projected maximum dependable capacity of the facility in megawatts, as well as the facility's nameplate capacity, expressed as megawatts (alternating current);
- ~~(viii)~~ The projected cost of the facility;
- ~~(ivix)~~ The projected date on which the facility will come on line; and
- ~~(vix)~~ The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity;
- (vi) Any provisions for wheeling of the electricity;
- (vii) Arrangements for firm, non-firm or emergency generation;
- (viii) The service life of the project;
- (ix) The projected annual sales in kilowatt-hours; and
- (x) Whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard; and

(4) Exhibit 4 shall contain:

- (ixi) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for.
- (ii) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(5) Exhibit 5 shall contain the expected cost of the proposed facility.

(26) In addition to the information required above, An applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity, and whose facility will have a projected dependable nameplate capacity of 5 megawatts alternating current or more, and whose facility is not a solar photovoltaic facility, available for such sales shall include in the application the following information and three additional exhibits: as described in R8-64(b)(6)(i), (ii), and (iii) below, except that an applicant who desires to enter into a contract of 5 years or more for the sale of electricity from a solar photovoltaic facility of 25 megawatts alternating current or more shall also include the three additional exhibits referenced herein.

(i) Exhibit 6 shall contain:

- ~~(i)~~a A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;
- ~~(ii)~~b Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project; and
- ~~(iii)~~c A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs; ;

(ii) Exhibit 7 shall contain:

- ~~(iv)~~a The most current available balance sheet of the applicant;
- ~~(v)~~b The most current available income statement of the applicant;
- ~~(vi)~~c An economic feasibility study of the project; and
- ~~(vii)~~d A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application; ;

(iii) Exhibit 8 shall contain:

- ~~(viii)~~a A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year. The explanation shall include a statement of the specific on-peak and off-peak hours underlying the applicant's quantification of anticipated kilowatt and kilowatt-hour outputs;
- ~~(ix)~~b A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and
- ~~(x)~~c A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.

- (37) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.
  - (48) Applications filed on behalf of a corporation are not subject to the provision of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.
  - (59) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.
  - (610) The application and 12 copies shall be filed with the Chief Clerk of the Utilities Commission.
  - (11) If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (c) Procedure upon receipt of Application. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
- (1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. Each electric utility shall provide on its website a mailing address to which the application and notice should be mailed. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.
  - (2) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.
  - (3) If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission

orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

- (4) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.

(d) The Certificate.

- (1) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and operation of the generating facility is not obtained and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.
- (2) The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate.
- (3) Both before the time construction is completed and after, all certificate holders must advise both the Commission and the utility involved of any plans to sell, transfer, or assign the certificate or the generating facility or of any significant changes in the information set forth in subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes.

- (e) Reporting. — All applicants must submit annual progress reports until construction is completed.

**Rule R8-61. PRELIMINARY PLANS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR CONSTRUCTION OF ELECTRIC GENERATION AND RELATED TRANSMISSION FACILITIES IN NORTH CAROLINA; CONSTRUCTION OF OUT-OF-STATE ELECTRIC GENERATING FACILITIES; PROGRESS REPORTS AND ONGOING REVIEWS OF CONSTRUCTION; PROJECT DEVELOPMENT COST REVIEWS FOR NUCLEAR GENERATING FACILITIES.**

- (a) A public utility or other person that plans to build an electricity generating facility with a nameplate capacity of 300 megawatts (alternating current) or more shall file with the Commission and the Department of the Environment and Natural Resources its preliminary plans at least 120 days before filing an application for a certificate of public convenience and necessity. The preliminary plans shall include the following exhibits:
  - (1) Exhibit 1 shall contain the following site information:
    - (i) A color map or aerial photo (a U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred) showing the proposed site boundary and layout, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;
    - (ii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree;
    - (iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site;
    - (iv) Justification for the adoption of the site selected, and general information describing the other locations considered;
    - (v) Information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, and local population;
    - (vi) A description of investigations completed, in progress, or proposed involving the subject site;
    - (vii) A statement of existing or proposed plans known to the applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site;
    - (viii) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated gas facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;
    - (ix) A brief general description of practicable transmission line routes emanating from the site, including a color map showing their general location; and



(x) The gross, net, and nameplate generating capacity of each unit and the entire facility's total projected dependable capacity in alternating current (AC).

(2) Exhibit 2 shall contain the following permitting information:

- (i) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals; and
- (ii) A statement of existing or proposed environmental evaluation programs to meet the applicable air and water quality standards.

(3) Exhibit 3 shall include a schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(b) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) in order to construct a generating facility in North Carolina, a public utility shall include the following exhibits supported by relevant testimony:

(1) Exhibit 1 shall contain the following resource planning information:

- (i) The utility's most recent biennial report and the most recent annual report filed pursuant to Rule R8-60, plus any proposals by the utility to update said reports;
- (ii) The extent to which the proposed facility would conform to the utility's most recent biennial report and the most recent annual report—that was filed pursuant to Rule R8-60;
- (iii) A statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site.
- (iv) An explanation of the need for the facility, including information on energy and capacity forecasts; and
- (v) An explanation of how the proposed facility meets the identified energy and capacity needs, including the anticipated facility capacity factor, heat rate, and service life.

(2) Exhibit 2 shall contain the siting and permitting information as listed in Rule R8-61(a), with updates as necessary for facilities that are 300 megawatts (alternating current) nameplate capacity or more, and for which this information had already been filed.

(3) Exhibit 3 shall contain the following cost information for the proposed facility, and for the final alternatives that the applicant considered:

- (i) An estimate of the construction costs for the generating facility, including the costs for new substation(s) and transmission line(s), and upgrades to existing substations(s) and transmission lines(s). For nuclear plants, construction costs shall include the plant's first core fuel load;

- (ii) Estimated construction costs expressed as dollars per megawatt of capacity;
  - (iii) Estimated annual operating expenses by category, including fuel costs;
  - (iv) Estimated annual operating expenses expressed as dollars per net megawatt-hour.
  - (v) The projected cost of each major component of the generating facility and the projected schedule for incurring those costs;
  - (vi) The projected effect of investment in the generating facility on the utility's overall revenue requirement for each year during the construction period;
  - (vii) The anticipated in-service expenses associated with the generating facility for the 12-month period of time following commencement of commercial operation of the facility; and
  - (viii) The anticipated impact the facility will have on customer rates.
- (4) Exhibit 4 shall contain the following construction information:
- (i) The anticipated construction schedule for the generating facility;
  - (ii) The specific type of units selected for the generating facility; the suppliers of the major components of the facility; the basis for selecting the type of units, major components, and suppliers; and arrangements made or planned to assure a dependable fuel supply;
  - (iii) The qualifications and selection process of principal contractors and suppliers for construction of the generating facility, other than those listed in Item (ii) above; and
  - (iv) Risk factors related to the construction and operation of the generating facility, including a verified statement as to whether the facility will be capable of operating during the lowest temperature that has been recorded in the area using information from the National Weather Service Automated Surface Observing System (ASOS) First Order Station in Asheville, Charlotte, Greensboro, Hatteras, Raleigh or Wilmington, depending upon the station that is located closest to where the plant will be located.
- (5) If the facility is a coal or nuclear-fueled facility, the application shall include Exhibit 5, which shall contain information demonstrating that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest.
- (c) The public utility shall submit a progress report and any revision in the construction cost estimate during each year of construction according to a schedule established by the Commission.

(d) Upon the request of the public utility or upon the Commission's own motion, the Commission may conduct an ongoing review of construction of the generating facility as the construction proceeds.

(e) A public utility requesting an ongoing review of construction of the generating facility pursuant to G.S. 62-110.1(f) shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity by the Commission; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause. Upon the filing of a request for an ongoing review, the Commission shall establish a schedule of hearings. The hearings shall be held no more often than every 12 months. The Commission shall also establish the time period to be reviewed during each hearing. The purpose of each ongoing review hearing is to determine the reasonableness and prudence of the costs incurred by the public utility during the period under review and to determine whether the certificate should remain in effect or be modified or revoked. The public utility shall have the burden of proof to demonstrate that all costs incurred are reasonable and prudent.

(f) A public utility may file an application pursuant to G.S. 62-110.6 requesting the Commission to determine the need for an out-of-state electric generating facility that is intended to serve retail customers in North Carolina. If need for the generating facility is established, the Commission shall also approve an estimate of the construction costs and construction schedule for such facility. The application may be filed at any time after an application for a certificate of public convenience and necessity or license for construction of the generating facility has been filed in the state in which the facility will be sited. The application shall be supported by relevant testimony and shall include the information required by subsection (b) of this Rule to the extent such information is relevant to the showing of need for the generating facility and the estimated construction costs and proposed construction schedule for the generating facility. The public utility shall submit a progress report and any revision in the construction cost estimate for the out-of-state electric generating facility during each year of construction according to a schedule established by the Commission.

(g) If the Commission makes a determination of need pursuant to G.S. 62-110.6 and subsection (f) of this Rule, the provisions of subsections (d) and (e) of this Rule shall apply to a request by a public utility for an ongoing review of construction of a generating facility to be constructed in another state that is intended to serve retail customers in North Carolina. An electric public utility shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity or license by the state commission in which the out-of-state generating facility is to be constructed; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause.

(h) A public utility may file an application pursuant to G.S. 62-110.7 requesting the Commission to review the public utility's decision to incur project development costs for

a potential in-state or out-of-state nuclear generating facility that is intended to serve retail electric customers in North Carolina. The application, supported by relevant testimony, shall be filed prior to the filing of an application for a certificate to construct the facility.

**Rule R8-63. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR MERCHANT PLANT; PROGRESS REPORTS.**

- (a) Scope of Rule.
  - (1) This rule applies to an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) by any person seeking to construct a merchant plant in North Carolina.
  - (2) For purposes of this rule, the term "merchant plant" means an electric generating facility, other than one that qualifies for and seeks the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156, the output of which will be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility pursuant to G.S. 62-133.
  - (3) Persons filing under this rule are not subject to the requirements of RuleR8-61 or R8-64.
- (b) Application. The application shall contain the exhibits listed below, which shall contain the information hereinafter required, with each exhibit and item labeled as set out below. Any additional information may be included at the end of the application.
  - (1) Exhibit 1 shall contain the following information about the applicant:
    - (i) The full and correct name, business address, business telephone number and electronic mailing address of the applicant;
    - (ii) A description of the applicant, including the identities of its principal participant(s) and officers, and the name and business address of a person authorized to act as corporate agent or to whom correspondence should be directed; and
    - (iii) A copy of the applicant's most recent annual report to stockholders, which may be attached as an exhibit, or, if the applicant is not publicly traded, its most recent balance sheet and income statement. If the applicant is a newly formed entity with little history, this information should be provided for its parent company, equity partner, and/or the other participant(s) in the project; and
    - (iv) Information about generating facilities in the Southeastern Electric Reliability Council region which the applicant or an affiliate has any ownership interest in and/or the ability to control through leases, contracts, options, and/or other arrangements and information about certificates that have been granted for any such facilities not yet constructed.
  - (2) Exhibit 2 shall contain the following information about the proposed facility:

- (i) The nature of the proposed generating facility, including its type, fuel, expected service life, and the gross, net, and nameplate generating capacity of each generating unit and the entire facility, as well as the facility's total projected dependable capacity, in megawatts (alternating current); the anticipated beginning date for construction; the expected commercial operation date; and estimated construction costs;
  - (ii) A color map or aerial photo (a U.S. Geological Survey map or aerial photo map prepared via the State's geographic information system is preferred) showing the proposed site boundary and layout, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;
  - (iii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
  - (iv) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;
  - (v) A list of all needed federal, state, and local approvals related to the facility and site, identified by title and the nature of the needed approval; a copy of such approvals or a report of their status; and a copy of any application related to eligible facility and/or exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992, including attachments and subsequent amendments, if any; and
  - (vi) A general description of the transmission facilities to which the facility will interconnect, and a color map showing their general location. If additional facilities are needed, a statement regarding whether the applicant would need to acquire rights-of-way for new facilities.
- (3) Exhibit 3 shall provide a description of the need for the facility in the state and/or region, with supporting documentation.
  - (4) The application shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant.
  - (5) The application shall be accompanied by pre-filed direct testimony incorporating and supporting the application.

- (6) The Chief Clerk will deliver a copy of the application to the Clearinghouse Coordinator in the Department of Administration for distribution to State agencies having an interest in the proposed generating facility.
  - (7) Contemporaneous with the filing of the application with the Commission, all applicants proposing a generating facility that will use natural gas must provide written notice of the filing to the natural gas local distribution company or municipal gas system providing service or franchised to provide service at the location of the proposed generating facility.
- (c) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (d) Procedure upon Receipt of Application. No later than ten (10) business days after the application is filed with the Commission, the Public Staff shall, and any other party in interest may, file with the Commission and serve upon the applicant a notice regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information. Upon receipt of all required information, the Commission will promptly issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.
- (e) The Certificate.
- (1) The certificate shall specify the name and address of the certificate holder; the type, capacity, and location of the facility; and the conditions, if any, upon which the certificate is granted.
  - (2) The certificate shall be subject to revocation if (a) any of the federal, state, or local licenses or permits required for construction and operation of the generating facility not obtained or, having been obtained, are revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30) days' written notice and opportunity to cure.
  - (3) The certificate must be renewed if the applicant does not begin construction within three years after the date of the Commission order granting the certificate.
  - (4) A certificate holder must notify the Commission in writing of any plans to sell, transfer, or assign the certificate and the generating facility.
- (f) Reporting. All applicants must submit annual progress reports and any revisions in cost estimates, as required by G.S. 62-110.1(f) until construction is completed.

**R8-64 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY QUALIFYING COGENERATOR OR SMALL POWER PRODUCER; PROGRESS REPORTS.**

- (a) Scope of Rule.
- (1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18) or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).
  - (2) For purposes of this rule, the term "person" shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.
  - (3) The construction of a facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.
  - (4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.
- (b) The Application. The application shall be comprised of the following five exhibits:
- (1) Exhibit 1 shall contain:
    - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
    - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina; and
    - (iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site.
  - (2) Exhibit 2 shall contain:
    - (i) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, and startup equipment, the site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S.

- Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred; and
- (ii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.

(3) Exhibit 3 shall contain:

- (i) The nature of the generating facility, including the type and source of its power or fuel;
- (ii) A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
- (iii) The gross and net projected maximum dependable capacity of the facility as well as the facility's nameplate capacity, expressed as megawatts (alternating current);
- (iv) The projected date on which the facility will come on line; and
- (v) The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity;
- (vi) Any provisions for wheeling of the electricity;
- (vii) Arrangements for firm, non-firm or emergency generation;
- (viii) The service life of the project;
- (ix) The projected annual sales in kilowatt-hours; and
- (x) Whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.

(4) Exhibit 4 shall contain:

- (i) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for.
- (ii) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(5) Exhibit 5 shall contain the expected cost of the proposed facility.

(6) An applicant who desires to enter into a contract for 5 years or more for the sale of electricity, whose facility will have a nameplate capacity of 5 megawatts alternating current or more, and whose facility is not a solar photovoltaic facility, shall include the three additional exhibits as described in R8-64(b)(6)(i), (ii), and (iii) below, except an applicant who desires to enter into a contract of 5 years or more for the sale of electricity



from a solar photovoltaic facility of 25 megawatts alternating current or more shall also include the three additional exhibits referenced herein.

(i) Exhibit 6 shall contain:

- a A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;
- b Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project; and
- c A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs.

(ii) Exhibit 7 shall contain:

- a The most current available balance sheet of the applicant;
- b The most current available income statement of the applicant;
- c An economic feasibility study of the project; and
- d A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application.

(iii) Exhibit 8 shall contain:

- a A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year. The explanation shall include a statement of the specific on-peak and off-peak hours underlying the applicant's quantification of anticipated kilowatt and kilowatt-hour outputs;
- b A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and
- c A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.

- (7) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.
- (8) Applications filed on behalf of a corporation are not subject to the provision of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.
- (9) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.

- (10) The application and 12 copies shall be filed with the Chief Clerk of the Utilities Commission.
  - (11) If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (c) Procedure upon receipt of Application. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
- (1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. Each electric utility shall provide on its website a mailing address to which the application and notice should be mailed. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.
  - (2) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.
  - (3) If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.
  - (4) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.
- (d) The Certificate.
- (1) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and

operation of the generating facility is not obtained and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.

- (2) The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate.
- (3) Both before the time construction is completed and after, all certificate holders must advise both the Commission and the utility involved of any plans to sell, transfer, or assign the certificate or the generating facility or of any significant changes in the information set forth in subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes.

(e) Reporting. — All applicants must submit annual progress reports until construction is completed.