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November 25, 2020

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

**RE: NCUC Docket Nos. E-100, Sub 101; E-2, Sub 1159; and E-7,
Sub 1156**

Dear Ms. Campbell:

On behalf of Fair Bluff Solar, LLC (“Fair Bluff Solar”) and Homer Solar, LLC (Homer Solar”), we submit the attached **Motion for Extension of Waiver** in the above-referenced dockets. Please note that Fair Bluff Solar and Homer Solar respectively request expedited consideration of the waiver request.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Karen m. Kemerait'.

Karen Kemerait

KK:bs

cc: All parties of record
Enclosure

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
New Jersey New York North Carolina Pennsylvania South Carolina Texas Virginia Washington

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 101
DOCKET NO. E-2, SUB 1159
DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION:

DOCKET NO. E-100, SUB 101)	
)	
In the Matter of)	
Petition for Approval of Generator)	
Interconnection Standard)	
)	
DOCKET NO. E-2, SUB 1159)	MOTION FOR EXTENSION OF
)	WAIVER BY FAIR BLUFF SOLAR,
In the Matter of)	LLC AND HOMER SOLAR, LLC
Duke Energy Progress LLC)	
Competitive Procurement of Renewable)	
Energy Program)	
)	
DOCKET NO. E-7, SUB 1156)	
)	
In the Matter of)	
Joint Petition of Duke Energy)	
Carolinas, LLC, and Duke Energy)	
Progress, LLC, for Approval of)	
Competitive Procurement of)	
Renewable Energy Program)	
)	

MOTION FOR EXTENSION OF WAIVER

NOW COME Fair Bluff Solar, LLC (“Fair Bluff Solar”) and Homer Solar, LLC (“Homer Solar”), pursuant to Commission Rule R1-7, and respectfully move the North Carolina Utilities Commission (“Commission”) for a further extension of the limited waivers that the Commission granted in its *Order Granting Limited Waiver* on December

6, 2018 (“December 6, 2018 Order”) and its *Order Granting Further Limited Waiver* on December 20, 2019 (“December 20, 2019 Order”). Fair Bluff Solar and Homer Solar continue to be uniquely and adversely affected by Ordering Paragraph 2 of the Commission’s *Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1 of CPRE RFP* issued on October 5, 2018 (the “October 5, 2018 Order”) and Section 4.3.9 of the North Carolina Interconnection Procedures (“NCIP”).

This purpose of this motion is to again request that payment of the Milestone Payments pursuant to Section 4.3.9 of the NCIP be waived, and instead require that Fair Bluff Solar and Homer Solar provide the Milestone Payments within ten (10) business days following the earlier of (i) Friesian Holdings, LLC (“Friesian”) having made a contractual commitment to fund the Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian having been removed from the queue and not made a timely application to the Transitional Cluster Study, (iii) the execution of the Interconnection Agreements for Fair Bluff Solar and Homer Solar, or (iv) December 31, 2021.

In support of this Motion, Fair Bluff Solar and Homer Solar state the following:

1. The October 5, 2018 Order called for application of the Milestone Payment requirement to Interconnection Customers in the Facilities Study stage, stating in Ordering Paragraph 2:

That Interconnection Customers affected by Section 4.3.9 that are currently in the facilities study stage of the NCIP shall have 30 business days from the date of this Order to submit a prepayment for Network Upgrades. For a given Interconnection Request, if no such payment is received, the Interconnection Request shall be removed from the interconnection queue.

2. Fair Bluff Solar and Homer Solar are and continue to be uniquely and negatively impacted by this aspect of the October 5, 2018 Order. Fair Bluff Solar and

Homer Solar are transmission solar projects. Fair Bluff Solar signed a Facilities Study Agreement on February 27, 2018, and Homer Solar signed a Facilities Study Agreement on September 18, 2017.

3. Fair Bluff Solar and Homer Solar were identified in the System Impact Study results as being interdependent with Friesian, an earlier-queued FERC-jurisdictional Interconnection Customer. Friesian has triggered substantial Network Upgrades at a cost of approximately \$187 million.

4. Friesian submitted an application for a Certificate of Public Convenience and Necessity (“CPCN”) in Docket No. EMP-105, Sub 0. The Commission denied Friesian’s CPCN application in its June 11, 2020 *Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility*. On August 10, 2020, Friesian, the North Carolina Sustainable Energy Association (“NCSEA”), and the North Carolina Clean Energy Business Alliance (“NCCEBA”) appealed the Commission’s denial of the CPCN to the North Carolina Court of Appeals. The appeal is pending before the Court of Appeals.

5. Friesian is ahead of Fair Bluff Solar and Homer Solar in the interconnection queue.

6. Fair Bluff Solar and Homer Solar both require substantial Network Upgrades ("the Interdependent Upgrades") that are also required by the earlier-queued Friesian project. As the earlier-queued project, Friesian is responsible for paying for those Network Upgrade costs. In addition to allowing Friesian to interconnect, those Network Upgrades will alleviate congestion in Duke Energy Progress, LLC’s

transmission system in the southeastern portion of the state where Fair Bluff Solar and Homer Solar are located.

7. Fair Bluff Solar and Homer Solar also require other Network Upgrades ("the Independent Upgrades") that are independent of the Network Upgrades required for Friesian. The total estimated cost of the Independent Upgrades, which will be borne solely by Fair Bluff Solar and Homer Solar, is approximately \$9.6 million.

8. The Commission's December 6, 2018 Order temporarily waived the requirement pursuant to Section 4.3.9 for Fair Bluff Solar and Homer Solar to pay the Milestone Payments, and requires instead that Fair Bluff Solar and Homer Solar provide Milestone Payments for the Independent Upgrades upon the earlier of: (i) Friesian Solar having made a contractual commitment to fund the Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian Solar having been removed from the queue, or (iii) December 31, 2019.

9. The Commission's December 20, 2019 Order extended the limited waiver previously granted to Fair Bluff Solar and Homer Solar in the December 6, 2018 Order based upon the continued unique circumstances surrounding the projects. In the December 20, 2019 Order, the Commission extended the waiver of payment of the Milestone Payments, and required instead that Fair Bluff Solar and Homer Solar provide Milestone Payments within ten business days following the earlier of: (i) Friesian having made a contractual commitment to fund the Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian having been removed from the queue, (iii) the execution of the Interconnection Agreements for Fair Bluff Solar and Homer Solar, or (iv) December 31, 2020.

10. The Friesian project--which is subject to the FERC-jurisdictional Large Generator Interconnection Procedures and therefore not required to make a state-jurisdictional Milestone Payment--has not yet made an irrevocable commitment to fund the Interdependent Upgrades and will not do so before December 31, 2020. If Friesian ultimately does not irrevocably commit to paying for the Network Upgrades, and is thus forced out of the queue, Fair Bluff Solar and Homer Solar will become responsible for paying for the Interdependent Upgrades.¹ That additional cost, which is anticipated to be approximately \$187 million, would make Fair Bluff Solar and Homer Solar infeasible from a cost perspective and would result in them having to exit the queue. In that event, Fair Bluff Solar and Homer Solar would be required to forfeit to Duke the \$9.6 million Milestone Payments for Network Upgrades that would not be constructed.

11. Given the financial uncertainty that arises from this situation, if Fair Bluff Solar and Homer Solar were required to make the \$9.6 Milestone Payment on December 31, 2020, they would be forced to withdraw from the queue, resulting in the loss of all investment and existing economic value in those projects. This would result in irreparable harm to the projects.

12. Fair Bluff Solar and Homer Solar therefore request that the Commission extend the waiver of payment of the Milestone Payments, and require instead that Fair Bluff Solar and Homer Solar provide the Milestone Payments within ten (10) business days following the earlier of (i) Friesian having made a contractual commitment to fund the

¹ Alternatively, under the Commission's recently approved amendments to the NCIP, Friesian, Fair Bluff Solar, and Homer Solar will all have the opportunity to apply to the Transitional Cluster Study, which would allow for the cost of the Interdependent Upgrades to be allocated to and shared by not only those three projects, but numerous other projects that would also benefit from and utilize the Interdependent Upgrades.

Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian having been removed from the queue, (iii) the execution of the Interconnection Agreements for Fair Bluff Solar and Homer Solar, or (iv) December 31, 2021.

13. To Fair Bluff Solar's and Homer Solar's best knowledge, there are no projects in the interconnection queue with Network Upgrades dependent on Fair Bluff Solar's and Homer Solar's Independent Upgrades. There are later-queued projects that are interdependent on Friesian's Network Upgrades. However, Fair Bluff Solar, Homer Solar, and the later-queued projects that are interdependent on Friesian's Network Upgrades will not have certainty as to the required Network Upgrade costs until Friesian definitively commits (or declines to commit) to its interdependent Network Upgrades. Extending the deadline for Fair Bluff Solar's and Homer Solar's Milestone Payments would not alter this situation or cause harm to any party or later queued Interconnection Customer.

14. Counsel for Fair Bluff Solar and Homer Solar has conferred with counsel for Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, NCSEA, NCCEBA, and the Public Staff. Each of these parties does not oppose the requested further stay.

15. Pursuant to the Commission's December 20, 2019 Order, Fair Bluff Solar and Homer Solar are required to make the Milestone Payments by December 31, 2020. In light of this payment deadline, Fair Bluff Solar and Homer Solar request expedited consideration of this request.

WHEREFORE, for the foregoing reasons, Fair Bluff Solar and Homer Solar respectfully request that the Commission extend the waiver of payment of the Milestone Payments pursuant to Section 4.3.9 of the NCIP, and require instead that Fair Bluff Solar

and Homer Solar provide the Milestone Payments within ten (10) business days following the earlier of (i) Friesian having made a contractual commitment to fund the Interdependent Upgrades that is irrevocable and not subject to any contingencies, (ii) Friesian having been removed from the queue and not made a timely application to the Transitional Cluster Study, (iii) the execution of the Interconnection Agreements for Fair Bluff Solar and Homer Solar, or (iv) December 31, 2021.

Respectfully submitted, this 25th day of November, 2020.

By: Karen M. Kemerait
Karen M. Kemerait
Fox Rothschild LLP
434 Fayetteville Street, Ste. 2800
Raleigh, NC 27601
Telephone: 919-755-8764
Email: kkemerait@foxrothschild.com
*Attorneys for Petitioners Fair Bluff Solar, LLC
and Homer Solar, LLC*

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing MOTION FOR EXTENSION OF WAIVER has been served this day upon each party of record in this proceeding or their attorney by electronic mail or by depositing a copy thereof in the United States mail, postage prepaid.

This the 25th day of November, 2020.

By: /s/ Karen M. Kemerait
Karen M. Kemerait
Fox Rothschild LLP
434 Fayetteville Street, Ste. 2800
Raleigh, NC 27601
Email: kkemerait@foxrothschild.com
*Attorneys for Petitioners Fair Bluff Solar, LLC
and Homer Solar, LLC*

STATE OF CALIFORNIA

COUNTY OF Buncombe

VERIFICATION

I, Ben Catt, having been duly sworn, depose and say that I am the Authorized Representative of Fair Bluff Solar, LLC and Homer Solar, LLC, that I have read the foregoing Motion for Extension of Waiver and know its contents, and that the matters stated in this Motion are true to the best of my knowledge.

This 23rd day of November, 2020.



Ben Catt

Sworn to and subscribed before me

this 23rd day of November, 2020.


Notary Public

My commission expires: July 5, 2025

