BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 176

In the Matter of: Petition to Revise Commission Rules R8-63 and R8-64	)	**INITIAL COMMENTS OF NCSEA**

NOW COMES the North Carolina Sustainable Energy Association ("NCSEA"), pursuant to the North Carolina Utility Commission's (the "Commission") April 1, 2024, *Order Requesting Comments*, and the Commission's May 1, 2024, *Order Granting Motion for Extension of Time*, and respectfully submits the following initial comments on the proposed revisions to Commission Rules R8-63 and R8-64, as found in the Commission's April 1, 2024, *Order*.

I. INTRODUCTION

In both *NCSEA's Initial Comments*[1] and *NCSEA's Reply Comments*,[2] NCSEA requested the Commission delay a decision on proposed rule changes in this docket. At that time, NCSEA argued that the Public Staff's proposed changes to Rules R8-63 and R8-64 were premature considering the recent passage of S.L. 2021-165 ("HB 951"). NCSEA appreciates the Commission's patience in not issuing a ruling in this docket and instead proposing its own amendments to the rules based on its experience issuing Certificates of Public Convenience and Necessity ("CPCN") for merchant solar facilities, while working

[1] *NCSEA's Initial Comments*, Docket No. E-100, Sub 176, 2–3 (Nov. 2, 2021) [hereinafter "NCSEA's Initial Comments"].

[2] *NCSEA's Reply Comments*, Docket No. E-100, Sub 176, 1–5 (Dec. 14, 2021) [hereinafter "NCSEA's Reply Comments"].

through other related concerns to HB 951. NCSEA further appreciates this opportunity to submit additional comments.

NCSEA's principal concern with the proposed rule changes, consistent with its previous comments, is that many of the proposed requirements improperly and unfairly force the applicant to rely on "third parties (including potential competitors) to commit acts or provide information to which the certificate applicant does not have direct access."[3] As proposed, the amended rules inappropriately place the burden of data collection and analysis on the applicant—when it is the affected system operator ("ASO") that controls, maintains, and functions as gatekeeper to the data at issue. This proposed arrangement magnifies the significant informational asymmetry that exists between applicants and ASOs. NCSEA believes that the potential rule changes to R8-63 and R8-64 are overly burdensome and may ultimately preempt the construction of these facilities—which may also result in the loss of any potential benefits to customers through the transmission and distribution system upgrades triggered by these facilities.

To lessen this tension, NCSEA recommends the Commission also consider a rule change that requires the interconnecting utility and the ASOs (once they are determined to be affected) to automatically be made parties to CPCN proceedings convened pursuant to rules R8-63 and R8-64. Such a rule change could allow the Commission to get much of the information it seeks directly from the party responsible for that data's collection. Further, by also requiring the interconnecting utility and the ASOs to be parties to such proceedings, the Commission could adopt a process that enables both the applicant and the Public Staff the opportunity to gather any additional relevant information through standard discovery

[3] NCSEA's Initial Comments, at 4.

practices. NCSEA is concerned that without such an addition, the proposed rules will preclude the development of such facilities due to the proposed heightened requirements and the time and resources required to meet them. NCSEA is sympathetic to the need of the Commission to gather information to develop "the evidence necessary for a determination of whether granting an application is the in public interest,"[4] but the proposed rules do not address the barriers to receiving this information.

NCSEA believes that Rule R8-63(a), (b), and (d) would be the most appropriate places for such a rule change, and suggests that the following additions be considered:

> (a) Scope of Rule.
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> [. . .]
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> (4) Once an application is filed pursuant to this Rule, the Public Staff, the interconnecting utility, and, upon a finding of an affected system, the Affected System Operator shall be deemed parties necessary to that proceeding.
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> [. . .]
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> (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. To the extent that the applicant reasonably believes that certain required information is under the control of the interconnecting utility or an Affected System Operator and does not intend to include such information at the time the application is filed, the applicant must label such information clearly and either provide an explanation of why either the interconnecting utility or Affected System Operator is the appropriate party to provide such information or provide a description of how it plans to attain such information and provide it to the Commission.
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> [. . .]
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> (d) Procedure upon Receipt of Application. Upon receipt of an application, the Public Staff, the interconnecting utility, and, if a finding of an affected system has been made, the Affected System Operator will be

[4] *Order Requesting Comments*, E-100 Sub 176, 5 (Apr. 1, 2024).

made parties to the docket opened for purposes of reviewing such application. Each party shall be subject to standard discovery rules. 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, it may require either the applicant ~~will be required~~ to file the missing information or the Commission may require such information be filed by either the interconnecting utility or Affected System Operator, as appropriate. 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.

In considering changes to R8-63 and R8-64 that require additional data and information to be presented, the Commission should also seek to balance the burden of proof placed on the applicant with the needs of the greater grid. HB 951 requires the Commission to adopt the "least cost path" to compliance with its carbon reduction mandates,[5] while also ensuring "any generation and resource changes maintain or improve upon the adequacy and reliability of the existing grid."[6] Even though Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP," jointly "Duke Energy" or the "Companies") are the only utilities currently subject to HB 951, and any merchant solar facility outside of their service territories does not implicate compliance with HB 951's emission reduction mandates, upgrades to the Companies' transmission and distribution systems triggered by these CPCN's may still support the law's other objectives. North Carolina's largest utilities have an interest in these proceedings as the potential for merchant solar facilities to beneficially contribute to grid reliability, resource adequacy,

[5] N.C.G.S. § 62-110.9(1).

[6] *Id.*, at § 62-110.9(3).

and affordability through economic transfers of energy between balancing authorities are all considerations contemplated under HB 951.

In recognizing the potential for these benefits, the Southeastern Regional Transmission Planning process has identified two 2024 economic planning studies, as selected by the Regional Planning Stakeholder Group, that implicate Duke Energy territories. One study examines power flowing into each Duke Energy territory from the PJM Interconnection, and one study examines power flowing out of DEC to Santee Cooper.[7] The overall robustness of interties and transfer capabilities between balancing authorities, as well as their efficient and effective use, provides benefits to utilities on both sides. Clean energy resources located adjacent to Duke Energy's territories, or contracted to primarily serve an adjacent utility's load, still have the potential to be valuable assets to Duke Energy's customers. For example, grid upgrades to accommodate a merchant solar facility may support economically meeting peak demand or reliably serving Duke Energy customers during the next severe weather event.[8]

For the reasons herein, NCSEA maintains its previously stated objections to the proposed rules. However, if the Commission finds good cause to proceed with the rules as proposed, NCSEA recommends that the interconnecting utilities and ASOs become required parties to these proceedings.

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[7] 2024 ECONOMIC PLANNING STUDIES SCOPE DOCUMENT, SOUTHEASTERN REGIONAL TRANSMISSION PLANNING (Apr. 18, 2024), *available at* http://www.southeasternrtp.com/docs/general/2024/2024_SERTP_Economic_Planning_Studies_Scope_Document-Draft.pdf.

[8] Duke Energy saw significant amounts of power purchased from PJM curtailed during the Winter Storm Elliott event. However, this was mostly due to issues with natural gas generation facilities and not related to clean energy generation facilities (which are not subject to fuel supply related disruptions). *Order Making Findings and Directing Actions Related to Impact of Winter Storm Elliott*, M-100 Sub 163, 8, 10, 24–28, 34, 46 (Dec. 22, 2023). Merchant facilities that increase capacity in PJM, especially within PJM South, could help address the risk of such curtailment in the future.

II. SPECIFIC CONCERNS

A. Concerns with proposed changes to Rule R8-63

NCSEA continues to oppose all aspects of proposed Rule R8-63 that would require the applicant to be dependent on third parties for specific actions or to provide access to specific data beyond the applicant's control. Accordingly, NCSEA renews and repeats its prior comments submitted in this docket.

R8-63(b)(3)(iv) is one such provision, which, as proposed, would require the applicant to provide "[a] description of the transmission and distribution facilities to which the facility will interconnect, and a color map showing their general location. Include the utility feeder name or substation and the voltage level of the planned interconnection." The local utility, not the applicant, is in the best position to provide this information to the Commission. NCSEA also objects to R8-63(b)(3)(ix)-(xi), and (xiii)-(xiv) as beyond the scope of relevancy for consideration of a CPCN, with some of this information beyond the control or possession of the applicant, as well.

Proposed Rules R8-63(b)(5)(ii)-(vii) all require the applicant to provide lengthy studies that are conducted and controlled by a utility (either the interconnecting utility or an ASO) and not the applicant. Though NCSEA appreciates the inclusion of R8-63(vii), which recognizes the potential for "benefits to be received by ratepayers from any transmission upgrades, including affected system upgrades, the need for which is caused by the proposed facility." Placing the burden on the applicant to make this showing would require the collection of large amounts of data across many sources, most if not all of which are controlled by either the interconnecting utility or ASO. NCSEA is additionally concerned about the length of time these studies take to complete, and the burden it places

on the applicant to continue to receive the necessary help from either the interconnecting utility or the ASO throughout that period.

Similarly, much of proposed Rule R8-63(b)(6) would require the applicant to gather, analyze, and provide the Commission data about statewide or regional needs, including information on the effect on utility-controlled assets that are beyond the knowledge or control of the applicant.

NCSEA is also concerned by proposed Rule R8-63(e)(3), which imposes the full set of requirements from subsection (b) for an applicant to achieve recertification should they fail to begin construction within three years. Beyond the objections to subsection (b) above, which NCSEA maintains for this provision, this requirement is unduly duplicative and will in some circumstances punish an applicant that is merely waiting on an interconnecting utility or ASO to complete their work to interconnect the applicant's facility. A streamlined renewal process that recognizes the existing efforts made not only by the applicant, but also by the implicated utilities, would serve as a much more efficient use of parties' resources.

B. Concerns with proposed changes to Rule R8-64

NCSEA continues to oppose all aspects of proposed Rule R8-64 that would require the applicant to be dependent on third parties for specific actions or to provide access to specific data beyond the applicant's control. Accordingly, NCSEA renews and repeats its prior comments submitted in this docket.

This includes proposed Rule R8-64(b)(6)(iii)e, which requires "[a]ll studies associated with interconnection of the facility." This would violate FERC's interpretation that it is the establishment of a legally enforceable obligation ("LEO") that turns on "the

QF's commitment, and *not* the utility's actions[.]"[9] As part of LEO formation in North Carolina is that the facility must receive a CPCN, this would impermissibly place the utility's actions in control of the formation of a LEO for a small power producer.

NCSEA also believes that clarity may be needed with regard to Rule R8-64(a)(1), concerning the applicability of the rule to certain types of facilities. The Commission accepted Duke Energy's proposal to conclude the Competitive Procurement of Renewable Energy ("CPRE") program earlier this year.[10] The applicability of R8-64 to the continuing solar procurements—pursuant to HB 951 and the Commission's *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning*, issued in Docket No. E-100 Sub 179—should be clarified for future applicants.

[9] FLS Energy, Inc., 157 FERC ¶ 61211, 61730–31, (Dec. 15, 2016) (emphasis in original).

[10] *Order Accepting CPRE Program Plan, Concluding CPRE Program, and Granting Waiver of Commission Rules R8-71(G) and R8-71(H)*, Docket Nos. E-2, Sub 1159; E-7, Sub 1156 (Dec. 12, 2023).

III. CONCLUSION

For the reasons set forth herein, NCSEA respectfully requests that the Commission consider these initial comments in this proceeding.

Respectfully submitted this 15th day of May, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service lists have been served true and accurate copies of the foregoing by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 15th day of May, 2024.

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