

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EGL-1, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Eagle Solar & Light, LLC,)
for a Certificate of Authority to Engage in)
Business as an Electric Generator Lessor,)
Pursuant to N.C.G.S. § 62-126.7 and)
Commission Rule R8-73)
	ORDER REQUIRING ADDITIONAL FILING

BY THE CHAIRMAN: On July 27, 2017, the Governor signed into law House Bill 589 (S.L. 2017-192), which enacted Article 6B of Chapter 62 of the North Carolina General Statutes, the Distributed Resources Access Act (Act). The Act declares, in relevant part, that “as a matter of public policy it is in the interest of the State to encourage the leasing of solar energy facilities for retail customers[.]”¹ In so enacting, the North Carolina General Assembly also directed the Commission to implement the Act, directing that the Commission adopt rules to govern the application and certification of electric generator lessors.

On January 8, 2018, in Docket No. E-100, Sub 156, after receiving comments from Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC (together, Duke), the Public Staff, and other interested parties, the Commission issued an Order (EGL Rule Order) adopting Commission Rule R8-73, governing the process by which applicants can apply and become certified as electric generator lessors.

On May 11, 2018, Eagle Solar & Light, LLC (Eagle Solar), filed an application for a certificate of authority to engage in business as an electric generator lessor in accordance with the provisions of N.C.G.S. 62-126.7 and Commission Rule R8-73.

On June 6, 2018, pursuant to Commission Rule R8-73(f)(2), the Commission issued an Order requiring Eagle Solar to mail notice of its pending application to each electric service provider in whose service territory Eagle Solar proposes to operate.

On June 8, 2018, the Public Staff filed the recommendation required by Commission Rule R8-73(f)(4), stating that Eagle Solar’s application was incomplete and deficient according to the requirements specified in Rule R8-73 and N.C.G.S. §§ 62-126.6 and 126.7.

¹ N.C.G.S. § 62-126.2.

On June 15, 2018, Eagle Solar filed an amended application for certificate of authority to engage in business as an electric generator lessor.

On July 13, 2018, the Public Staff filed an additional recommendation, stating that Eagle Solar's amended application was incomplete and deficient according to the requirements specified in Rule R8-73 and N.C.G.S. §§ 62-126.5, 62-126.6, and 62-126.7.

On August 27, 2018, Eagle Solar filed a second amended application for certificate of authority to engage in business as an electric generator lessor.

On August 30, 2018, pursuant to the Commission's June 6, 2018 Order and Rule R8-73(f)(2), Eagle Solar filed a certificate of service of its notice to both Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP), advising of Eagle Solar's pending application and intent to engage in business as an electric generator lessor in both DEC and DEP's respective service territories.

Also on August 30, 2018, the Public Staff filed an additional recommendation, stating that it has reviewed Eagle Solar's second amended application and determined it to be in compliance with the requirements of N.C.G.S. § 62-126 and Commission Rule R8-73. The Public Staff, therefore, recommends Commission approval of Eagle Solar's application for a certificate of authority to engage in business as an electric generator lessor.

Pursuant to Rule R8-73(f)(5), more than 30 days have elapsed since Eagle Solar filed its certificate of service, and no protests were filed with the Commission. Therefore, if Eagle Solar's application were complete and contained no deficiencies, it would be appropriate for the Commission to proceed in considering and deciding the application on the basis of information contained in the application and exhibits, and the recommendation of the Public Staff. However, the Chairman finds that there remain deficiencies in Eagle Solar's second amended application and exhibits. The Chairman further finds that it requires additional information before deciding Eagle Solar's application. For these reasons, the Chairman finds good cause to direct Eagle Solar to make an additional filing containing the information requested and attaching an amended application in conformance with this Order.

The Chairman now addresses a number of substantive issues that require modification, by way of an additional filing, before the Commission proceeds to decide Eagle Solar's application. First, the Chairman notes that the proposed lease agreement provided by Eagle Solar with its application appears to be for a residential solar facility. It is unclear, however, whether the Applicant intends to use the same lease agreement for both residential and non-residential installations, and, if not, whether any material differences exist between the two leases. In order to ensure that it has fully evaluated Eagle Solar's compliance with N.C.G.S. § 62-126.6, the Chairman finds that it is necessary for it to obtain this additional information before deciding Eagle Solar's application. The Chairman, therefore, directs Eagle Solar to include in its additional filing a statement regarding whether the proposed residential lease is identical to the one Eagle

Solar intends to use for non-residential installations. If the leases are materially different, the Chairman further directs Eagle Solar to include in its additional filing a copy of a proposed non-residential lease, with any such materially difference underlined.

Second, the Chairman finds that the section of the lease agreement labeled “Estimated Annual Energy Savings” within the proposed lease agreement could be misleading to consumers, and inconsistent with the requirements of N.C.G.S. § 62-126.6(11), which provides:

If the [lease] agreement contains an estimate of the retail electric customer’s future utility charges based on projected utility rates after the installation of a solar energy facility, provide an estimate of the retail electric customer’s estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent (5%) annual decrease to at least a five percent (5%) annual increase from current utility costs. The comparative estimates must be calculated based on the same utility rates.

Eagle Solar’s proposed lease includes only the estimated annual energy savings based upon the current average energy cost, but does not include the ranges required by statute. In addition, the purported “savings” does not account for the costs of the solar facility pursuant to the lease, such as the upfront installation fee or the monthly lease payments, and, consequently, could overstate a lessee’s net savings. Therefore, the Chairman directs Eagle Solar to include in its additional filing an amended proposed lease, containing the range of estimated energy charges and savings as required pursuant to N.C.G.S. § 62-126.6(11). In addition, the amended “Estimated Annual Energy Savings” section should include a disclaimer notifying the prospective lessee that the energy savings listed does not reflect the cost of the payments made pursuant to the solar facility lease agreement, and is not reflective of a lessee’s net savings.

The Chairman next addresses the references to Duke’s Solar Rebate Program contained within the contract terms of Eagle Solar’s proposed lease agreement. The Chairman notes that, although the proposed lease agreement states that there is “no guarantee” of a prospective lessee receiving a solar rebate, there is insufficient warning to the consumer regarding the limited availability of solar rebates. For example, the proposed lease agreement fails to state (1) that Duke Solar Rebate Program has already reached its 2018 participation limits; (2) the date upon which the application window will open during each remaining year of the Solar Rebate Program (January 1); (3) the fact that solar rebates are awarded on a first-come, first-served basis; and (4) a link to Duke’s Solar Rebate Program web page. In addition, the Chairman notes that Section 5 of the proposed lease is inconsistent with Section 1, insofar as Section 1 appears to confirm that the lessee will retain the right to any solar rebate payment issued for the leased facility, whereas Section 5 appears to confirm that the lessor will retain such right. It appears from the lease agreement, read in its entirety, that the intent is for the lessee to retain the right to receipt of any solar rebate payment, whereas the lessor would retain the right to any other financial incentives flowing from the system installation.

In the interest of contractual clarity and consumer protection, the Chairman finds it necessary and appropriate for Eagle Solar to include in its amended lease agreement the disclosures regarding the Solar Rebate Program, as required by this paragraph. In addition, the Chairman directs Eagle Solar to modify its lease terms to clarify in Section 5 that the lessee retains the right to receipt of any solar rebate payment issued.

Finally, the Chairman notes that the proposed lease agreement requires the lessee to provide to Eagle Solar, both at the time of execution of the lease agreement and annually thereafter, proof of insurance with a minimum aggregate property coverage of \$100,000. Pursuant to Rule R8-73(5)(iii), Eagle Solar is provide proof or certification that it “maintains minimum limits of \$100,000 of general liability insurance coverage.” Although Eagle Solar certified on its application that it has satisfied this requirement, it has not as of yet provided the Commission with the name or contact information of the insurance carrier providing such coverage, nor the policy number or similar information. Given that the Commission requires Eagle Solar to maintain such insurance coverage for the duration of the lease term, and particularly since there is a requirement that the lessee provide similar proof of coverage to Eagle Solar, the Chairman finds that it is both appropriate and in the public interest to require Eagle Solar to include as part of its additional filing the name and contact information of Eagle Solar’s general liability insurance carrier, as well as the policy number.

Based upon the foregoing and the entire record in this proceeding, the Chairman finds good cause to require Eagle Solar to make an additional filing, containing the information and amendments as directed by this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of October, 2018.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Janice H. Fulmore", is written over a faint, circular official stamp.

Janice H. Fulmore, Deputy Clerk