

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP-118, SUB 0  
DOCKET NO. EMP-118, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. EMP-118, SUB 0	)	
	)	
In the Matter of	)	
Application of Timbermill Wind, LLC, for	)	
a Certificate of Public Convenience and	)	
Necessity to Construct a Merchant Plant	)	
Wind Energy Facility in Chowan County,	)	
North Carolina, and Registration as a	)	
New Renewable Energy Facility	)	ORDER GRANTING
	)	CERTIFICATES AND ACCEPTING
DOCKET NO. EMP-118, SUB 1	)	REGISTRATION
	)	
In the Matter of	)	
Application of Timbermill Wind, LLC for a	)	
Certificate of Environmental Compatibility	)	
and Public Convenience and Necessity to	)	
Construct A 230 kV Transmission Line in	)	
Chowan County, North Carolina	)	

HEARD: Wednesday, October 27, 2021, at 10:00 a.m., via WebEx videoconference

BEFORE: Chair Charlotte A. Mitchell, presiding, Commissioner Kimberly W. Duffley,  
and Commissioner Daniel G. Clodfelter

APPEARANCES:

For Timbermill Wind, LLC:

Katherine E. Ross and E. Merrick Parrott, Parker Poe Adams & Bernstein  
LLP, 301 Fayetteville Street, Suite 1400, Raleigh, NC 27601

For the Using and Consuming Public:

Robert B. Josey and Reita D. Coxton, Public Staff – North Carolina Utilities  
Commission, 4326 Mail Service Center, Raleigh, NC 27699-4300

BY THE COMMISSION: On June 14, 2021, Timbermill Wind, LLC (Timbermill or Applicant), filed an application for a Certificate of Public Convenience and Necessity (CPCN), pursuant to N.C. Gen. Stat. § 62-110.1(a) and Commission Rule R8-63, for the construction of a wind energy facility with a capacity of up to 189 MW<sub>AC</sub> (Facility) to be located in Chowan County in Docket No. EMP-118, Sub 0 (Facility CPCN Application). On the same date, Timbermill prefiled the direct testimony of Jimmy Merrick, Deepesh Rana, Ellen Balfrey, Emmanuel Wemakoy, and Jeremy Spaeth in support of the Facility CPCN Application. Timbermill contemporaneously filed to register as a New Renewable Energy Facility in accordance with Commission Rule R8-66 (Registration).

On June 21, 2021, Timbermill filed an application for a Certificate of Environmental Compatibility and Public Convenience and Necessity (CECPCN) pursuant to N.C.G.S. § 62-101 to construct an approximately 6-mile 230 kV transmission line to allow interconnection of the Facility to the existing 230 kV Winfall-Mackeys transmission line operated by Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC) in Docket No. EMP-118, Sub 1 (Transmission Line CECPCN Application, and, together with the Facility CPCN Application, the Applications). On the same date, Timbermill prefiled the direct testimony of Brie Anderson, Jimmy Merrick, Emmanuel Wemakoy, and Jeremy Spaeth in support of the Transmission Line CECPCN Application.

On June 22, 2021, the Commission issued an Order Scheduling Public Hearing, Requiring Public Notice, and Requiring Clearinghouse Review for the Transmission Line CECPCN Application.

On June 28, 2021, the Public Staff filed a Notice of Completeness stating that it had reviewed the Facility CPCN Application as required by Commission Rule R8-63(d) and considered it to be complete. In addition, the Public Staff requested that the Commission issue a procedural order.

On June 29, 2021, Timbermill filed a supplement to its Facility CPCN Application confirming that the interconnection costs referenced in Mr. Rana's prefiled direct testimony were included in the estimated construction costs identified in the Facility CPCN Application.

On July 2, 2021, Timbermill made an informational filing related to its Transmission Line CECPCN Application stating that the summary of the Transmission Line CECPCN Application had not run in the newspaper of general circulation in Chowan County on July 1, 2021, as scheduled, due to an inadvertent publication error by the newspaper. Timbermill stated that the summary had been published on the newspaper's website and that the newspaper would extend the physical publication by a week so that the summary would be published in the physical newspaper four times.

On July 22, 2021, the Commission issued an Order Consolidating Dockets, Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (Procedural Order), that scheduled hearings, established a procedural schedule, and directed the Applicant to publish notice of the Applications once

a week for four successive weeks. That Order required Timbermill to answer certain questions regarding, among other things, the presence and amount of Network Upgrade costs or Affected System costs, interconnection studies, and the output of the proposed Facility.

On July 27, 2021, Patrick Flynn filed a letter with the Commission seeking to intervene in the proceedings on behalf of his wife and himself.

Beginning on July 27, 2021, more than 30 members of the public filed consumer statements of position. Consumer statements are filed in Docket No. EMP-118, Sub OCS.

On July 30, 2021, Patrick Flynn filed additional comments about the proposed Facility.

Also on July 30, 2021, the North Carolina Department of Administration (NC DOA) filed comments regarding the Transmission Line CECPCN Application via the State Clearinghouse. NC DOA's filing stated that it had determined that no further State Clearinghouse review action on Timbermill's part was needed for compliance with the North Carolina Environmental Policy Act.

On August 11, 2021, NC DOA filed additional comments regarding the Transmission Line CECPCN Application via the State Clearinghouse. NC DOA's filing stated that the Department of Natural and Cultural Resources (DNCR) requested additional information.

Also on August 11, 2021, Timbermill filed a motion to deny Mr. Flynn's petition to intervene based on Commission Rules R1-19 and R1-22.

On August 25, 2021, Timbermill prefiled the supplemental testimony and exhibits of Jimmy Merrick to provide responses to the questions the Commission asked in its Procedural Order.

On August 26, 2021, NC DOA filed comments regarding the Facility CPCN Application via the State Clearinghouse. NC DOA's filing stated that the DNCR requested additional information.

On September 21, 2021, Timbermill filed an updated site plan showing minor revisions to certain Facility components within the project area.

On September 29, 2021, the Public Staff filed the testimony of Public Staff Witness Jeff T. Thomas.

On September 30, 2021, Timbermill filed affidavits of publication associated with both Applications.

On October 4, 2021, Patrick Flynn filed a Petition for Investigation and Rulemaking of Timbermill Wind, LLC's Certificate of Environmental Compatibility and Public Convenience Application.

On October 8, 2021, the Commission issued an Order Acknowledging Filings as Public Comments, which denied the petition to intervene of Patrick and Belinda Flynn and accepted the filings as public comments.

On October 11, 2021, the Commission filed an Order Establishing Remote Procedures for Expert Witness Hearing.

On October 14, 2021, the Commission conducted a hearing in Edenton, North Carolina to receive public witness testimony. The following public witnesses appeared and gave testimony at this hearing: John Mitchener, Frank Sellers, Jean Harold Bunch, John Guard, Patrick Flynn, and Jeff Smith.

On October 15, 2021, Timbermill filed the prefiled direct testimony and exhibit of Hank Seltzer in substitution of the prefiled direct testimony of Brie Anderson.

Also on October 15, 2021, Timbermill filed a Motion to Cancel the Evidentiary Hearing. The Public Staff did not object to the Motion.

On October 18, 2021, Timbermill filed a letter stating that it had secured amendments to expired site control agreements and, as such, had site control over the entire project area.

On October 20, 2021, both Timbermill and the Public Staff filed written consents to hold the October 27, 2021, evidentiary hearing by remote means. Also on October 20, 2021, the Commission issued an Order Denying Motion to Cancel Evidentiary Hearing.

On October 26, 2021, Timbermill and the Public Staff filed a joint motion for witnesses to be excused from appearance at the evidentiary hearing (Joint Motion).

On October 27, 2021, the matter came on for evidentiary hearing as ordered. The Commission granted the Joint Motion in part, excusing from appearance Timbermill witnesses Jeremy Spaeth, Emmanuel Wemakoy, and Hank Seltzer and accepting their prefiled testimony into the record. The Applicant presented the direct and supplemental testimony and exhibits of Jimmy Merrick, the direct testimony of Ellen Balfrey, and the direct testimony and exhibit of Deepesh Rana. The Public Staff presented the direct testimony and exhibit of Jeff T. Thomas.

On December 20, 2021, Timbermill and the Public Staff filed a Joint Proposed Order Granting Certificates.

On January 18, 2022, Patrick Flynn filed an additional consumer statement and a revised consumer statement.

On February 11, 2022, the State Clearinghouse filed comments and indicated that no further State Clearinghouse review action was needed for compliance with the North Carolina Environmental Policy Act.

## **FINDINGS OF FACT**

1. Timbermill Wind, LLC is a Delaware limited liability company authorized to do business in the State of North Carolina. Timbermill is a wholly owned indirect subsidiary of Apex Clean Energy Holdings, LLC (Apex).

2. In compliance with N.C.G.S. § 62-110.1 and Commission Rule R8-63, the Applicant filed with the Commission an application for a CPCN authorizing the construction of the Facility to be built on approximately 6,300 acres in Chowan County east of Sandy Ridge Road, southwest of Center Hill Highway, and north of US Highway 17. Contemporaneous with the CPCN Application, Timbermill filed its registration as a New Renewable Energy Facility pursuant to N.C.G.S. § 62-133.8 and Commission Rule R8-66.

3. In compliance with N.C.G.S. § 62-101 et seq. and Commission Rule R8-62, the Applicant filed with the Commission an application for a CECPCN authorizing the construction of the approximately 6-mile 230 kV Transmission Line to interconnect the Facility to the existing 230 kV Winfall-Mackeys transmission line operated by DENC.

4. The Applications have met all requirements for publication of notice.

5. Timbermill is financially and operationally able to undertake the construction and operation of the Facility.

6. The Facility is a wind energy facility and will interconnect to the grid operated by DENC. Construction of the Facility is anticipated to begin in November 2022 and the expected commercial operation date for the Facility is as early as October 2023.

7. The Facility's anticipated net production capacity is approximately 465,000 MWh per year.

8. The Facility will generate renewable energy certificates (RECs) that could be used by electric power suppliers to meet the requirements of the renewable energy and energy efficiency portfolio standards in North Carolina, in other jurisdictions having similar standards, or for purposes of meeting voluntary corporate environmental standards.

9. It is reasonable and appropriate to accept the registration of the Facility as a New Renewable Energy Facility pursuant to N.C.G.S. § 62-133.8 and Commission Rule R8-66.

10. On August 11, 2021, NC DOA, through the State Clearinghouse, requested additional information regarding the Transmission Line. On August 26, 2021, NC DOA,

through the State Clearinghouse, requested additional information regarding the Facility. NC DOA concluded that no further State Clearinghouse review action on Timbermill's part is needed for compliance with the North Carolina Environmental Policy Act.

11. The six-mile 230 kV transmission line will allow interconnection of the proposed Facility to an existing transmission line owned by DENC.

12. The Transmission Line CECPCN Application meets the requirements of N.C.G.S. § 62-102.

13. The Applicant has carried its burden of proof under N.C.G.S. § 62-105(a) through substantial, competent evidence showing that:

- a) the proposed transmission line is necessary to satisfy the reasonable needs of the public for an adequate and reliable supply of electricity;
- b) when compared with reasonable alternative courses of action, construction of the transmission line in the proposed location is reasonable, preferred, and in the public interest;
- c) the costs associated with the proposed transmission line are reasonable;
- d) the impact that the proposed transmission line will have on the environment is justified considering the state of available technology, the nature and economics of the alternatives, and other material considerations; and
- e) the environmental compatibility, public convenience and necessity require the construction of the transmission line.

14. It is in the public interest, reasonable, and appropriate to grant the Transmission Line CECPCN.

15. Timbermill has a fully executed Interconnection Service Agreement (ISA) with DENC. Under the ISA, Timbermill is responsible for \$7,093,084 in interconnection costs including Attachment Facilities and Direct Connection Network Upgrades associated with a new three-breaker ring bus switching station and minimal relay upgrades at stations along the 230kV Winfall-Mackeys transmission line.<sup>1</sup> Timbermill will not be reimbursed by DENC for the interconnection costs and those costs will not be passed on by DENC to its ratepayers.

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<sup>1</sup> Tr. vol. 2, 55, 64.

16. There are currently no Affected System Network Upgrade costs assigned to this Facility.

17. The ISA is currently in suspension, as allowed under the PJM Interconnection Procedures. Under the procedures, Timbermill may stay in suspension until May 2023 but anticipates requesting the ISA come out of suspension by May 2022. Timbermill maintains its queue position throughout suspension.

18. The Facility has a Levelized Cost of Transmission (LCOT) between \$0.73 and \$1.07,<sup>2</sup> which compares favorably to the LCOT average calculated by the Energy Information Administration (\$0.97) as well as the average LCOTs identified in the 2019 Lawrence Berkeley National Laboratory Interconnection Cost Study (LBNL Study) for new wind facilities in MISO (\$2.48/MWh) and PJM (\$0.30/MWh).

### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4**

These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not in dispute. These findings are supported by the Applications, and the testimony of Timbermill witnesses Merrick and Balfrey.

A copy of the Application for Certificate of Authority to conduct business in North Carolina, filed with the North Carolina Secretary of State on June 18, 2013, was filed in the docket on June 14, 2021, as an exhibit to the Facility CPCN and Transmission Line CECPCN Applications.

An examination of the Applications and testimony and exhibits of Timbermill's witnesses confirms that the Applicant has complied with all filing requirements of the law and Commission rules associated with applying for a certificate to construct a merchant plant and a certificate to construct a transmission line in North Carolina.

State statutes require that the summary of a Transmission Line CECPCN application be published within 10 days of the filing of the application.<sup>3</sup> However, "inadvertent failure of service on or notice to any municipality, county, governmental agency, or other person described in this section may be cured by an order of the Commission designed to give that person adequate notice to enable effective participation in the proceeding."<sup>4</sup> After Timbermill's informational filing notifying the Commission that the newspaper failed to begin publication of the approved Public Notice within 10 days of the Transmission Line CECPCN Application filing, the Commission issued the Procedural Order. The Procedural Order required that the Applicant publish the Public Notice attached to the Procedural Order in a newspaper having general circulation in Chowan County once a week for four successive weeks. The Public Notice

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<sup>2</sup> The LCOT calculated by Public Staff witness Thomas was \$0.73, and the two LCOTs calculated by Timbermill witness Rana were \$0.90 and \$1.07, depending on the length of the Facility's life.

<sup>3</sup> N.C.Gen.Stat. § 62-102(c).

<sup>4</sup> N.C.G.S. § 62-102(d).

covered both the Facility CPCN Application and the Transmission Line CECPCN Application. On September 30, 2021, the Applicant filed the Affidavits of Publication, showing that the Chowan Herald ran ads on its website and in the physical newspaper five times between July 1, 2021, and July 29, 2021. The Commission determines that despite the newspaper's one-week delay in publication of the Transmission Line CECPCN Application summary in July, the public had adequate notice to enable effective participation in the proceedings. Therefore, the Commission concludes that the Applicant timely and adequately published the Public Notice.

#### **EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5**

The evidence supporting this finding of fact is in the Facility CPCN Application and the testimony of Timbermill witnesses Merrick and Balfrey and Public Staff witness Thomas. This finding is not disputed by any party.

Timbermill is a wholly owned indirect subsidiary of Apex. Timbermill was organized to develop the Facility. Financial statements for Apex were provided, under seal, with Timbermill witness Balfrey's testimony as confidential CPCN Application Addendum 2. Apex has the capability to arrange adequate assurances, guarantees, financing, and insurance for Timbermill's development, construction, and operation.

According to Timbermill witness Balfrey's testimony, Apex provides experienced personnel and capital to develop and source financing for its project subsidiaries. Apex will arrange the financing of the Facility, which will include financing on Apex's balance sheet prior to construction and may include various lender facilities that can provide Apex with a surety bond or letter of credit. Apex may also obtain a construction loan closer to construction.

Timbermill witness Merrick testified regarding the managerial and technical capability of Apex. He testified that Apex is an experienced operator of renewable energy facilities. Apex and its affiliated companies currently operate 11 commercial wind farms across North America, totaling more than 2 GW of capacity. The Facility will have on-site monitoring from the O&M office, and there will be a 24/7 remote operations facility.

Based on the foregoing, the Commission concludes that Apex's experience in the construction and operational control of renewable energy facilities demonstrates that Timbermill has access to the financial and operational capabilities necessary to successfully construct the Facility.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-9**

The evidence supporting these findings of fact is in the Applications, the testimony of Timbermill witness Merrick, and the testimony of Public Staff witness Thomas.

According to the Applications and the testimony of Timbermill witness Merrick, the Facility will be located on approximately 6,300 acres in Chowan County, North Carolina.



A map of the proposed project area was included as an exhibit with the Facility CPCN Application, and a map of the Transmission Line corridor was included as an exhibit with the Transmission Line CECPCN Application.

The Transmission Line described in the Transmission Line CECPCN Application will be used to interconnect the Facility to the DENC Winfall–Mackeys transmission line adjacent to the site. As described in the Applications, underground collection lines will connect the turbines together and run to a Collector Substation. The approximately 6-mile Transmission Line will run from the Collector Substation to a new three-breaker ring bus switching station, which will be constructed and owned by DENC.

The Facility seeks to be registered as a New Renewable Energy Facility and as such will be eligible to participate in NC-RETS for the generation of RECs. The RECs will be eligible to be sold to and then used by an electric power supplier to meet the requirements of the renewable energy and energy efficiency portfolio standards in North Carolina.

If a renewable energy facility is not registered with the Commission, then electric power suppliers cannot use RECs the facility earns to comply with their obligations in N.C.G.S. § 62-133.8. The registration process is set forth in Commission Rule R8-66. The Commission concludes that Timbermill has complied with the Commission’s rules for registration as a New Renewable Energy Facility. Timbermill shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year. To the extent that Timbermill is not otherwise participating in a REC tracking system, it will be required to participate in the North Carolina Renewable Energy Tracking System (NC-RETS) to facilitate the issuance of RECs.

#### **EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 10-14**

The evidence supporting these findings of fact is in the Applications, the State Clearinghouse Comments filed between July 30, 2021 and August 26, 2021, the testimony of Timbermill witnesses Merrick and Seltzer, and the testimony of Public Staff witness Thomas.

The evidence supporting the findings of fact specific to the Transmission Line CECPCN is found in the application and its Exhibits 2 and 3, and in the testimony of Applicant witnesses Merrick, Anderson, and Wemakoy and Public Staff witness Thomas. Further, a detailed environmental report was filed with the Transmission Line CECPCN Application. The environmental report satisfies the requirements of N.C.G.S. § 62-102 and Commission Rule R8-62.

On July 30, 2021, the NC DOA, through the State Clearinghouse, filed a letter in Docket No. EMP-118, Sub 1. The letter included comments from multiple state agencies and stated that no further State Clearinghouse review action was needed for compliance with the North Carolina Environmental Policy Act. On August 11, 2021, NC DOA, through the State Clearinghouse, filed additional comments in EMP-118, Sub 1, requesting

additional information about an archaeological survey of the Facility site. In its additional comments, NC DOA included a letter from DNCR recommending that the Commission not issue the Transmission Line CECPCN until an archaeological survey report was submitted to DNCR for review. The same letter was filed in Docket No. EMP-118, Sub 0, on August 26, 2021. Timbermill completed additional fieldwork and coordinated with the State Historic Preservation Office on the final archaeological report. Public Staff witness Thomas stated in his pre-filed direct testimony that the Public Staff recommended that the Commission issue the Facility CPCN and the Transmission Line CECPCN only after the Applicant demonstrated that it had resolved DNCR's concerns by filing a letter and supporting documentation with the Commission. At the evidentiary hearing, Public Staff witness Thomas clarified that the typical process is that the DNCR would notify the State Clearinghouse and the State Clearinghouse would file the letter rather than the Applicant.<sup>5</sup>

On February 11, 2021, the State Clearinghouse filed comments with the Commission in both dockets indicating that no further State Clearinghouse review action is needed for compliance with the North Carolina Environmental Policy Act. Therefore, the Commission concludes that Timbermill has complied with the North Carolina Environmental Policy Act and that the Act does not prohibit or impede issuance of either certificate of authority. However, the Commission notes that the Timbermill Facility is also subject to the North Carolina Department of Environmental Quality's (NCDEQ's) permitting requirements under N.C.G.S. §§ 143-215.115-125. The Facility and associated transmission line shall be constructed and operated only after the Applicant receives all necessary environmental or other permits and approvals, including any necessary permits under N.C.G.S. §§ 143-215.115-125.

Under N.C.G.S. § 62-101(a), only a public utility may obtain a certificate to construct a new transmission line, except an entity may obtain a certificate to construct a new transmission line solely for the purpose of providing interconnection of an electric generation facility. Because Timbermill is not a public utility, it may only obtain a CECPCN to provide interconnection to its generation facility. The CECPCN for the Applicant's proposed transmission line is conditioned on the Applicant's maintaining the CPCN for the proposed Facility.

The Commission concludes that the Applicant has complied with N.C.G.S. § 62-102(a) and Commission Rule R8-62 and has entered evidence and testimony into the record demonstrating that it has met its burden of proof for construction of the proposed transmission line under N.C.G.S. § 62-105.

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<sup>5</sup> Tr. vol. 2,112.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-18

The evidence supporting these findings of fact is in the Facility CPCN Application, the testimony of Timbermill witnesses Merrick and Rana, and the testimony of Public Staff witness Thomas.

N.C.G.S. § 62-110.1(a) provides that no generating facility may be constructed without first obtaining from the Commission a certificate that that public convenience and necessity requires, or will require, such construction. N.C.G.S. § 62-110.1(e) provides further that “no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that the construction will be consistent with the Commission’s plan for expansion of electric generating capacity.” Commission Rule R8-63(b)(3) also requires a merchant plant application to include a description of the need for the facility in the “state and/or region.” This requirement is an outgrowth of the 1991 Empire Power Company case in Docket No. SP-91, Sub 0. In 2001, the Commission initiated a generic proceeding in Docket No. E-100, Sub 85, to consider changes in the certification requirements for merchant plants. As impetus for its Order, the Commission cited the Energy Policy Act of 1992, which encouraged independent power production and competition in the wholesale power market through the creation of exempt wholesale generators and the ability of the Federal Energy Regulatory Commission to issue wheeling orders requiring utilities to allow access to their transmission grids for wholesale power transactions.<sup>6</sup> Further, the Commission cited FERC Order 2000 as “encouraging the formation of regional transmission organizations which would operate interconnected transmission systems, reduce the cost of transmitting power to more distant markets, and further enhance wholesale competition.”<sup>7</sup> In the E-100, Sub 85, Order, the Commission ordered the Public Staff to file a proposal for certification requirements for merchant plants.<sup>8</sup> In its proposal, the Public Staff recommended that the Commission address in its proceeding how the public convenience and necessity for an IPP would be demonstrated “when the facility is intended in whole or in part to serve: . . . Load outside of North Carolina, on varying bases and for varying duration.”<sup>9</sup>

In its Order adopting the certification rule, the Commission stated “[i]t is the Commission’s intent to facilitate, and not to frustrate, merchant plant development. Given the present statutory framework, the Commission is not in a position to abandon any showing of need or to create a presumption of need. However, the Commission believes that a flexible standard for the showing of need is appropriate.”<sup>10</sup> Although previously emphasized in the Order adopting the certification rule, the Commission emphasizes

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<sup>6</sup> Order Initiating Further Proceedings, *Investigation of Certification Requirements for New Generating Capacity in North Carolina*, No. E-100, Sub 85, at 3 (N.C.U.C. February 7, 2001).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Public Staff’s Initial Comments, *Investigation of Certification Requirements for New Generating Facilities*, No. E-100, Sub 85, at 8 (January 10, 2000).

<sup>10</sup> Order Adopting Rule, *Investigation of Certification Requirements for New Generating Facilities*, No. E-100, Sub 85, at 7 (N.C.U.C. May 21, 2001).

again that the analysis of whether the public convenience and necessity requires the construction of a specific merchant facility is flexible and, to this end, must focus on the facts and circumstances presented by the application and, additionally, must evolve as North Carolina's underlying electric system evolves. Thus, while it remains the case that it is not the Commission's intent to frustrate merchant plant development, it also remains the Commission's obligation to determine whether granting an application for a CPCN is in the public interest.<sup>11</sup>

In fulfilling these obligations imposed by statute and rule, the Commission has determined, in the context of CPCN applications for merchant plant facilities, that "it is appropriate for the Commission to consider the total construction costs of a facility, including the cost to interconnect and to construct any necessary transmission Network Upgrades, when determining the public convenience and necessity of a proposed new generating facility."<sup>12</sup>

The Commission also has determined that "the use of the levelized cost of transmission (LCOT) provides a benchmark as to the reasonableness of the transmission Network Upgrade cost associated with interconnecting a proposed new generating facility."<sup>13</sup>

In explaining its analysis of these issues, the Commission has explained that "the very reason the CPCN statute was enacted was to stop the costly overexpansion of facilities to serve areas that did not need them"<sup>14</sup> and has noted, based on policies established explicitly in N.C.G.S. § 62-2, that the "legislature intends the Commission to encourage cost-efficient siting of generation facilities, and thus that the Commission has the authority to consider all costs borne as a result of that siting decision."<sup>15</sup>

In this instance, the Facility CPCN Application provides a total cost for the Facility, which includes approximately \$3.5 million for the transmission line and \$7 million for associated Network Upgrades. Timbermill Wind entered into an ISA and an Interconnection Construction Services Agreement with DENC in December 2015. While the ISA is currently in suspension, when the Facility comes out of suspension, PJM, DENC, or both may engage in a limited sensitivity analysis related to interconnection, but

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<sup>11</sup> See Order Granting Certificate, *Application of Rowan Generating Company, LLC, for a Certificate of Public Convenience and Necessity to Construct a Generating Facility in Rowan County, North Carolina*, No. EMP-3, Sub 0, at 8 (N.C.U.C. October 12, 2001) (stating that the Commission is "mindful that issues regarding the appropriate amount of merchant plant generation in the State remain to be decided.").

<sup>12</sup> See Order Denying Certificate of Public Convenience and Necessity for Merchant Plant Generating Facility, *In the Matter of Application of Friesian Holdings, LLC for a Certificate of Convenience and Necessity to Construct a 70-MW Solar Facility in Scotland County, North Carolina*, No. EMP-105 Sub 0, at 6 (N.C.U.C. June 11, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 17. See also *High Rock Lake Ass'n*, 97 N.C. App. at 140-41, 245 S.E.2d at 790; *State ex rel. Utils. Comm'n v. Empire Power*, 112 N.C. App. 265, 280, 435 S.E.2d 553, 561 (1994).

<sup>15</sup> *Id.* at 17-18.

the Facility will not be subject to restudy and will retain its interconnection queue position. The Facility's queue position and associated Network Upgrades are included in the baseline for all PJM studies for generators in later queue positions, and as a result, once the Facility exits suspension, it is unlikely that PJM or DENC will identify any additional, significant upgrade costs assignable to the Facility. No adjacent transmission operators have been assigned any Affected System Network Upgrade costs to the Facility. The evidence before the Commission is that there are no adjoining transmission systems that would incur Affected System costs as a result of interconnection of the Facility to the DENC system.<sup>16</sup>

Pursuant to the terms of the ISA and the applicable regulatory paradigm, Timbermill will bear all costs associated with the interconnection of the Facility, including costs associated with the Transmission Line and with the Network Upgrades. Additionally, Timbermill will bear all costs associated with the construction of the generating Facility. Therefore, it is unlikely that retail ratepayers in North Carolina will bear unreasonable risk associated with the construction of the Facility. The Applicant provides that the LCOT for the Network Upgrades is somewhere between \$0.73 and \$1.07,<sup>17</sup> which compares favorably to the LCOT average calculated by EIA (\$0.97) as well as the average LCOTs identified in the 2019 LBNL Study for new wind generators in MISO (\$2.48/MWh) and PJM (\$0.30/MWh). These data points are not contested by the Public Staff, and witness Thomas testifies that Timbermill Wind's LCOT is in line with other wind projects in the region and that, in any case, as Timbermill Wind will be responsible for paying the interconnection-related costs, North Carolina ratepayers will not bear any portion of the cost.<sup>18</sup> For this reason, the LCOT weighs favorably in the Commission's decision.

In its analysis of public convenience and necessity in the context of merchant generating facilities, the Commission has considered the long-term energy and capacity needs in the State and region, as well as system reliability concerns.

The Commission notes that the Applicant has not executed a contract for the Facility's output as of the date of this Order. However, it has provided sufficient evidence of negotiations with multiple offtakers for the energy and capacity of the Facility.<sup>19</sup> For this reason, the Commission has analyzed and given weight to evidence, contemplating a sale to either DEP or DEC or an offtaker in PJM.

The Facility CPCN Application and testimony of Timbermill witness Merrick and the testimony of Public Staff witness Thomas indicate that the Facility may help meet increases in peak energy requirements forecasted in DENC's most recent Integrated

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<sup>16</sup> Tr. vol. 2, 95-96.

<sup>17</sup> The LCOT calculated by Public Staff witness Thomas was \$0.73, and the two LCOTs calculated by Timbermill witness Rana were \$0.90 and \$1.07, depending on the length of the Facility's life.

<sup>18</sup> Tr. vol. 2, 98.

<sup>19</sup> Tr. vol. 2, 57-58.

Resource Plan, as well as contribute to meeting increases in peak load growth forecasted for PJM.

As described in the direct testimony of Applicant's witness Merrick, the 2020 IRP of DENC forecasts that its load serving entity peak and energy requirements are estimated to grow at approximately 1.0% and 1.3% annually throughout the 15-year planning period. Additionally, Merrick testifies that each alternative plan in the DENC IRP calls for a significant amount of retirement of coal-fired and inflexible, higher cost oil and natural gas-fired generation, ranging from 3,030 MW to 3,183 MW over the 15-year planning period and 4,651 MW to 13,978 MW over the 25-year planning period. Merrick testifies that the IRP includes an analysis of the annual assumed levelized cost of energy of select new renewable capacity options and concludes that "onshore wind resources reflect the most economic option in the near-term given the ability to take advantage of production tax credits."<sup>20</sup>

Witness Merrick also testifies that in addition to needs specific to DENC, significant need exists in the PJM Interconnection (PJM) region into which the Facility will be interconnected. He testifies that summer peak load in PJM is expected to grow by 0.6% per year over the next 10 years and by 0.5% over the next 15 years. He testifies that, specifically as relates to the Dominion zone, summer peak load is expected to grow by 1.2% per year over the next 10 years and 1.0% per year over the next 15 years. He testifies that the anticipated 10-year summer peak load growth in the Dominion Virginia Power zone represents 4.6% growth over the January 2019 load forecast report. Further, witness Merrick testifies that winter peak load growth in PJM is projected to average 0.4% per year over the next 10-year period and 0.3% over the next 15 years. He testifies that winter peak load growth for the Dominion zone specifically is expected to grow by 1.4% per year over the next 10 years and 1.2% per year over the next 15 years. He testifies that the anticipated 10-year winter peak load growth in the Dominion zone represents 15.7% growth over the January 2019 load forecast report.

With respect to system reliability and service quality issues, at the hearing, witness Merrick testified as to the typical operating profile of wind generation and testified that "wintertime is a stronger wind resource also than in the summer." Public Staff witness Thomas reiterates this point in his testimony and does not contest it,<sup>21</sup> and, at the hearing, testified that the operating profile of the Facility aligns particularly well with the needs of the DEP service area, given that DEP is winter planning and that its 2020 IRP calls for onshore wind resources.<sup>22</sup> In considering this evidence the Commission observes that the operating and performance characteristics of this wind generation facility, which differ from those of other renewable resources such as solar generating facilities, will thus contribute to resource diversity and add balance to the generating resource portfolios of the regulated North Carolina utilities and/or those within the PJM region. The Commission

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<sup>20</sup> Tr. vol. 2, 46-47.

<sup>21</sup> Tr. vol. 2, 93.,

<sup>22</sup> Tr. vol. 2, 104-105.

considers resource diversity and portfolio balance to support the showing of public convenience and necessity in this case.

Therefore, after having carefully considered and weighed the evidence presented in this proceeding, the Commission is persuaded that granting the Facility CPCN is in the public convenience and necessity.

However, the certificate will be conditioned in the manner described below to ensure that the Commission is notified of any future material revisions in the cost estimates for the interconnection facilities and Network Upgrades, including Network Upgrades on Affected Systems.

Additionally, for all the reasons explained in this Order and because it is necessary to connect the Facility to the electric system, and subject to the conditions imposed herein, the construction of the Transmission Line is in the public interest and justified by the environmental compatibility, public convenience, and necessity as required by N.C.G.S. § 62-101 *et. seq.*

IT IS THEREFORE, ORDERED as follows:

1. A CPCN is hereby granted to Timbermill for the construction of a wind energy facility of up to 189-MW<sub>AC</sub> to be located in Chowan County, North Carolina, subject to the following conditions:

- (i) The Applicant shall notify the Commission of any significant change (greater than 10%) in the cost estimates for the acquisition, construction, and interconnection of the Facility, and for any Network Upgrades or Affected System costs, within 30 days of becoming aware of such change;
- (ii) The Facility shall be constructed and operated in strict accordance with applicable state and federal laws and regulations, including any local zoning requirements and environmental permitting requirements;
- (iii) The CPCN and the CECPCN shall be subject to Commission Rule R8-63(e) and (f) and all orders, rules, and regulations as are now or may hereafter be lawfully made by the Commission; and
- (iv) Timbermill shall not assert that the issuance of these certificates in any way constitutes authority to exercise any power of eminent domain to secure rights of way, and the Applicant and its successors shall abstain from attempting to exercise such power.

2. That the registration statement filed by Timbermill for its wind energy facility located in Chowan County, North Carolina, as a New Renewable Energy Facility shall be, and is hereby, accepted;

3. That Timbermill shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year; and

4. That a CECPCN is hereby granted to Timbermill for the construction of an approximately 6-mile 230 kV transmission line to interconnect the Facility to the existing 230 kV Winfall-Mackeys transmission line operated by DENC. The Transmission Line CECPCN shall be effective so long as the Facility CPCN is effective.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of May, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, appearing to read "Joann R. Snyder".

Joann R. Snyder, Deputy Clerk



**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP-118, SUB 0

KNOW ALL PERSONS BY THESE PRESENTS THAT

Timbermill Wind, LLC  
310 4<sup>TH</sup> Street NE  
Suite 300  
Charlottesville, VA 22902

is hereby issued this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO  
N.C. GEN. STAT. § 62-110.1

for a 189-MW wind energy facility

located

on approximately 6,300 acres of privately held property in Chowan County, North  
Carolina,

subject to receipt of all federal and state permits as required by existing and  
future regulations prior to beginning construction and further subject to all other orders,  
rules, regulations, and conditions as are now or may hereafter be lawfully made by the  
North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of May, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Joann R. Snyder, Deputy Clerk

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP-118, SUB 1

KNOW ALL PERSONS BY THESE PRESENTS THAT

Timbermill Wind, LLC  
310 4<sup>TH</sup> Street NE  
Suite 300  
Charlottesville, VA 22902

is hereby issued this

**CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE  
AND NECESSITY PURSUANT TO N.C. GEN. STAT. § 62-102**

to construct approximately 6 miles of new 230 kV transmission line in Chowan County, North Carolina, to allow interconnection of Timbermill Wind's wind energy facility to be constructed in Chowan County to the existing 230 kV Winfall-Mackeys transmission line operated by Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina

subject to receipt of all federal and state permits as required by existing and future regulations prior to beginning construction and further subject to all other orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of May, 2022.

NORTH CAROLINA UTILITIES COMMISSION



Joann R. Snyder, Deputy Clerk