STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition to Revise Commission Rules R8-63 and R8-64	))))	CCEBA'S COMMENTS IN RESPONSE TO PETITION

NOW COMES the Carolinas Clean Energy Business Association ("CCEBA"), pursuant to the Commission's October 19, 2021 Order Granting Extension, and files these comments responsive to the Public Staff's Petition to Amend Commission Rules R8-63 and R8-64 ("Petition"). Rule R8-63 applies to the application for a Certificate of Public Convenience and Necessity ("CPCN") by any person, other than a utility, seeking to construct a merchant plant in North Carolina and sell its output at wholesale. Rule R8-64 applies to the application for a CPCN by any person, other than a utility, seeking to construct a facility as a qualifying co-generator or a qualifying small power producer pursuant to the Public Utilities Regulatory Policy Act of 1978 ("PURPA").

In general, CCEBA supports changes that seek to harmonize the application requirements imposed by the two rules on applicants for a CPCN. However, the Public Staff's proposed rule changes seek to impose new requirements which would leave CPCN applicants subject to delays imposed by third parties which are out of the applicant's control. In addition, the proposed changes would require an applicant to subject themselves to significant withdrawal penalties in the interconnection study process in order to obtain the information required for a CPCN application, but would then cause the applicant (in most cases) to forfeit those penalties if its CPCN application

were to be denied. CCEBA therefore cannot support the changes proposed by the Public Staff in the form submitted.

Discussion

A. Substantial Regulatory Changes due to House Bill 951

As an initial matter, CCEBA notes that these proposed rule changes were filed on August 19, 2021. Weeks later, on October 7, 2021, Governor Cooper signed S.L. 2021-165, also known as House Bill 951 ("HB 951"), which imposes a new policy requiring the Commission to "take all reasonable steps to achieve a seventy percent (70%) reduction in emissions of carbon dioxide (CO2) emitted in the State from electric generating facilities owned or operated by electric public utilities from 2005 levels by the year 2030 and carbon neutrality by the year 2050." (HB 951, Part I, Section 1.) Among other requirements, the Commission is required to "[d]evelop a plan, no later than December 31, 2022, with the electric public utilities, including stakeholder input, for the utilities to achieve the authorized reduction goals, which may, at a minimum, consider power generation, transmission and distribution, grid modernization storage, energy efficiency measures, demand-side management, and the latest technological breakthroughs to achieve the least cost path" toward such goals. (Id.)

The Public Staff claims in its Petition that the proposed revisions to Rule R8-63 are necessary in part by "new constraints on the system caused by high penetrations of solar facilities in certain regions." (Petition, p. 3.) However, the enactment of HB 951 shows that it is the General Assembly's intent that significant additional such penetration needs to occur prior to 2030 and that the manner of achieving that goal will be in large part up to the Commission to determine. By December 31, 2022, the Commission must

develop a plan that will fundamentally alter the energy market in this state and result in the required 70% reduction of carbon dioxide emissions. The Commission's plan will likely affect the requirements for CPCN applications.

B. CCEBA's Comments on Proposed Amendments to R8-63

The Public Staff's Petition seeks to revise R8-63, which governs application for CPCNs for merchant plants, "to include the information needed from merchant generator applicants, including total construction costs, for the application to be considered complete by the Public Staff and the Commission." (Petition at 4.) This information would include "information related to interconnection studies." (Id. at 7.) The Public Staff states: "In order to properly evaluate the reasonableness of the construction costs, the Public Staff believes that the interconnection studies, including system impact study and facilities study, are necessary in order for the Commission to make a finding that construction will be consistent with the plan for expansion of electric generating capacity." (Id.)

The primary proposed text change to achieve these stated goals appears in new R8-63(b)(5), which would require Exhibit 5 to a merchant plant application to include:

> (5) Exhibit 5 shall contain:
>
> (i) An estimate of the construction cost of the facility.
> (ii) A feasibility study obtained from the interconnecting utility.
> (iii) A system impact study obtained from the interconnecting utility.
> (iv) A facilities study obtained from the interconnecting utility detailing final interconnection facilities and network upgrade costs.
> (v) An affected system study from any neighboring utilities detailing any network upgrade costs. If an affected system study has not been completed, include a certified statement from the neighboring utility that the facility has been considered for affected system impacts and it has been determined that there are not any such impacts or required upgrades.

> (vi) A Levelized Cost of Transmission (dollars per megawatt hour (alternating current)) calculation compared to the production output of the life of the facility. The calculation shall be inclusive of any network and system upgrades required for interconnection and operation of the facility and include a description of the inputs used in the calculation.

Likewise, the proposed edits would require an "Exhibit 6" to a merchant plant application to include:

> (iii) 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, and capacity expansion plan.

CCEBA submits that requiring the *completion* of multiple studies that are performed by third parties would impose a burden on applicants which is greater than warranted by the concerns addressed in the Petition. The proposed rule requires no fewer than four studies be completed by one or more utilities, including system impact studies and affected system studies which have been notoriously difficult to obtain in a timely manner from incumbent utilities and nearby affected systems, such as PJM. (*See* Complaint filed by CCEBA before the Federal Energy Regulatory Commission, docket EL21-92-000, detailing years-long delays in obtaining system impact and affected system studies related to interconnection along certain congested lines which cross the Duke Energy / PJM boundary.[1])

CCEBA opposes any rule change which would determine the readiness of a merchant plant CPCN application solely on the basis of whether a third party completely outside the control of the applicant has performed studies in a timely fashion. Of even greater concern is the fact that the Public Staff's proposal would have the effect of

[1] This Complaint was voluntarily dismissed by the Complainant in furtherance of discussions to resolve the backlogs. The matter remains under discussion.

subjecting CPCN applicants to huge penalties if they are required to withdraw from the queue because the Commission denies them a CPCN. Owners of merchant plants should have the right and ability to know going into the interconnection study process whether and under what circumstances the Commission will certificate their projects. The solution to this situation is the one proposed by Juno Solar, LLC, in its pending CPCN proceeding in Docket No. EMP-116, Sub 0, which is the issuance of a CPCN conditioned upon a defined level of reimbursable upgrade costs—expressed as levelized cost of transmission, or LCOT—deemed by the Commission to be reasonable. A CPCN conditioned upon a reasonable LCOT value would ensure that the reimbursable upgrade costs will not unduly burden the North Carolina retail ratepayers or the wholesale customers.

The problems inherent in these study requirements are clearly discernible when evaluating the proposed change to Rule R8-63(e)(4), which would require a successful CPCN holder to notify the Commission in writing "of any significant changes in the information set forth in subsections (b)(1) thru (b)(8) of this Rule." While the remainder of the proposed rule attempts to clarify the distinction between changes which would require notice and further procedures and those that do not, the proposed amendment leaves unstated whether changes *to the utility's studies* would require a CPCN holder to notify the Commission and amend its certificate. Combined with the increased requirements in subsections (b)(5) and (b)(6), this new notice provision risks introducing substantial unacceptable uncertainty into planning for a facility which is completely outside the control of the applicant.

The Public Staff requests the reduction of the term of CPCNs under Rule R8-63 *and* 64 from 5 years to 3 before renewal is required. CCEBA opposes this suggested revision in both rules. It would impose additional administrative burdens on solar developers, the Public Staff, and the Commission to address what would likely be many renewal requests filed between 3 and 5 years after granting of the initial CPCN. Many of those projects would likely go forward before the 5-year period was up. Thus, the increased administrative burden is unnecessary and without concomitant benefit. Moreover, the requirement that a new CPCN application must be submitted along with a renewal request would address the Public Staff's stated concern about "stale" information for older projects needing renewal. CCEBA therefore opposes this proposed revision and requests the Commission leave the CPCN term at 5 years before renewal is required.

While CCEBA considers the above objections as controlling and outweighing any other proposed changes to R8-63, CCEBA does note that not all of the proposed edits are objectionable. For instance, the proposed changes to the requirements to be included in Exhibits 3, 7, and 8 include materials that are similar to those currently required of small power producer applicants under Rule R8-64. Therefore, CCEBA does not oppose these requirements set forth in proposed Rule R8-63(b)(3), (7) and (8).

CCEBA further supports the proposal by the Public Staff to remove the current provision in Rule R8-63(11), which requires the Chief Clerk to deliver a copy of the application to the Clearinghouse Coordinator in the Department of Administration for distribution to State agencies. The proposed rule eliminates this requirement and allows the compliance with state law and policies to be enforced by notice to the public and the investigation of complaints. CCEBA agrees that this proposal removes a source of delay

without benefit, in that those agencies notified through the Clearinghouse do not have enforcement authority against applicants in any event. Issues which may affect the Commission's decision whether or not to grant a certificate are best addressed by the Commission itself, and the proposed rule preserves that power.

As stated above, CCEBA opposes the Public Staff's proposed reduction from 5 to 3 years of the term of CPCNs issued under R8-64 before renewal is required.

In sum, while CCEBA does not oppose all of the changes to Rule R8-63 proposed by the Public Staff, its opposition to the requirement of completed studies to be prepared by multiple utilities is firm. CCEBA submits that those objectionable elements of the proposal should be rejected.

C. CCEBA Comments on Proposed Amendments to Rule R8-64

Unlike the proposals to amend Rule R8-63, the Public Staff does not seek to impose the same interconnection study completion requirements upon small power producers seeking a CPCN under Rule R8-64. Changes to Exhibit 3 requiring certain details be provided related to the anticipated date of commencement of construction and operation, as well as the description of interconnection facilities, fencing and storage technologies are not objectionable. In addition, the Public Staff's proposed amendment to Rule R8-64(6) would raise from 5 to 20 megawatts alternating current the nameplate capacity at which a proposed facility would be required to include additional Exhibits 6, 7 and 8. This change too is acceptable to CCEBA.

As with the proposed amendment to R8-63 removing referral of a completed application to the Clearinghouse for review, CCEBA supports the parallel provisions of the proposed amendment to Rule R8-64, for the reasons set forth above.

Conclusion

As discussed above, CCEBA does not object to most of the rule changes proposed by the Public Staff, but strongly opposes the burdensome and inequitable requirements that merchant plants obtain multiple interconnection studies as a pre-condition of applying for a CPCN and requests that the 5-year term for CPCNs before renewal is required under Rule R8-63 and R8-64 be maintained.

Respectfully submitted, this 2nd day of November, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document 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 2d day of November 2021.

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