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April 20, 2020

Ms. Janice Fulmore  
Interim Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603

***RE: 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***  
***DOCKET NO. EMP-105, SUB 0***  
***MOTION FOR EXPEDITED CONSIDERATION OF FRIESIAN HOLDINGS, LLC'S APPLICATION FOR CPCN***

Dear Ms. Fulmore:

On behalf of Friesian Holdings, LLC ("Friesian"), we hereby submit **Friesian's Motion for Expedited Consideration of Friesian Holdings, LLC's Application for CPCN** in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to call me.

Thank you in advance for your assistance.

Sincerely,

/s/ Karen M. Kemerait

Karen M. Kemerait  
skb  
Enclosures

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. EMP-105, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter

Application of Friesian Holdings, LLC for a  
Certificate of Convenience and Necessity to  
Construct a 70-MW Solar Facility in Scotland  
County, North Carolina

MOTION FOR EXPEDITED  
CONSIDERATION OF  
FRIESIAN HOLDINGS,  
LLC'S APPLICATION FOR A  
CPCN

NOW COMES Friesian Holdings, LLC ("Friesian" or the "Applicant"), by and through the undersigned attorneys, and submits this Motion for Expedited Consideration ("Motion") to the North Carolina Utilities Commission ("Commission") in the above-captioned docket.

**I. PROCEDURAL BACKGROUND**

1. The relevant procedural background to Friesian's Motion is as follows:

2. On May 15, 2019, Friesian filed an application pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63 for a certificate of public convenience and necessity ("CPCN") to construct a 70-MWAC solar photovoltaic (PV) electric generating facility located in Scotland County, North Carolina (the "Application" or "CPCN Application").

3. On May 31, 2019, the Public Staff filed a Notice of Completeness stating that the Public Staff had reviewed the Application as required by Commission Rule R8-63(d) and that the Public Staff considered the Application to be complete. In addition, the Public Staff requested that the Commission issue a procedural order setting the Application

for hearing, requiring public notice pursuant to N.C. Gen. Stat. § 62-82, and addressing other procedural matters.

4. On June 13, 2019, the Commission issued an Order that, among other things, scheduled hearings in this proceeding, established a procedural schedule for the filing of petitions to intervene and of testimony, and directed Friesian to publish notice of the public hearing once a week for four consecutive weeks, beginning at least 30 days prior to July 26, 2019.

5. On August 1, 2019, the Public Staff filed a Motion for the Establishment of Due Dates for Pre-Hearing Briefs and Suspension of Evidentiary Hearing. The Public Staff stated that it has identified the following issues that are legal in nature that should be addressed in pre-hearing briefs:

1. The appropriate standard of review for the Commission to apply in determining the public convenience and necessity for a certificate to construct a merchant generating facility pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63;
2. Whether the Commission has authority under state and federal law to consider as part of its review of the CPCN application the costs associated with transmission network upgrades and interconnection facilities necessary to accommodate the [Federal Energy Regulatory Commission (“FERC”)]-jurisdictional interconnection of the merchant generating facility, and the resulting impact of those network costs on retail rates in North Carolina; and
3. Whether the allocation of costs associated with interconnecting the Facility and any resulting additional capacity made available that is then utilized by State-jurisdictional interconnection projects is consistent with the Commission’s guidance in its June 14, 2019 *Order Approving Revised Interconnection Standard and Requiring Reports and Testimony* in which the Commission directed the utilities as follows: “to the greatest extent possible, to continue to seek to recover from Interconnection Customers all expenses ... associated with supporting the generator interconnection process under the NC Interconnections Standard.

Also in the motion, the Public Staff requested that the Commission suspend the evidentiary hearing and allow Friesian and the other parties to file pre-hearing briefs and reply briefs.

6. On August 5, 2019, the Commission issued an Order that suspended the procedural schedule previously established in this proceeding and allowed the filing of pre-hearing briefs and reply briefs.

7. On August 6, 2019, the Commission issued an Order cancelling the public hearing because the Commission had not received any written complaints regarding the Application.

8. On October 3, 2019, the Commission issued an Order scheduling oral arguments for the purposes of receiving arguments from the parties addressing the issues noted in the Commission's August 5, 2019 Order, and, additionally, the questions of whether and, if so, how the July 14, 2017 decision of the U.S. Court of Appeals for the D.C. Circuit in *Orangeburg v. FERC*, 862 F.3d 1071 (2017), applies to the issues noted in the Commission's August 5, 2019 Order.

9. On October 21, 2019, oral argument before the Commission was conducted (the "Oral Argument").

10. On October 25, 2019, the Commission issued an *Interlocutory Order on Legal Issues, Scheduling Hearing, Allowing the Filing of Testimony, and Establishing Discovery Guidelines* (the "Interlocutory Order"). In the Interlocutory Order, the Commission stated that the Commission may consider the costs for future Network Upgrades that are required to accommodate a proposed electric generating facility when considering a CPCN pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63.

The Commission further stated that the Commission's final order on the merits of the CPCN Application will include the Commission's full discussion and findings of fact and ultimate decision to either issue or deny the CPCN. The Commission also scheduled a hearing for the purpose of receiving expert witness testimony for December 18, 2019.

11. The expert witness hearing was held on December 18 and 19, 2019.

## **II. REQUEST FOR EXPEDITED CONSIDERATION OF CPCN APPLICATION WITH A NOTICE OF DECISION**

12. Friesian respectfully requests that the Commission expeditiously issue a Notice of Decision as to its decision to either issue or deny the CPCN, and then provide at a later date the Commission's full discussion and findings of fact of its decision as to the CPCN Application.

13. This matter involves exceptional circumstances that warrant immediate issuance of a Notice of Decision. The exceptional circumstances include the following:

a. The Friesian Project has an executed Large Generator Interconnection Agreement ("LGIA") with certain key posting milestones identified in Appendix B of the LGIA. Failure to meet those milestones will result in a breach of the LGIA and, if uncured, lead to LGIA termination.

b. Friesian has posted the following four separate cash payments to Duke Energy Progress, LLC ("Duke") for the Friesian Network Upgrades totaling \$11 million since execution of the LGIA:

- May 1, 2019: \$1.5 million
- July 26, 2019: \$1.5 million
- December 2, 2019: \$7 million
- January 6, 2020: \$1 million

c. The next payment, known as the surety posting, required by the LGIA is due within ten Business Days of the issuance of the Class III estimate from Duke. Based on the original estimate at the time of LGIA execution, the next posting is \$45,501,400 and is due to be delivered to Duke by April 20, 2020.

d. Based on significant value engineering and refined cost estimates from Duke, the Class III estimate for the Friesian Network Upgrades was substantially reduced from \$227,507,000 at the time of LGIA execution to \$187,251,000 based on the updated Class III estimate. As a result, the expected posting amount has decreased and so have the posting milestones under Appendix B of the LGIA. Duke is working diligently to finalize an amendment to the LGIA to reflect the updated Class III but will not be complete by April 20, 2020.

e. The Commission's decision on the CPCN for the Friesian project is viewed to be a binary financing risk by the financing parties to Friesian. The Friesian financing parties are unable to make additional financial postings, including the \$45 million surety, under the LGIA beyond the \$11 million that has already been posted without a decision from the Commission as to whether the Commission will issue or deny the CPCN.

f. Duke recognizes the facts and circumstances the Friesian project is facing. Despite Duke's indication that they intend to prepare and execute an amendment to adjust the timing and posting amounts under the original LGIA, there is not adequate time to delay the surety posting and prevent declaring a breach under the Friesian LGIA. Duke has limited flexibility on the additional

time it can offer Friesian related to this posting schedule given long lead time equipment orders.

14. Due to the upcoming Class III payment deadline of tens of millions of dollars, Friesian respectfully requests that the Commission issue a Notice of Decision of its ultimate decision on the CPCN Application as soon as possible.

WHEREFORE, in light of the exceptional circumstances described above, Friesian respectfully requests that the Commission expeditiously issue a Notice of Decision as to its decision to either issue or deny the CPCN, and then provide at a later date the Commission's full discussion and findings of fact of its decision as to the CPCN Application.

Respectfully submitted this the 20th day of April, 2020.



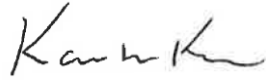
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Motion for Expedited Consideration upon all parties of record by electronic mail.

This 20<sup>th</sup> day of April, 2020.

A handwritten signature in black ink, appearing to read "Karen M. Kemerait". The signature is written in a cursive style with a large initial "K" and a long horizontal stroke at the end.

Karen M. Kemerait