

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-100, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Request for Declaratory Ruling by Sunstone Energy Development LLC Regarding the Provision of Solar Energy and Energy Efficiency Services Within Fort Bragg)	ORDER SCHEDULING ORAL ARGUMENT, ALLOWING BRIEFING, AND REQUIRING RESPONSES TO COMMISSION QUESTIONS

BY THE COMMISSION: On December 8, 2020, Sunstone Energy Development LLC (Sunstone) filed in the above-captioned proceeding a Request for Declaratory Ruling (Petition). Sunstone explains that it seeks to enter into a contract with Bragg Communities, LLC (BCL) — the private entity that provides privatized, on base military housing at Fort Bragg pursuant to the United States Department of the Army’s (Army) Residential Communities Initiative (RCI) — to provide solar energy and energy efficiency services to housing units on the federal Army base of Fort Bragg (Proposed Project). Sunstone requests that the Commission issue a declaratory ruling concluding that (1) Fort Bragg is not subject to the North Carolina Public Utilities Act because it is a federal enclave; (2) Sunstone’s provision of energy and energy efficiency services within the federal enclave of Fort Bragg does not subject Sunstone to the Public Utilities Act; and (3) the activities Sunstone proposes to undertake will not cause it to be considered a public utility under N.C. Gen. Stat. § 62-3(23). On December 9, 2020, Sunstone filed a corrected Petition.

On January 13, 2021, Duke Energy Progress, LLC (DEP), filed a petition to intervene. On January 21, 2021, the Commission granted the petition.

On February 25, 2021, DEP filed a Motion to Dismiss for Failure to Meet Requirements of North Carolina Declaratory Judgement Act (Motion to Dismiss). In the Motion to Dismiss DEP requested that the Commission dismiss Sunstone’s Petition for failing to present a justiciable case or controversy and for failing to join the Army as a necessary party. DEP further requested that if Sunstone’s Petition is not dismissed the Commission allow parties an additional 20 days from the date of the Order on its motion to respond to the substance of Sunstone’s Petition.

On February 26, 2021, the Public Staff filed a letter stating that it did not intend to file comments at that time.

On March 12, 2021, Sunstone filed a Response to Duke’s Motion to Dismiss (Response) requesting that the Commission dismiss DEP’s Motion to Dismiss. In support, Sunstone argued that Sunstone has presented a justiciable case and controversy and

that the Army is not a necessary party to this proceeding. Sunstone further requested that, if the Commission did determine the Army is a necessary party, the Commission join the Army and allow the consideration of its Petition to proceed.

On May 4, 2021, the Commission issued an Order Denying Motion to Dismiss. The Commission also found good cause to establish new deadlines for the filing of comments from interested parties on the merits of the Petition.

On June 8, 2021, DEP filed the Initial Comments of Duke Energy Progress, LLC (DEP's Comments).

Also on June 8, 2021, the Public Staff filed a second letter stating that it did not intend to file comments at that time.

On June 15, 2021, Sunstone filed a Motion for Extension of Time in which to file its reply comments to DEP's Comments. On June 23, 2021, the Commission granted the motion.

On July 20, 2021, Sunstone filed the Reply Comments of Sunstone Energy Development, LLC (Sunstone's Reply Comments).

On September 7, 2021, the North Carolina Court of Appeals issued a decision in *State ex rel. Utils. Comm'n v. Cube Yadkin Generation LLC*, No. COA20-46, 2021 N.C. App. LEXIS 479 (N.C. Ct. App. Sept. 7, 2021) (*Cube Yadkin*).

Based upon the foregoing and the entire record herein, the Commission finds good cause to schedule oral arguments in this proceeding. Sunstone and DEP shall each be afforded thirty minutes in which to make opening arguments; the Commission does not expect or require the parties to fully recount the arguments already presented by their written filings but rather expects that the parties will use this time judiciously and make themselves available for Commission questions. The Commission further expects oral arguments not to exceed a total of two hours in duration.

The Commission also finds good cause to allow for the filing of additional pre-argument briefing limited to the issue of whether and, if so, how the *Cube Yadkin* decision impacts the jurisdictional question previously decided by the Commission's May 4, 2021 Order Denying Motion to Dismiss. Parties are not required to file pre-argument briefs; however, any party that avails itself of the opportunity shall file its brief within 20 days of the date of this Order. Reply briefs shall not be accepted.

Finally, the Commission finds good cause to direct that Sunstone or DEP, or both if appropriate, file verified written responses to the following Commission questions:

1. Confirm the contractual and developmental status of the Proposed Project. Have there been any changes or developments since the last filings of the parties?

2. To date, what if any negotiated or executed obligations, service agreements, leases, or contracts exist that relate to or involve the Proposed Project, including for example those that may exist between Sunstone and BCL, BCL and the Fort Bragg Directorate of Public Works (FBDPW) or any other office, agency, subdivision, or unit of the Army or the United States Department of Defense (DOD), or Sunstone and any office, agency, subdivision, or unit of the Army or the DOD? Provide to the Commission (by way of a confidential filing if necessary) copies of any such obligations, service agreements, leases, or contracts between those entities that have not already been provided.

3. Explain the customer relationship between the FBDPW and DEP.

4. Explain the relationship between BCL, Sandhills Utility Services, LLC (Sandhills), and the FBDPW.

5. Sunstone states in its Reply Comments (at 15) that bi-directional metering will measure the amount of power generated by the Proposed Project, and that the FBDPW is to provide BCL a credit for that production against BCL's monthly usage. Explain how that crediting mechanism or relationship is expected to operate in addition to how that relationship currently operates. Also, explain what is expected to occur if any amount to be credited exceeds BCL's monthly usage. In other words, in addition to any crediting mechanism is there the future possibility of any payment flowing from FBDPW to BCL, including assuming that the Proposed Project were to or could generate significantly more power?

6. Confirm that there will be no back feed beyond the Fort Bragg-exclusive Sandhills' network onto DEP's system. Is any such confirmation dependent upon the amount of energy to be generated by the Proposed Project? In other words, assuming the Proposed Project (or another similar but larger-scale project) were to generate significantly more power and were to do it at non-peak times, is there the potential for back feed on DEP's system?

Sunstone and DEP are encouraged to cooperate and stipulate to a joint verified response; however, to the extent that the parties cannot agree upon a joint response the parties may file separate, verified responses. Such response(s) shall be filed with the Commission within 20 days of the date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That this matter shall be, and is hereby, scheduled for oral argument on November 29, 2021, at 2:00 p.m., in the Commission Hearing Room, 2115 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina;

2. That, on or before Tuesday, November 9, 2021, the parties may file pre-argument briefs; and

3. That, on or before Tuesday, November 9, 2021, Sunstone and DEP shall file verified responses to the Commission's questions.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of October, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "A. Shonta Dunston".

A. Shonta Dunston, Chief Clerk

Commissioner Jeffrey A. Hughes did not participate in this decision.