



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

July 14, 2021

Ms. A. Shonta Dunston, Interim Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket No. EMP-114, Sub 0 - Application for Certificate of Public Convenience and Necessity

Dear Ms. Dunston:

Attached for filing is the Proposed Order of the Public Staff in the above-referenced docket.

The Public Staff wishes to call the Commission's attention to the Public Staff's recommendations in two other pending EMP dockets: EMP-102, Sub 1 and EMP-117, Sub 0. The Public Staff has recommended that the CPCN requests in both dockets be held in abeyance pending the outcome of the complaint proceeding Edgemcombe Solar, LLC initiated before the Federal Energy Regulator Condition challenging certain 2020 amendments DEP and other affiliated utilities made to their Affected System Operating Agreement templates. The Public Staff provides this proposed order as requested by the Commission, but believes the Commission may want to consider holding this docket in abeyance as well.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,

Electronically submitted
s/ Reita D. Coxton
Staff Attorney
reita.coxton@psncuc.nc.gov

Attachment

Executive Director
(919) 733-2435

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Economic Research
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Energy
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Legal
(919) 733-6110

Transportation
(919) 733-7766

Water/Telephone
(919) 733-5610

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-114, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Oak Trail Solar, LLC, for a) ORDER GRANTING
Certificate of Public Convenience and) CERTIFICATE FOR MERCHANT
Necessity to Construct a 100-MW Solar) GENERATING FACILITY WITH
Facility in Currituck County, North Carolina) CONDITIONS

HEARD: Monday, May 17, 2021, at 2:00 p.m., by virtual means using the
Webex electronic platform

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

APPEARANCES:

For Oak Trail Solar, LLC:

E. Merrick Parrott, Parker Poe Adams & Bernstein LLP, PNC Plaza,
301 Fayetteville Street, Suite 1400, Raleigh, North Carolina 27601

Katherine E. Ross, Parker Poe Adams & Bernstein LLP, PNC Plaza,
301 Fayetteville Street, Suite 1400, Raleigh, North Carolina 27601

For the Using and Consuming Public:

Reita D. Coxton, Staff Attorney
Public Staff-North Carolina Utilities Commission, 4326 Mail Service
Center, Raleigh, North Carolina 27699-4300

BY THE COMMISSION: On September 17, 2020, Oak Trail Solar, LLC
(Oak Trail or Applicant), filed an application pursuant to N.C. Gen. Stat. § 62-110.1
and Commission Rule R8-63 (Application) for a certificate of public convenience
and necessity (CPCN) to construct a 100-MW_{AC} solar photovoltaic (PV) electric
generating facility (Facility) to be located in Currituck County, North Carolina, and

to be operated as a merchant generating facility. As part of the Application, Oak Trail included the supporting pre-filed direct testimony and exhibits of Matt Crook and Wyatt Toolson.

On September 29, 2020, the Public Staff – North Carolina Utilities Commission (Public Staff) filed a Notice of Completeness stating that the Public Staff has reviewed the Application as required by Commission Rule R8-63(d) and that the Public Staff considers 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.G.S. § 62-82, and addressing any other procedural matters.

On December 14, 2020, the Commission issued an Order Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (First Scheduling Order). In addition, Staff of the Commission's Chief Clerk's Office filed a copy of the letter sent to the State Clearinghouse, notifying the Clearinghouse of the Application.

On December 16, 2020, the Commission issued an Errata Order stating that the First Scheduling Order contained an inadvertent typographical error concerning the time of the remote hearing for the purpose of receiving expert witness testimony.

On December 18, 2020, the Commission issued an Order Rescheduling Public Witness Hearing, Revising Deadlines Related to Public Witness Hearing, and Revising Required Public Notice (Public Hearing Scheduling Order), which

among other things, (1) scheduled a remote public hearing via Webex, on Monday, February 1, 2021, at 7:00 p.m., for the purpose of receiving public witness testimony regarding the Application; (2) required all parties to file a statement of consent to the remote public hearing; (3) required Oak Trail to publish public notice of the hearing in a newspaper having general circulation in Currituck County once a week for four consecutive weeks; and (4) required members of the public who wanted to testify to register in advance of the hearing, no later than 5:00 p.m. on Wednesday, January 27, 2021, by contacting the Public Staff. The Public Hearing Scheduling Order also provided that the Commission may cancel the public witness hearing if no substantial written complaints regarding the proposed facility are filed with the Commission on or before Thursday, January 28, 2021.

On January 6, 2021, Oak Trail confirmed its consent to the remote public hearing, and on January 15, 2021, the Public Staff also confirmed its consent to the remote public hearing.

On January 19, 2021, the State Clearinghouse filed its comments.

On January 25, 2021, Oak Trail filed its Affidavit of Publication of the Notice of Public Witness Hearing, which had been published in the Daily Advance, a newspaper having general circulation in Currituck County, once a week for four successive weeks, on December 31, 2020, and on January 7, 14, and 21, 2021.

No members of the public registered to testify at the remote public hearing or filed written complaints with the Commission by the deadline set forth in the

Public Hearing Scheduling Order and so, on February 1, 2021, the Commission issued an order canceling the public hearing.

On February 22, 2021, Oak Trail filed the Supplemental Testimony of Matt Crook in response to the Commission's questions listed in the First Scheduling Order.

On March 9, 2021, Oak Trail filed a Notice of Pending Change in Ownership.

On March 22, 2021, the Public Staff filed the Direct Testimony of Evan D. Lawrence.

On March 30, 2021, Oak Trail filed a second Notice of Pending Change of Ownership. On April 16, 2021, Oak Trail filed a Notice of Change of Ownership. Oak Trail's filing included the Direct Testimony of Christopher Loehr and the Supplemental Direct Testimony of Matt Crook.

On April 30, 2021, Oak Trail filed the Rebuttal Testimony of Frank Bristol.

On May 3, 2021, Oak Trail and the Public Staff both confirmed their consent to the remote evidentiary hearing.

On May 5, 2021, Oak Trail filed Supplemental Rebuttal Exhibit D to Oak Trail witness Bristol's prefiled rebuttal testimony.

This matter came on for hearing on May 17, 2021, and was conducted remotely using the Webex electronic platform. Oak Trail presented the testimony

and exhibits of witnesses Loehr, Crook, and Bristol. The Public Staff presented the testimony of witness Lawrence.

On June 11, 2021, the Commission issued an Order Requiring Proposed Orders.

Based upon consideration of the pleadings, testimony, and exhibits received into evidence and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Oak Trail is a limited liability company registered to do business in the State of North Carolina.

2. Oak Trail's Application for a CPCN authorizing the construction of a 100-megawatt AC (MW_{AC}) solar photovoltaic electric generating facility to be located in Currituck County, North Carolina was filed in compliance with N.C.G.S. § 62-110.1 and Commission Rule R8-63.

3. The State Clearinghouse has indicated that no further action was required for compliance with the North Carolina Environmental Policy Act.

4. The Facility has been assigned two PJM interconnection queue positions: AD2-160 and AE2-253. The Generator Interconnection Affected System Study Report for PJM Interconnection Cluster AD2, prepared by Duke Energy Progress, LLC (DEP), was posted on the DEP OASIS website on April 5, 2021. No such study has been posted for PJM Interconnection Cluster AE2.

5. The Public Staff recommended issuance of Oak Trail's CPCN subject to four conditions related to interconnection facilities, network upgrades, affected system upgrades, and their costs (interconnection costs). According to the Public Staff, these conditions are a necessary, protective measure to ensure that North Carolina's retail ratepayers are not negatively impacted by the operation of the Facility and the cost to interconnect the Facility.

6. The language in multiple documents authored by DEP causes concern about the finality of interconnection costs.

7. The conditions recommended by the Public Staff are an appropriate and reasonable requirement that will allow construction and operation of the Facility and protect the using and consuming public from interconnection operational and cost uncertainties.

8. Issuing a CPCN to Oak Trail subject to the Public Staff's conditions is a reasonable method for managing interconnection, operational, and cost uncertainties associated with the Facility's development.

9. The Commission finds it is reasonable and appropriate to grant the requested CPCN conditioned as follows:

- i. The Applicant shall, if applicable, file a copy of an executed Affected System Operating Agreement (ASOA) with the Commission at the same time such filing is made at the Federal Energy Regulatory Commission (FERC) (at least 61 days prior to commencing construction on the upgrades);

- ii. The Applicant shall file a verified statement acknowledging that, under DEP's currently effective Affected Systems Business Procedure and PJM's Open Access Transmission Tariff (OATT), the Interconnection Customer is responsible for all affected system Network Upgrade Costs assigned to the Applicant's facility, if any, without reimbursement;
- iii. The Applicant shall notify the Commission of any change in the cost estimates for the construction of the Facility itself, interconnection facilities, network upgrades, or affected system costs within 30 days of becoming aware of such change; and
- iv. If, at any time, the Applicant seeks reimbursement for any interconnection facilities, network upgrade costs, affected system costs, or other costs required to allow energization and operation of the Facility (including as a result of any change to the DEP OATT or any other governing document(s)), the Commission shall weigh the costs with the generation needs in the state or region consistent with its ruling in its Order Denying Application for a Certificate of Public Convenience and Necessity for a Merchant Generating Facility requested by Friesian Holdings, LLC, in Docket No. EMP-105, Sub 0 (the Friesian case).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not in dispute. These findings are supported by the Application and the testimony of Oak Trail witness Crook and Public Staff witness Lawrence.

Based on an examination of the Application, testimony, and exhibits, the Commission concludes that Oak Trail has complied with all filing requirements associated with applying for a certificate to construct a merchant plant in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is found in the revised pre-filed direct testimony of Public Staff witness Lawrence and pre-filed rebuttal testimony of Oak Trail witness Bristol.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is found in the pre-filed direct testimony of Public Staff witness Lawrence and his testimony during the May 17, 2021 hearing. (Tr. p. 80, line 1, through p. 81, line 6)

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is found in the pre-filed direct testimony of Public Staff witness Lawrence as well as his testimony during the May 17, 2021 hearing.

Witness Lawrence testified the language provided by DEP in the affected system studies allowed for DEP to restudy the power flows as needed. Specifically, witness Lawrence testified that affected system costs can, and have, transferred between interconnection queues. Witness Lawrence also testified that DEP's affected system study explicitly states that "DEP retains the right to make modifications to power-flow cases as needed if additional information is available or if specific scenarios necessitate changes." (Tr. p. 88, lines 5-10 and Tr. p. 91, lines 1-12)

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-9

The evidence supporting these findings of fact is found in the pre-filed direct testimony of Public Staff witness Lawrence and the May 17, 2021 hearing testimony of Oak Trail witness Crook, Oak Trail witness Bristol, and Public Staff witness Lawrence.

Discussion and Conclusions

The ultimate magnitude, impact, and responsibility of affected systems network upgrade costs for DEP's North Carolina retail ratepayers is shrouded in uncertainty due to the following factors, among others: (1) the unknown system impacts of the large volume of solar energy seeking to interconnect in PJM and its impact to the existing electric grid in Dominion and DEP service territories; (2) the cost to upgrade the existing electric grid to accommodate the influx of renewable energy spurred by legislative mandates in Virginia due to the Virginia Clean Energy Economy Act; and (3) whether DEP's relatively recent policy change to not

reimburse interconnection customers for affected system network upgrade cost will be upheld by FERC.

The Commission sought an alternative to the Public Staff's recommended conditions from two of Oak Trail's witnesses and was left empty-handed. (Tr. p. 62, line 12 through p. 65, line 13 and Tr. p. 174, line 14 through p. 175, line 20) Oak Trail did not provide any alternative conditions to those recommended by the Public Staff and remained wed to its position that conditions seeking to manage uncertainty about costs were simply unwarranted based on the facts it presented. Oak Trail failed to show flexibility by providing a pathway that would allow the Commission to split the difference and reasonably balance the risks for both Oak Trail and North Carolina Retail customers. The Public Staff, via the conditions it put forth, offered this pathway. Public Staff witness Lawrence acknowledged the difficult position Oak Trail is placed in when trying to anticipate network upgrade costs and, rather than recommend denial of the CPCN until some of the uncertainties listed above are resolved, recommended that Oak Trail's request for a CPCN be granted subject to the conditions listed in his direct testimony.

The Public Staff's recommended conditions create notification and filing requirements that are intended to keep regulators, investor-owned utilities, developers, and consumer advocates notified of interconnection requirements. The conditions require developers to commit to paying project costs openly and in writing, and prescribe the lens through which reimbursement requests received from developers who seek to shift some, or all, of those costs to others, will be evaluated. The Commission can provide the CPCN that developers need to

construct projects without fear that unnecessary costs will be passed on to ratepayers for assets that ratepayers do not need and that may be short lived. By complying with the conditions (especially the verification statement required in the second condition), developers will have committed to be solely responsible for financial outlays for costs imposed by their projects, and prospectively forgo their ability to request reimbursement from other system participants. The CPCN with conditions will allow developers to undertake projects in accordance with their own individual cost and risk appetites. In this scenario, merchant energy development can continue without interruption or undue risk to North Carolina ratepayers.

Further, the Commission is not persuaded by Oak Trail's argument that the affected system costs are final. Evidence in this case seemingly provides for the opposite; that the Utilities must account for changing conditions over a years-long process, and allows for the need to reevaluate current system conditions as necessary. Oak Trail has provided ample evidence, with which the Public Staff agrees, that there are currently no affected system costs. Oak Trail seemingly uses this evidence to conclude that there will never be affected system costs. The Commission disagrees with this conclusion, noting that it believes the possibility for affected system costs to arise may be small, but carries with it a large risk that cannot be ignored.

Based upon the foregoing and after careful consideration of the entire record in this proceeding, the Commission finds that it is appropriate and reasonable to issue the requested CPCN subject to the conditions recommended by the Public Staff.

IT IS, THEREFORE, ORDERED as follows:

1. That a certificate of public convenience and necessity shall be, and is hereby, issued to Oak Trail Solar, LLC, for the construction of a 100-MW_{AC} solar PV merchant generating facility to be located in Currituck County, North Carolina, to be operated as a merchant plant. This certificate is subject to the following conditions:

- i. The Applicant shall, if applicable, file a copy of an executed Affected System Operating Agreement (ASOA) with the Commission at the same time such filing is made at Federal Energy Regulatory Commission (FERC) (at least 61 days prior to commencing construction on the upgrades);
- ii. The Applicant shall file a verified statement acknowledging that, under DEP's currently effective Affected Systems Business Procedure and PJM's Open Access Transmission Tariff (OATT), the Interconnection Customer is responsible for all affected system Network Upgrade Costs assigned to the Applicant's facility, if any, without reimbursement;
- iii. The Applicant shall notify the Commission of any change in the cost estimates for the construction of the Facility itself, interconnection facilities, network upgrades, or affected system costs within 30 days of becoming aware of such change; and

- iv. If, at any time, the Applicant seeks reimbursement for any interconnection facilities, network upgrade costs, affected system costs, or other costs required to allow energization and operation of the Facility (including as a result of any change to the DEP OATT or any other governing document(s)), the Commission shall weigh the costs with the generation needs in the state or region consistent with its ruling in its Order Denying Application for a Certificate of Public Convenience and Necessity for a Merchant Generating Facility requested by Friesian Holdings, LLC, in Docket No. EMP-105, Sub 0.

2. That Appendix A hereto shall constitute the certificate of public convenience and necessity issued for the Facility.

ISSUED BY ORDER OF THE COMMISSION.

This the _____ day of _____, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Interim Chief Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-114, SUB 0

Oak Trail Solar, LLC
6688 N. Central Expressway, Suite 500
Dallas, Texas 75206

is hereby issued this

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO N.C. Gen. Stat. § 62-110.1**

for a 100-MW solar photovoltaic electric generating facility

located

on the south side of S. Mills Road (NC 1227), on the east and west sides of
Puddin Ridge Road, and on the north and south sides of Cooper Garrett Road,
near Moyock, in Currituck County, North Carolina

subject to all 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 ___ day of _____, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Interim Chief Clerk