



NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

Joseph W. Eason
T: 919.329.3807 F: 919.877.3140
joe.eason@nelsonmullins.com

301 Hillsborough Street, Suite 1400
Raleigh, NC 27603
T: 919.329.3800 F: 919.329.3799
nelsonmullins.com

December 1, 2022

North Carolina Utilities Commission
c/o: Ms. Shonta Dunston, Chief Clerk
Dobbs Building
430 North Salisbury Street
Raleigh, NC 27603-5918

Re: Pitt Solar, LLC's Application For Certificate Of Public
Convenience and Necessity – Merchant Plant
Docket No. EMP-102, Sub 1
Our File: 054943.09015

Dear Ms. Dunston:

In accordance with the Commission's Order Requiring Proposed Orders in the above-referenced docket, Pitt Solar, LLC submits the attached proposed order for consideration by the Commission.

By copy of this letter, we are serving counsel for the Public Staff via electronic mail today.

Thank you for your assistance with this filing.

Very truly yours,

Joseph W. Eason

JWE:wg

Enclosure

cc: Christopher Ayers (w/enc)
Gina Holt (w/enc)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-102, SUB 1

In the Matter of

Application of Pitt Solar, LLC, for a)
Certificate of Public Convenience and)
Necessity to Construct a 150-MW)
Solar Facility in Pitt County, North)
Carolina)

PROPOSED
ORDER ISSUING
CERTIFICATE FOR
MERCHANT
GENERATING FACILITY

BY THE COMMISSION: On August 10, 2020, Bethel NC 11 Solar, LLC, now named Pitt Solar, LLC (Applicant), 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 150-MW (ac) solar photovoltaic (PV) electric generating facility to be located in Pitt County, North Carolina, and to be operated as a merchant generating facility. On the same date, the Applicant filed the testimony and exhibits of witness Linda Nwadike. By consent motion filed by the Applicant on August 31, 2022, the parties participating in this proceeding concur that the proceedings relating to the application, as amended, are now complete, and the application, as amended, is ready for disposition.

PROCEDURAL HISTORY

On August 10, 2020, the Applicant filed its original application for a 150-MW (ac) solar photovoltaic generating facility together with supporting testimony and exhibits as previously described.

On August 19, 2020, the Public Staff filed a Notice of Completeness stating it had reviewed the application as required by Commission Rule

R8-63(d) and considered the application to be complete. The Public Staff requested that the Commission issue a procedural order setting the matter for hearing, requiring public notice, and addressing any other procedural matters.

On October 5, 2020, the Commission issued an Order Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (First Scheduling Order).

On October 16, 2020, the Applicant filed the supplemental testimony of Linda Nwadike.

On October 23, 2020, the Applicant filed a Notice of Name Change and Motion to Amend Application and Caption to reflect its new corporate name, Pitt Solar, LLC.

On October 30, 2020, the Commission entered an order granting the Public Staff's motion for extension of time to file testimony and canceling the expert witness hearing.

On November 12, 2020, Applicant filed an Affidavit of Publication stating that notice of the Application had been published in the Daily Reflector, a daily newspaper of general circulation, printed and published in Greenville, Pitt County, North Carolina, on October 14, 2020, October 21, 2020, October 28, 2020, and November 4, 2020.

On November 12, 2020, the Public Staff filed the testimony of Dustin R. Metz, Utilities Engineer, Electric Section, Energy Division.

The State Clearinghouse filed comments on the application on November 12, 2020. The Clearinghouse's letter stated that "it has been determined that no further State Clearinghouse review action on your part is needed for compliance with the North Carolina Environmental Policy Act."

The public hearing was conducted by videoconference on November 16, 2020, with Hearing Examiner Kathryn Cooper, Presiding.

On May 7, 2021, the Commission entered an Order Requiring Further Additional Testimony from Applicant and the Public Staff.

On July 7, 2021, the Public Staff filed the supplemental testimony of Dustin R. Metz.

On July 22, 2021, Applicant filed the Reply Testimony of Linda Nwadike.

On September 28, 2021, the Applicant filed its Amended Application for a CPCN with a capacity of 80 MW AC, referred to as Pitt Solar Phase 1, together with supporting testimony, in accordance with this Commission's order issued on September 14, 2021 (the "Amended Application").

On October 19, 2021, the Public Staff filed the second supplemental testimony of Dustin R. Metz.

On October 25, 2021, the Applicant filed its Reply Testimony of Linda Nwadike.

On October 26, 2021, Applicant filed a Motion for Leave to Amend Reply Testimony.

On August 31, 2022, Applicant, with the consent of the Public Staff, filed its Consent Motion to Proceed on Record.

On November 1, 2022, the Commission entered its Order Requiring Proposed Orders, accepting Applicant's reply testimony of witness Nwadike, and requiring proposed orders or briefs from the participating parties.

DISCUSSION AND CONCLUSIONS

After careful consideration, the Commission finds good cause to approve the application, as amended, and issue the requested CPCN for the 80-MW (ac) Facility, subject to certain conditions.

Rule R8-63(b)(3) requires a merchant plant application to include a description of the need for the facility in the “state and/or region.” This requirement has evolved over the years from the requirement articulated in the 1991 Empire Power Company case in Docket No. SP-91, Sub 0 that an independent power producer (IPP) such as Pitt Solar obtain a contract or a written commitment from a utility to demonstrate need. 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 (FERC) to issue wheeling orders requiring utilities to allow access to their transmission grids for wholesale power transactions. 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. Feb. 7, 2001 (the E-100, Sub 85 Order)).

In the E-100, Sub 85 Order, the Commission ordered the Public Staff to file a proposal for certification requirements for merchant plants. *Id.* 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 to serve load outside of North Carolina.

In its Order adopting the certification rule on the issue of showing need, the Commission stated that “the Commission is not in a position to abandon any showing of need or to create a presumption of need [as had been urged by two commenting utilities]. However, the Commission believes that a flexible standard for the showing of need is appropriate.” Order Adopting Rule, *Investigation of Certification Requirements for New Generating Capacity in North Carolina*, No. E-100, Sub 85, at 7 (N.C.U.C. May 21, 2001). For example, in the implementation of the rule, the Commission has stated that it is mindful that issues regarding the appropriate amount of merchant plant generation in the State remains to be decided. 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. Oct. 12, 2001).

As the history of the rule described above makes clear, the statement of need requirement is a “flexible standard” consistent with the Commission’s intent to oversee merchant plant development to meet needs both within North Carolina and in the region. As the record of evidence demonstrates, Pitt Solar will participate as a seller in the PJM wholesale market. The Applicant has presented to the Commission evidence that load growth for the PJM RTO as a whole, and more specifically for the Dominion Virginia power zone serving parts of eastern North Carolina and Virginia, is expected to increase over the next ten to fifteen years. Summer peak load is expected to grow by 0.4% over the next ten years, and by 0.4% over the next fifteen years. In the Dominion Virginia power zone, summer peak load growth is expected to grow by 0.8% per year over the next ten years, and 0.8% per year over the next fifteen years, representing a 2.6% growth over the equivalent forecasts from the January 2017 load forecast report. Winter peak load growth in PJM is expected to average 0.4% per year over the next ten-year period, and 0.4% over the next fifteen years. Winter peak load growth in the Dominion Virginia power zone is expected to grow by 0.9% per year over the next ten years, and 0.9% per year over the next nine to fifteen years, representing a 3.9% growth over the January 2017 load forecast report. Further, the area of North Carolina within the footprint of the transmission system owned by Dominion Virginia Power has a slightly higher projected load growth than Virginia. North Carolina is expected to average between 0.8% and 0.9% load growth per year over the next ten years, in contrast to the PJM RTO load growth projections of 0.4% over the next ten years. Additionally, although not a traditional agreement for the purchase and sale of the Facility’s output, Pitt Solar also has an executed contract with a large commercial and industrial customer located within the PJM footprint that is a different type of financial transaction involving the output of the Facility, and the Commission has also considered this agreement in weighing the totality of the evidence. Finally, it does not appear that the Facility will have any material impact on the long-range balance of demand for electricity and the generation resources available to meet the demand in North Carolina.

Further, consistent with N.C.G.S. § 62-110.1(e), the Commission has considered the construction costs associated with the construction of the Facility. Specifically, the statute provides that, “[a]s a condition for receiving a certificate, the applicant shall file an estimate of construction costs in such detail as the Commission may require...and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that construction will be consistent with the Commission’s plan for expansion of electric generating capacity.” N.C.G.S. § 62-110.1(e). The Commission has evaluated the construction costs for the Facility, including the cost of the generating plant, as well as the network upgrade costs on the Dominion system and elsewhere in PJM.

In her additional supplemental testimony filed on October 16, 2020, Applicant witness Nwadike states that the Interconnection Services Agreement (ISA) between the Applicant and PJM Queue AC1-189 (the Facility) forecasts necessary network upgrades and relay setting changes at Dominion’s Thelma and Lakeview substations to accommodate this generator. The estimated cost of this work is \$8,237,534. The System Impact Study, attached as Exhibit 4 to Witness Nwadike’s additional supplemental testimony filed on October 16, 2020, identifies \$6,100,000 in interconnection costs necessitated by the AC1-189 interconnection request. The Public Staff does not dispute or raise any concerns regarding the costs of the Facility.

Applicant witness Nwadike also notes in her testimony that the ISA for PJM Queue AB1-132 for 120MW was filed with the FERC in May 2018, and that PJM did not require any affected system studies for this queue.

The Applicant provided a confidential calculation of the levelized cost of transmission (LCOT) for network upgrades in PJM with an anticipated total cost of \$157,125.00. The LCOT calculated by witness Nwadike is reasonable. Public Staff witness Metz reviewed the Applicant’s LCOT calculation and did not dispute it. Witness Metz also stated that the Pitt Solar Facility will not require any affected system upgrades. He notes that interconnection of PJM study-group AA2

required Duke Energy Progress, LLC (DEP) to upgrade its portion of the Rocky Mount-Battleboro 115 kilovolt transmission line. According to Witness Metz, this upgrade eliminated any need for affected system upgrades for PJM study-group AB1.

The Public Staff, based on the testimony of Witness Metz, recommends the Applicant's request for a CPCN be granted, subject to the following conditions:

- (1) The Applicant shall construct and operate the Facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements.
- (2) The CPCN shall be subject to Commission Rule R8-63(e) and all orders, rules and regulations as are now or may hereafter be lawfully made by the Commission.
- (3) The Applicant shall file with the Commission in this docket any significant revisions in the cost estimates for the construction of the Facility itself, interconnection facilities, network upgrades, or affected system upgrades, or any other significant change in costs, within 30 days of becoming aware of such revisions.
- (4) The Applicant shall file a copy of any executed Affected System Operating Agreement with the Commission at the same time such filing is made at the Federal Energy Regulatory Commission (at least 61 days prior to commencing construction on the upgrades).
- (5) 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, the Applicant shall notify the Commission no later than 60 days before seeking reimbursement.

In its June 11, 2020, order in Docket No. EMP-105, Sub 0, denying the application by Friesian Holdings, LLC (Friesian) for a CPCN for a merchant generating facility, the Commission stated it is appropriate to use the LCOT as a benchmark as to the reasonableness of the transmission network upgrade costs associated with interconnecting a new generation facility. The LCOT allows for a comparison of the relative magnitude of transmission investments required to interconnect generation facilities. Based on the evidence of record, the Commission determines that the LCOT calculation put forth in the Applicant's confidential prefiled testimony of Witness Nwadike is not unreasonably out of line with the 2019 Lawrence Berkeley National Laboratory interconnection cost study (LBNL Study), on which the Commission has relied to place LCOT calculations in perspective with data from other balancing authorities. In view of the total cost of the Facility, the Commission concludes that the siting of the Applicant's facility in this area is not inconsistent with the Commission's obligation under N.C. Gen. Stat. § 62-110.1(d) for the provision of "reliable, efficient and economical service" in the state.

On September 14, 2021, the Commission entered an order directing the Applicant to file an Amended Application in this sub-docket for a 80-MW (ac) generation facility, corresponding to the portion of the plant associated with the PJM study group for the AC1 queue position, and file in a separate sub-docket of docket EMP-102 an application for a CPCN for a 70-MW (ac) solar photovoltaic generation facility that corresponds to the portion of the proposed facility associated with the PJM study group for the AF2 queue position,

On September 28, 2021, the Applicant filed its Amended Application for a 80-MW (ac) solar photovoltaic generation facility as ordered by the Commission, and filed in a separate sub-docket of docket EMP-102 its application for a 70-MW (ac) solar photovoltaic generation facility.

The Amended Application in this docket for a CPCN for a 80-MW (ac) facility, by concurrence of the parties, relates to the portion of the original application that was included with PJM study group AC1, and is ready for disposition.

For the foregoing reasons, the Commission finds and concludes that the Facility is in the public convenience and necessity as required by N.C.G.S. § 62-110.1 and that the Application should be granted.

However, although the record indicates that affected systems costs appear unlikely, there is enough uncertainty in the interconnection queue process that the Commission will require the Applicant to provide ongoing updated cost information for the Facility. To the extent the costs associated with any necessary system upgrades evolve, the Commission will consider this additional evidence and act accordingly.

Therefore, the CPCN will be subject to the conditions outlined below, to ensure that any significant increases in affected systems upgrade costs are considered by the Commission, consistent with its obligations under N.C.G.S. § 62-110.1 and regardless of whether the Applicant seeks reimbursement for the costs. However, in monitoring the costs of the Facility the Commission finds good cause for the Applicant to inform the Commission of any cost reimbursement it receives, including reimbursement from any utility or any other facility in the interconnection queue.

IT IS, THEREFORE, ORDERED as follows:

- (1) That a certificate of public convenience and necessity shall be, and is hereby issued to Pitt Solar, LLC for the construction of a 80 MWac solar PV merchant generating facility to be located in Pitt County, North Carolina and to be operated as a merchant plant. This certificate is subject to the following conditions:
- (2) Pitt Solar, LLC will construct and operate the Facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements.
- (b) Pitt Solar, LLC will not assert that the issuance of the certificate in any

way constitutes authority to exercise any power of eminent domain, and it will abstain from attempting to exercise such power;

€ Pitt Solar, LLC will comply with all orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the Commission;

(d) Pitt Solar, LLC shall file with the Commission in this docket any revisions in the cost estimates for the interconnection facilities, network upgrades (including network upgrades on affected systems), or any other significant change in costs within 30 days of becoming aware of such revisions, allowing the Commission to 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, *Application of Friesian Holdings, LLC, for a Certificate of Public Convenience and Necessity to Construct a 70-MW Solar Facility in Scotland County, North Carolina*, No. EMP-105, Sub 0 (N.C.U.C. June 11, 2020) (Friesian);

(e) Pitt Solar, LLC 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 commencement of construction on the upgrades); and

(f) If, at any time, Pitt Solar, LLC 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 reimbursement as a result of any change to the DEP OATT or any other governing documents, or reimbursement from another facility in the interconnection queue, it must notify the Commission no later than sixty (60) days before seeking reimbursement; and

2. That Appendix A hereto shall constitute the certificate of public convenience and necessity issued for the Facility as revised in the Amended Application.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2022.

NORTH CAROLINA UTILITIES COMMISSION

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-102, SUB 1

Pitt Solar, LLC
6750 NC Highway 30 East
Bethel, NC 27812

is hereby issued this

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

For an 80-MWAC solar photovoltaic electric generating facility

located

East of NC 11 and North of NC 30 at GPS coordinates
35.790974 and -77.366634
in the town of Bethel, Pitt 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 _____, 2022.

NORTH CAROLINA UTILITIES COMMISSION

Erica N. Green, Deputy Clerk