



434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
☎ 919.755.8700 📠 919.755.8800
WWW.FOXROTHSCHILD.COM

BENJAMIN L. SNOWDEN
Direct No: 919-719-1257
Email: bsnowden@foxrothschild.com

June 14, 2024

Ms. A. Shonta Dunston
Chief Clerk
NC Utilities Commission
430 N. Salisbury Street
Room 5063
Raleigh, NC 27603

**Re: In the Matter of
Petition to Revise Commission Rules R8-63 and R8-64
NCUC Docket E-100 Sub 176
*Reply Comments of SunEnergy1 on Proposed Revisions to Rule R8-63***

Dear Commissioners:

On behalf of SunEnergy1 LLC (“SunEnergy”), provided herewith are Reply Comments of SunEnergy1 on Proposed Revisions to Rule R8-63.

If you have any questions concerning these Comments, please let me know. Thank you for your assistance.

Sincerely,

/s/ Benjamin L. Snowden

Benjamin L. Snowden

pbb

Enclosure

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Copy to: Parties and Counsel of Record
NC Commission Staff
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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
)	REPLY COMMENTS OF
)	SUNENERGY1
Petition to Revise Commission Rules)	ON PROPOSED REVISIONS TO
R8-63 and R8-64)	RULE R8-63
)	

Pursuant to the Order Requesting Comments (“April 1 Order”) issued in this docket on April 1, 2024, Intervenor SunEnergy1 LLC (“SE1”), by and through counsel, provides the following Reply Comments regarding the proposed revisions to Rule R8-63 attached as Attachment A to the April 1 Order. SE1’s Reply Comments address issues and proposals raised in the Initial Comments of the North Carolina Electric Membership Corporation (“NCEMC”), the Carolinas Clean Energy Business Association (“CCEBA”), the North Carolina Sustainable Energy Association (“NCSEA”), and the Public Staff.

SE1 does not with disagree with any of the specific recommendations made by other intervenors in their Initial Comments, and (as discussed below) agrees with much of what is said in those comments. However, intervenors’ comments underscore the difficulty of considering affected system upgrade costs and benefits in CPCN proceedings, and in particular the unreasonableness of the draft rule that would require CPCN applicants to quantify the benefits of the specific upgrades triggered by a proposed project.

1. NCEMC Initial Comments

NCEMC's comments highlight some of the complexities of addressing affected system upgrades and associated costs in the CPCN process. SE1 appreciates NCEMC's concern, as a wholesale customer of Duke, about "the realization of benefits to the using and consuming public in North Carolina associated with transmission upgrades triggered by generator interconnection applications."¹ And SE1 supports NCEMC's suggestion that the word "ratepayers" in draft Rule R8-63(b)(5)(vii) be replaced with the phrase "the interconnecting utility's customers and other customers,"² as this acknowledges the reality that the benefits of system upgrades (including affected system upgrades) may inure not only to retail ratepayers, but to all classes of customers and to other members of the using and consuming public.

However, NCEMC's reference to "situations where the record provides little to no evidence of any specific benefits to the customers or consumer-members to whom the costs of the upgrades are being assigned"³ speaks directly to the problem, raised in SE1's Initial Comments, of requiring CPCN applicants to quantify the benefits of individual transmission upgrades.⁴ While it may not be true that *every* transmission upgrade has collateral benefits, neither is it true that the *only* benefit of transmission upgrades is allowing the interconnection of additional generators. Indeed, the Commission recognized in its 2022 Carbon Plan Order that upgrades to the transmission system required to interconnect new generation—in that case, the Red Zone Transmission Expansion Plan

¹ Petition to Intervene and Initial Comments of the North Carolina Electric Membership Corporation (NCEMC Initial Comments) at 4.

² *Id.* at 7-8.

³ *Id.* at 4.

⁴ Initial Comments of SunEnergy1 on Proposed Revisions to Rule R8-63 (SunEnergy1 Initial Comments) at 13-15.

projects—would not only allow the interconnection of generation needed to meet the carbon dioxide emissions reduction mandates of N.C.G.S. § 62-110.9, but would also “provide[] additional operation and resiliency benefits.”⁵ The problem with draft Rule R8-63(b)(5)(vii) is the CPCN applicants are not in a position to develop evidence regarding the benefits of specific transmission upgrades, without information and analysis that can only be provided by the interconnecting utility and/or affected system operator.

NCEMC also notes another complexity of the affected system issue: that affected systems may include not only regulated utilities, but entities such as EMCs that are not required to maintain FERC-jurisdictional interconnection tariffs. So while FERC Order No. 2023 may streamline and improve the analysis of affected system impacts by jurisdictional utilities, some interconnection customers will continue to grapple with uncertainty and delay in the identification and analysis of affected system impacts, and it is not reasonable to require complete certainty about affected system upgrade costs before taking action on a CPCN. NCEMC’s comment also highlights that fact that not all systems potentially affected by projects seeking CPCNs from the Commission are under the Commission’s jurisdiction, and the costs of upgrades to those systems may not be borne by North Carolina ratepayers.

SE1 appreciates NCEMC’s observation that draft rule R8-63(b)(5) uses terminology from the North Carolina Interconnection Procedures (NCIP) to describe the

⁵ Order Adopting Initial Carbon Plan and Providing Direction for Future Planning, Docket No. E-100, Sub 179 (Dec. 30, 2022) at 116. The benefits of the RZEP cited by Duke in the Carbon Plan docket included “replacing aging facilities with newer and more efficient and resilient components” and “as increased ability of solar in the Red Zones to charge standalone battery storage located close to load centers and discharge during net demand peak periods.” *Id.* at 115. It is worth noting that the Everetts-Greenville 230 kV line upgrade, which was identified as an affected system upgrade for projects in PJM’s AD1 cluster, was later classified by Duke as a reliability project. Order Granting Certificate of Public Convenience and Necessity, Docket No. EMP-111, Sub 0 (Sept. 13, 2023) at 8, 13.

interconnection studies that must be submitted with a CPCN application,⁶ but also notes that merchant facilities seeking a CPCN under Rule R8-63 are unlikely to be interconnecting under the NCIP, because state-jurisdictional interconnection procedures generally apply only to qualifying facilities selling their output to the interconnecting utility (which projects would likely seek a CPCN under Rule R8-64). More flexible language as suggested by NCEMC is therefore appropriate.

Finally, NCEMC notes that “that the requirement that these interconnection studies be completed at the time of the CPCN application may reflect a departure from past practice for most CPCN applicants and . . . may require coordination or changes to the process by which a legally enforceable obligation or other milestones in project development are established.”⁷ If the Commission requires interconnection studies to be completed before a CPCN can be issued under Rule R8-64, NCEMC and NCSEA are absolutely correct that this would also require the Commission to modify the requirements for establishing a Legally Enforceable Obligation (LEO) under PURPA in North Carolina. FERC has long held that a state cannot condition the establishment of a LEO on a utility’s issuance of an interconnection study or agreement.⁸ SE1 does not interpret draft Rule R8-64 to require that all interconnection studies be completed before a CPCN can be issued (much less an application filed) under Rule R8-64, though – only that all of the specified studies must be filed with the Commission if and when they become available. However, it would be helpful for the Commission to provide guidance regarding its intended application of this rule.

⁶ NCEMC Initial Comments at 6-7.

⁷ *Id.* at 7.

⁸ *FLS Energy*, 157 FERC ¶ 61,211 (Dec. 15, 2016).

2. CCEBA Initial Comments

SE1 supports CCEBA's comments and suggestions on the draft rules, in particular CCEBA's request that the draft rules clarify that information not available at the time an application is submitted may be provided later.⁹ SE1 shares CCEBA's opposition to any Rule change that would condition the sufficiency of a merchant plant CPCN application on whether a third party outside the control of the applicant has performed interconnection studies in a timely fashion. As stated by CCEBA, delaying issuance of a CPCN until the completion of all interconnection studies, including affected system studies, would expose CPCN appliance to potentially massive financial consequences (in the form of lost interconnection deposits) if they are required to withdraw from the interconnection process because the Commission denied them a CPCN.¹⁰

3. NCSEA Initial Comments

SE1 generally concurs with NCSEA's comments and shares NCSEA's concern that the proposed rule changes relating to interconnection studies and affected system studies inappropriately place the burden on an applicant to generate information about the benefits of upgrades or affected system upgrades required for a facility.¹¹ As discussed above, although applicants may be able to provide *general* information about the benefits of affected system upgrades,¹² information about specific upgrades is entirely within the hands of the utilities.

⁹ CCEBA's Comments in Response to Order Requesting Comments at 2-4.

¹⁰ *Id.* at 1-3.

¹¹ Initial Comments of NCSEA at 2.

¹² There are many publicly available studies addressing the potential benefits of more robust connections between utility service territories as a general matter. *E.g.*, "The Need for Intertie Optimization: Reducing Customer Costs, Improving Grid Resilience, and Encouraging Interregional Transmission," Brattle Group (Oct. 2023), at <https://acore.org/wp-content/uploads/2023/10/The-Need-for-Intertie-Optimization.pdf>; Joseph Makjut and Cy McGeady, "The Power System Benefits of Interregional Transmission," Center for Strategic and International Studies (May 25, 2023), at <https://www.csis.org/analysis/power-system-benefits-interregional-transmission>; MISO

SE1 takes no position on NCSEA's recommendation that interconnecting utilities and/or affected system operators automatically be made party to CPCN proceedings, but notes (as discussed above), that some such entities may not be subject to the Commission's jurisdiction. However, any utility that would be in a position to pass on the costs of an upgrade (or affected system upgrade) to North Carolina ratepayers would likely be under the Commission's jurisdiction. Therefore it may be prudent for the Commission to distinguish between those upgrades whose costs may be allocated to North Carolina retail ratepayers, and those whose costs would not be.

4. Public Staff Initial Comments

SE1 appreciates the various clarifying edits proposed by the Public Staff to Rules R8-63 and R8-64, and supports the Public Staff's proposal to remove the Clearinghouse review process in favor of self-certification by the applicant.

Respectfully submitted this the 14th day of June, 2024.

FOX ROTHSCHILD LLP



Benjamin L. Snowden
North Carolina State Bar No. 51745
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
E-mail: BSnowden@foxrothschild.com

& SPP, "Joint Targeted Interconnection Queue Study" (ongoing), at <https://www.misoenergy.org/engage/committees/miso-spp-joint-targeted-interconnection-queue-study/>. However, the draft rule would require the quantification of benefits for *each individual upgrade* required for a proposed merchant facility.

CERTIFICATE OF SERVICE

I hereby certify that all persons on the Commission's E-100 Sub 176 docket service list have been served true and accurate copies of the foregoing Reply Comments of SunEnergy1 on Proposed Revisions to Rule R8-63 by hand delivery, first class mail deposited in the U. S. mail, postage pre-paid, or by e-mail transmission with the party's consent.

This the 14th day of June, 2024.

/s/ Benjamin L. Snowden

Benjamin L. Snowden
Fox Rothschild LLP
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Telephone: 919-719-1257
E-mail: BSnowden@foxrothschild.com