

NORTH CAROLINA UTILITIES COMMISSION

NOTICE TO PARTIES

Docket No. SP-5272, SUB 0 Exceptions Due on or Before September 9, 2015

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day above shown as provided in G.S. 62-78. Exceptions, if any, must be filed (original and thirty (30) copies) with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefore at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become final and effective on September 10, 2015 unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-5272, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Sunflower Solar, LLC, for a)	
Certificate of Public Convenience and)	RECOMMENDED ORDER
Necessity to Construct a 20-MW _{AC} Solar)	GRANTING CERTIFICATE
Facility in Halifax County, North Carolina)	

HEARD: Thursday, May 28, 2015, at 6:00 p.m. at the Halifax County Historic Courthouse, Halifax, North Carolina.

BEFORE: Hearing Examiner Sam Watson

APPEARANCES:

For Sunflower Solar, LLC:

Steven J. Levitas, Kilpatrick Townsend & Stockton LLP, 4208 Six Forks Road,
Suite 1400, Raleigh, North Carolina 27609

WATSON, HEARING EXAMINER: On March 3, 2015, as amended June 8, 2015, Sunflower Solar, LLC (Sunflower), filed an application seeking a certificate of public convenience and necessity (CPCN) pursuant to G.S. 62-110.1(a) for construction of a 20-MW_{AC} solar generating facility to be located off Highway 301 Road, approximately 0.17 miles east of the intersection of Dickens-Wildwood Road and Highway 301 Road in an unincorporated area approximately 2 miles south of Weldon, Halifax County, North Carolina. Sunflower stated that it plans to sell the electricity to Dominion North Carolina Power (DNCP).

On March 24, 2015, the Commission issued an Order Requiring Publication of Notice requiring Sunflower (1) to publish notice of the application in the manner required by G.S. 62-82(a) and file an affidavit of publication with the Commission, and (2) to mail a copy of the application and notice to the electric utility to which Sunflower plans to sell and distribute the electricity, and file a signed and verified certificate of service that the application and notice have been provided to the utility. In addition, the Order directed the Chief Clerk of the Commission to deliver copies of the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.

On April 20, 2015, as amended April 30, 2015, an electronic mail message designated as a complaint was received from Paul Walden. On May 12, 2015, a second letter of complaint was filed with the Commission by Jim Manley.

On May 13, 2015, based upon the complaints and the record herein, the Commission issued an Order Scheduling Hearing, setting this docket for hearing on Thursday, May 28, 2015, at 6:00 p.m. at the Halifax County Historic Courthouse, Halifax, North Carolina, and establishing a procedural schedule for parties to intervene and pre-file direct expert testimony.

On May 18, 2015, the State Clearinghouse filed comments. Based on comments provided by the Department of Cultural Resources, the State Clearinghouse requested that additional information be submitted to the State Clearinghouse for review and comment. The Department of Cultural Resources indicated that the geographical setting of the project is considered a high probability area for archaeological remains and recommended that Sunflower perform an archaeological survey and submit a report to the Office of State Archaeology prior to construction or ground disturbance activities.

On May 18, 2015, Sunflower filed the direct testimony and exhibits of Tommy Cleveland, Richard Kirkland, and Georg Veit.

On May 19, 2015, Sunflower filed affidavits of publication stating that it had published notice of the application and of the hearing in The Daily Herald (Halifax County) as required by the Commission's orders.

On May 28, 2015, the matter came on for hearing as ordered. Sunflower presented the testimony and exhibits of Mr. Cleveland, Mr. Kirkland, and Mr. Veit. Seven public witnesses testified regarding the proposed facility.

On July 1, 2015, the Public Staff filed its recommendation with the Commission noting the request for further information by the Department of Cultural Resources and recommending that the Commission approve the application and issue the requested CPCN upon receipt of a letter from the State Clearinghouse indicating that no further State Clearinghouse review action by the Commission is required for compliance with the North Carolina Environmental Policy Act.

On August 11, 2015, the State Clearinghouse filed additional comments. The Department of Cultural Resources indicated that it had received an archeological survey report and concurred with its recommendation that no further archaeological investigation be conducted in connection with the proposed facility. Because of the nature of the comments, the State Clearinghouse cover letter indicated that no further State Clearinghouse review action by the Commission was required for compliance with the North Carolina Environmental Policy Act.

Based on the evidence presented at the hearing, including the amended application and the witnesses' testimony and other exhibits, and the entire record in this proceeding, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. In compliance with G.S. 62-110.1(a) and Commission Rule R8-64, Sunflower filed with the Commission an application for a CPCN authorizing construction of a 20-MW solar photovoltaic (PV) electric generating facility to be located approximately two miles south of the town of Weldon in Halifax County, North Carolina.

2. Sunflower indicated that it plans to self-certify as a qualifying facility (QF) with the Federal Energy Regulatory Commission (FERC) and to sell electricity to DNCP. Sunflower further indicated that its project will earn renewable energy certificates (RECs) that can be used by electric power suppliers to satisfy the requirements of the State's Renewable Energy and Energy Efficiency Portfolio Standard (REPS).

3. Sunflower has demonstrated the need for the proposed facility based on the public benefits of solar-powered electric generation and State and federal policy encouraging private investment in renewable energy.

4. Sunflower has demonstrated that construction of the facility is in the public convenience based on the economic benefits of the proposed facility and State and federal policy encouraging private investment in renewable energy. No credible evidence was introduced regarding adverse health impacts or inappropriate factors considered in siting the facility, and Sunflower has taken appropriately measures to address other concerns raised in the complaints and by the public witnesses, such as the potential for glare and other aesthetic issues.

5. No party presented evidence that the application was not prepared and filed in accordance with G.S. 62-110.1(a) or was deficient in any manner, or that notice of the application and hearing was not appropriately provided as required by G.S. 62-82(a) and the Commission's rules.

6. It is reasonable and appropriate to grant the requested CPCN.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The evidence in support of the findings of fact is found in the direct testimony and exhibits of Applicant witnesses Tommy Cleveland, Richard Kirkland, and Georg Veit; the application filed on March 3, 2015; and the public witness testimony regarding the facility.

At the May 19, 2015 hearing, seven public witnesses testified regarding the proposed facility: Jim Manley; Paul Walden; Charles Copeland; William Hodge; J. Rives Manning, Jr.; Terri Medlin; and Tony Brown. Mr. Manley testified that the facility would be in close proximity to a predominantly African American community and stated his

belief that solar companies in general have taken unfair advantage of such communities. Mr. Manley also stated concerns that the land would adjoin his property causing his property value to lower and that adequate notice had not been given to potentially impacted citizens. He further testified regarding potential adverse health impacts from solar facilities. Mr. Walden echoed Mr. Manley's concerns regarding the community in which the proposed facility would be located. Additionally, Mr. Walden noted his concern that the proposed facility had not been noticed to the public adequately or received the appropriate attention necessary from the press to alert the public that the facility was to be built. Mr. Copeland testified regarding the siting location of the proposed facility, the potential for solar glare from the panels, the size of the panels, and the lack of economic benefit provided by the facility. Mr. Hodge testified that similar facilities have been constructed and community opposition thwarted due to lack of proper noticing. Additionally, Mr. Hodge cited concerns regarding lights at night and the location of the facility in an African American community. Ms. Medlin testified regarding aesthetic concerns due to the proximity of the proposed facility to her home, stormwater run-off concerns, solar glare concerns, and general concerns about the selection of the particular community in which proposed facility would be sited.

Mr. Manning testified in support of the facility, noting the tax base benefits for the county stemming from the proposed facility and that other solar facilities in the county had not caused issues. Mr. Brown testified that the parent company of Sunflower had previously been a good corporate citizen and that he was working on a county ordinance to address notice concerns.

Witnesses Veit, Kirkland, and Cleveland testified on behalf of Sunflower. Mr. Veit testified that the 20-MW_{AC} solar PV facility will utilize approximately 90,000 310 to 330 Watt PV modules and that Sunflower plans to sell the output of the facility to DNCP. Mr. Veit further stated that Sunflower anticipates that the project will create approximately 120 short term local construction jobs and that Sunflower intends to limit the operation of heavy machinery during construction to the hours of 7:00 am to 7:00 pm. Mr. Kirkland testified regarding the impact on property values and stated that and any appearance concerns are typically alleviated with buffering and landscaping. Mr. Cleveland testified regarding environmental and public health issues and stated that solar facilities are both safe and environmentally friendly.

In its application, sponsored as an exhibit by Mr. Veit, Sunflower stated that it intends to self-certify as a QF with the FERC. The Public Utility Regulatory Policy Act of 1978 established federal policy to encourage the development of QFs and required that the electrical output from QFs be purchased by public utilities. Additionally, the REPS, passed by the General Assembly as S.L. 2007-397, established State policy that the State's investor owned utilities, electric membership corporations and municipalities obtain a certain percentage of their electricity from renewable energy resources, of which solar energy is one of the qualifying resources. That statute further declares it to be the public policy of the State to promote the development of renewable energy through the implementation of the REPS and to encourage private investment in renewable energy. Sunflower will earn RECs that can be used by electric power suppliers to satisfy the State's REPS requirements.

No party asserted that the application was not prepared and filed in accordance with G.S. 62-110.1(a) or was deficient in any manner. Although several public witnesses expressed concerns about the amount of notice given or press coverage received by the project, the affidavits of publication filed in this docket demonstrate that Sunflower provided notice in compliance with the requirements of G.S. 62-82(a) and the Commission's rules.

The majority of the testimony against the proposed facility related to the appropriateness of the site. The Commission's April 24, 2008 Order in Docket No. SP-231, Sub 0, stated, regarding local authority over the siting of facilities:

[S]uch decisions are, in most instances, best left to the local community through the exercise of its zoning authority rather than made by the Commission. Local governing bodies are, generally speaking, in a better position than the Commission to make local land use planning decisions (so long as those decisions do not operate to thwart controlling State policy).

The Hearing Examiner concludes that in this particular instance the siting decision is best left to the local community and the local zoning process. This facility is subject to local zoning authority, and Sunflower stated that it will comply with that process and any conditions imposed thereby. Mr. Kirkland testified that any appearance concerns are typically alleviated with buffering and landscaping, and Mr. Veit stated that the project would include buffers greater than those required by county ordinance:

[Geenex Solar, LLC (Geenex), an affiliate of Sunflower and the developer of the site] has developed, and is developing, numerous solar facilities in North Carolina and elsewhere. It strives to be a good neighbor through the permitting, design, and construction of the Facility; and to address concerns raised by neighboring property owners. During construction, we take measures to ensure that appropriate sedimentation and erosion control measures are in place; we maintain, to the greatest extent possible, a trash and litter-free construction site; and we operate heavy machinery during limited hours, typically from 7:00 am to 7:00 pm. In the case of the Facility, we plan to exceed the setback zoning requirements to include an additional voluntary buffer with vegetative screening along Reese's Store Road and parts of White Hill Road as further shown in Exhibit 2.

The Hearing Examiner notes, however, that the Commission would not be precluded from considering similar issues regarding the appropriateness of a site in future proceedings and making a different conclusion. The Commission will address such concerns on a case-by-case basis.

Additional concerns were raised regarding various environmental issues and the impact on the property values of surrounding properties. No credible evidence was provided, however, to support claims that the facility posed an environmental threat.

Rather, Mr. Cleveland, who testified regarding the impacts of a solar facility on the surrounding environment and public health, noted that such impacts would be minimal and that, for example, the strength of electromagnetic fields produced by solar systems does not approach levels considered harmful to human health. Regarding property values, Mr. Kirkland, a licensed commercial appraiser, testified that in his opinion, solar facilities have no measurable impact on property values. Moreover, as stated in the Commission's June 29, 2004 Order in Docket P-100, Sub 711 regarding the Commission's authority to assess monetary damages, "While the Commission has a duty to enforce its rules and orders, it has long been recognized that the Commission does not have the power to render a judgment for compensatory damages."

Lastly, several public witnesses questioned whether inappropriate factors were considered in siting the facility in close proximity to a predominantly African American community, particularly in light of the perceived adverse impacts on property values, public health, and the environment. As stated above, there is no evidence to support these perceived adverse impacts. Moreover, there is no evidence to support a claim of unfairness or racial motivation. Mr. Veit testified that the developer, Geenex, did not consider race as a factor when selecting the site of the proposed facility:

Q. How does Geenex generally select sites for its facilities?

A. In general, Geenex selects sites in two ways. First, Geenex evaluates certain criteria for potential sites, including territory, potential for interconnection, size of the property, and topography. Based on these criteria, Geenex performs a GIS evaluation to identify potential parcels. Geenex then calls the land owners of identified parcels to determine interest. Second, as a result of our successful solar project located at the former county airport and our community involvement, Geenex is approached by landowners, either directly or indirectly, to inquire about potential opportunities. Geenex will then evaluate the screening criteria. If a parcel does not pass this initial screen, Geenex will not pursue the parcel further.

Q. Does Geenex consider the race or other characteristics or residents in the surrounding community in selecting sites for its facilities?

A. Absolutely not. Our site selection, including the selection of the Sunflower Solar site, is in no way based on the property owner's or surrounding citizens' race. Geenex does not consider race, color, national origin, or income in selecting its sites. Site selection is based solely upon the screening factors related to the property discussed above. In addition, Geenex is committed to assisting low-income and minority communities by promoting economic development and creating jobs above the local median wage.

Q. With respect to the Facility in this proceeding, how did Geenex select the site?

A. Geenex was contacted by the landowner. After being contacted by the landowner, Geenex evaluated each site criterion and determined that the parcel was feasible for a solar facility. Geenex negotiated and entered into a lease agreement with the landowner. Following the lease execution, Geenex initiated development of the site.

After careful consideration of the entire record in this proceeding, based on federal and State policy and the demonstrated economic benefits of such facilities, the Hearing Examiner concludes that construction of the proposed 20-MW_{AC} solar PV electric generating facility is in the public interest and justified by the public convenience and necessity as required by G.S. 62-110.1(a).

IT IS, THEREFORE, ORDERED as follows:

1. That the application filed by Sunflower Solar, LLC, for a certificate of public convenience and necessity shall be, and is hereby, approved;

2. That Appendix A shall constitute the certificate of public convenience and necessity issued to Sunflower Solar, LLC, for construction of a 20-MW_{AC} solar PV electric generating facility to be located off Highway 301 Road, approximately 0.17 miles east of the intersection of Dickens-Wildwood Road and Highway 301 Road in an unincorporated area approximately 2 miles south of Weldon, Halifax County, North Carolina; and

3. That the facility shall be constructed in accordance with all applicable laws and regulations, including any local and county zoning ordinances.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of August, 2015.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Jackie Cox", is written over a horizontal line.

Jackie Cox, Deputy Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-5272, SUB 0

Sunflower Solar, LLC
7804 - C Fairview Road #257
Charlotte, North Carolina 28226

is hereby issued this

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1**

for a 20-MW_{AC} a solar photovoltaic facility

to be located off Highway 301 Road, approximately 0.17 miles east of the intersection of Dickens-Wildwood Road and Highway 301 Road in an unincorporated area approximately 2 miles south of Weldon, Halifax 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 25th day of August, 2015.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Jackie Cox", is written over a horizontal line.

Jackie Cox, Deputy Clerk