

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition to Revise Commission Rules R8-63) ORDER REQUESTING
and R8-64) COMMENTS

BY THE COMMISSION: On August 19, 2021, the Public Staff filed a Petition to Amend Commission Rules R8-63¹ and R8-64² (Petition). In short, the Petition proposed revisions to Rules R8-63 and R8-64 primarily in response to the increase in applications to construct non-utility generation on the North Carolina transmission system, the Commission's statutory duty to examine the long-range needs for the generation of electricity in North Carolina, and the need to make other technical and clarifying changes to the application and review process for certificates of public convenience and necessity (CPCN) sought by merchant generators and qualifying facilities.

On August 26, 2021, the North Carolina Sustainable Energy Association (NCSEA) filed the Petition to Intervene of NCSEA. In addition, also on August 26, 2021, NCSEA filed a Motion to Stay Proceedings Pending Appeal. In its Motion, NCSEA noted that it had filed an appeal of the Commission's Order Denying Application for a Certificate of Public Convenience and Necessity for a Merchant Generating Facility in Docket No. EMP-105, Sub 0 (Friesian Order) on the basis that the Commission inappropriately considered federal- jurisdictional costs in its decision to deny an application for a CPCN. NCSEA took the position that the outcome of that appeal might materially affect the rulemaking sought by the Public Staff and requested that the Commission stay this proceeding until the appeal had been resolved.

On September 1, 2021, the Public Staff filed a response to NCESEA's Motion to Stay Proceedings Pending Appeal in which it asserted that the Commission should not delay the requested rulemaking and that its proposed rule changes were intended to standardize and streamline the process of CPCN applications.

¹ Pursuant to N.C.G.S. § 62-110.1(a), Rule R8-63 establishes the application requirements for CPCNs sought by any person seeking to construct a merchant plant in North Carolina and intending to sell its output exclusively at wholesale.

² Pursuant to N.C.G.S. § 62-110.1(a), Rule R8-64 establishes the application requirements for CPCNs sought by any person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in N.C.G.S. § 62-110.8 or who is a qualifying facility seeking the benefits of 16 U.S.C. § 824a-3 or N.C.G.S. § 62-156.

By order issued September 20, 2021, the Commission denied NCSEA's motion to stay and solicited comments on the Public Staff's proposed revisions to Rules R8-63 and R8-64.

On October 12, 2021, the Carolina Clean Energy Business Association (CCEBA) filed a petition to intervene, which was granted by order issued October 13, 2021. NCSEA's petition to intervene was granted by order issued October 14, 2021. On October 18, 2021, Carolina Industrial Group for Fair Utility Rates I (CIGFUR I), Carolina Industrial Group for Fair Utility Rates II (CIGFUR II), and Carolina Industrial Group for Fair Utility Rates III (CIGFUR III) (collectively, CIGFUR) filed a petition to intervene, which was granted by order issued October 19, 2021. On October 18, 2021, Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene, which was granted by order issued October 25, 2021.

CCEBA and NCSEA filed initial comments on the Public Staff's proposed revisions. CIGFUR, NCSEA, CCEBA and the Public Staff filed reply comments.

On January 18, 2022, the North Carolina Court of Appeals issued its opinion upholding the Friesian Order. *State ex. rel. Utils. Comm'n v. Friesian Holdings, LLC*, 869 S.E.2d 327 (N.C. Ct. App. 2022).

Since the filing of the Public Staff's Petition, the Commission has issued seven orders approving CPCN applications for merchant generators.³ Consistent with its determination in the Friesian Order, in analyzing the CPCN applications for merchant generators, the Commission has deemed it "appropriate for the Commission to consider the total construction costs of a facility, including the cost to interconnect and to construct any necessary transmission network upgrades, when determining the public convenience and necessity of a proposed new generating facility." Friesian Order at 6. To this end, the Commission has relied, as one factor in a multi-factor analysis, on the levelized cost of transmission (LCOT) for the proposed generator as a benchmark of the reasonableness of the transmission costs associated with that proposed facility. The Commission has recognized that while certain of the costs associated with transmission upgrades may be allocated to multiple interconnecting facilities as a result of a cluster study approach, ultimately, ratepayers will pay (some or all of, depending on point of interconnection) those costs regardless of whether those costs are allocated proportionally among different generators or are shared among generators. Thus, in analyzing the LCOT, the Commission has considered an LCOT that includes the entirety of the costs, not just a proportional share of the costs. See, e.g., Order Granting Certificate of Public Convenience and Necessity with Conditions, *Application of American Beech Solar LLC, for a Certificate of Public Convenience and Necessity to Construct a 140 MW Solar Facility in Halifax County, North Carolina*, No. EMP-108, Sub 0, 11-12 (N.C.U.C. Jan. 31, 2023) (American Beech Order). However, the LCOT, though but one factor relied upon by the Commission, is an imperfect assessment of the reasonableness of the transmission-related costs associated with a proposed generator, as the LCOT is often

³ Docket Nos. EMP-101, Sub 0; EMP-102, Sub 1; EMP-108, Sub 0; EMP-110, Sub 0; EMP-114, Sub 0; EMP-118, Sub 0; and EMP-119, Sub 0.

calculated based on Class IV estimates for costs associated with transmission upgrades.⁴ In addition, as expressed by the Public Staff,

[t]he LCOT is measured in dollars per megawatt-hour and is used as a way to gauge the reasonableness of the upgrade costs. However, implicit in the use of the LCOT in this manner is the assumption that the customers paying for the upgrade also receive the energy. If the dollars are paid by DEP's customers, but they do not receive the megawatt-hours, the LCOT loses its meaning. The value to DEP's customers is at or near zero.

Third Supplemental Testimony of Jay B. Lucas, Public Staff – North Carolina Utilities Commission, *Application of American Beech Solar LLC, for a Certificate of Public Convenience and Necessity to Construct a 140 MW Solar Facility in Halifax County, North Carolina*, No. EMP-108, Sub 0, 12 (June 27, 2022).

In addition, its most recently issued orders, the Commission has expressed concern regarding benefits to ratepayers associated with the transmission upgrades, including affected system upgrades. See, e.g., Order Granting Certificate of Public Convenience and Necessity with Conditions, *Application of Pitt Solar, LLC, for a Certificate of Public Convenience and Necessity to Construct an 80 MW Solar Facility in Pitt County, North Carolina*, No. EMP-102, Sub 1, 9 (N.C.U.C. Apr. 4, 2023) (Pitt Solar Order). The Pitt Solar Order notes

the Commission remains concerned that regardless of how many interconnecting solar projects are allocated a share of the Affected System Upgrade costs, DEP ratepayers will reimburse all of those costs (with interest) and will not receive any of the power supplied by these projects. As testified by Pitt witness Nwadike, the Applicant has entered a Power Purchase Agreement (PPA) with a Fortune 100 company that will use the RECs associated with the output of the Facility to meet its sustainability goals. The Applicant anticipates continued and robust long-term offtake prospects for renewable energy and renewable energy credits. Thus, while the record suggests this Facility is likely destined to serve the need of a corporate offtaker in the PJM region, the record provides little to no evidence of any specific benefit to DEP ratepayers from the transmission infrastructure for which they must pay so that the electricity may reach the corporate buyer.

Pitt Solar Order at 9. Thus, as the costs to retail ratepayers associated with the merchant generating facilities become clearer, the benefits to retail ratepayers of the investments they are required to make in the transmission system are not clear.

⁴ See, e.g., Testimony of Evan D. Lawrence, Public Staff – North Carolina Utilities Commission, *Application of Oak Trail Solar, LLC, for a Certificate of Public Convenience and Necessity to Construct a 100-MW Solar Facility in Currituck County, North Carolina*, No. EMP-114, Sub 0, 7 (Mar. 22, 2021).

In order to better understand and develop the record on the costs associated with the merchant generating facilities, the Commission has issued orders in certain of these dockets requiring the filing of additional testimony addressing transmission-related costs, including costs associated with affected system upgrades.⁵ In addition, the Commission has, in certain dockets, directed that the applicant provide testimony in response to specific questions by the Commission related to transmission-related impacts and upgrades.⁶

The Federal Energy Regulatory Commission (FERC) issued Order No. 2023 in Docket No. RM22-14-000 (FERC Order 2023) on July 28, 2023, which among other things, establishes deadlines to ensure timely completion of affected system studies and directs the allocation of any affected system costs among interconnection customers. *Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC P61,054, *reh'g denied by operation of law*, 184 FERC P62,163, *modified and set aside in part*, 185 FERC P61,063 (2023).

Given the increase in the number of applications for CPCNs by merchant generators and pending interconnection requests by merchant generators, as well as experience and understanding gained from previous proceedings before the Commission and the issuance of FERC Order 2023, it is appropriate, at this time, to amend the Commission's rules to reflect the requirement that applicants provide complete construction cost information, as well as evidence of specific benefits to be realized by ratepayers from the specific upgrades to the transmission system that are caused by the proposed generator.

The Commission has reviewed and considered the Public Staff's Petition as well as the comments and reply comments filed in response to the Public Staff's proposed revisions to the rules.

Attached hereto as Attachment A and Attachment B are proposed revisions to Commission Rules R8-63 and R8-64, respectively, which reflect the Commission's review of the record in this proceeding as well as the Commission's experience gained in recent CPCN application proceedings and which are intended to formalize application requirements, increase the efficiency of the application process, and, ultimately, provide

⁵ See, e.g., Order Requiring Filing of Additional Testimony, *Application of Edgecombe Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 75-MW Solar Facility in Edgecombe County, North Carolina*, No. EMP-101, Sub 0 (N.C.U.C. Aug. 20, 2020); Order Requiring Filing of Additional Testimony, *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*, No. EMP-102, Sub 1 (N.C.U.C. Oct. 5, 2021); and Order Requiring Further Additional Testimony, *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*, No. EMP-102, Sub 1 (N.C.U.C. May 7, 2021).

⁶ See, e.g., Order Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice, *Application of Oak Trail Solar, LLC, for a Certificate of Public Convenience and Necessity to Construct a 100 MW Solar Facility in Currituck County, North Carolina*, No. EMP-114, Sub 0, (N.C.U.C. Dec.14, 2020).

the Commission with the evidence necessary for a determination of whether granting an application is in the public interest.

The Commission finds good cause to request comments on the proposed revisions to Commission Rules R8-63 and R8-64.

IT IS, THEREFORE, ORDERED as follows:

1. That on or before May 1, 2024, any additional persons having an interest in this matter may file petitions to intervene in this docket;
2. That on or before May 1, 2024, all parties may file initial comments addressing the proposed revisions to Commission Rules R8-63 and Rule R8-64 attached hereto as Attachment A and Attachment B; and
3. That all parties may file reply comments on or before May 15, 2024.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk

Rule R8-63. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR MERCHANT PLANT; PROGRESS REPORTS

(a) Scope of Rule.

- (1) This rule applies to an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) by any person seeking to construct a merchant plant in North Carolina.
- (2) For purposes of this rule, the term "merchant plant" means an electric generating facility, other than one that qualifies for and seeks the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156, the output of which will be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility pursuant to G.S. 62-133.
- (3) Persons filing under this rule are not subject to the requirements of Rule R8-61 or R8-64.

(b) Application. The application shall contain the exhibits listed below, which shall contain the information hereinafter required, with each exhibit and item labeled as set out below. Any additional information may be included at the end of the application.

- (1) Exhibit 1 shall contain ~~the following information about the applicant:~~
 - (i) The full and correct name, business address, business telephone number and electronic mailing address of the facility owner; ~~applicant;~~
 - ~~(ii) A description of the applicant, including the identities of its principal participant(s) and officers, and the name and business address of a person authorized to act as corporate agent or to whom correspondence should be directed;~~
 - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina; and
 - (iii) The full and correct name of the site owner and, if the site owner is other than the applicant, the applicant's interest in the site; and ~~A copy of the applicant's most recent annual report to stockholders, which may be attached as an exhibit, or, if the applicant is not publicly traded, its most recent balance sheet and income statement. 1~~ ~~If the applicant is a newly formed entity with little history, this~~

- ~~information should be provided for its parent company, equity partner, and/or the other participant(s) in the project; and~~
- (iv) Information about generating facilities in the Southeastern Electric Reliability Council region which the applicant or an affiliate has any ownership interest in and/or the ability to control through leases, contracts, options, and/or other arrangements and information about certificates that have been granted for any such facilities not yet constructed.
- (2) Exhibit 2 shall contain the following information about the proposed facility:
- ~~(i)~~ The nature of the proposed generating facility, including its type, fuel, expected service life, and the gross, net, and nameplate generating capacity of each generating unit and the entire facility, as well as the facility's total projected dependable capacity, in megawatts (alternating current); the anticipated beginning date for construction; the expected commercial operation date; and estimated construction costs;
 - ~~(i)(ii)~~ A color map or aerial photo ~~(a U.S. Geological Survey map or aerial photo map prepared via the State's geographic information system is preferred)~~ showing the location of the proposed facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing access roads to be used to reach the generating facility, planned and existing water supplies, planned and existing electric facilities, and points of interconnection with the incumbent electric service provider, including associated interconnection facilities proposed site boundary and layout, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;
 - ~~(ii)(iii)~~ The E911 street address, county in which the proposed facility would be located, and GPS coordinates latitude and longitude of the approximate center of the proposed facility site to the nearest second or one ten thousandth of a degree. If the E911 address is not available, Exhibit 2 shall contain a written description of the location of the proposed facility.
 - ~~(iii)(iv)~~ In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;

- ~~(iv)(v)~~ A list of all needed federal, state, and local approvals related to the facility and site, identified by title and the nature of the needed approval; a copy of such approvals or a report of their status; and a copy of any application related to eligible facility and/or exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992, including attachments and subsequent amendments, if any; ~~and~~
 - ~~(vi)~~ A description of the transmission facilities to which the facility will interconnect, and a color map showing their general location. If additional facilities are needed, a statement regarding whether the applicant would need to acquire rights-of-way for new facilities.
- (3) Exhibit 3 shall contain: ~~provide a description of the need for the facility in the state and/or region, with supporting documentation.~~
- (i) The nature of the generating facility, including the type and source of its power or fuel;
 - (ii) A description of the buildings, structures, interconnection facilities, and equipment comprising the generating facility and the manner of its operation;
 - (iii) A description of any fencing or other barriers that will be installed around the perimeter of the proposed facility, as well as any planned setbacks;
 - (iv) A description of the transmission and distribution facilities to which the facility will interconnect, and a color map showing their general location. Include the utility feeder name or substation and the voltage level of the planned interconnection. If additional facilities are needed, a statement regarding whether the applicant would need to acquire rights-of-way for new facilities;
 - (v) The gross and net projected maximum dependable capacity of the facility as well as the facility's nameplate capacity, expressed as megawatts (alternating current);
 - (vi) If the facility includes energy storage, the following information: (1) a description of the technology and the supporting components, (2) the cost of the energy storage system separate from the generating facility, (3) whether the facility is AC or DC connected, (4) how the Applicant plans to charge the energy storage system, (5) any operational restrictions included in the Interconnection Agreement, (6) output capacity in megawatts (DC), and (7) energy storage capability in megawatt-hours;
 - (vii) The anticipated date construction will begin;
 - (viii) The projected date on which the facility will begin operation;
 - (ix) The applicant's general plan for sale of the electricity to be generated, including the utility or other off-taker to which the applicant plans to sell the electricity;
 - (x) Any provisions for wheeling of the electricity, if applicable;

- (xi) Arrangements for firm, non-firm or emergency generation, if applicable;
 - (xii) The service life of the project;
 - (xiii) The projected annual sales in megawatt-hours; and
 - (xiv) Whether the applicant intends to produce renewable energy certificates, the name of the purchaser, and if the renewable energy certificates are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard or any other state's renewable energy mandate.
- (4) Exhibit 4 shall contain:
 - (i) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for.
 - (ii) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
- (5) Exhibit 5 shall contain:
 - (i) An estimate of the construction cost of the facility.
 - (ii) A feasibility study obtained from the interconnecting utility.
 - (iii) A system impact study obtained from the interconnecting utility.
 - (iv) A facilities study obtained from the interconnecting utility detailing final interconnection facilities and network upgrade costs.
 - (v) An affected system study from any neighboring utilities detailing any affected system upgrades and associated costs for any facility that that has required affected system upgrades listed in a feasibility study, system impact study, or facilities study. If an affected system study has not been completed, provide a statement that the facility has been considered for affected system impacts and it has been determined that there are not any such impacts or required upgrades.
 - (vi) A Levelized Cost of Transmission (dollars per megawatt hour (alternating current)) calculation compared to the production output of the life of the facility. The calculation shall include the cost of any network and affected system upgrades required for interconnection and operation of the facility and shall include a description of the inputs used in the calculation.
 - (vii) A detailed description, including quantification, of any benefits to be received by ratepayers from any transmission upgrades, including affected system upgrades, the need for which is caused by the proposed facility, with specific reference to each upgrade identified in the relevant interconnection study.

(6) Exhibit 6 shall contain:

- (i) A description of the need for the facility in the state and/or region, with supporting documentation;
- (ii) Information specifically identifying the extent to which any regulated utility will be involved in the interconnection and operation of the facility;
- (iii) A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, and capacity expansion plan;
- (iv) If the applicant does not plan to sell to an electric utility or does not yet have a definite off-taker, provide a discussion of how the facility's output conforms to or varies from the long-range resource plan of a potential utility purchaser of the power;
- (v) If the applicant proposes to sell energy and capacity from the facility to a purchaser who is subject to a statutory or regulatory mandate with respect to its energy sourcing, explain how, if at all, the facility will assist or enable compliance with that mandate. Provide any contracts that support that compliance; and
- (vi) Provide any power purchase agreements, renewable energy certificate sale contracts, or contracts for compensation for environmental attributes for the output of the facility.

(7) Exhibit 7 shall contain:

- (i) A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;
- (ii) A copy of the applicant's most recent annual report to stockholders, if applicable;
- (iii) The most current available balance sheet of the applicant;
- (iv) The most current available income statement of the applicant;
- (v) An economic feasibility study of the project; and
- (vi) A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application.

(8) Exhibit 8 shall contain:

- (i) The projected annually hourly production profile for the first full year of operation of the facility in kilowatt-hours (alternating current), including an explanation of potential factors influencing the hourly production profile;
- (ii) If the facility's maximum generation has the capability to exceed the nameplate capacity (alternating current), include a description of what factors or component will limit production;

- (iii) A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser;
 - (iv) A one-line diagram, or equivalent, that illustrates the planned arrangement and interconnection of the entire facility; and
 - (v) A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.
- (9)(4) The application shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant.
- (10)(5) The application shall be accompanied by prefiled direct testimony incorporating and supporting the application.
- (11)(6) The Chief Clerk will deliver 2 copies ~~copy~~ of the application and the notice to the State Environmental Review Clearinghouse Coordinator of the Office of Policy and Planning in the Department of Administration for distribution by the Clearinghouse Coordinator to State agencies having an interest in the application ~~proposed generating facility.~~
- (12)(7) Contemporaneous with the filing of the application with the Commission, all applicants proposing a generating facility that will use natural gas must provide written notice of the filing to the natural gas local distribution company or municipal gas system providing service or franchised to provide service at the location of the proposed generating facility.
- (c) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (d) Procedure upon Receipt of Application. No later than ten (10) business days after the application is filed with the Commission, the Public Staff shall, and any other party in interest may, file with the Commission and serve upon the applicant a notice regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information. Upon receipt of all required information, the Commission will promptly issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.

(e) The Certificate.

- (1) The certificate shall specify the date the certificate was issued; the name and address of the certificate holder; the type, capacity, and location of the facility; and the conditions, if any, upon which the certificate is granted.
- (2) The certificate shall be subject to revocation if (a) any of the federal, state, or local licenses or permits required for construction and operation of the generating facility not obtained or, having been obtained, are revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30) days' written notice and opportunity to cure.
- (3) ~~The certificate must be renewed if the applicant does not begin construction within three years after the date of the Commission order granting the certificate.~~ The certificate shall expire if the applicant does not begin construction within three years after the certificate is issued.
 - (i) The certificate holder shall file with the Commission a description of the construction progress pursuant to subsection (f) of this Rule prior to the expiration of the certificate. The Commission may revoke the certificate if the certificate holder fails to file a construction progress update prior to the expiration of the certificate.
 - (ii) The certificate may be renewed by re-compliance with the requirements set forth in subsection (b) of this Rule.
 - (iii) Applications for renewal must be filed no later than 90 calendar days prior to the expiration of the certificate. An application for renewal that is filed no later than 90 calendar days prior to the expiration of the certificate will be considered timely regardless of when a new certificate is issued.
 - (iv) Amendments and transfers of certificates pursuant to subsection (d)(4) of this Rule will not alter the expiration date of a certificate.
- (4) A certificate holder must notify the Commission in writing of any plans to sell, ~~transfer~~, or assign the certificate and the generating facility or of any revisions to the information set forth in subsections (b)(1) thru (b)(8) of this Rule, and the Commission will order such proceedings as necessary to address the proposed plans or revisions.
- (f) Reporting. All ~~applicants~~ certificate holders must submit annual progress reports and any revisions in cost estimates until construction is completed. If transmission upgrade costs estimated by the interconnecting utility or an affected system are revised subsequent to the approval of the application and issuance of the

certificate, the certificate holder must file notice with the Commission of such changes no later than 30 days after receiving notice from the relevant utility of the revised cost estimates.

Rule R8-64. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY CPRE PROGRAM PARTICIPANT, QUALIFYING COGENERATOR, OR SMALL POWER PRODUCER; PROGRESS REPORTS.

(a) Scope of Rule.

- (1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8, or by any person who is seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18), or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).
- (2) For purposes of this rule, the term "person" shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.
- (3) The construction of a facility for the generation and supply of electricity to the point of interconnection shall include ~~not only the building construction of a new building, structure, or generator, but also and balance of plant, and~~ the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.
- (4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.

(b) Application. The application shall be comprised of the following five exhibits:

- (1) Exhibit 1 shall contain:
 - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
 - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina; and

- (iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site.
- (2) Exhibit 2 shall contain:
- (i) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing access roads to be used to reach the generating facility, planned and existing water supplies, ~~and planned and existing electric facilities, and point(s) of interconnection with the incumbent electric service provider, including associated interconnection facilities~~ A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred; and
 - (ii) The E911 street address, county in which the proposed facility would be located, and ~~GPS coordinates~~ latitude and longitude of the approximate center of the proposed facility site to the nearest ~~second or one ten thousandth~~ of a degree. If the E911 address is not available, Exhibit 2 shall contain a written description of the location of the proposed facility.
- (3) Exhibit 3 shall contain:
- (i) The nature of the generating facility, including the type and source of its power or fuel;
 - (ii) A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
 - (iii) A description of the interconnection facilities and an explanation of whether the facility will be interconnected to a distribution system or a transmission system;
 - (iv) A description of any fencing or other barriers that will be installed around the perimeter of the proposed facility, as well as any planned setbacks;
 - (v)(iii) The gross and net projected maximum dependable capacity of the facility as well as the facility's nameplate capacity, expressed as megawatts (alternating current);
 - (vi) If the facility includes energy storage, a description of the technology, output capacity in megawatts, and energy storage capability in megawatt-hours;
 - (vii) The anticipated date construction will begin;
 - (viii)(iv) The projected date on which the facility will come on-line begin operation;

- ~~(ix)(v)~~ The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity;
 - ~~(x)(vi)~~ Any provisions for wheeling of the electricity, if applicable;
 - ~~(xi)(vii)~~ Arrangements for firm, non-firm or emergency generation, if applicable;
 - ~~(xii)(viii)~~ The service life of the project;
 - ~~(xiii)(ix)~~ The projected annual sales in ~~kilowatt~~ megawatt-hours; and
 - ~~(xiv)(x)~~ Whether the applicant intends to produce renewable energy certificates and whether the renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard or, if intended to be used for compliance with another state's renewable energy mandate, whether it will be eligible for compliance with that state's renewable energy mandate.
- (4) Exhibit 4 shall contain:
- (i) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for.
 - (ii) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
- (5) Exhibit 5 shall contain the expected cost of the proposed facility.
- (6) An applicant who desires to enter into a contract for 5 years or more for the sale of electricity, whose facility will have a nameplate capacity of 520 megawatts alternating current or more, ~~and whose facility is not a solar photovoltaic facility,~~ shall include the three additional exhibits as described in R8-64(b)(6)(i), (ii), and (iii) below, ~~except an applicant who desires to enter into a contract of 5 years or more for the sale of electricity from a solar photovoltaic facility of 25 megawatts alternating current or more shall also include the three additional exhibits referenced herein.~~
- (i) Exhibit 6 shall contain:
 - a. A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;
 - b. Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project; and
 - c. A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such

- purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs.
- (ii) Exhibit 7 shall contain:
 - a. The most current available balance sheet of the applicant;
 - b. The most current available income statement of the applicant;
 - c. An economic feasibility study of the project; and
 - d. A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application.
 - (iii) Exhibit 8 shall contain:
 - a. The projected annual hourly production profile for the first full year of operation of the ~~renewable energy~~ facility in kilowatt-hours (alternating current), including an explanation of potential factors influencing the ~~shape of the hourly production profile, including the following, if applicable: fixed tilt or tracking panel arrays, inverter loading ratio, over-paneling, clipped energy, or inverter AC output power limits;~~
 - b. If the facility's maximum generation has the capability to exceed the nameplate capacity (alternating current), a description of the factors or components that will limit production;
 - c. A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and
 - d. A one-line diagram, or equivalent, that illustrates the planned arrangement and interconnection of the entire facility;
 - e. All studies associated with interconnection of the facility; and
 - f. A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.
- (7) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.
 - (8) Applications filed on behalf of a corporation are not subject to the provision of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.
 - (9) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.
 - (10) The application shall be in the form adopted by the Commission and accompanied by the filing fee required by G.S. 62-300. The application may

be filed electronically or by transmission of an original plus 12 copies to the Chief Clerk of the Utilities Commission.

- (11) If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (c) Procedure upon receipt of Application. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
- (1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the generating facility is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. Each electric utility shall provide on its website a mailing address to which the application and notice should be mailed. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.
 - (2) If the applicant does not file the affidavit of publication and certificate of service within twelve months of the Commission's publication order, the Commission will automatically dismiss the application.
 - (3) The Chief Clerk will deliver 2 copies of the application and the notice to the State Environmental Review Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Clearinghouse Coordinator to State agencies having an interest in the application.
 - (4) If a significant complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no significant complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the

Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

- (5) If no significant complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.

(d) The Certificate.

- (1) The certificate shall specify the date the certificate was issued; the name and address of the certificate holder; the type, capacity, and location of the facility; and the conditions, if any, upon which the certificate is granted.

- (2)(4) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and operation of the generating facility is not obtained, is revoked, or lapses, and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.

- ~~(2) — The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate.~~

- (3) The certificate shall expire if the applicant does not begin construction within five years after the certificate is issued.

- (i) The certificate holder shall file with the Commission a description of any construction progress prior to the expiration of the certificate. The Commission may revoke the certificate if the certificate holder fails to file a construction progress update prior to the expiration of the certificate.

- (ii) The certificate may be renewed by re-compliance with the requirements set forth in subsection (b) of this Rule. Renewal of a certificate will not require publication of notice pursuant to subsection (c) of this Rule, but the Commission may require publication of notice if it deems it appropriate. Upon renewal, a new certificate will be issued.

- (iii) Applications for renewal must be filed no later than 90 calendar days prior to the expiration of the certificate. An application for renewal that is filed no later than 90 calendar days prior to the expiration of the certificate will be considered timely regardless of when a new certificate is issued.

- (iv) Amendments and transfers of certificates pursuant to subsection (d)(4) of this Rule will not alter the expiration date of a certificate.

- (4)(3) Both before the time construction is completed and after, all certificate holders must advise both the Commission and the utility involved of any plans to sell, transfer, or assign the certificate or the generating facility or of any significant changes in the information set forth in subsections (b)(1) thru (b)(56) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes. The following changes in information are exemplary of changes that require an amendment to the certificate issued for the facility: a transfer of the certificate or the facility, a change in the facility owner's name, a change in the fuel source, ~~or a change in the generating capacity of the facility, a~~ change in the points of interconnection, and the addition of land to the project area. The following changes in information are exemplary of changes that require notice to the Commission, but do not require an amendment to the certificate: a change in the facility owner's contact information, or a change in the upstream ownership of the facility ~~owner, a~~ reduction in the footprint of the facility, and the movement of equipment or access roads within the footprint of the facility as filed with the Commission when the certificate was approved.
- (e) In addition to complying with any other applicable filing requirements pursuant to this Rule or other Commission rules, the filing of an amendment to the certificate application, or the filing of a FERC Form No. 556 for the purpose of satisfying the notice requirements of 18 C.F.R. 292.207(c) or for the purpose of satisfying the requirements of subsection (d) of this Rule, shall be accompanied by a cover letter that identifies the facility, the facility owner, and the associated docket number assigned to the matter by the Chief Clerk, and includes a short, plain statement alerting the Commission to the changed information, if any.

DOCKET NO. SP-_____, SUB ____

Filing Fee for New Applications and Renewals Tendered \$_____**Application for a Certificate of Public Convenience and Necessity – Rule R8-64**

Pursuant to Commission Rule R8-64, this form is required for use in applying for a Certificate of Public Convenience and Necessity (CPCN) by a person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8, or by a person who is seeking the benefits of 16 U.S.C. 624-3 or G.S. 62-156 as a qualifying co-generator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18), or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification pursuant to G.S. 62-110.1(g). This form may be accompanied by any exhibits or additional responses incorporated by reference thereto and attached to this form. This form must be accompanied by the required filing fee of \$250.00.

You may file this application electronically; please see www.ncuc.net for instructions.

If this form is filed by hard copy, the original plus 12 copies must be presented at or transmitted to the office of the Chief Clerk. Regardless of the method of delivery, this form is not deemed filed until it is received by the Chief Clerk, along with the required filing fee.

The mailing address is:

Chief Clerk
NC Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

Exhibits required by Rule R8-64(b)		Applicant's Response
(1)(i)	Full and correct name of the owner of the facility	
	Facility name	
	Business address	
	E-mail address	
	Telephone number	
(ii)	The owner is (check one)	Individual Corporation Partnership
	If a partnership, the name and business address of each general partner	
	If a corporation, the state and date of incorporation	
	If a partnership, the name and address of each general	

	partner (add additional sheets if necessary)	
	Owner's agent for purposes of this report, if applicable:	
	Agent's business address	
	Agent's e-mail address	
	Agent's telephone number	
	<u>Person to contact concerning this application (name of contact person, company name, business address, e-mail address, and telephone number)</u>	
(iii)	The full and correct name of the site owner and, if the site owner is other than the applicant, the applicant's legal interest in the site	
(2)(i)	Attach a color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing <u>access roads to be used to reach the generating facility</u> , planned and existing water supplies, and planned and existing electric facilities, <u>and point(s) of interconnection with the incumbent electric service provider, including associated interconnection facilities</u> A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system (found at www.gis.ncdcr.gov/hpoweb/) is preferred.	
(ii)	E911 street address of the proposed facility. <u>If the E911 address is not available, provide a written description of the location.</u>	
	County in which the proposed facility will be physically located	
	GPS coordinates <u>Latitude and longitude</u> of the approximate center of the proposed facility site to the nearest second or one <u>ten</u> thousandth of a degree	
(3)(i)	The nature of the facility, including its technology, and	

	the source of its power and fuel(s)	
(ii)	A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation	
<u>(iii)</u>	<u>A description of the interconnection facilities and an explanation of whether the facility will be interconnected to a distribution system or a transmission system</u>	
<u>(iv)</u>	<u>A description of any fencing or other barriers that will be installed around the perimeter of the proposed facility, as well as any planned setbacks</u>	
<u>(v)</u> (iii)	The gross and net projected maximum dependable capacity of the facility in megawatts – Alternating Current	
	The facility's nameplate capacity in megawatts – Alternating Current	
<u>(vi)</u>	<u>If the facility includes energy storage, a description of the technology, output capacity in megawatts, and energy storage capability in megawatt-hours</u>	
<u>(vii)</u>	<u>The anticipated date construction will begin</u>	
<u>(viii)</u> (iv)	The projected date on which the facility will come on-line <u>begin operation</u>	
<u>(ix)</u> (v)	The applicant's general plan for sale of the electricity to be generated, including the name of utility to which the applicant plans to sell the electricity	
<u>(x)</u> (vi)	Any provisions for wheeling of the electricity, if applicable	

(xi) (vii)	Arrangements for firm, non-firm, or emergency generation, if applicable	
(xii) (viii)	The service life of the project	
(xiii) (ix)	The projected annual sales in kilowatt-hours <u>megawatt-hours</u>	
(xiv) (x)	Whether the applicant intends to produce renewable energy certificates, <u>the name of the purchaser, and if the renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard or any other state's renewable energy mandate</u>	
Yes No		
(4)(i)	A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for	
(ii)	Attach a copy of those licenses, permits and exemptions that have been obtained; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained	
(5)	The expected cost of the proposed facility	\$
<p>(6) The following applicants shall complete this section with the information as described in R8-64(b)(6): 1) A <u>an</u> applicant seeking to enter into a contract for the sale of electricity with a term of 5 years or more, and whose facility will have a <u>projected generating nameplate capacity of 520 MW_{AC} or greater</u> and is not a solar photovoltaic facility, and 2) An applicant seeking to enter into a contract for the sale of electricity with a term of 5 years or more, and whose facility is a solar photovoltaic facility with a generating capacity of 25 MW_{AC} or more.</p>		
(i)a	A statement detailing the experience and expertise of the persons who will develop, design, construct, and operate the project to the extent such persons are known at the time of the application	
b	Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project	
c	A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs	

(ii) (7)a	The most current available balance sheet of the applicant
b	The most current available income statement of the applicant
c	An economic feasibility study of the project
d	A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application
(iii) (8)a	A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year. The explanation shall include a statement of the specific on-peak and off-peak hours underlying the applicant's quantification of anticipated kilowatt and kilowatt-hour outputs <u>The projected annual hourly production profile for the first full year of operation of the facility in kilowatt-hours (alternating current), including an explanation of potential factors influencing the hourly production profile</u>
b	<u>If the facility's maximum generation has the capability to exceed the nameplate capacity (alternating current), a description of the factors or components that will limit production</u>
c b	A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser
d	<u>A one-line diagram, or equivalent, that illustrates the planned arrangement and interconnection of the entire facility</u>
e	<u>All studies associated with interconnection of the facility</u>
f e	A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application

Confidentiality

If an applicant considers certain of the required information above to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

Please read the "After You File" instructions on the last page of this document.

All applications shall be signed and verified (notarized) by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application. A blank verification page is attached below:

VERIFICATION

STATE OF _____ COUNTY OF _____

Signature of Owner's Representative or Agent Title of Representative or Agent

Typed or Printed Name of Representative or Agent

The above named person personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this _____ day of _____, 20

My Commission Expires: _____

Signature of Notary Public

Name of Notary Public – Typed or Printed

This original verification must be affixed to the original application, and a copy of this verification must be affixed to each of the copies that are also submitted to the Commission.

After You File

1. After you file an application for a CPCN, the Utilities Commission will automatically send a copy to the State Clearinghouse for a government agency review and will issue an Order Requiring Publication of Notice.
2. The State Clearinghouse will post the application on its website for a 30-day review by government agencies.
3. You must publish the Commission's Public Notice as required by the Order Requiring Publication of Notice.
4. You must send a copy of the application and the Commission's Public Notice to the interconnecting utility no later than the first date that publication begins in the newspaper. You must also file a notarized letter called a "certificate of service" that states you completed this requirement.
5. After the publication period, the publishing newspaper should send you a notarized affidavit of publication. You must file the affidavit of publication with the Chief Clerk of the Utilities Commission.
6. If a significant complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no significant complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published. If no significant complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order issuing the certificate.