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August 20, 2021

Ms. A. Shonta Dunston
Interim Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**RE: *In the matter of the Application for a Conditional Certificate
of Public Convenience and Necessity for Juno Solar, LLC
Docket No. EMP-116, Sub 0
Response to Public Staff's Notice of Completeness
and Motion to Stay***

Dear Ms. Dunston:

In the above-referenced docket, Juno Solar, LLC ("Juno Solar") herewith provides Response to Public Staff's Notice of Completeness and Motion to Stay.

Should you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,

/s/ Karen M. Kemerait

Karen M. Kemerait

pbb

Enclosures

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-116, Sub 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

**In the Matter of the Application of
Juno Solar, LLC for a Certificate of
Public Convenience and Necessity**

**RESPONSE TO PUBLIC STAFF'S
NOTICE OF COMPLETENESS AND
MOTION TO STAY**

NOW COMES Juno Solar, LLC ("Juno Solar" or "Applicant"), by and through counsel, and hereby responds to the Public Staff's Notice of Completeness and Motion to Stay filed on July 27, 2021 in the above-referenced docket. In the Public Staff's Notice of Completeness and Motion to Stay, the Public Staff requests that the North Carolina Utilities Commission ("Commission") consider Juno Solar's Application ("Conditional CPCN Application" or "Application") for a Conditional Certificate of Public Convenience and Necessity ("CPCN") to be complete and that the proceeding be stayed until further order of the Commission. Juno Solar respectfully requests that the Commission reject the Public Staff's Motion to Stay and issue a procedural order in accordance with Commission Rule R8-63(d). In support of this response, Juno Solar shows the Commission the following.

I. PROCEDURAL BACKGROUND

On July 12, 2021 and July 13, 2021, Juno Solar filed a Conditional CPCN Application pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63 for construction of a solar photovoltaic ("PV") facility with a capacity of 275-MW_{AC} in Richmond County, North Carolina ("Facility"). Juno Solar's Application includes

information and exhibits required by Commission Rule R8-63, including the pre-filed direct testimony of Piper Miller supporting the Application.

On July 19, 2021, the Public Staff requested that Juno Solar file additional information so that the Conditional CPCN Application could be deemed to be complete. On July 27, 2021, Juno Solar supplemented the Application with the revised direct testimony of Piper Miller, along with additional information, including a revised site plan.

On July 27, 2021, the Public Staff filed notice that Juno Solar's Conditional CPCN Application is complete. Even though the Public Staff found the Application to be complete, the Public Staff requested that the proceeding be stayed pending further order of the Commission and that the Commission not issue a procedural order during the period of the stay.

II. JUNO SOLAR'S CONDITIONAL CPCN APPLICATION

A. The need for conditional approval of the CPCN Application

1. Duke Energy's Modified Interconnection Procedures

As the Commission is aware, in 2020 and 2021, Duke Energy Progress, LLC's ("DEP") and Duke Energy Carolinas, LLC's (together, "Duke Energy")—under the banner of "Queue Reform"—admirably proposed substantial modifications to their state and federal interconnection procedures. These modified procedures are designed to remedy serious problems with the existing interconnection process by transitioning from a serial study process to a cluster study process and by requiring Interconnection Customers to demonstrate project readiness or pay significant penalties if they withdraw from the interconnection queue. The modified procedures were developed through a

lengthy stakeholder process in which Pine Gate Renewables, LLC (“Pine Gate”)¹ and the Public Staff were active participants. Duke Energy filed proposed revisions to their LGIP with the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER-21-1579-000 on April 1, 2021 (“FERC Interconnection Procedures”). *See* Attachment J (Standard Large Generator Interconnection Procedures (“LGIP”)) to their Joint Open Access Transmission Tariff (“OATT”). In their pleading, Duke Energy requested approval of their FERC Interconnection Procedures by June 1, 2021 so that Duke Energy could immediately reform their generator interconnection queueing, study process, and cost allocation process by transitioning to a Definitive Interconnection Study Process (“DISIS”), and align the FERC-jurisdictional LGIP with queue reform revisions to the state-jurisdictional interconnection procedures recently approved by the North Carolina Utilities Commission and the Public Service Commission of South Carolina. On August 6, 2021, FERC issued an Order approving Duke Energy’s FERC Interconnection Procedures.

A central feature of Duke Energy’s modified interconnection procedures is a transition study opportunity for Interconnection Customers in the interconnection queue prior to notification by Duke Energy that the new procedures are in effect (the “Notice Date”). Certain advanced stage projects, not relevant here, are eligible to continue to be studied on a serial basis. All other Interconnection Customers in the queue as of the Notice Date (including Juno Solar) are eligible to be studied as part of a single, one-time Transitional Cluster Study (“TCS”) process, subject to a number of conditions. TCS

¹ Juno Solar is wholly owned by Birch Creek Development, LLC (“Birch Creek”). Pursuant to a contract with Birch Creek, Pine Gate Renewables, LLC is responsible for managing the development of Juno Solar’s proposed Facility.

involves a Phase 1 power flow and voltage study, a Phase 2 stability and short circuit study, and a Facilities Study. In order to enter Phase 2 of TCS, Interconnection Customers must satisfy both readiness and financial security requirements. In the case of FERC-jurisdictional Interconnection Customers, those requirements in most cases, including that of Juno Solar, consist of either (i) a non-refundable performance security posting of \$3,000,000 and an executed contract for the sale of the output of the Interconnection Customer's facility, or (ii) a non-refundable performance security posting of \$5,000,000.² If the Interconnection Customer withdraws after entering Phase 2 and prior to executing a Large Generator Interconnection Agreement ("LGIA"), Duke Energy will use the security as payment for (a) the final invoice for study costs and (b) the Withdrawal Penalty, after which any remaining amount of security shall be returned to the Interconnection Customer.

2. The "Catch 22" facing Juno Solar

On numerous occasions during the stakeholder process for Duke Energy's FERC Queue Reform Proposal, Pine Gate identified a "catch 22" created by Duke Energy's FERC Queue Reform Proposal and explained the problem to both Duke Energy and the Public Staff. Specifically, a FERC-jurisdictional Interconnection Customer that enters Phase 2 of TCS must make substantial performance security payments and face multi-million-dollar withdrawal penalties if it exits the study process. Among the reasons that an Interconnection Customer might need to withdraw from the study process is if the Commission were to deny a CPCN application or revoke a CPCN. As demonstrated by

² The performance security may be refunded under very limited circumstances not relevant here.

the Commission's decision for Friesian Holdings, LLC's ("Friesian") CPCN application,³ the Commission could decide to deny a CPCN where it believes that the Levelized Cost of Transmission ("LCOT") for required Network Upgrades assigned to the Interconnection Customer (which under Duke Energy's FERC-approved OATT and LGIA are reimbursed in part by North Carolina retail customers) are too high.⁴ However, the Interconnection Customer cannot know its Network Upgrade costs and thus its LCOT with reasonable confidence until it has been through TCS. Thus the "catch 22."

If, based on Juno Solar's LCOT value, the Commission were to deny Juno Solar's CPCN after it enters Phase 2 of study, Juno Solar would be required to forfeit millions of dollars. That result would be manifestly unjust and would discourage FERC-jurisdictional Interconnection Customers from participating in TCS, thereby reducing the potential to spread the very large cost of resolving Duke Energy's significant transmission system constraints and removing a major impediment to achieving Governor Cooper's decarbonization goals.

3. The best solution to the "catch 22" problem

During the Queue Reform stakeholder process, on numerous occasions Pine Gate explained this problem to Duke, the Public Staff, and other stakeholders. Pine Gate identified two possible solutions to the problem: either (i) utilize the sort of conditional CPCN approval sought by Juno Solar in this proceeding, or (ii) waiver of the withdrawal

³ See *Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility* issued on June 11, 2020 in Docket No. EMP-105, Sub 0.

⁴ In the case of Friesian Holdings, LLC, the Commission denied a CPCN application on these grounds. The Commission has also considered revoking CPCNs on similar grounds. See *Order Requiring Further Testimony*, issued on May 7, 2021 in Docket No. EMP-102, Sub 1; *Order Granting Motion, Reopening Record, Receiving Additional Evidence into the Record, Requiring Public Staff Recommendation, and Providing Notice of Timeline for Issuance of Final Order* issued on August 13, 2020 in Docket No. EMP-107, Sub 0.

penalties where an Interconnection Customer withdraws from the queue because its CPCN has been denied based on the LCOT. Duke Energy strongly opposed the latter option because of its disruptive effect on TCS and other Interconnection Customers, and indicated its preference for the conditional CPCN approach. Despite Pine Gate's repeated emphasis of the severity of the problem and the need for this specific solution, the Public Staff never expressed any objection to the conditional CPCN approach. Had it done so, Pine Gate would not have supported—and encouraged its trade association, Carolinas Clean Energy Business Association to support—Duke Energy's FERC Interconnection Procedures without the waiver of withdrawal penalties described above.⁵

In the Commission's Order denying Friesian's CPCN Application, the Commission made it clear that the LCOT provides the “benchmark” as to the reasonableness of Network Upgrade costs associated with merchant generating plants.⁶ In addition to its testimony in the Friesian proceeding, the Public Staff has confirmed on numerous occasions to Pine Gate that it believes that LCOT is the appropriate test to be utilized by the Commission in making CPCN determinations for FERC-jurisdictional projects. However, the Commission did not provide in the Friesian docket, nor has it provided since the Friesian Order, any specific guidance as to what is a reasonable LCOT value for merchant plant facilities. FERC-jurisdictional Interconnection Customers are therefore faced with having no clarity about whether or not the Commission will consider

⁵ The “catch 22” could also be avoided if the Commission had a bright-line standard for an acceptable LCOT for FERC-jurisdictional customers. Pine Gate had approached the Public Staff about this option, but the Public Staff indicated it would not support such a “bright line” LCOT value that would be applied to *all* merchant plant facilities and instead wanted to be able to consider the reasonableness of Network Upgrade costs on a case-by-case basis. Pine Gate therefore proposed the two alternative solutions described above.

⁶ See *Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility*, in Docket No. EMP-105, Sub 0, pp. 6, 15.

the LCOT for any required Network Upgrades to be reasonable when deciding whether to grant a CPCN. Interconnection Customers need to have clear guidance about what LCOT value the Commission considers to be acceptable so that they can determine the feasibility of their projects before posting millions of dollars of non-refundable payments in order to participate in TCS.

The solution to this untenable situation is for the Commission to issue a Conditional CPCN to Juno Solar (and other similarly situated FERC-jurisdictional Interconnection Customers) that will remain in effect so long as the LCOT for any required Network Upgrades assigned to Juno Solar is at or below an acceptable defined amount. Juno Solar's Application therefore includes a condition that the LCOT for any assigned Network Upgrades will be no greater than \$4.00 per MWh, and that if the LCOT is greater than \$4.00 per MWh, the CPCN will automatically terminate unless Juno Solar requests further proceedings to consider whether the CPCN should not be terminated.⁷ With a Conditional CPCN, Juno Solar will be able to enter the TCS and incur the required financial exposure without an unacceptable level of uncertainty and risk about whether the Commission will issue a CPCN to the project.

III. THE PUBLIC STAFF'S MOTION TO STAY

In its Motion to Stay, the Public Staff urges the Commission to stay the proceeding and not issue a procedural order, as required by Commission Rule R8-63(d). As discussed above, the Public Staff's motion followed discussions that spanned many months between Pine Gate and the Public Staff about the Conditional CPCN solution to the "catch 22" problem. Even though the Public Staff participated in the months-long

⁷ As discussed below, Juno Solar is proposing a modification to this condition to address concerns raised by the Public Staff.

stakeholder process for Duke's FERC Queue Reform Proposal, the Public Staff never once expressed any concern about the conditional CPCN solution. The Public Staff also did not indicate any reservation about the conditional CPCN approach in email discussions with Pine Gate in November, 2020 and April, 2021. Most recently, prior to filing the Conditional CPCN Application, Juno Solar shared the Application with the Public Staff (and Duke Energy), and requested any feedback regarding the Application and the reasonableness of the proposed LCOT amount for the project. The Public Staff provided no feedback to Juno Solar.

In its Motion to Stay, the Public Staff makes the following arguments: (1) the Network Upgrade costs will be unknown until the TCS is completed; (2) there is no information about whether the Facility will trigger Affected System Upgrades; and (3) the Network Upgrade costs will be passed on to the North Carolina ratepayers, and Affected System Upgrade costs, if any, might be as well.⁸ The Public Staff's motion should be rejected as contrary to the Commission's *Order Scheduling Hearings, Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice* issued on August 12, 2021 in Docket No. EMP-117, Sub 0 ("Shawboro Order"). The Public Staff's concerns should also be rejected as unfounded because the conditions to Juno Solar's Application provide ample protection for the North Carolina ratepayers from unreasonable Network Upgrade and Affected System costs being passed onto them.

A. Stay of the Juno Solar CPCN proceeding is not warranted and not contemplated by Commission Rule R8-64

⁸ Motion to Stay, p. 2, fn. 1 ("The Public Staff does not have any information about whether there is the potential for affected system costs for this facility.").

Commission Rule R8-63(d) provides that following receipt of a notice of completeness from the Public Staff and receipt of all required information from the applicant, “the Commission will promptly issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.” Here, the Public Staff determined that the Application is complete and filed a Notice of Completeness on July 27, 2021. Thus, due to the complete Application, Rule R8-63 requires the Commission to “promptly” issue a procedural order. The Rule R8-63 requirement is consistent with due process safeguards, along with the special procedures governing proceedings for CPCN applications for electric generating facilities in N.C. Gen. Stat. § 62-82.

Despite the fact that Commission Rule R8-63 provides no authority for staying a CPCN proceeding after the application is deemed complete, the Public Staff nonetheless asked the Commission to “stay the proceedings in the docket pending the completion of the interconnection studies by DEP, and any affected system studies by potential systems, if applicable.”⁹ The Public Staff’s request for a stay of the proceedings would inflict unacceptable uncertainty and potentially substantial financial harm to Juno Solar. If the proceedings were stayed, Juno Solar would be subjected to costly delays in the development process, and Juno Solar might have to forfeit millions of dollars if the CPCN was denied after Juno Solar enters the study process.¹ In addition to millions of dollars of potential withdrawal penalties, Juno Solar has already incurred \$100,650 in development costs and will have to incur an additional \$6.5 million for interconnection and land permitting costs with no assurance that the CPCN will be granted.

⁹ Motion to Stay, p. 3.

The Public Staff's position is also contrary to the Commission's ruling in its Shawboro Order. In Shawboro East Ridge Solar, LLC's ("Shawboro East Ridge Solar") CPCN proceeding in Docket No. EMP-117, Sub 0, the Public Staff filed a Notice of Completeness and Motion to Stay on July 7, 2021. In the filing, the Public Staff noted that Shawboro East Ridge Solar had provided estimated construction costs for the facility, but that DEP had not completed an Affected System Study that includes the Shawboro East Ridge Solar facility. The Public Staff also pointed out that Edgecombe Solar, LLC ("Edgecombe Solar") filed a complaint at FERC regarding Duke Energy's revised policy for the assignment of Affected System Network Upgrade costs. The Public Staff recommended that the Commission stay the Shawboro East Ridge Solar proceedings until completion of the Affected System Study for the facility and a FERC ruling on the Edgecombe Solar complaint. However, the Commission rejected the Public Staff's arguments, denied the Public Staff's request to stay the proceedings, and scheduled an evidentiary hearing for Shawboro East Ridge Solar.

Similar to the Shawboro East Ridge Solar proceedings, in this case, the Public Staff has demonstrated no cause for a stay of the proceedings for an extended and indefinite duration (*i.e.*, until FERC issues a decision in the Edgecombe Solar complaint proceeding and until the TCS is completed). It is uncertain when FERC might issue a decision in the proceeding, and Duke Energy will not complete Phase 2 of the TCS until at least August, 2022. The Public Staff's urging for a stay of the proceedings is unreasonable and without justification.

B. The proposed conditions to the CPCN will protect the ratepayers from unreasonable network upgrade and affected system upgrade costs.

Juno Solar's Application includes a condition under which the CPCN will automatically terminate if Network Upgrades exceed a reasonable value of \$4.00 per MWh unless Juno Solar obtains relief from that condition. In addition, in light of the Public Staff's concerns, Juno Solar is willing to modify that condition. Juno Solar will commit to a revised condition, stating that if the LCOT for the combined Network Upgrade costs and Affected System costs is greater \$4 per MWh, Juno Solar must commit to pay any costs above that threshold or the CPCN will automatically terminate. In other words, the LCOT value of \$4 per MWh would serve as a cap, and any amount in excess would be paid by Juno Solar.

Even though Juno Solar has committed to a condition that will ensure that the LCOT for any Network Upgrades and Affected System Upgrades will protect the ratepayers from unreasonable costs, the Public Staff inexplicably believes that it still needs to have the TCS results in order to determine whether the \$4 per MWh LCOT value is reasonable. The LCOT value for a transmission generating facility is readily ascertainable since there is an established methodology for calculating the LCOT value.¹⁰ Consequently, there is no simply no reason that the Commission cannot make a determination about the reasonableness of Juno Solar's LCOT condition prior to the completion of DEP's TCS.

WHEREFORE, Juno Solar, LLC respectfully requests that the Commission deny the Public Staff's Motion to Stay and order an evidentiary hearing on Juno Solar's Conditional CPCN Application.

¹⁰ The LCOT value is calculated by dividing the annualized cost of the required new transmission assets over the typical transmission asset lifetime by the expected annual generator output in MWh, with the outputs presented in a \$/MWh value. *See Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility*, p. 15.

Respectfully submitted this 20th day of August, 2021.



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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Response to Public Staff's Notice of Completeness and Motion to Stay by first class mail deposited in the U.S. mail, postage pre-paid, or by e-mail transmission to all parties of record.

This the 20th day of August, 2021.



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