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August 28, 2020

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

RE: *Application of Apex Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 30-MW Solar Facility in Cleveland County, North Carolina NCUC Docket No. SP-11723, Sub 0*

Dear Ms. Campbell:

On behalf of Apex Solar, LLC, we submit the attached **Proposed Order Issuing Amended Certificate** in the above-referenced docket.

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

Sincerely,

Karen Kemerait

KK:bs

cc: All parties of record
Enclosure

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 Virginia Washington

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-11723, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Apex Solar, LLC,)	PROPOSED ORDER
for a Certificate of Public Convenience and)	ISSUING AMENDED
Necessity to Construct a 30-MW Solar Facility)	CERTIFICATE OF
in Cleveland County, North Carolina)	PUBLIC CONVENIENCE
)	AND NECESSITY

HEARD: Wednesday, July 22, 2020, at 6:00 p.m., via Remote Hearing

BEFORE: Hearing Examiner Patrick Buffkin

APPEARANCES:

For Apex Solar, LLC:

Karen Kemerait, Fox Rothschild LLP, 434 Fayetteville Street, Suite 2800,
Raleigh, North Carolina 27604

For the Using and Consuming Public:

Nadia Luhr, Staff Attorney, Public Staff – North Carolina Utilities
Commission, 4326 Mail Service Center, Raleigh, NC 27699

BUFFKIN HEARING EXAMINER: On February 28, 2017, the Commission issued an order granting Apex Solar, LLC (Applicant), a certificate of public convenience and necessity (CPCN) for the construction of a 30-MW solar photovoltaic (PV) generating facility to be located on the west side of Plainsview Church Road, approximately 0.5 miles west of the intersection with East Stage Coach Trail, Lawndale, Cleveland County, North Carolina.

On September 13, 2019, the Applicant filed an amendment to its application. The amendment is to add additional land to the facility. In addition, the Applicant filed an

updated site plan map showing the new boundaries of the proposed facility, as well as information about the new owner of the Applicant, Silver Creek Energy, LLC (Silver Creek Energy).

On September 18, 2019, the Commission issued an Order Requiring Publication of Notice requiring the Applicant (1) to publish notice of the application in the manner required by N.C. Gen. Stat. § 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 the Applicant 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 Requiring Publication of Notice 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 (State Clearinghouse) for distribution by the Coordinator to State agencies having an interest in the application.

On or after September 26, 2019, the following individuals filed complaints in this docket: Carrie and Gene Daves, Ronald Ingram, Dana Donaldson, Tom and Karen Bess (collectively, the Complainants).

On September 27, 2019, the Applicant filed a verified certificate of service evidencing that the application and notice were mailed to Duke Energy Carolinas, LLC (DEC) on September 18, 2019.

On October 29, 2019, the State Clearinghouse filed comments of state agencies. The cover letter indicates that, because of the nature of the comments, no further State Clearinghouse review is required for compliance with the North Carolina Environmental Policy Act.

On October 31, 2019, the Applicant filed an affidavit of publication evidencing that the notice of the amended application for a CPCN was published in The Star, a newspaper published in Cleveland County, North Carolina, in the manner prescribed by the Commission's September 18, 2019 Order Requiring Publication of Notice.

On November 6, 2019, the State Clearinghouse filed additional comments of state agencies. The cover letter also indicates that, because of the nature of the comments, no further State Clearinghouse review is required for compliance with the North Carolina Environmental Policy Act.

In March 2020, Governor Roy Cooper issued a progression of Executive Orders that declared a State of Emergency in North Carolina to coordinate response and protective actions to prevent the spread of coronavirus (COVID-19). On May 5, 2020, Governor Cooper issued Executive Order No. 138 easing some restrictions on business operations and mass gatherings, but still limiting face-to-face meetings to no more than ten people and requiring social distancing between individuals of at least six feet.

Based upon the foregoing and the entire record herein, the Hearing Examiner found good cause to schedule a remote hearing on July 22, 2020 to be held via WebEx to allow members of the public to provide testimony through video conference and by telephone and to receive public and expert witness testimony regarding the Applicant's application for an amended CPCN. Members of the public who wished to testify at the remote hearing were instructed to contact the Public Staff on or before 4:00 p.m. on July 17, 2020.

On July 2, 2020, the Applicant consented to holding the hearing scheduled for July 22, 2020 by remote means.

On July 2, 2020, the Applicant filed the direct testimony and corrected direct testimony and exhibits of Cullen Morris, the direct testimony and exhibits of Richard Kirkland, and the direct testimony of Chris Sandifer.

On July 6, 2020, the Public Staff consented to holding the hearing scheduled for July 22, 2020 by remote means.

On July 10, 2020, the Public Staff filed the direct testimony and exhibits of Jay B. Lucas.

On July 16, 2020, the Applicant filed rebuttal testimony and exhibits of Cullen Morris.

On July 17, 2020, the Applicant filed a Certificate of Service, evidencing that the notice of hearing was mailed to DEC.

On July 17, 2020, the Applicant filed a list of potential cross-examination exhibits, provided a pre-marked electronic copy to all parties, and provided a hard copy of same to the Commission.

On July 20, 2020, the Applicant filed an Affidavit of Publication stating that the notice of the hearing had been published in The Star.

On July 22, 2020, the matter came on for hearing as ordered. The Applicant presented the testimony and exhibits of Cullen Morris, Richard Kirkland, and Chris Sandifer. The Public Staff presented the testimony and exhibits of Jay B. Lucas. Two public witnesses testified regarding the proposed facility.

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

FINDINGS OF FACT

1. On February 28, 2017, the Commission issued an order granting the Applicant a CPCN for the construction of a 30-MW solar photovoltaic (PV) generating facility to be located on the west side of Plainsview Church Road, approximately 0.5 miles west of the intersection with East Stage Coach Trail, Lawndale, Cleveland County, North Carolina.

2. In compliance with N.C. Gen. Stat. § 62-110.1(a) and Commission Rule R8-64, on September 13, 2019, the Applicant filed with the Commission an application for an amended CPCN so that additional land could be added to the facility. In the application, the Applicant filed an updated site plan map showing the new boundaries of the proposed facility, as well as information about the new owner of the Applicant, Silver Creek Energy.

3. The Applicant has self-certified as a qualifying facility (QF) with the Federal Energy Regulatory Commission (FERC).

4. The Applicant has demonstrated the need for the proposed facility because the Applicant plans to sell electricity from the proposed facility to DEC and to 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).

5. The Applicant has demonstrated that construction of the facility is in the public convenience because the facility will provide 69,890,000 kWh per year of emission-free renewable energy to DEC's system that has the potential to cause DEC to defer, in part, the addition of fossil fuel-fired generation to its generating fleet. No credible evidence

was introduced regarding adverse health effects or inappropriate factors in siting the proposed facility, and the Applicant has taken measures to address other concerns raised in the complaints and by the public witnesses, such as aesthetic issues and the decommissioning of the facility.

6. No party presented evidence that the application was not prepared and filed in accordance with N.C. Gen. Stat. § 62-110(a) or was deficient in any manner.

7. It is reasonable and appropriate to grant the amended 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 Cullen Morris, Richard Kirkland, and Chris Sandifer; the rebuttal testimony and exhibits of Applicant witness Cullen Morris; the direct testimony and exhibits of Public Staff witness Jay B. Lucas; the amended application filed on September 13, 2019; and the public witnesses' testimony regarding the proposed facility.

At the July 22, 2020 hearing, two public witnesses testified regarding the proposed facility: Carrie Daves and Ronald Ingram. Ms. Daves testified about potential adverse aesthetics of the facility, potential adverse health impacts from solar facilities, potential impact to property values in the area, and potential impact to wildlife. Mr. Ingram testified that Cleveland County had revised its Solar Ordinance and that the Applicant has not complied with the revised Solar Ordinance, that the decommissioning of the facility might have an adverse impact on human health, and that another solar facility in the County not associated with the Applicant has not been properly screened.

Mr. Morris testified that the total acreage of the underlying tracts for the proposed 30-MW facility is 475 acres, that the solar panels will be located on 321 acres of the parent

tracts, and that the area of disturbance will include 357 acres. The facility will consist of approximately (132,327) 345W photovoltaic (PV) modules (or equivalent) affixed to metal racks, which will be supported by piles driven into the ground to minimize soil disturbance. The Facility will utilize (14) 2500kVa inverters (or equivalent).

Mr. Morris testified that the facility will provide 69,890,000 kWh per year of emission-free renewable energy. The addition of this renewable energy to DEC's system has the potential to cause DEC to defer, in part, the addition of fossil fuel-fired generation to its generating fleet. Also, the energy generated by the facility has the potential to be consumed by residences or other buildings that are fed by the same transmission line. Serving the load nearest to the facility from energy generated by the facility minimizes the loss of power that occurs in the transmission and distribution lines when residences and business are served by generation that is located many miles away.

Mr. Morris testified that the Applicant will take steps to minimize any disturbance to neighbors during the construction of the facility. During construction, the Applicant will ensure that appropriate sedimentation and erosion control measures are in place; the Applicant will maintain a trash and litter-free construction site; and the Applicant will operate heavy machinery during limited hours, typically from 7:00 am to 7:00 pm.

Mr. Morris testified that the Cleveland County Board of Adjustment granted a Conditional Use Permit to the Applicant for the facility. As part of the permitting process for the facility, a public hearing was held before the Cleveland County Board of Adjustment. After hearing all of the evidence during the public hearing, the Board of Adjustment found and concluded that the solar farm use will not materially endanger the public health or safety; the use will not substantially injure the value of adjoining or

abutting property; the use will be in harmony in the area in which it is to be located; and the use will be in general conformity with the land development plan or other plans officially adopted by the Board of Commissioners.

Mr. Morris testified that the facility will meet or exceed the setback and screening requirements of the Cleveland County Unified Development Ordinance (UDO) applicable to the facility. The facility will be set back at least 50 feet from all adjacent property lines and at least 100 feet from any habitable dwelling or commercial structure. In addition, the facility will exceed the screening and setback requirements as follows:

1. On Parcel ID No. 35641, the Applicant is required to provide a 50-foot setback from the security fencing to any non-participating property. After consultation with adjoining property owners, the Applicant volunteered to adhere to a 70-foot setback along the northwest property boundary with Charolais Drive.

2. The Applicant is required to plant Type A screening by preserving existing vegetation or plant evergreen vegetation, either of which must be opaque to 6 feet in height and reach 20 feet at maturity. The Applicant volunteered to preserve or plant three staggered rows of vegetation ranging from 6 to 8 feet in height, along the northwest property boundary with Charolais Drive. The Applicant also volunteered to install slatted fencing along this parcel's northeastern boundary with Fallston Waco Road.

3. On Parcel ID No. 35642, the Applicant is likewise required to meet the 50-foot setback and Type A screening. However, along the western boundary of this parcel, the Applicant volunteered to provide a 70-foot setback and a 150-

foot non-disturbance buffer, and to preserve or plant three staggered rows of vegetation ranging from 6 to 8 feet in height.

4. On the portions of Parcel ID Nos. 35642 and 35649 located southwest of Fallston Waco Road, the Applicant must meet the standards of the Type A screening. However, in addition to this requirement, the Applicant volunteered to install slatted fencing along the boundaries with Fallston Waco Road.

5. On the portion of Parcel ID No. 35649 located southwest of Fallston Waco Road, the Applicant must observe a 50-foot setback and meet the standards of Type A screening. However, along this property's southern border, Apex Solar has volunteered to observe a 70-foot setback and preserve or plant three staggered rows of vegetation ranging from 6 to 8 feet in height.

6. Throughout the project footprint, Apex Solar has volunteered a 150-foot setback from any habitable dwelling, even though the applicable Solar Ordinance only requires the Applicant to observe a 100-foot setback.

Mr. Morris and Mr. Sandifer testified that the facility will be properly decommissioned. As part of the Applicant's application for a Conditional Use Permit approved by Cleveland County, the Applicant provided a decommissioning plan as required by the UDO. The decommissioning plan provides that decommissioning will occur upon any of the following conditions: (1) the land lease ends; (2) the facility does not produce power for a period of twelve months; and (3) the facility is damaged and will not be repaired or replaced. Also, the Applicant's lease with the property owners requires the Applicant to perform the following to decommission the project: (1) remove all non-

utility owned equipment, conduits, structures, fencing, and foundations to a depth of at least three feet below grade; (2) remove all graveled areas and access roads unless the property owners request in writing for they remain in place; (3) restore the land to a condition reasonably similar to its condition before development, including replacement of top soil that was removed or eroded; (4) re-vegetate any cleared areas with warm season grasses that are native to the Piedmont region, unless requested in writing by the property owners to not re-vegetate due to plans for agricultural planting.

Mr. Morris testified that the facility will comply with applicable state and federal regulations. There will be a wetlands delineation and jurisdictional determination by the US Army Corps of Engineers pursuant to Section 404 of the Clean Water Act for the entirety of the facility footprint, and there will be 50-foot riparian buffers on both sides of any jurisdictional streams. The facility will require an erosion and sedimentation control plan approved by the North Carolina Department of Environmental Quality in accordance with the Sedimentation Pollution Control Act. The facility is subject to and will comply with the Endangered Species Act and the Fish and Wildlife Coordination Act, which require coordination with US Fish and Wildlife Service and the North Carolina Wildlife Resources Commission to limit or prohibit adverse impacts to protected species. The facility is subject to the North Carolina Environmental Policy Act and has been reviewed by the State Historic Preservation Office for any impact to important historical or cultural sites. The Applicant will adhere to state regulations for the application of herbicides or chemical mowing that is performed as part of the operations and maintenance of the facility.

Mr. Morris and Mr. Sandifer testified that there are no adverse health effects from the facility. The solar panels that comprise the solar arrays are made primarily of glass, utilizing Thin Film technology. They do not contain any radioactive materials, hazardous chemicals, or other materials that could potentially cause harm to the environment or the surrounding community. The solar panels are safe and create no site emissions, odor, or dust. The Environmental Protection Agency performs a test (the Toxic Characteristic Leaching Procedure (TCLP) test) to determine whether toxic/hazardous materials are present and whether the materials can be disposed of in landfills. Solar panels pass that test and may be disposed of in landfills.

Mr. Kirkland testified that the facility will not have an adverse impact on adjacent property values.

Public Staff witness Lucas testified that the public witnesses' concerns are more appropriately addressed through the local permitting process and through the environmental permitting process. In its April 24, 2008 Order in Docket No. SP-231, Sub 0, the Commission discussed local authority over the siting of facilities, stating that "such decisions are, in most instances, best left to the local community through the exercise of its zoning authority rather than made by the Commission." Mr. Lucas testified the public witnesses' concerns are of the type that the Commission has previously determined are best left to the purview of local zoning boards and environmental regulators who have authority over such matters and who are responsible for issuing specific permits that apply to the facility.

Public Staff witness Lucas recommends that the Commission approve the application and grant the amended CPCN, subject to certain conditions.

IT IS THEREFORE, ORDERED as follows:

1. That the application filed by the Applicant, for an amended certificate of public convenience and necessity shall be, and is hereby, approved.
2. The Applicant shall construct and operate the facility in strict accordance with applicable laws and regulations, including any environmental permitting requirements.
3. The amended certificate shall be subject to Commission Rule R8-64 and all orders, rules, and regulations as are now or may hereafter be lawfully made by the Commission.
4. That Appendix A hereto shall constitute the certificate of public convenience and necessity issued for the facility.

ISSUED BY ORDER OF THE COMMISSION.

This ____ day of _____, 2020.

NORTH CAROLINA UTILITIES COMMISSION

Chief Clerk

APPENDIX A

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-11723, SUB 0

Apex Solar, LLC
3402 Pico Boulevard, Suite 200
Santa Monica, CA 90405

is hereby issued this

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

For a 30-MW solar photovoltaic facility

to be located on the west side of Plainsview Church Road, approximately 0.5 miles west
of the intersection with East Stage Coach Trail, Lawndale, Cleveland County,
North Carolina

subject to all orders, rules, regulations, and conditions as are now or may hereafter by
lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2020.

NORTH CAROLINA UTILITIES COMMISSION
