

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. SP-100, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Request for Declaratory Ruling by Sunstone )  
Energy Development LLC Regarding the ) ORDER DENYING  
Provision of Solar Energy and Energy ) MOTION TO DISMISS  
Efficiency Service Within Fort Bragg )  
)

BY THE CHAIR: On December 8, 2020, Sunstone Energy Development LLC (Sunstone) filed a Request for Declaratory Ruling. Sunstone is engaged in the business of providing solar energy and energy efficiency services to on-base, privatized military housing. Sunstone filed a motion seeking the Commission issue a declaratory ruling that:

- (1) Fort Bragg is not subject to the North Carolina Public Utilities Act because it is a federal enclave;
- (2) Sunstone's provision of energy an energy efficiency services with the federal enclave of Fort Bragg does not subject Sunstone to the Public Utilities Act;
- (3) the activities Sunstone proposes to undertake will not cause it to be considered a public utility under N.C. Gen. Stat. § 62-3(23).

On January 13, 2021, Duke Energy Progress, LLC (DEP), filed a Petition to Intervene. On January 21, 2021, the Commission granted that Petition.

On February 25, 2021, DEP filed a Motion to Dismiss for Failure to Meet Requirements of North Carolina Declaratory Judgement Act. In the Motion DEP requested the Commission dismiss Sunstone's request for failing to present a justiciable case or controversy and for failing to join the United States Department of the Army (Army) as a necessary party. In its Motion, DEP further requested that if Sunstone's Request is not dismissed, the Commission allow parties an additional 20 days from the date of the Order on its Motion to respond to the substance of Sunstone's Request.

On February 26, 2021, the Public Staff filed a letter stating that it did not intend to file comments at that time.

On March 12, 2021, Sunstone filed a Response to Duke's Motion to Dismiss, requesting that the Commission Dismiss DEP's Motion to Dismiss as Sunstone has

presented a case or controversy and that the Army is not a necessary party to this proceeding. In its Response, Sunstone further requested that if the Commission did determine the Army is a necessary party, the Commission join the Army and allow the consideration of its Request to proceed.

Sunstone seeks to provide solar energy and energy efficiency services to housing units on the federal Army base of Fort Bragg. As described in Sunstone's Request for Declaratory Ruling, in order to provide these services Sunstone would enter into a contract with Bragg Communities, LLC (BCL), a private entity that provides privatized, on-base military housing at Fort Bragg. Sunstone's filing further states that BCL has a Municipal Services Agreement with the Army under which the Army provides electric service to BCL. Sunstone states in the filing that BCL may negotiate directly with other providers for alternative sources for the services that are provided under the Municipal Services Agreement.

Prior to engaging in this activity, Sunstone seeks a ruling by the Commission whether its activities would deem it a public utility under N.C.G.S. § 62-3(23), provided North Carolina law applies to the provision of these services on the military base of Fort Bragg. Sunstone states that the U.S. Constitution reserves to Congress the right to legislate over areas purchased by the federal government, including military bases. Sunstone further states that these areas are known as federal enclaves and are not subject to regulation by the states unless specific exemptions apply.

## **DISCUSSION AND CONCLUSIONS**

DEP argues in its February 25, 2021 Motion that Sunstone presents "virtually no legal issues for the Commission to decide under North Carolina law" and that the current posture of Sunstone does not present an actual controversy. DEP asserts that Sunstone has not taken any meaningful steps in furtherance of its plans to construct solar facilities on Fort Bragg, and that due to the speculative nature of Sunstone's proposed activities the Commission should dismiss the motion for failure to comply with the requirements of the Declaratory Judgement Act.

Sunstone argues that its Request seeking to resolve the legal uncertainty of whether or not the Commission would consider Sunstone a public utility under N.C.G.S. § 62-3(23) presents a case and controversy that is "exactly the type of problem for which the Declaratory Judgment Act exists." Sunstone further points out that the Commission routinely provides similar guidance to other parties seeking to ascertain whether their actions will deem them a public utility under N.C.G.S. § 62-3(23).<sup>1</sup>

---

<sup>1</sup> See e.g. Order on Request for Declaratory Ruling, *Request for a Declaratory Ruling by Cogentrix of North Carolina, Inc.*, No. SP-100, Sub 0 (N.C.U.C. Feb. 29, 1984); Order on Request for Declaratory Ruling, *Pitt Landfill Gas, LLC, Petition for Declaratory Ruling*, No. SP-100, Sub 13 (N.C.U.C. Mar. 19, 1991); Order on Request for Declaratory Ruling, *Request for Declaratory Ruling of Wake Landfill Gas Co., LLC, and Enerdyne IV, LLC*, No. SP-100, Sub 9 (N.C.U.C. July 31, 1996); Order on Petition for Declaratory Ruling, *Request for Declaratory Ruling by Pharr Yarns, LLC*, No. W-1260, Sub 0 (N.C.U.C. Nov. 22, 2005); Order on Request for Declaratory Ruling, *Request for Declaratory Ruling by Catawba County*, No. SP-100, Sub 22 (N.C.U.C. Oct. 19,

In addition, the Commission has provided guidance to Old North State Utility Services seeking to provide water and wastewater services at Fort Bragg Army, Pope Air Force Base, and Camp MacKall on whether its actions would fall within the definition of a public utility under N.C.G.S. § 62-3(23). Order on Petition for Declaratory Ruling and Application for Certificate for Public Convenience and Necessity, *Request for Declaratory Ruling by Old North State Utility Services, Inc. and Application of Old North State Utility Services, Inc. for Certificate of Public Convenience and Necessity*, No. W-1279, Sub 0 (N.C.U.C. Mar. 18, 2008).

In the recent proceeding brought by Cube Yadkin Generation, LLC (Cube Yadkin) for a Petition for a Declaratory Ruling, DEP together with Duke Energy Carolinas, LLC (jointly Duke), similarly argued that Cube Yadkin's petition should be dismissed for failure to meet the requirements for a declaratory judgment. The Commission did not find Duke's argument persuasive in that docket and issued an order finding that Cube Yadkin's proposed actions would fall within the definition of a public utility in N.C.G.S. § 62-3(23). Order Issuing Declaratory Ruling, *Petition for Declaratory Ruling by Cube Yadkin Generation, LLC*, No. M-100, Sub 152 (N.C.U.C. Sept. 4, 2019).

The Chair concludes that Sunstone's Request does present an actual controversy proper for consideration under the Declaratory Judgment Act. Pursuant to N.C.G.S. § 62-60, the Commission "shall have all the powers and jurisdiction of a court of general jurisdiction" over matters within its jurisdiction. Section 1-253 of the North Carolina General Statutes, therefore, provides the Commission with the authority to "declare rights, status, and other legal relations, whether or not further relief is or could be claimed." Section 1-264 further provides that the purpose of the Declaratory Judgment Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be liberally constructed and administered." The Declaratory Judgment Act does not require a party to have actionable claim at the time it requests the declaratory judgment, but only that the judgment is necessary to avoid future litigation. *N.C. Consumers Power, Inc. v. Duke Power Co.*, 285 N.C. 434, 450, 206 S.E.2d 178, 189 (1974).

The Chair is also not persuaded that the Army is a necessary party. Section 1-260 provides that "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings" in declaratory rulings.

---

2006); Order on Petition for Declaratory Ruling, *Petition for Declaratory Ruling by Grand Strand Water and Sewer Authority*, No. W-1278, Sub 0 (N.C.U.C. Jan. 1, 2008); Order on Petition for Declaratory Ruling, *Petition for Declaratory Ruling by Grand Strand Water and Sewer Authority*, No. W-1278, Sub 0 (N.C.U.C. Jan. 28, 2008); Order on Request for Declaratory Ruling, *Request for Declaratory Ruling by Solid Recovered Fuel, LLC*, No. SP-100, Sub 23 (N.C.U.C. Mar. 25, 2009); Order on Petition for Declaratory Ruling, *Petition for Declaratory Ruling by JUSA Utilities Bridgeton, LTD*, No. W-1290, Sub 0 (N.C.U.C. Apr. 27, 2010); Order Issuing Declaratory Ruling, *Public Utility Status of American Homes 4 Rent – Public Staff Request for a Declaratory Ruling*, No. M-100, Sub 144, (N.C.U.C. Oct. 18, 2016); Order Issuing Declaratory Judgment, *Petition for Declaratory Ruling by the Villages of Bishops Ridge Association*, No. W-1309, Sub 0 (N.C.U.C. Apr. 24, 2017).

DEP asserts that the Commission's determination in this proceeding will have a direct effect on the Army's interest and that the Army is necessary to resolve the complex issues of Constitutional and federal law. In the case DEP cites in support of its argument that the Army is a necessary party, the court held that an action on the declaration of the rights under a contract would be invalid where one of the parties to the disputed contract was not a party to the action. See *N.C. Monroe Constr. Co. v. Guilford Cty. Bd. of Educ.*, 278 N.C. 633, 180 S.E.2d 818 (1971). As noted in its Request for Declaratory Ruling, Sunstone is seeking to enter into a contract with BCL, a private entity that provides privatized, on-base military housing. Sunstone is not directly contracting with the Army.

The Chair concludes that the Army is not a necessary party and that the proceeding on the merits of Sunstone's Request for Declaratory Ruling should proceed. The Army, through the Department of Defense and all other Federal Executive Agencies (DOD/FEA), has participated in other Commission proceedings. The Commission will send a copy of this Order to the DOD/FEA and would certainly consider any petition to intervene in this proceeding. However, the Chair will not dismiss Sunstone's Request for Declaratory Ruling if the Army or the DOD/FEA fail to file such a petition.

Based on the foregoing and the record, and having denied DEP's Motion to Dismiss, the Chair finds good cause to establish new deadlines for the filing of comments from interested parties on the merits of Sunstone's Request for Declaratory Ruling.

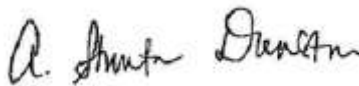
IT IS, THEREFORE, ORDERED as follows:

1. That on or before June 8, 2021, persons having an interest in this matter may file petitions to intervene in this docket;
2. That on or before June 8, 2021, the Public Staff and other parties may file initial comments addressing the issues raised by Sunstone's December 8, 2020 Request for Declaratory Ruling;
3. That on or before July 6, 2021, all parties may file reply comments; and
4. That the Chief Clerk shall serve a copy of this Order on the DOD/FEA.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of May, 2021.

NORTH CAROLINA UTILITIES COMMISSION



A. Shonta Dunston, Deputy Clerk