

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP 115, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of the Application of Cherry Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 180-MW Solar Facility in Northampton County, North Carolina	) ) ) ) )	MOTION FOR ORDER TO TAKE JUDICIAL NOTICE AND REQUIRE DUPLICATE FILING AND TO SUBMIT PROPOSED ORDERS
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NOW COMES Cherry Solar, LLC, (the "Applicant"), by and through its undersigned counsel, and moves the Commission for an Order which: (1) declares that judicial notice shall be taken in this proceeding that the North Carolina Department of Natural and Cultural Resources (the "NCDNCR") has lifted its request for an administrative "hold" in this docket by letter dated March 23, 2023, as shown by Exhibit A attached hereto<sup>1</sup>, and also ordering that a duplicate copy of Exhibit A be deemed filed in this docket, EMP-115, Sub 0, as of April 11, 2023; in addition, that said Order, upon granting that evidentiary relief, also should: (2) direct the parties to this proceeding to submit proposed orders for the application for a certificate of public convenience and necessity to construct the proposed 180 MW generation resource (the "CPCN").

In support of this motion, the Applicant shows unto the Commission the following:

**INTRODUCTION AND BACKGROUND**

1. The NCDNCR has lifted its requests for an administrative "hold" pertaining to the CPCN sought in this docket, and once judicial notice of that fact has been taken in this docket, the Applicant respectfully submits that the Commission should require the submission of proposed orders.

2. A portion of the land which presently is within the footprint of the 180-MW resource proposed in the application in this proceeding was originally located within the footprint of the 300-MW solar facility that was the subject of the original CPCN application filed in this Commission's docket EMP-112, Sub 0. The NCDNCR responded to the original requests for comments made through the State Clearinghouse in that docket, requesting an administrative hold as to that parcel on January 25, 2021. When the original application was divided into separate applications for a 120-MW and a 180-MW resource to be owned by different entities, however,

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<sup>1</sup> Exhibit A, as shown by the legend on its margin, is a 3-page exhibit comprised of a two-page letter dated March 27, 2023 from NCDNCR, accompanied by a transmittal letter dated April 3, 2023 from the NC Department of Administration.

the parcel that was the focus of the NCDNCR's "hold" was within the footprint of the resource proposed by the Applicant in this docket, Cherry Solar.

3. As shown by Exhibit A, the NCDNCR recently approved a plan submitted by the Applicant and lifted its administrative "hold", issuing a letter to that effect dated March 27, 2023. A copy of that letter was provided to the State Clearinghouse, which in turn transmitted a copy of that letter to this Commission by its letter dated April 3, 2023. The March letter from the NCDNCR references the "proposed Cherry Solar Facility", but the April cover letter from the State Clearinghouse references "a 300 MW Solar Facility in Northampton Co. Docket # EMP-112 Sub 0"; accordingly, the Clerk of this Commission filed all of this 2023 correspondence in Docket # EMP-112 Sub 0, on April 11, 2023, but did not file any of these 2023 materials in this docket.

4. This Commission should take judicial notice of Exhibit A hereto for all purposes in this proceeding, and order that a duplicate of Exhibit A be filed in this docket separately and deemed filed as of April 11, 2023. Upon granting such relief, the Commission should then direct the parties to submit proposed orders disposing of the CPCN application in this docket.

Docket No. EMP-112, Sub 0

5. On July 15, 2020, an application for a CPCN to construct a 300-MW (AC) solar renewable electric merchant plant was filed pursuant to N.C. Gen. Stat. § 62-110.1 and NCUC Rule R8-63 in NCUC Docket EMP-112, Sub 0, on behalf of Gaston Green Acres Solar, LLC, a North Carolina organized limited liability company (the "GGAS Application"). The GGAS Application was supported by the pre-filed testimony and exhibits of Linda Nwadike filed with the Commission on the same day in accordance with NCUC Rule R8-63.

6. At the time the GGAS Application was filed, there was no contract to sell the output of the proposed 300-MW solar generation facility.

7. On July 29, 2020, the Public Staff filed a Notice of Completeness stating that the Public Staff had reviewed the GGAS Application as required by Commission Rule R8-63(d) and that the Public Staff considered the GGAS Application to be complete. In addition, the Public Staff requested that the Commission issue a procedural order setting the GGAS Application for hearing, requiring public notice pursuant to N.C.G.S. § 62-82, and addressing any other procedural matters.

8. On September 28, 2020, the Commission issued in EMP-112, Sub 0, an *Order Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice*.

9. On October 19, 2020, the Applicant for the GGAS Application pre-filed the supplemental testimony of witness Nwadike, and pre-filed additional testimony of witness Nwadike addressing specific issues pertaining to the proposed 300 MW facility.



10. After the filing of the initial application in NCUC Docket EMP-112, Sub 0, the proposed 300-MW generation facility was redesigned as two separate generation resources, one of 120 MW and the other for 180 MW. The Applicant in this docket, Cherry Solar, LLC, was organized, and entered an out-take contract for the output associated with a 180-MW solar facility sited within the footprint of the proposed larger 300-MW facility. In connection with the making of the two out-take contracts, the counterparty requested that the Applicant in this proceeding become the counterparty to the output contract associated with a 180-MW facility. The Applicant agreed to file a new application in this docket to seek authority to construct a 180-MW solar facility.

11. A separate out-take contract for the output associated with a 120-MW facility, representing the balance of the proposed 300-MW facility described in the original GGAS Application, was signed by Oak Solar, LLC ("Oak Solar"), which was the new name of the original Applicant for the GGAS Application. Oak Solar continued to prosecute its amended application for a 120-MW solar facility in this Commission's docket EMP-112, Sub 0.

12. By Order dated November 19, 2021, this Commission issued a CPCN to Oak Solar in docket EMP-112, Sub 0. By Order dated February 2, 2022, in EMP-112, Sub 1, the Commission also granted a CECPCN to Oak Solar to construct an interconnecting "tie-line", which would interconnect the DENC transmission system with the proposed 120-MW generation facility of Oak Solar, and the proposed 180-MW generation facility of Cherry Solar.

Docket No. EMP-115, Sub 0

13. The new Application in this docket was filed on November 13, 2020. In addition to the original testimony submitted in support of the original Application when it was filed, the Applicant has caused the additional filing of testimony and studies in support of the requested CPCN on March 11, 2021, and January 13, 2022.

14. On November 24, 2020, the Public Staff filed a Notice of Completeness stating that the Public Staff had reviewed the Application as required by Commission Rule R8-63(d) and that the Public Staff considered the Application to be complete. In addition, the Public Staff requested that the Commission issue a procedural order setting the Application for hearing, requiring public notice pursuant to N.C.G.S. § 62-82, and addressing any other procedural matters.

15. On December 18, 2020, the Commission issued in this docket an *Order Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice*.

16. On April 14, 2021, the Public Staff filed the direct testimony of Mr. Jay B. Lucas, a Manager in the Electric Section of the Public Staff's Energy Division. The Public Staff, through witness Lucas, recommended that the Commission grant the requested CPCN, subject to certain conditions as set out on pages 14-16 of that testimony. That testimony thereafter was supplemented by additional testimony filed on behalf of the Public Staff on December 17, 2021.

Administrative Hold

17. After the original application for a 300-MW resource had been divided and become the subject of two separate Commission dockets, an administrative "Hold" had been raised through the North Carolina Clearinghouse by the NCDNCR because some grave sites had been located within the footprint of what had become the site of the proposed 180-MW generation resource of Cherry Solar. The NC Clearinghouse, however, continued to communicate with this Commission based on the information in the original application; as a result, the requested "hold" was filed on January 25, 2021, in this Commission's docket EMP-112, Sub 0, the docket in which the original application had been filed.

18. Although testimony and other information addressing all material issues has been filed in this docket, completion of the prosecution of the application of Cherry Solar has been delayed pending resolution of the concerns raised by the NCDNCR in connection with its "hold".

19. Earlier this year the concerns of the NCDNCR were addressed. As shown by Exhibit A hereto, by letter dated March 27, 2023, the NCDNCR released its "hold" on the application and notified the NC State Clearinghouse accordingly. The NC State Clearinghouse relayed the 2023 letter of the NCDNCR to this Commission by its letter dated April 3, 2023, but in so doing, the Clearinghouse visibly referenced the docket for the original application, EMP-112, Sub 0, rather than the docket for Cherry Solar, EMP-115, Sub 0.

20. The 2023 correspondence from the NCDNCR was filed on April 11, 2023, in the Commission's docket for Oak Solar, docket EMP-112, Sub 0, even though the March letter from the NCDNCR expressly references the site plans for the "Cherry Solar Facility". Exhibit A hereto is a true and correct copy of the 2023 letters from the NCDNCR and the Environmental Review Clearinghouse, all as filed in this Commission's Docket EMP-112, Sub 0, on April 11, 2023. Exhibit A should have been filed in this docket, as well as in Docket EMP-112, Sub 0.

21. This Commission should take judicial notice in this docket of the release of the "hold" of the application of Cherry Solar by the NCDNCR as evidenced by Exhibit A hereto, which letter is on file in this Commission's docket EMP-112, Sub 0; and, this Commission should also direct that a duplicate copy of Exhibit A be separately filed in this docket "as of" April 11, 2023.

22. Upon the taking judicial notice by the Commission of the release of the NCDNCR's administrative "hold", this Commission also should issue an order directing the parties to submit proposed orders disposing of the Application of Cherry Solar for a CPCN to construct a 180-MW generation resource.

23. The Applicant is informed and believes, and therefore avers, that the Public Staff has no objection to the granting of all the relief requested by the Applicant herein.

WHEREFORE, the Applicant respectfully prays that the Commission issue an order which:



- (1) Takes judicial notice in this docket of Exhibit A hereto, and directs that a duplicate copy of the original letter from the North Carolina Department of Natural and Cultural Resources (the "NCDNCR") dated March 27, 2023, previously filed during April of 2023 in this Commission's docket EMP-112 Sub 0, and attached here as Exhibit A, be "dual filed" in this docket, EMP-115, Sub 0, as of April 11, 2023; and,
- (2) Also requires the parties to this proceeding to submit proposed orders on the application of Cherry Solar for a CPCN to construct the proposed 180-MW generation resource.

Respectfully submitted this 5<sup>th</sup> day of May, 2023.



Joseph W. Eason  
Nelson Mullins Riley & Scarborough LLP  
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Raleigh, North Carolina 27603  
Tel: (919) 329-3800  
joe.eason@nelsonmullins.com

Attorneys for the Applicant

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing MOTION FOR ORDER TO TAKE JUDICIAL NOTICE AND TO REQUIRE DUPLICATE FILING AND TO SUBMIT PROPOSED ORDERS was served upon the following by electronic mail:

Christopher Ayers, Esq.  
Executive Director-NC Public Staff  
Chris.Ayers@psncuc.nc.gov

Energy Division  
NC Public Staff  
[energyinfo@psncuc.gov](mailto:energyinfo@psncuc.gov)

Nadia Luhr  
NC Public Staff-Legal Division  
[Nadia.Luhr@psncuc.nc.gov](mailto:Nadia.Luhr@psncuc.nc.gov)

This the 5<sup>th</sup> day of May, 2023.

  
\_\_\_\_\_  
Joseph W. Eason



Roy Cooper  
Governor

Pamela B. Cashwell  
Secretary

April 3, 2023

Shonta Dunston  
North Carolina Department of Commerce  
Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

Re: SCH File # 21-E-4600-0750 Application of Gaston Green Acres Solar, LLC for Certificate to construct a 300 MW Solar Facility in Northampton Co. Docket # EMP-112 Sub 0. View document at <http://starw1.ncuc.net/NCUC/portal/ncuc/page/Dockets/portal.aspx>, Type EMP-112 Sub 0 in the Docket Number search line.

Dear Shonta Dunston:

The above referenced environmental impact information has been reviewed through the State Clearinghouse under the provisions of the North Carolina Environmental Policy Act.

Attached to this letter are additional comments made in the review of this document. Because of the nature of the comments, it has been determined that no further State Clearinghouse review action on your part is needed for compliance with the North Carolina Environmental Policy Act. The attached comments should be taken into consideration in project development.

If you have any questions, please do not hesitate to contact me at (984) 236-0000.

Sincerely,

CRYSTAL BEST  
State Environmental Review Clearinghouse

Attachments

Mailing  
1301 Mail Service Center | Raleigh, NC 27699-1301



[ncadmin.nc.gov](http://ncadmin.nc.gov)

Location  
116 West Jones St. | Raleigh NC 27603  
984-236-0000 T

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Apr 11 2023

May 05 2023 OFFICIAL COPY



## North Carolina Department of Natural and Cultural Resources

### State Historic Preservation Office

Ramona M. Bartos, Administrator

Governor Roy Cooper  
Secretary D. Reid Wilson

Office of Archives and History  
Deputy Secretary, Darin J. Waters, Ph.D.

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Apr 11 2023

OFFICIAL COPY

May 05 2023

March 27, 2023

Lauren Minford  
PaleoWest Archaeology  
916 East Park Avenue  
Tallahassee, FL 32301

[lminford@paleowest.com](mailto:lminford@paleowest.com)

Re: Phase I archaeological survey and GPR survey report for the proposed Cherry Solar Facility, 922 & 1315 Oak Grove Church Road, 105 Crossvine Lane, and 610 Cherry Tree Road, Gaston, Northampton County, ER 20-2522

Dear Ms. Minford:

Thank you for your submittal of February 6, 2023, transmitting the draft of the above-referenced report. We have reviewed the information provided and offer the following comments.

PaleoWest Archaeology (PaleoWest) conducted a Phase I archaeological survey for SunEnergy1 LLC (SunEnergy) for the proposed Cherry Solar Farm on approximately 1,425 acres. The archaeological survey resulted in revisits of four previously recorded sites (31NP438, 31NP439, 31NP442, and 31NP446) and documentation of 98 new sites (31NP474-31NP571), including two cemeteries (31NP565 and 31NP566).

Ninety-five of the sites (31NP438, 31NP446, 31NP474-31NP495, 31NP497-31NP522, 31NP524-31NP529, 31NP531-31NP540, 31NP542-31NP554, and 31NP556-31NP571) were fully delineated within the project area and PaleoWest recommends that all 95 are not eligible for listing in the National Register of Historic Places (NRHP) and that no further archaeological investigations are necessary.

Seven resources (31NP439, 31NP442, 31NP496, 31NP523, 31NP530, 31NP541, and 31NP555) could not be fully delineated within the project area and are recommended as "Unassessed." Given that the investigated portions of 31NP439, 31NP442, 31NP496, 31NP523, 31NP530, 31NP541, or 31NP555 within the project area are recommended as not eligible, PaleoWest recommends that no further work is necessary at these seven sites.

Of the six locations initially thought to be potential cemeteries, four were determined not to be associated with historic cemeteries. Ground Penetrating Radar (GPR) was conducted by Seramur & Associates, PC to determine boundaries for each of the two cemeteries (31NP565 and 31NP566). The results of the GPR survey indicated the presence of multiple anomalies at each site that are consistent with unmarked burials. PaleoWest recommends a 10-meter avoidance buffer around each. An additional cemetery reportedly located within the APE and identified as the Valentine Cemetery was not located. PaleoWest recommends



that SunEnergy1 consult with OSA prior to ground-disturbing activities on this parcel to establish protocols ahead of any unanticipated discoveries associated with the Valentine cemetery.

We concur with PaleoWest's findings and recommendations for all sites, and we commend PaleoWest on its well-presented and comprehensive report.

We ask that PaleoWest revise the report with the following corrections and edits:

- The Contents section needs to be reformatted to fix numbering inconsistencies with the Appendices and Figures (pg. ix).
- At several places within the report, figure captions are separated from their images on the subsequent page.
- The description of the PPK recovered from 31PN476 does not match the type-description for Halifax side-notched points (see Daniel 2021). No picture was provided, but corner notched types usually fall under the Kirk or Palmer types (Early Archaic). Please include a photo, if possible.
- The "Fountain Creek" point identified from 31NP558 is not a recognized NC type and no reference or photo was provided for identification. The point description sounds similar to a Palmer corner-notched. Please provide either a reference to this point type or change the identification. Please include a photo, if possible.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or [environmental.review@ncdcr.gov](mailto:environmental.review@ncdcr.gov). In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,



*for* Ramona Bartos, Deputy  
State Historic Preservation Officer

cc: Derek Ivie, SunEnergy1  
Nick Tillson, SunEnergy1

[derek.ivie@sunenergy1.com](mailto:derek.ivie@sunenergy1.com)  
[nick.tillson@sunenergy1.com](mailto:nick.tillson@sunenergy1.com)

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May 05 2023