

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 134

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing Requirements for New Electric Generators	) ORDER AMENDING RULES R8-61, R8-63, ) AND R8-64
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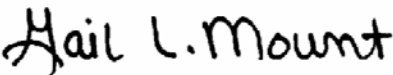
BY THE COMMISSION: In order to facilitate more efficient review by government agencies and the general public of the potential environmental impacts of proposed new electric generation facilities, the Commission finds good cause to: (1) amend Commission Rules R8-61, R8-63, and R8-64, as shown in the attached Appendix A, effective September 1, 2012; and (2) require the Chief Clerk to serve copies of this Order on all North Carolina electric power suppliers, the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration, and all parties to Docket No. E-100, Sub 113.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 30<sup>th</sup> day of July, 2012.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Chief Clerk

**Rule R8-61. PRELIMINARY PLANS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR CONSTRUCTION OF ELECTRIC GENERATION AND RELATED TRANSMISSION FACILITIES IN NORTH CAROLINA; CONSTRUCTION OF OUT-OF-STATE ELECTRIC GENERATING FACILITIES; PROGRESS REPORTS AND ONGOING REVIEWS OF CONSTRUCTION; PROJECT DEVELOPMENT COST REVIEWS FOR NUCLEAR GENERATING FACILITIES.**

(a) Information to be filed 120 or more days before the filing of an application, by a public utility or other person, for a certificate of public convenience and necessity for generating facilities with capacity of 300 MW or more shall include the following:

(1) Available site information (including maps and description), preliminary estimates of initial and ultimate development, a drawing showing the proposed site layout relative to the map, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;

(2) justification for the adoption of the site selected, and general information describing the other locations considered;

(23) As appropriate, preliminary information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, population and general load center data to the extent known;

(34) A statement of the need for the facility, including information on loads and generating capability;

(45) A description of investigations completed, in progress, or proposed involving the subject site;

(56) A statement of existing or proposed plans known to the applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site;

(67) A statement of existing or proposed environmental evaluation programs to meet the applicable air and water quality standards;

(78) A brief general description of practicable transmission line routes emanating from the site;

(89) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals;

(910) A statement of estimated cost information, including plans and related transmission capital cost (initial core costs for nuclear units); all operating expenses by categories, including fuel costs and total generating cost per net kWh at plant; and information concerning capacity factor, heat rate, and plant

service life. Furnish comparative cost including related transmission cost of other final alternatives considered; and

(4011) A schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(b) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) in order to construct a generating facility in North Carolina, a public utility shall include the following information supported by relevant testimony:

(1) The most recent biennial report and the most recent annual report (as defined in Rule R8-60) of the utility plus any proposals by the utility to update said report;

(2) The extent to which the proposed construction conforms to the utility's most recent biennial report and the most recent annual report (as defined in Rule R8-60);

(3) Support for any utility proposals to update its most recent biennial report and its most recent annual report (as defined in Rule R8-60);

(4) Updates, if any, to the Rule R8-61(a) information;

(5) An estimate of the construction costs for the generating facility;

(6) The projected cost of each major component of the generating facility and the projected schedule for incurring those costs;

(7) The projected effect of investment in the generating facility on the utility's overall revenue requirement for each year during the construction period;

(8) The anticipated construction schedule for the generating facility;

(9) The specific type of units selected for the generating facility; the suppliers of the major components of the facility; the basis for selecting the type of units, major components, and suppliers; and the adequacy of fuel supply;

(10) The qualifications and selection of principal contractors and suppliers for construction of the generating facility, other than those listed in Item (9) above;

(11) Resource and fuel diversity and reasonably anticipated future operating costs, including the anticipated in-service expenses associated with the generating facility for the 12-month period of time following commencement of commercial operation of the facility;

(12) Risk factors related to the construction and operation of the generating facility; and

(13) If the application is for a coal or nuclear generating facility, information demonstrating that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest.

(c) The public utility shall submit a progress report and any revision in the construction cost estimate during each year of construction according to a schedule established by the Commission.

(d) Upon the request of the public utility or upon the Commission's own motion, the Commission may conduct an ongoing review of construction of the generating facility as the construction proceeds.

(e) A public utility requesting an ongoing review of construction of the generating facility pursuant to G.S. 62-110.1(f) shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity by the Commission; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause. Upon the filing of a request for an ongoing review, the Commission shall establish a schedule of hearings. The hearings shall be held no more often than every 12 months. The Commission shall also establish the time period to be reviewed during each hearing. The purpose of each ongoing review hearing is to determine the reasonableness and prudence of the costs incurred by the public utility during the period under review and to determine whether the certificate should remain in effect or be modified or revoked. The public utility shall have the burden of proof to demonstrate that all costs incurred are reasonable and prudent.

(f) A public utility may file an application pursuant to G.S. 62-110.6 requesting the Commission to determine the need for an out-of-state electric generating facility that is intended to serve retail customers in North Carolina. If need for the generating facility is established, the Commission shall also approve an estimate of the construction costs and construction schedule for such facility. The application may be filed at any time after an application for a certificate of public convenience and necessity or license for construction of the generating facility has been filed in the state in which the facility will be sited. The application shall be supported by relevant testimony and shall include the information required by subsection (b) of this Rule to the extent such information is relevant to the showing of need for the generating facility and the estimated construction costs and proposed construction schedule for the generating facility. The public utility shall submit a progress report and any revision in the construction cost estimate for the out-of-state electric generating facility during each year of construction according to a schedule established by the Commission.

(g) If the Commission makes a determination of need pursuant to G.S. 62-110.6 and subsection (f) of this Rule, the provisions of subsections (d) and (e) of this Rule shall apply to a request by a public utility for an ongoing review of construction of a generating facility to be constructed in another state that is intended to serve retail customers in North Carolina. An electric public utility shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity or license by the state commission in which the out-of-state generating facility is to be constructed;

provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause.

(h) A public utility may file an application pursuant to G.S. 62-110.7 requesting the Commission to review the public utility's decision to incur project development costs for a potential in-state or out-of-state nuclear generating facility that is intended to serve retail electric customers in North Carolina. The application, supported by relevant testimony, shall be filed prior to the filing of an application for a certificate to construct the facility.

**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 R1-37 or Rule R8-61.

(b) Application.

- (1) The application shall contain all of the information hereinafter required, with each item labeled as set out below. Any additional information may be included at the end of the application.
  - (A) The Applicant:
    - (i) The full and correct name, business address, and business telephone number of the 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; and
    - (iii) 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. 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.

- (B) The Facility:
- (i) The nature of the proposed generating facility, including its type, fuel, size, and expected service life; the anticipated beginning date for construction; the expected commercial operation date; and estimated construction costs;
  - (ii) A detailed description of the location of the generating facility, including a map with the location marked;
  - (iii) A drawing showing the proposed site layout relative to the map provided pursuant to (B)(ii), with of all major equipment, and a diagram showing including the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and provisions for planned and existing electric transmission facilities interconnection;
  - (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;
  - (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;
  - (vi) A general description of the transmission facilities to which the facility will have access or the necessity of acquiring rights-of-way for new facilities; and
  - (vii) 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.
- (C) Statement of Need: A description of the need for the facility in the state and/or region, with supporting documentation.
- (2) The application shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant.
  - (3) The application shall be accompanied by prefiled direct testimony incorporating and supporting the application.
  - (4) The Chief Clerk will deliver ten (10) copies of the application to the Clearinghouse coordinator in the Department of Administration for

distribution to State agencies having an interest in the proposed generating facility.

- (5) 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 name and address of the certificate holder; the type, size, 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 is not obtained or, having been obtained, is 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 two years after the date of the Commission order granting the 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.

(f) Reporting. All applicants must submit annual progress reports and any revisions in cost estimates, as required by G.S. 62-110.1(f) until construction is completed.

**R8-64 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY 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 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 of electricity shall include not only the building of a new building, structure or generator, but also 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) The Application.

(1) The application shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the Commission requires. It shall contain, among other things, the following information, either embodied in the application or attached thereto as exhibits:

(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;

(iii) The nature of the generating facility, including the type and source of its power or fuel;

(iv) The location of the generating facility set forth in terms of local highways, streets, rivers, streams, or other generally known local



landmarks together with a map, such as a county road map, with the location indicated on the map; and a drawing showing: (1) the proposed site layout relative to the map; (2) all major equipment, including the generator, fuel handling equipment, plant distribution system, and startup equipment; (3) the site boundary; and (4) planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;

(v) The ownership of the site and, if the owner is other than the applicant, the applicant's interest in the site;

(vi) A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;

(vii) The projected maximum dependable capacity of the facility in megawatts;

(viii) The projected cost of the facility;

(ix) The projected date on which the facility will come on line;

(x) 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; any provisions for wheeling of the electricity; arrangements for firm, non-firm or emergency generation; the service life of the project; the projected annual sales in kilowatt-hours; whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard; and

(xi) 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. 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.

(2) In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a projected dependable capacity of 5 megawatts or more available for such sale shall include in the application the following information and exhibits:

(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) Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project;

(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, capacity expansion plan, and avoided costs;

- (iv) The most current available balance sheet of the applicant;
- (v) The most current available income statement of the applicant;
- (vi) An economic feasibility study of the project;
- (vii) A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application;
- (viii) A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year;
- (ix) 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
- (x) 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.

(3) 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.

(4) 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.

(5) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.

(6) The application and 12 copies shall be filed with the Chief Clerk of the Utilities Commission.

(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 daily 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. 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) The Chief Clerk will deliver 2 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.

(3) If a 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 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.

(4) If no 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 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 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) 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 subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes.

(e) Reporting. — All applicants must submit annual progress reports until construction is completed.