

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-116, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Juno Solar, LLC, for a Conditional)
Certificate of Public Convenience and Necessity) ORDER SCHEDULING
to Construct a 275-MW Solar Facility in) HEARING
Richmond County, North Carolina)

BY THE COMMISSION: On July 12, 2021, Juno Solar, LLC (Applicant), filed an application pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63 for a conditional certificate of public convenience and necessity (CPCN) to construct a 275-MW_{AC} solar photovoltaic (PV) electric generating facility to be located in Richmond County, North Carolina (the Facility).

On August 31, 2021, the Commission issued an Order Scheduling Hearings, Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (Procedural Order). The Procedural Order scheduled an in-person expert witness hearing for 10:00 a.m. on Tuesday, November 30, 2021, in Commission Hearing Room 2115, 430 N. Salisbury St., Dobbs Building, 2nd Floor, Raleigh, North Carolina. The hearing took place as scheduled on November 30, 2021.

On October 12, 2021, Duke Energy Carolinas (DEC) and Duke Energy Progress (DEP) (together, Duke) filed a Petition to Intervene. Duke's petition stated that both DEC and DEP are transmission providers regulated by the Federal Energy Regulatory Commission (FERC) responsible for administering the Attachment J-Large Generator Interconnection Procedures (LGIP) under the Joint Open Access Transmission Tariff and providing non-discriminatory interconnection service to proposed generating facilities requesting to interconnect to the DEC and DEP transmission systems. DEP is responsible for studying and potentially interconnecting with the Applicant, and DEC may be an affected system. Therefore, according to Duke, DEC and DEP each have a direct and substantial interest in the outcome of this proceeding and no other party can adequately represent their interests. On October 26, 2021, the Commission issued an Order Granting Petition to Intervene allowing the intervention of Duke. Duke has not filed testimony in the case.

The Applicant is a participant in the Transitional Cluster Study (TCS) for interconnection in which the Applicant and other interconnection customers of DEP will be grouped together for the TCS process and will be able to share required system upgrade costs. The TCS process was established in Docket No. E-100, Sub 101. According to the Applicant, there are substantial financial security requirements for both "ready" and "non-ready" interconnection customers to enter the Transitional Cluster and proceed

through the TCS process. The TCS involves a power flow and voltage study (Phase 1), a stability and short circuit study (Phase 2), and a facilities study (Phase 3). According to the Applicant, to demonstrate readiness, or to establish security in lieu of readiness, for Phase 1, an interconnection customer must provide one of the following: (1) an executed term sheet (or comparable evidence) related to a contract for sale of the generating facility's energy, or the entire constructed generating facility, where the term of sale is not less than five years, or (2) reasonable evidence that the generating facility is included in a resource planning entity's Resource Plan or Resource Solicitation Process, or (3) an executed Provisional Large Generator Interconnection Agreement (LGIA) filed with the Federal Energy Regulatory Commission (FERC) that is not in suspension with: (a) a commitment to construct the facility, (b) a commercial operation date no later than 2024, and (c) a security deposit where the total deposit represents a reasonable estimate of the potential costs that could ultimately be allocated to the project in the TCS, or (d) security equal to \$3,000,000.

The Applicant states that there is significant and increasing security required for both ready and non-ready interconnection customers progressing through Phase 1 and Phase 2 of the TCS process and that these requirements are intended to incentivize only ready or near-ready projects to enter the Transitional Cluster. The Applicant states that ready projects will have to pay more than \$3 million to enter the Phase 2 Study, and non-ready projects will have to pay more than \$5 million to participate in Phase 2.

The Applicant explains that if an interconnection customer withdraws before Phase 2 of the TCS process commences, there is no withdrawal penalty, and the interconnection customer will only be assigned its allocated study costs. However, according to the Applicant, to enter Phase 2, an interconnection customer must either make a financial commitment of \$3 million and demonstrate definitive readiness or provide additional security of \$2 million (for a total of \$5 million) if the customer cannot demonstrate definitive readiness before Phase 2 begins. The Applicant states that if the interconnection customer withdraws after entering Phase 2 and before executing an LGIA, Duke will use the security as payment for the final invoice for study costs and for a withdrawal penalty, after which any remaining amount of security will be returned to the interconnection customer. The Applicant states that this puts an interconnection customer that enters Phase 2 of the TCS process at significant financial risk if it is later required to withdraw from the study process, for instance if the Commission were to deny a CPCN application or revoke an issued CPCN.

The Applicant describes this situation as leading to a "catch-22" for FERC-jurisdictional customers, like the Applicant that must enter the TCS and make substantial financial commitments and face multi-million-dollar penalties if it withdraws from the study process. The Applicant states that if the Commission were to deny or revoke its CPCN after it has entered Phase 2, the Applicant would forfeit millions of dollars. However, the Applicant states that it cannot determine the amount of its system upgrade costs and its LCOT without completing the study process.

The Applicant proposes to solve the purported “catch-22” by having the Commission issue a CPCN that is “conditional” and will remain in effect if the LCOT for any required system upgrades assigned to the Applicant is at or below an acceptable defined amount, which the Applicant defines as \$4.00/MWh. The Applicant believes that with such a conditional CPCN, it will be able to enter the Transitional Cluster and incur the associated financial exposure without an unacceptable level of uncertainty about whether the issued CPCN will remain in effect. Specifically, the Applicant requests that the Commission issue a CPCN with the following conditions: (1) the LCOT for any required system upgrades assigned to the Applicant will be no greater than \$4.00/MWh; (2) if during the study process the Applicant is informed by Duke Energy that its allocated system upgrade costs are such that the LCOT will exceed \$4.00/MWh, the Applicant shall file with the Commission a report documenting the cost of any assigned system upgrade costs and the LCOT for the same; and (3) if the LCOT for any required system upgrades assigned to the applicant is more than \$4.00/MWh, the CPCN will automatically terminate and be of no further force and effect unless the Applicant requests further proceedings to consider whether the CPCN should not be terminated, in which case the CPCN will not be terminated unless ordered by the Commission.

The Public Staff, in testimony of witness Dustin Metz filed on October 26, 2021, disagrees that the Applicant is subject to an unfair “catch-22.” The Public Staff asserts that the Applicant is seeking to shift risk from itself to DEP ratepayers and that the risk was known by the parties involved when they agreed to the queue reform process after a lengthy stakeholder process. The Public Staff also disagrees that the conditional CPCN would solve the “catch-22” because the Applicant would still be subject to the same financial risk for withdrawal from the TCS. The Public Staff recommends that the Commission deny the CPCN application without prejudice, allowing the Applicant to refile the Application once it has obtained its facilities study report and once any applicable system upgrades assigned from affected systems studies are known. The Public Staff states that the “true” LCOT will be unknown before these studies, as will the total magnitude of the system upgrades to ratepayers coming out of the TCS, which the Public Staff believes the Commission should consider when evaluating the need for a facility studied in a cluster study.

In rebuttal testimony filed on November 9, 2021, Applicant witness Steve Levitas states that the conditional CPCN would mitigate the risk to the Applicant because the Applicant will receive an initial estimate of its allocated system upgrade costs after Phase 1 of the study process. If those costs result in an LCOT for the Applicant greater than \$4.00/MWh, the CPCN will terminate, and the Applicant could withdraw from the queue without penalty. He explains that if, in later phases of study, the Applicant’s system upgrade costs as identified in Phase 1 increase by more than 25%, it can withdraw from the queue without penalty. Witness Levitas also states that, if an increase of less than 25% in the Applicant’s allocated system upgrade costs would cause its LCOT to exceed \$4.00/MWh, the Applicant would likely withdraw from the queue without penalty rather than risk the possibility that a later increase in its system upgrade costs could cause its CPCN to terminate.

Having heard the testimony of the Applicant's and the Public Staff's witnesses at the expert witness hearing on November 30, 2021, the Commission has concluded that it would be helpful to its analysis and decision-making process to have more information at the conclusion of Phase 1 of the TCS process. While the Commission understands that the cost estimates at the end of Phase 1 are preliminary, the results will provide more information about costs of necessary system upgrades than currently exists in the record. Further, the Commission determines that it will be beneficial to hear more testimony regarding the TCS process itself, how it works, the other projects in the study cluster and how they relate to or impact the Applicant's project, and how affected systems costs will be allocated among the various projects.

The Commission finds good cause to schedule an evidentiary hearing after the issuance of the TCS Phase 1 Study Report for the purpose of asking questions of the Applicant, the Public Staff, and Duke about Phase 1 of the TCS process and information gained therefrom. The Commission finds from the record that the projected date for the issuance of the Phase 1 Study Report is March 31, 2022, and that projects will have 30 days from that date (April 30, 2022) to pay deposits for Phase 2. The Commission is mindful of the timeline.

The hearing will take place on April 4, 2022, at 1:00 p.m. in the Commission Hearing Room 2115, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina. The Commission notes that it will be prepared to hold this hearing remotely via Webex if the number of Covid-19 cases in North Carolina at that time indicates that holding the hearing remotely would be prudent.

The parties are directed to proffer expert witnesses who are qualified to address questions from the Commission related to the results of the TCS Phase I study process. The Commission specifically requests that Duke make available a witness with transmission planning expertise and a witness with direct experience with the TCS Phase I study process, the costs of the system upgrades necessitated by the projects in the Transitional Cluster, the system upgrade costs attributed to the Juno Solar Facility, and the interconnection requests that are interdependent with Juno Solar. The Commission requests that the Applicant make available Witness Levitas to address system upgrade costs attributed to the Juno Solar Facility and updated plans for sale of the output of the Facility. The Commission also requires that the Applicant file in this docket the TCS Phase 1 Study Report and any other written documentation coming out of the Phase 1 study process on April 1, 2022.

The Commission notes that the deadline for proposed orders and briefs in this case is February 11, 2022. The Commission is not extending or otherwise amending that deadline but will give parties a chance to revise and redline their proposed orders and briefs after the evidentiary hearing. Any revised briefs and proposed orders should be filed no later than April 8, 2022.

The Commission further directs the Applicant and the Public Staff to ensure that each has filed all late-filed exhibits requested by the Commission at the expert witness hearing on November 30, 2021.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of January, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Joann R. Snyder". The signature is fluid and cursive, with the first name "Joann" being more prominent.

Joann R. Snyder, Deputy Clerk