

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Petition to Revise Commission Rules	)	CCEBA’S COMMENTS
R8-63 and R8-64	)	IN RESPONSE TO ORDER
	)	REQUESTING COMMENTS

Intervenor Carolinas Clean Energy Business Association (“CCEBA”), pursuant to the Commission’s April 1, 2024 Order Requesting Comments and May 1, 2024 Order Granting Motion to Extend Time, hereby submits these comments concerning the Commission’s proposed changes to Commission Rules R8-63 and R8-64.

Rule R8-63 applies to the application for a Certificate of Public Convenience and Necessity (“CPCN”) by any person, other than a utility, seeking to construct a merchant plant in North Carolina and sell its output at wholesale. Rule R8-64 applies to the application for a CPCN by any person, other than a utility, seeking to construct a facility as a qualifying cogenerator or a qualifying small power producer pursuant to the Public Utilities Regulatory Policy Act of 1978 (“PURPA”).

As stated in its initial Comments filed on November 2, 2021, CCEBA generally supports changes that seek to harmonize the application requirements imposed by the two rules on applicants for a CPCN. However, as detailed below, CCEBA objects to proposed rule changes which would leave CPCN applicants subject to delays imposed by third parties which are out of the applicant’s control. In addition, CCEBA objects to changes which would require an applicant to subject itself to significant withdrawal penalties in the interconnection study process in order to obtain the information required for a CPCN

application, but would then cause the applicant (in most cases) to forfeit those penalties if its CPCN application were to be denied.

Nevertheless, the Commission made needed changes to the rule amendments that were proposed by the Public Staff. CCEBA supports such changes as noted below.

### **Discussion**

#### **A. Proposed Amendments to R8-63.**

CCEBA defers to the arguments and suggestions made by Intervenor SunEnergy1, LLC in response to proposed Rule R8-63, because they are consistent with CCEBA's own concerns expressed in its initial Comments. For clarity, CCEBA notes the following particular issues.

The proposed changes to **R8-63(b)(2)(ii)** would require location of “the approximate center of the generating facility” to one ten-thousandth of a degree are overly prescriptive, given that a location within one ten-thousandth of a degree at the latitude of North Carolina is approximately 30 feet. Such precision on a large parcel is not necessary. Further, the “center” of an irregular parcel is difficult to determine. CCEBA agrees that (b)(2)(ii) should include an option to identify the parcel by locating the *approximate* center of the property within one one-thousandth of a degree or in the alternative the location of the substation of the proposed facility.

The proposed changes to **R8-63(b)(3)(iv)** seek additional information as part of Exhibit 3 to an application. Some of these requirements are for information in the control of others and not available to applicants at the time of their application. For instance, information about the identity of purchasers of Renewable Energy Certificates may not be available when the CPCN is applied for. CCEBA agrees that language should be

inserted in the revised rule that clarifies that such materials should be made part of Exhibit 3 *if available* to the applicant.

Similarly, the proposed changes to **R8-63(b)(5)** require significant additional information which will not be available at the time the CPCN is sought. Details of “final interconnection facilities and upgrade costs” for instance, as would be required under revised section (iv) will not usually be available at the time of application for a CPCN. CCEBA submits that requiring the *completion* of multiple studies that are performed by third parties would impose a burden on applicants which is greater than warranted by the concerns sought to be addressed by the rule changes. The proposed rule requires no fewer than four studies be completed by one or more utilities, including system impact studies and affected system studies which have been notoriously difficult to obtain in a timely manner from incumbent utilities and nearby affected systems, such as PJM. Despite the passage of FERC Rule 2023, the timeline for such study results is not yet certain.

CCEBA opposes any rule change which would determine the readiness of a merchant plant CPCN application solely on the basis of whether a third party completely outside the control of the applicant has performed studies in a timely fashion.

Many of the proposed changes to R8-63(b)(5) would have the effect of subjecting CPCN applicants to huge penalties if they are required to withdraw from the interconnection queue because the Commission denies them a CPCN. Owners of merchant plants should have the right and ability to know going into the interconnection study process whether and under what circumstances the Commission will certificate their projects.

In general, CCEBA believes the changes to 63(b)(5) to be overly prescriptive, particularly as to what must be included in documents that are outside the control of the applicant itself, such as facilities studies. Instead, the rule should be clarified to require information reasonably available to the applicant.

The proposed changes to **R8-63(b)(6)** impose substantial requirements to obtain statements from electric utilities and potential offtakers, much of which may not be readily available to an applicant. CCEBA defers to the proposed solutions and changes set out by SunEnergy1 in their comments.

Further, the problematic nature of the types of information required in proposed R8-63(b)(5) and (b)(6) is emphasized by the requirement in proposed **Rule R8-63(e)(4)**, which would require a successful CPCN holder to notify the Commission in writing “of any significant changes in the information set forth in subsections (b)(1) thru (b)(8) of this Rule.” This proposed rule is not clear as to whether changes *to the utility’s studies* would require a CPCN holder to notify the Commission and amend its certificate. Combined with the increased requirements in subsections (b)(5) and (b)(6), this new notice provision risks introducing substantial unacceptable uncertainty into planning for a facility which is completely outside the control of the applicant.

The proposed changes to **R8-63(e)(3)** would cause a merchant plant certificate to expire if the applicant does not begin construction within three years after the certificate is issued. CCEBA opposes this suggested revision. Based on the typical timeline for construction of such plants, this proposed revision would impose additional administrative burdens on solar developers, the Public Staff, and the Commission to address what would likely be many renewal requests filed between 3 and 5 years after

granting of the initial CPCN. Many of those projects would likely go forward before the 5-year period was up. Thus, the increased administrative burden is unnecessary and without concomitant benefit.

CCEBA notes with appreciation that the Commission did not adopt this approach in its proposed revisions of Rule R8-64(d)(3). CCEBA believes the five-year time frame in rule R8-64(d)(3) is the more reasonable one. Moreover, the requirement that a new CPCN application must be submitted along with a renewal request would address the Public Staff's stated concern about "stale" information for older projects needing renewal. CCEBA therefore opposes this proposed revision to R8-63(e)(3) and requests the Commission leave the CPCN term at 5 years before renewal is required.

CCEBA does note that not all of the proposed edits are objectionable. For instance, the proposed changes to the requirements to be included in Exhibits 3, 7, and 8 include materials that are similar to those currently required of small power producer applicants under Rule R8-64. Therefore, CCEBA does not oppose these requirements set forth in proposed Rule R8-63(b)(3), (7) and (8).

Finally, CCEBA notes that the Commission rejected the proposal by the Public Staff to remove the current provision in **Rule R8-63(11)**, which requires the Chief Clerk to deliver a copy of the application to the Clearinghouse Coordinator in the Department of Administration for distribution to State agencies. The Public Staff's original proposed rule eliminated this requirement and allowed the compliance with state law and policies to be enforced by notice to the public and the investigation of complaints. As stated in its original Comments, CCEBA agrees that this proposal removes a source of delay without benefit, in that those agencies notified through the Clearinghouse do not have

enforcement authority against applicants in any event. Issues which may affect the Commission's decision whether or not to grant a certificate are best addressed by the Commission itself, and the Public Staff's proposed rule preserved that power. CCEBA suggests that the Commission revise its proposal to adopt that provision as proposed by the Public Staff.

B. Proposed Amendments to Rule R8-64

Unlike the proposals to amend Rule R8-63, the proposed rules do not seek to impose the same interconnection study completion requirements and information demands upon small power producers seeking a CPCN under Rule R8-64. Changes to Exhibit 3 requiring certain details be provided related to the anticipated date of commencement of construction and operation, as well as the description of interconnection facilities, fencing and storage technologies are not objectionable. In addition, the proposed amendment to **Rule R8-64(6)** would raise from 5 to 20 megawatts alternating current the nameplate capacity at which a proposed facility would be required to include additional Exhibits 6, 7 and 8. This change too is acceptable to CCEBA. In the absence of the type of prescriptive changes detailed in Rule R8-63(b) and addressed above and in the comments of SunEnergy1, CCEBA is able to support the proposed changes to Rule R8-64 with relatively simple but significant changes.

First, Rule **R8-64(a)**, as proposed, maintains the Scope of the prior rule without change. The provision states that the rule applies to CPCN applications "filed by any person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8." The adoption of House Bill 951 and the various

orders entered by the Commission approving a Carbon Plan and authorizing procurements under that Carbon Plan mean that those procurements are technically not pursuant to “the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8.” There is thus a potential hole in the scope of the rule, which may leave applicants who are participating in the Carbon Plan RFP process unsure as to which rule applies to their application.

Neither does the phrase “or by any person who is seeking the benefits of [PURPA]” save the rule. There are many benefits of PURPA, including statutory exemptions from various federal laws, which may or may not necessitate a CPCN application. CCEBA proposes that this rule be amended to clarify that it applies to parties selling to the utility as part of an RFP authorized by the Commission under a Carbon Plan consistent with state law, including House Bill 951.

Second, as with the parallel provision of R8-63(b)(2)(ii), proposed **Rule R8-64(b)(2)(ii)** would require identification of the approximate center of the proposed facility to the nearest one ten thousandth of a degree. As noted above, this level of precision is both unneeded and difficult to provide. CCEBA proposes that the rule remain at one thousandth of a degree and provide the option to identify the substation of the facility rather than the “center,” which can be difficult to determine on an irregular property.

Third, in its proposed changes to **Rule R8-64(b)(6)(iii)e.**, the Commission would require Exhibit 8 to contain “All studies associated with interconnection of a facility.” In the interest of efficiency, CCEBA proposes that an applicant be allowed to simply identify the DISIS cluster studies relevant to its interconnection.

Fourth, the proposed changes to **Rule R8-64(d)** seek to harmonize these requirements with those of the Merchant plant requirements under R8-63(e). As noted above, CCEBA appreciates that the Commission maintaining the five-year time period prior to expiration in this rule and encourages both rules to maintain that time frame. However, CCEBA suggests that the Commission clarify in section **R8-63(d)(3)(i)** what is meant by “a description of any construction progress prior to the expiration of the certificate.” This phrasing is vague and will likely result in applicants being unsure of the amount of detail necessary in any such filing.

Finally, as with the proposed amendment to R8-63 removing referral of a completed application to the Clearinghouse for review, CCEBA supports the parallel provisions of the proposed amendment to Rule R8-64, for the reasons set forth above.

### **Conclusion**

Based on the arguments made above, and the entire record of this docket, CCEBA respectfully requests that the rules changes proposed by the Commission be revised as discussed herein prior to final approval by the Commission.

Respectfully submitted, this 15th day of May 2024.

CAROLINAS CLEAN ENERGY BUSINESS  
ASSOCIATION

By: /s/ John D. Burns  
John D. Burns  
General Counsel  
NC Bar No. 24152  
811 Ninth Street  
Suite 120-158  
Durham, NC 27705  
(919) 306-6906  
[counsel@carolinasceba.com](mailto:counsel@carolinasceba.com)



### **CERTIFICATE OF SERVICE**

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document by hand delivery, first class mail, deposited in the U.S. Mail, postage pre-paid, or by email transmission with the party's consent.

This the 15th day of May 2024.

/s/ John D. Burns  
John D. Burns  
General Counsel  
NC Bar No. 24152  
811 Ninth Street  
Suite 120-158  
Durham, NC 27705  
(919) 306-6906  
[counsel@carolinasceba.com](mailto:counsel@carolinasceba.com)