

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-118, SUB 0
DOCKET NO. EMP-118, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. EMP-118, SUB 0)
)
 In the Matter of)
 Application of Timbermill Wind, LLC, for)
 a Certificate of Public Convenience and)
 Necessity to Construct a Merchant Plant)
 Wind Energy Facility in Chowan County,)
 North Carolina and Registration as a)
 New Renewable Energy Facility)
)
 DOCKET NO. EMP-118, SUB 1)
)
 In the Matter of)
 Application of Timbermill Wind, LLC, for a)
 Certificate of Environmental Compatibility)
 and Public Convenience and Necessity to)
 Construct a Transmission Line in Chowan)
 County, North Carolina)

MOTION TO DENY
PETITION TO INTERVENE

NOW COMES TIMBERMILL WIND, LLC (“Timbermill”), by and through its counsel, and respectfully requests the Commission deny the petition to intervene filed by Patrick Flynn in the above-referenced dockets (the “Petition”).¹ In support of this motion, Timbermill shows the following:

1. On June 14, 2021, Timbermill filed an Application for Certificate of Public Convenience and Necessity (“CPCN Application”) to construct a merchant plant wind energy facility with a capacity up to 189 MW_{AC} to be located in Chowan County

¹ Although Mr. Flynn’s petition to intervene only references docket EMP-118, Sub 1, the Commission’s July 22, 2021 order consolidated the above-referenced dockets “due to the overlapping nature of the Applicant’s requested CPCN for the Facility and the CEPCN for the Timbermill Line to interconnect the Facility.”
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(the “Facility”) in Docket EMP-118, Sub 0. Timbermill simultaneously submitted its Registration as a New Renewable Energy Facility.

2. On June 21, 2021, Timbermill filed an Application for Certificate of Environmental Compatibility and Public Convenience and Necessity (“CECPCN Application”) in Docket EMP-118, Sub 1 to construct an approximately 6-mile 230kV transmission (the “Transmission Line”) to allow interconnection of the Facility to the existing 230kV Winfall-Mackeys transmission line operated by Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“DENC”).

3. On June 22, 2021, the Commission issued an Order Scheduling Public Hearing, Requiring Public Notice, and Requiring Clearinghouse Review related to the CECPCN Application.

4. On June 28, 2021, the Public Staff filed a notice of completeness stating the Public Staff considers the CPCN Application to be complete and requesting the Commission issue a procedural order setting it for hearing and requiring public notice.

5. On July 22, 2021, the Commission issued an Order Consolidating Dockets, Scheduling Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice.

6. On July 27, 2021, an unverified Petition to Intervene (“Petition”) was filed by Patrick Flynn on behalf of his wife, Belinda Flynn, and himself (“Petitioners”).

7. Rule R1-22 provides that “no person may appear in a representative capacity other than an attorney at law, duly qualified and entitled to practice before the Supreme Court of the State of North Carolina.” The Petition states that “[t]he Petitioners

are not represented by an attorney.” Mr. Flynn cannot appear in a representative capacity for his wife, and therefore the Petition should be denied.

8. Rule R1-19 provides that any person having an interest in a Commission proceeding may become a party thereto by filing a verified petition that includes, among other things, “a clear, concise statement of the nature of the petitioner’s interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues in the proceeding.”

9. The Petition is unverified and therefore should be denied. The Commission has emphasized the importance of verification of petitions to intervene because “the statements in the petition are treated as evidence” and verification is “necessary to ensure that the Commission’s decision to grant or deny a petition to intervene is based on competent evidence.” *Second Order on Petitions to Intervene*, Docket No. EMP-93, Sub 0, at 2 (April 6, 2018).

10. Furthermore, the Commission has held that, although the ability to intervene under Rule 1-19 is “generous,” it is “not unlimited.” *Order Denying Petition to Intervene*, Docket No. E-7, Sub 828, *et. al.* at 3 (September 13, 2007). “Intervention requires a real interest in the proceeding, not just an incidental or casual interest.” *Order Denying Petition to Intervene*, Docket No. E-22, Sub 412 (May 13, 2004) at 1 (emphasis in original). Intervention requires “more than an incidental and casual concern that the general public would share because the Commission is required to adjudicate each dispute on a case-by-case basis.” *Order Denying Petition to Intervene and Allowing Limited Amicus Curiae Status*, Docket No. EC-46, Sub 45 (July 8, 2021) (quoting *Order Denying Petition to Intervene and Granting Limited Amicus Curiae Status*, Docket No.

EC-52, Sub 39 at 6 (Aug. 9, 2016) and *Order Denying Petitions to Intervene and Granting Limited Amicus Curiae Status, Petition for Declaratory Ruling*, Docket No. M-100, Sub 152 at 6 (Apr. 25, 2019)).

11. The Petition is substantively insufficient in that it does not include “a clear, concise statement” of the Petitioners’ real interest in the proceeding. The Petition states that the Petitioners are “individuals who have an interest in promoting the fairness and equality of issues relevant to qualified facility applications, construction and operations in North Carolina, and are impacted and will be impacted should Timbermill Wind, LLC be built.” The Petition further states that “[f]ailure to address these limitations within NC’s legal and energy regulations will violate the due process rights of the Petitioners and/or any NC citizen opposing the approval, construction and/or operation of energy facilities in North Carolina now, or in the future.”

12. The Petition fails to articulate any real interest or concern specific to the Petitioners and only sets forth incidental and casual concerns that the general public may share. The Petition raises general objections and concerns related to (1) rate increases; (2) the implementation of the Public Utility Regulatory Policies Act (PURPA) by reference to a petition filed by Mr. Flynn in the unrelated E-100, Sub 171 docket; (3) the Commission’s Mission; and (4) the economic benefit of Timbermill to Chowan County. The appropriate venue for Petitioners’ general objections and concerns is the public witness hearing scheduled for October 14, 2021 for the purpose of receiving public witness testimony regarding Timbermill’s applications.

13. While Timbermill takes issue with the unverified and inaccurate statements set forth in the Petition, regardless of the merits of such statements, the

generalized objections and concerns are not unique or specific to the Petitioners. Therefore, the Commission should conclude that Petitioners have nothing more than an incidental and casual concern that the general public would share and deny the Petition.

WHEREFORE, Timbermill Wind, LLC respectfully requests that the Commission enter an order denying the petition to intervene for all of the reasons outlined above.

Respectfully submitted this the 11th day of August, 2021.

TIMBERMILL WIND, LLC

/s/ Katherine E. Ross

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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Motion to Deny Petition to Intervene on the below parties of record in this proceeding or their attorneys of record and to the petitioners by causing a copy to be deposited in the United States Mail, postage prepaid, properly addressed to each or by electronic delivery upon agreement from the parties:

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This the 11th day of August, 2021.

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