

STATE OF NORTH CAROLINA

UTILITIES COMMISSION

RALEIGH

DOCKET NO. EMP-117, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Shawboro East Ridge)	
Solar, LLC, for a Certificate of Public)	
Convenience and Necessity to Construct)	
a 150-MW Solar Facility in Currituck)	
County, North Carolina)	
		RESPONSE TO
		NOTICE OF COMPLETENESS AND
		MOTION TO STAY OF THE
		PUBLIC STAFF

NOW COMES the Applicant, Shawboro East Ridge Solar, LLC ("Shawboro" or "the Applicant"), by and through its undersigned counsel, and responds to the Notice of Completeness and Motion to Stay of the Public Staff filed in this docket on July 7, 2021 (the "Motion to Stay"). Shawboro urges that the Commission proceed to issue a scheduling order in this docket in accordance with the applicable statute and Commission rule, and the ordinary practice of this Commission. In support of this response, the Applicant shows unto the Commission the following:

1. On June 22, 2021, Shawboro filed in this docket a signed and verified application for a certificate of public convenience and necessity (a "CPCN") under NCUC Rule R8-63, seeking authority to construct a merchant plant solar generation facility with a capacity of 150 MWac in Currituck County, North Carolina. The proposed generation facility would be interconnected with the transmission system of Dominion North Carolina Energy ("Dominion") for delivery of the output into PJM.
2. The application filed on behalf of Shawboro included the information required by Rule R8-63, including supporting direct testimony from Ms. Linda Nwadike that incorporated and supported the application. In addition, the pre-filed direct testimony of Ms. Nwadike also included the responses of the Applicant to certain additional questions that this Commission, since 2020, has routinely requested of merchant plant CPCN applicants in various scheduling orders in proceedings wherein a CPCN to construct a solar merchant plant has been sought.
3. In accordance with Rule R8-63(d), the Public Staff conducted a review of the application submitted by Shawboro, and timely filed a report which confirmed that "Shawboro provided the estimated construction cost for the solar facility as required by Rule R8-63(b)(2)(i)", and notified the Commission "... that [the Public Staff] considers the application to be complete." Motion to Stay, pp. 1 & 2.

4. Rule R8-63(d) states that following receipt of a notice of completeness from the Public Staff, the Commission will determine whether the application is complete. The rule further provides that “[u]pon 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.” The Applicant respectfully submits that it has provided “...all information required...” by the published rule. The prompt issuance of a scheduling order by the Commission as contemplated by this rule is consistent with due process, and the statutory directives establishing special procedures governing the proceedings for applications for CPCNs for electric generation facilities set out in N.C. Gen. Stat. § 62-82.
5. Notwithstanding the texts of the applicable statute and Commission rule, and the ordinary practice of the Commission, the Public Staff first asks that the Commission “...consider Shawboro’s application to be complete...,” but then asks that this proceeding be stayed indefinitely “...pending further order of the Commission, and that no procedural order be issued during the period of the stay.” Motion to Stay, p. 3.
6. The entry of an order that stays this proceeding indefinitely will inflict costly delays in the development process, reduce the competitiveness of the proposed facility by increasing its costs, and potentially destroy the feasibility of the project by causing the project to lose its position in the PJM queue. The current PJM tariff and rules require a potential interconnection customer to demonstrate diligence in the prosecution of applications for federal, state and local permits for a proposed project, including a CPCN from this Commission. The practical impact of the requested stay could preclude such a showing and render the project unfeasible without regard to the ultimate resolution of questions about the amount and cost responsibility for any required affected system upgrades.
7. The Public Staff has failed to demonstrate good cause for a stay in this proceeding, particularly in light of the harm such a stay will cause the Applicant. It seeks to impose burdens on the Applicant based on the actions or omissions of others over whom the Applicant has no control.
8. One asserted ground for the requested stay is that the application does not include a specific study that, as far as the Applicant knows, has not been conducted. The Public Staff acknowledges that PJM has assigned the proposed facility solar facility queue number AE1-072; notes that the potential affected system is that of Duke Energy Progress, LLC (“DEP”); admits that DEP has not yet completed an affected system study for PJM Cluster AE-1; and, thus implicitly concedes that it was and is impossible for Shawboro to include an affected system study with its application. Motion Stay, p. 1.
9. Moreover, the Applicant is informed and believes that the initial conclusion was that the only affected system upgrade entails a re-build of 1.87 miles of the Everetts-Greenville 115 kV line, and that DEP’s initial estimate of the cost of that upgrade was \$ 8,500,000. This amount compares favorably to the amounts of the estimates and study-based forecasts associated with other proposed merchant plant facilities that have been the subject of proceedings before this Commission, including some for which CPCNs have been issued.

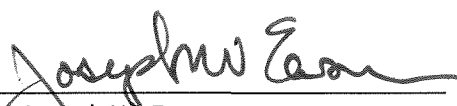
10. Another asserted ground for the requested stay is that another merchant plant applicant, Edgecombe Solar, LLC ("Edgecombe") who relatively recently received a CPCN from this Commission, has initiated complaint proceedings before the Federal Energy Regulatory Commission (the "FERC") challenging certain 2020 amendments made by DEP and other affiliated utilities of the Affected System Operating Agreement template. These amendments had the effect of reassigning the costs of affected system upgrades, "reversing its prior policy of repayment to the interconnection customer for the affected system costs." According to the Public Staff, "[p]ending FERC's decision in the Edgecombe proceeding, it is uncertain whether DEP could pass on affected system costs to its customers." Motion to Stay, p. 2
11. Shawboro is not a party to the complaint proceedings at the FERC referenced by the Public Staff in its Motion to Stay. That proceeding has only recently been commenced, and the duration of that proceeding is essentially unbounded, given the potential for protracted proceedings before the FERC to be followed by years of judicial proceedings.
12. Shawboro respectfully urges the Commission to issue a timely scheduling order in accordance with Rule R8-63, and consistent with N.C. Gen. Stat. § 62-82 and its ordinary practice, particularly given the authority of the Commission to subsequently amend or extend that scheduling order for good cause. Issuance of a scheduling order will allow for publication of a notice to the public of the proposed facility, and also will allow other agencies of the State to review and comment on the proposed project, thereby reducing the scope of any delay and the harm delays will cause.
13. Shawboro respectfully submits that no cause has been shown which supports a stay of all proceedings in this docket for a period of indefinite duration. Granting the Motion to Stay of the Public Staff would be prejudicial to the commercial and legal interests and rights of the Applicant, including its right to receive fair and timely consideration of its application to construct the proposed project in accordance with the directives of N.C. Gen. Stat. § 62-82 and NCUC Rule R8-63.

WHEREFORE, the Applicant, having responded to the Motion to Stay of the Public Staff, respectfully asks that the Commission review the application submitted in this docket and determine it to be complete, and issue an appropriate scheduling order for this proceeding in accordance with Rule R8-63(d).

Respectfully submitted, this 14th day of July, 2021.

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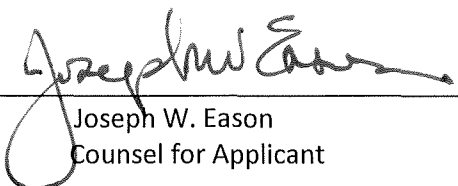
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Counsel for Applicant, Shawboro East Ridge Solar, LLC

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing Response to Notice of Completeness and Motion to Stay of the Public Staff on all parties of record in this proceeding, or their attorneys of record, in accordance with Commission Rule R1-39, by mail, first-class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 14th day of July, 2021.



Joseph W. Eason
Counsel for Applicant