

NORTH CAROLINA UTILITIES COMMISSION

NOTICE TO PARTIES

Docket No. SP-11723, SUB 0 Exceptions Due on or Before: September 24, 2020

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day above shown as provided in N.C. Gen. Stat. § 62-78. Exceptions, if any, must be filed (one original copy) with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefore at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become final and effective on September 25, 2020, unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-11723, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Apex Solar, LLC, for a)
Certificate of Public Convenience and) **RECOMMENDED ORDER AMENDING**
Necessity to Construct a 30-MW Solar) **CERTIFICATE**
Facility in Cleveland County, North)
Carolina)

HEARD: Wednesday, July 22, 2020, at 6:00 p.m. via Remote Hearing

BEFORE: Hearing Examiner Patrick Buffkin

APPEARANCES:

For Apex Solar, LLC:

Karen Kemerait, Fox Rothschild LLP, 434 Fayetteville Street, Suite 2800,
Raleigh, North Carolina 27604

For the Using and Consuming Public:

Nadia Luhr, Staff Attorney, Public Staff — North Carolina Utilities
Commission, 4326 Mail Service Center, Raleigh, NC 27699

BUFFKIN, HEARING EXAMINER: On July 23, 2018, the Commission issued an order granting Apex Solar, LLC (Applicant), a certificate of public convenience and necessity (CPCN) for the construction of a 30-MW solar generating facility to be located on the west side of Plainsview Church Road, approximately 0.5 miles west of the intersection with East Stage Coach Trail, Lawndale, Cleveland County, North Carolina.

On September 13, 2019, the Applicant filed an amendment to its application. The amendment proposes that additional land be added to the site of the proposed facility. In addition, the Applicant filed an updated site plan map showing the new boundaries of the facility, as well as information about the new owner of the Applicant, Silver Creek Energy, LLC.

On September 18, 2019, the Commission issued an Order Requiring Publication of Notice requiring the Applicant (1) to publish notice of the application in the manner required by N.C. Gen. Stat. § 62-82(a) and file an affidavit of publication with the Commission, and (2) to mail a copy of the application and notice to the electric utility to

which the Applicant plans to sell and distribute the electricity, and file a signed and verified certificate of service that the application and notice have been provided to the utility. In addition, the Order Requiring Publication of Notice directed the Chief Clerk of the Commission to deliver copies of the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration (State Clearinghouse) for distribution by the Coordinator to State agencies having an interest in the application.

On or after September 26, 2019, the following individuals filed complaints in this docket: Carrie and Gene Daves, Ronald Ingram, Dana Donaldson, and Tom and Karen Bess (collectively, the Complainants).

On September 27, 2019, the Applicant filed a verified certificate of service evincing that the application and notice were mailed to Duke Energy Carolinas, LLC (DEC), on September 18, 2019.

On October 29, 2019, the State Clearinghouse filed comments of state agencies. The cover letter indicates that because of the nature of the comments, no further State Clearinghouse review is required for compliance with the North Carolina Environmental Policy Act.

On October 31, 2019, the Applicant filed an affidavit of publication evincing that the notice of the amended application for a CPCN was published in *The Star*, a newspaper published in Cleveland County, North Carolina, in the manner prescribed by the Commission's September 18 Order Requiring Publication of Notice.

On November 6, 2019, the State Clearinghouse filed additional comments of state agencies. The cover letter also indicates that because of the nature of the comments, no further State Clearinghouse review is required for compliance with the North Carolina Environmental Policy Act.

Beginning in March 2020, Governor Roy Cooper issued a progression of Executive Orders that declared a State of Emergency in North Carolina to coordinate response and protective actions to prevent the spread of coronavirus (COVID-19). The Executive Orders place restrictions on business operations and mass gatherings including limiting face-to-face meetings to no more than ten people and requiring social distancing between individuals of at least six feet. On May 5, 2020, Governor Cooper issued Executive Order No. 138 easing some restrictions on business operations and mass gatherings, but still limiting face-to-face meetings to no more than ten people and requiring social distancing between individuals of at least six feet.

On June 26, 2020, in light of the Governor's emergency declarations the Hearing Examiner issued an order scheduling this matter for a remote hearing on July 22, 2020, at 6:00 p.m. via Webex for the purpose of receiving public and expert witness testimony. That order also directed the Applicant to publish notice of the hearing in the newspaper that the Applicant previously published notice of the application, established a schedule for the filing of testimony and petitions to intervene, and adopted procedures for the

remote hearing to facilitate the participation of the public witnesses and the parties in the remote hearing.

On July 2, 2020, in compliance with the Hearing Examiner's June 26 order, the Applicant filed a letter consenting to the remote hearing in this proceeding.

Also on July 2, 2020, the Applicant filed the direct testimony and exhibits of Richard Kirkland, Cullen Morris, and Chris Sandifer.

On July 6, 2020, in compliance with the Hearing Examiner's June 26 order, the Public Staff filed a letter consenting to the remote hearing in this proceeding.

Also on July 6, 2020, the Applicant filed the corrected direct testimony of Cullen Morris.

On July 10, 2020, the Public Staff filed the testimony of Jay Lucas, an engineer with the Public Staff – Electric Division.

On July 16, 2020, the Applicant filed the rebuttal testimony of Cullen Morris.

On July 17, 2020, in compliance with the Hearing Examiner's June 26 Order, the Applicant filed potential cross-examination exhibits.

On July 20, 2020, the Applicant filed an affidavit of publication evincing that the notice of the remote hearing was published in the manner prescribed by the Hearing Examiner's June 26 order.

On July 22, 2020, this matter came on for remote hearing as ordered. Two public witnesses testified at the remote hearing: Carrie Daves and Ronald Ingram. The Applicant presented the testimony of Cullen Morris, Richard Kirkland, and Chris Sandifer, and the Public Staff presented the testimony of Jay Lucas.

On August 28, 2020, the Public Staff filed a letter reciting the background in this proceeding and recommending that the Commission approve the application and grant the amended CPCN, subject to the conditions stated in the testimony of Public Staff witness Lucas.

Based upon the foregoing and the entire record herein, the Hearing Examiner makes the following

FINDINGS OF FACT

1. On July 23, 2018, the Commission issued an order granting the Applicant a CPCN for the construction of a 30-MW solar photovoltaic (PV) generating facility to be located on the west side of Plainsview Church Road, approximately 0.5 miles west of the intersection with East Stage Coach Trail, Lawndale, Cleveland County, North Carolina.

2. On September 13, 2019, the Applicant filed with the Commission an application for an amended CPCN so that additional land could be added to the facility. In the application, the Applicant filed an updated site plan map showing the new boundaries of the proposed facility, as well as information about the new owner of the Applicant, Silver Creek Energy, LLC.

3. The Applicant plans to sell electricity generated by the proposed facility to DEC and to earn renewable energy certificates (RECs) that can be used by electric power suppliers to satisfy the requirements of the State's Renewable Energy and Energy Efficiency Portfolio Standard (REPS). In addition, the Applicant has self-certified as a qualifying facility (QF) with the Federal Energy Regulatory Commission (FERC).

4. The Applicant timely published notice of the remote hearing in *The Star* on July 7, 2020. At the remote hearing held via Webex on July 22, 2020, two public witnesses testified about their concerns with the proposed facility, including compliance with Cleveland County's zoning requirements, environmental concerns such as impairment of drinking water, aesthetics, and the impact to the future potential uses of the land after the proposed facility is taken out of operation. One of the public witnesses testified that she no longer has concerns with the proposed facility.

5. The Applicant demonstrated the need for the proposed facility based on the public benefits of solar-powered generation and state and federal policies encouraging private investment in and development of renewable energy.

6. The Applicant demonstrated that construction of the facility is consistent with the public convenience based on the public benefits of solar-powered generation, the investment in the local economy, and the Applicant's plan to develop the proposed project in accordance with Cleveland County's zoning regulations, including measures that go beyond the express requirements of Cleveland County's zoning regulations that are applicable to the proposed facility.

7. The Applicant committed to develop the proposed project in accordance with applicable state and local laws and required permits, including controlling water runoff and soil erosion and screening the view of the facility. These measures mitigate the project's impact on adjoining properties and the environment.

8. It is reasonable and appropriate to grant the requested amendment to the CPCN previously issued to the Applicant, conditioned on the facility being constructed and operated in accordance with applicable laws and regulations.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The evidence supporting the foregoing findings of fact is found in the testimony and exhibits of the Applicant's witnesses Cullen Morris, Richard Kirkland, and Chris Sandifer; the testimony and exhibits of Public Staff witness Jay Lucas; the amended

application filed in this docket on September 13, 2019; and the public witnesses' testimony regarding the proposed facility.

The application for an amended CPCN filed by the Applicant complies with the filing requirements set forth by the Commission and contains all of the information required by the Commission's rules. No party asserted that the application was not prepared and filed in accordance with N.C.G.S. § 62-110.1(a) or was deficient in any manner.

Summary of the Testimony

At the remote hearing held on July 22, 2020, two public witnesses testified regarding the proposed facility: Carrie Daves and Ronald Ingram. Ms. Daves initially testified that she was concerned with the aesthetics and harmony with the surrounding land uses, giving an "industrial feel" to an otherwise residential and agricultural setting. In addition, she testified that she was concerned about environmental issues such as loss of habitat for wildlife and impact on groundwater. She also expressed concern about whether the land could be used as agricultural land in the future. In conclusion, she stated that she does not feel like it's a good fit for her neighborhood.

However, on cross-examination by the Applicant, Ms. Daves stated that she was not aware that the Cleveland County Board of Adjustment had approved a conditional use permit for the Applicant's proposed facility in 2018, determining that the proposed facility will not materially endanger the public health or safety, that the facility will not injure the value of adjoining or abutting properties, and that the facility will be in harmony with the area in which it is located. She further testified that she was not aware that Cleveland County required the Applicant to submit a decommissioning plan to the County, and that the Applicant is required to decommission facility consistent with that plan and return the land to its predevelopment condition. On examination by the Hearing Examiner, Ms. Daves testified that having learned of Cleveland County's requirements for the development of the facility her concerns with the proposed facility had been addressed.

Ronald Ingram testified that he attended the Cleveland County Board of Adjustment meetings where the Applicant's special use permit was considered. He further testified that since the special use permit was issued, Cleveland County revised its solar farm standards that offer the county and citizens greater protection and livability, both while the facility is operating and for decommissioning the facility. He next testified that nearby the site of the Applicant's proposed facility a solar farm is under development but not complying with the local requirements to provide screening of the facility. He expressed concern that this solar facility would be located in the area when a facility sits idle nearby. He also expressed concern regarding whether the panels used in the Applicant's facility would be safe to be disposed of in a landfill and whether there would be lasting environmental impacts, such as impairment of drinking water, from the operation of facility.

On cross-examination by the Applicant, Mr. Ingram acknowledged being aware of the County's determinations that the proposed facility will not materially endanger the public health or safety. He also testified on cross-examination by the Applicant that he had not had an opportunity to review the testimony filed in this docket, that the nearby facility referenced in his testimony was not affiliated with the Applicant, and that he had not reviewed the Brunswick County Ordinance that he referenced in his testimony. In response to questions from the Hearing Examiner, Mr. Ingram confirmed that the facility mentioned in his testimony is separate from the one being considered in this proceeding, and he emphasized his concern about "visibility" or aesthetic impact of the facility.

The Applicant's witness Cullen Morris testified that the total acreage of the underlying tracts for the proposed 30-MW facility is 475 acres, that the solar panels will be located on 321 acres of the parent tracts, and that the area of disturbance will include 357 acres. He further testified that the facility will consist of approximately 132,327 PV modules, each with a capacity of 345 W (or equivalent), affixed to metal racks, which will be supported by piles driven into the ground to minimize soil disturbance and that the proposed facility will utilize 14 2500-kVa inverters (or equivalent).

Witness Morris next testified that the facility will provide 69,890,000 kWh per year of emission-free renewable energy. He further testified that the addition of this renewable energy to DEC's system has the potential to cause DEC to defer, in part, the addition of fossil fuel-fired generation to its generating fleet. He also testified that the energy generated by the facility has the potential to be consumed by residences or other buildings that are served by the same transmission line, which minimizes the loss of power that occurs in the transmission and distribution lines when residences and business are served by generation that is located many miles away. Witness Morris next testified that the Applicant will take steps to minimize any disturbance to neighbors during the construction of the facility. During construction, the Applicant will ensure that appropriate sedimentation and erosion control measures are in place; the Applicant will maintain a trash and litter-free construction site; and the Applicant will operate heavy machinery during limited hours, typically from 7:00 am to 7:00 pm.

Witness Morris testified that the Cleveland County Board of Adjustment granted a Conditional Use Permit to the Applicant for the facility. As part of the permitting process for the facility, a public hearing was held before the Cleveland County Board of Adjustment. After hearing the evidence during the public hearing, the Board of Adjustment found and concluded that the solar farm use will not materially endanger the public health or safety; the use will not substantially injure the value of adjoining or abutting property; the use will be in harmony in the area in which it is to be located; and the use will be in general conformity with the land development plan or other plans officially adopted by the Board of Commissioners. Witness Morris testified that the facility will meet or exceed the setback and screening requirements of the Cleveland County Unified Development Ordinance (UDO) applicable to the facility: the facility will be set back at least 50 feet from all adjacent property lines and at least 100 feet from any habitable dwelling or commercial

structure. In addition, the facility will exceed the screening and setback requirements as follows:

- (1) On Parcel ID No. 35641, the Applicant is required to provide a 50-foot setback from the security fencing to any nonparticipating property. After consultation with adjoining property owners, the Applicant volunteered to adhere to a 70-foot setback along the northwest property boundary with Charolais Drive.
- (2) The Applicant is required to plant Type A screening by preserving existing vegetation or plant evergreen vegetation, either of which must be opaque to 6 feet in height and reach 20 feet at maturity. The Applicant volunteered to preserve or plant three staggered rows of vegetation ranging from 6 to 8 feet in height along the northwest property boundary with Charolais Drive. The Applicant also volunteered to install slatted fencing along this parcel's northeastern boundary with Fallston Waco Road.
- (3) On Parcel ID No. 35642, the Applicant is likewise required to meet the 50-foot setback and Type A screening. However, along the western boundary of this parcel, the Applicant volunteered to provide a 70-foot setback and a 150-foot non-disturbance buffer, and to preserve or plant three staggered rows of vegetation ranging from 6 to 8 feet in height.
- (4) On the portions of Parcel ID Nos. 35642 and 35649 located southwest of Fallston Waco Road, the Applicant must meet the standards of the Type A screening. However, in addition to this requirement, the Applicant volunteered to install slatted fencing along the boundaries with Fallston Waco Road.
- (5) On the portion of Parcel ID No. 35649 located southwest of Fallston Waco Road, the Applicant must observe a 50-foot setback and meet the standards of Type A screening. However, along this property's southern border, the Applicant has volunteered to observe a 70-foot setback and preserve or plant three staggered rows of vegetation ranging from 6 to 8 feet in height.
- (6) Throughout the project footprint, the Applicant has volunteered a 150-foot setback from any habitable dwelling, even though the applicable Solar Ordinance only requires the Applicant to observe a 100-foot setback.

Witnesses Morris and Sandifer testified that the facility will be properly decommissioned. As part of the Applicant's application for a Conditional Use Permit approved by Cleveland County, the Applicant provided a decommissioning plan as required by the UDO. The decommissioning plan provides that decommissioning will occur upon any of the following conditions: (1) the land lease ends, (2) the facility does not produce power for a period of twelve months, and (3) the facility is damaged and will not be repaired or replaced. Also, the Applicant's lease with the property owners requires the Applicant to perform the following to decommission the project: (1) remove all nonutility owned equipment, conduits, structures, fencing, and foundations to a depth of

at least three feet below grade, (2) remove all graveled areas and access roads unless the property owners request in writing that they remain in place, (3) restore the land to a condition reasonably similar to its condition before development, including replacement of top soil that was removed or eroded, and (4) revegetate any cleared areas with warm season grasses that are native to the Piedmont region unless requested in writing by the property owners to not revegetate due to plans for agricultural planting.

Witness Morris further testified that the facility will comply with applicable state and federal regulations. There will be a wetlands delineation and jurisdictional determination by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act for the entirety of the facility footprint, and there will be 50-foot riparian buffers on both sides of any jurisdictional streams. The facility will require an erosion and sedimentation control plan approved by the North Carolina Department of Environmental Quality in accordance with the Sedimentation Pollution Control Act. The facility is subject to and will comply with the Endangered Species Act and the Fish and Wildlife Coordination Act, which require coordination with U.S. Fish and Wildlife Service and the North Carolina Wildlife Resources Commission to limit or prohibit adverse impacts to protected species. The facility is subject to the North Carolina Environmental Policy Act and has been reviewed by the State Historic Preservation Office for any impact to important historical or cultural sites. The Applicant will adhere to state regulations for the application of herbicides or chemical mowing that is performed as part of the operations and maintenance of the facility.

Witnesses Morris and Sandifer testified that there are no adverse health effects from the facility. The solar panels that comprise the solar arrays are made primarily of glass, utilizing Thin Film technology. They do not contain any radioactive materials, hazardous chemicals, or other materials that could potentially cause harm to the environment or the surrounding community. The solar panels are safe and create no site emissions, odor, or dust. The Environmental Protection Agency performs a test (the Toxic Characteristic Leaching Procedure (TCLP) test) to determine whether toxic or hazardous materials are present and whether the materials can be disposed of in landfills. Solar panels pass that test and may be disposed of in landfills.

Witness Kirkland testified that he researched hundreds of solar farms in numerous states to determine the impact of these facilities on the value of adjacent property. He further testified that the study he conducted for the Applicant focused on North Carolina properties and includes paired sales analyses, a breakdown of adjoining uses to solar farms, proximity to existing residences, and typical landscape screens. Witness Kirkland testified that, based upon his analyses, the facility will have no impact on the property values of the surrounding properties. A copy of a report supporting his conclusions and opinion was admitted to the record as Kirkland Exhibit No. 2.

In his testimony, Public Staff witness Lucas described the Application, the concerns raised by the individuals who have filed complaints in this proceeding, and his recommendation regarding whether the Commission should grant the requested CPCN. Witness Lucas testified that the complaints filed in this proceeding raised the following

concerns: alteration of the landscape, safety, changes to Cleveland County's solar ordinance, another solar facility in the county, decrease in land values, operation of the facility, decommissioning and disposal of solar panels, toxic materials in solar panels, and loss of farmland. He then testified that the Public Staff has carefully reviewed the complaints and believes that the public witnesses' concerns are more appropriately addressed through the local permitting process and through the environmental permitting process. Witness Lucas further testified that the Commission, in its April 24, 2008 order in Docket No. SP-231, Sub 0, discussed local authority over the siting of facilities, stating that "such decisions are, in most instances, best left to the local community through the exercise of its zoning authority rather than made by the Commission." Witness Lucas testified the public witnesses' concerns are of the type that the Commission has previously determined are best left to the purview of local zoning boards and environmental regulators who have authority over such matters and who are responsible for issuing specific permits that apply to the facility. He then testified to the requirements of the Cleveland County ordinance regulating solar facilities. In conclusion, witness Lucas testified that the Public Staff recommends that the Commission approve the application and grant the requested amended CPCN, subject to the following conditions: (1) that the Applicant construct and operate the proposed facility in strict accordance with applicable laws and regulations, including any environmental permitting requirements, and (2) that the CPCN be subject to Commission Rule R8-64 and all orders, rules, and regulations as are now or may hereafter be lawfully made by the Commission.

Discussion and Conclusions

The uncontested evidence regarding the need for the facility is that the Applicant has self-certified as a QF as defined in the federal Public Utility Regulatory Policies Act of 1978 (PURPA), which requires DEC to purchase the electrical output from the Applicant's proposed facility. Additionally, the Hearing Examiner takes notice that N.C.G.S. § 62-133.8 (the Renewable Energy and Energy Efficiency Portfolio Standard) establishes State policy to promote the development of renewable energy by requiring the State's electric power suppliers to obtain a certain percentage of their electricity from renewable energy resources, including solar energy. The Hearing Examiner concludes that the Applicant's plans to sell the electric output from its facility to DEC tends to support this State policy goal. In addition, the uncontroverted testimony of Applicant's witness Morris is that the facility will provide 69,890,000 kWh per year of emission-free renewable energy, that the addition of the proposed facility to DEC's system has the potential to cause DEC to defer, in part, the addition of fossil fuel-fired generation to its generating fleet, and that the energy generated at the proposed facility can be consumed by residences or other buildings that are nearest to the facility, minimizing loss of power that occurs in the transmission and distribution lines. The Hearing Examiner further concludes that this uncontroverted evidence demonstrates the need for the facility. Therefore, the Hearing Examiner finds that the Applicant demonstrated the need for the proposed facility, as required by N.C.G.S. § 62-110.1, based on the public benefits of solar powered generation and state and federal policies encouraging private investment in and development of renewable energy.

The need having been demonstrated by the Applicant, the contested issue is whether construction of the proposed facility is consistent with the public convenience. The public witness testimony against the proposed facility addressed the following concerns: compliance with the Cleveland County's zoning requirements, environmental concerns such as impairment of drinking water, aesthetics, and the impact to the future potential uses of the land after the proposed facility is taken out of operation. One of the public witnesses testified that she no longer has concerns with the proposed facility.

As recommended by the Public Staff and as applied in previous solar PV cases, the Hearing Examiner is persuaded that restrictions on land use, where they do not otherwise frustrate State policy, are best left to local zoning and a determination by local elected officials. In the Commission's April 24, 2008 Order in Docket No. SP-231, Sub 0, regarding local authority over the siting of facilities, the Commission stated:

[S]uch decisions are, in most instances, best left to the local community through the exercise of its zoning authority rather than made by the Commission. Local governing bodies are, generally speaking, in a better position than the Commission to make local land use planning decisions (so long as those decisions do not operate to thwart controlling State policy).

Thus, where, as in this case, the relevant local jurisdiction has adopted an ordinance addressing the appropriateness of siting a solar PV facility, the Commission generally will not substitute its judgment for that of the local jurisdiction. Moreover, the Applicant, by its testimony and application, committed to develop the project in compliance with the requirements of the Cleveland County land use regulations and special use permit, including the plan to decommission the facility. In fact, the uncontroverted testimony of Applicant witness Morris on this issue demonstrates that the Applicant will exceed some of the requirements of the special use permit issued under Cleveland County's prior ordinance, as the Applicant has voluntarily agreed to comply with the revised Cleveland County ordinance. The Hearing Examiner finds that compliance with the Cleveland County solar ordinance includes measures that mitigate the impact that the proposed facility may have on adjoining properties. Further, the Hearing Examiner notes that the Commission has no specific statutory authority to require the decommissioning of solar PV facilities and concludes that like the authority to regulate land use, the Commission should not substitute its judgment for that of the locally elected or appointed officials or that of the Environmental Management Commission, which has been tasked with developing decommissioning regulations. See 2019 N.C. Sess. Laws. Ch. 132, § 2. The Hearing Examiner, therefore, concludes that the foregoing authority and the Applicant's commitment to comply with or exceed Cleveland County's requirements support issuance of the requested CPCN.

Additional public witness testimony against the proposed facility addressed concerns regarding potential environmental issues, including the possibility of impairment of drinking water, the loss of habitat for wildlife, and the potential for future use of the land after the decommissioning of the facility. Applicant witness Morris testified that the Applicant will comply with all environmental laws in the construction and operation of the

facility. For example, he testified that the facility will require an erosion and sedimentation control plan approved by the North Carolina Department of Environmental Quality in compliance with the sedimentation Pollution Control Act, that the facility is subject to and will comply with the Endangered Species Act and the Fish and Wildlife Coordination Act, and that the Applicant will adhere to state regulations for the application of herbicides or chemical mowing that is performed as part of the operations and maintenance of the facility. He also testified that the Environmental Protection Agency performs a Toxic Characteristic Leaching Procedure test to determine whether toxic or hazardous materials are present in solar panels and whether the materials can be disposed of in landfills. He further testified that solar panels pass that test and may be disposed of in landfills. Applicant witness Sandifer testified that at the end of the useful life of the facility, the land is easily restored for agricultural purposes. Public Staff witness Lucas testified that these issues are of the type that the Commission has previously determined are best left to the purview of environmental regulators who have authority over such matters and who are responsible for issuing specific permits that apply to the facility.

The Hearing Examiner gives substantial weight to the testimony of witnesses Morris, Sandifer, and Lucas on these issues and agrees with witness Lucas that these issues are best left to the purview of environmental regulators. The Hearing Examiner, therefore, is not persuaded that sufficient evidence supports denying the requested CPCN based on these issues.

After careful consideration of the entire record, the Hearing Examiner finds that the Applicant demonstrated that construction of the facility is consistent with the public convenience based on the public benefits of solar-powered generation, the investment in the local economy, and the Applicant's plan to develop the proposed project in accordance with Cleveland County's zoning regulations, including measures that go beyond the express requirements of Cleveland County's zoning regulations that are applicable to the proposed facility. The Hearing Examiner further finds that the Applicant committed to develop the proposed project in accordance with applicable state and local laws and required permits, including controlling water runoff and soil erosion and screening the view of the facility. The Hearing Examiner also concludes that it is appropriate to make compliance with these regulations an express condition of the granting of the amended certificate, as agreed to by the Applicant.

Based upon the foregoing and the entire record herein, the Hearing Examiner finds that it is reasonable and appropriate to grant the requested amendment to the CPCN previously issued to the Applicant, conditioned on the facility being constructed and operated in accordance with applicable laws and regulations and subject to Commission Rule R8-64 and all orders, rules, and regulations as are now or may hereafter be lawfully made by the Commission. The Hearing Examiner, therefore, finds good cause to approve

the application and issue the attached amended certificate for the proposed solar PV electric generating facility.

IT IS THEREFORE ORDERED as follows:

1. That the application filed by Apex Solar, LLC, for an amended certificate of public convenience and necessity shall be, and is hereby, approved;

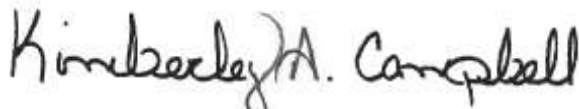
2. That Appendix A shall constitute the certificate of public convenience and necessity for the 30-MW_{AC} solar photovoltaic electric generating facility to be located on the west side of Plainsview Church Road, approximately 0.5 miles west of the intersection with East Stage Coach Trail, Lawndale, Cleveland County, North Carolina; and

3. That the facility shall be constructed in strict accordance with applicable laws and regulations, including any laws or regulations for the protection of the environment and any local zoning ordinances, and subject to any and all orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of September, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. SP-11723, SUB 0

Apex Solar, LLC
3402 Pico Boulevard, Suite 200
Santa Monica, CA 90405

is hereby issued this

**AMENDED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. § 62-110.1**

for a 30-MW_{AC} solar photovoltaic electric generating facility

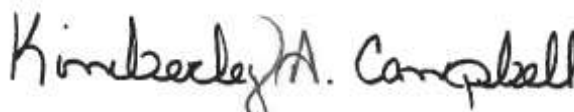
to be located on the west side of Plainsview Church Road, approximately 0.5 miles west of the intersection with East Stage Coach Trail, Lawndale, Cleveland County, North Carolina,

subject to the facility being constructed in strict accordance with all applicable laws and regulations, including any laws or regulations for the protection of the environment and any local zoning ordinances and all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of September, 2020.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk