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October 26, 2023

Via Electronic Submittal

Ms. A. Shonta Dunston  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603

**Re: In the Matter of**  
**Application of Aulander Holloman Solar, LLC for a Certificate of Public**  
**Convenience and Necessity to Construct an 80-MW Solar Facility in Bertie**  
**County, North Carolina**  
**Docket No. SP-5259, Sub 0**  
***Motion to Amend and Reissue Certificate of Public Convenience and***  
***Necessity and Request for Limited Waiver***

Dear Ms. Dunston:

On behalf of Aulander Holloman Solar, LLC, ("Aulander"), we herewith submit the attached Motion to Amend and Reissue Certificate of Public Convenience and Necessity and Request for Limited Waiver.

If you have any questions concerning this filing, please let me know. Thank you and your staff for your assistance.

Sincerely,  
*/s/ Benjamin L. Snowden*  
Benjamin L. Snowden  
Attorney for  
Aulander Holloman Solar, LLC

pbb  
Enclosure  
cc: Parties and Counsel of Record  
NC Public Staff  
Commission Staff - Legal

A Pennsylvania Limited Liability Partnership

California Nevada Colorado Arizona New Mexico Texas Oklahoma Florida Georgia Pennsylvania South Carolina Massachusetts Vermont New York Connecticut Delaware District of Columbia Maryland Virginia North Carolina South Dakota Minnesota Iowa Missouri Wisconsin Illinois Indiana Ohio Michigan Kansas Nebraska Missouri Washington Texas

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Oct 26 2023

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. SP-5259, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Aulander Holloman	)	MOTION TO AMEND AND REISSUE
Solar, LLC, for a Certificate of	)	CERTIFICATE OF PUBLIC
Public Convenience and Necessity to	)	CONVENIENCE AND NECESSITY AND
Construct an 80-MW Solar Facility	)	REQUEST FOR LIMITED WAIVER
in Bertie County, North Carolina	)	

NOW COMES Applicant Aulander Holloman Solar, LLC, by and through the undersigned counsel, and respectfully requests that the North Carolina Utilities Commission ("Commission") issue a Certificate of Public Convenience and Necessity ("CPCN") for a merchant plant under Commission Rule R8-63; and cancel the Applicant's existing Amended CPCN, which was issued under Rule R8-64 on June 20, 2018 in Docket No. SP-5259, Sub 0. Applicant further requests that the Commission waive, for good cause, certain requirements of Rule R8-63 based on the unique circumstances of this docket. The Public Staff has been consulted and does not oppose Applicant's request for waiver.

In support of its motion, Applicant states the following:

1. On February 27, 2015, Applicant filed an application for a CPCN for the construction of an 80 megawatt (MW) solar photovoltaic generating facility ("the Facility") under Rule R8-64 in docket no. SP-5259, Sub 0. Although the proposed Facility was a Qualifying Facility ("QF") under PURPA, the Application that Applicant was "in discussions to sell the output through a negotiated Power Purchase Agreement (PPA) to DNCP [Dominion North Carolina Power] or to one or more retail customers in deregulated

states that allow for such sales, or to sell the output in the PJM market.” Because the project contemplated potentially selling to entities other than DNCP, the Applicant requested that the Commission waive the requirement under Rule R8-64(b)(6)(i)(c) to obtain a statement from electric utility to which the applicant plans to sell the electricity to be generated. The Application reported that the proposed project would have a capacity of 80 MWac.

2. On April 23, 2015, the State Clearinghouse filed comments indicating that no further State Clearinghouse review was required for compliance with the North Carolina Environmental Policy Act.

3. On April 29, 2015, the Applicant filed an affidavit of publication from *The Bertie Ledger Windsor* and the *Roanoke Chowan News Herald* stating that the publication of notice was completed by April 15, 2015. No complaints were received.

4. The Public Staff presented this matter to the Commission at its Regular Staff Conference on June 15, 2015. The Public Staff supported Applicant’s request for a waiver of Rule R8-64(b)(6)(i)(c), noting that DNCP had obtained a waiver of its mandatory purchase obligation as to the project under PURPA, and that the Applicant was in discussions to sell the output of the project to other parties. The Public Staff requested that the Commission require the Applicant, upon determining the entity or entities to which the output of the facility would be sold, to make a supplemental filing to provide this information to the Commission. The Public Staff stated that it had reviewed the application and determined it to comply with the requirements of G.S. 62-110.1(a) and Commission Rule R8-64, and recommended approval of the certificate.

5. The Commission issued an Order granting Applicant’s request for a CPCN on June 17, 2015. The Commission Order required the Applicant to make a supplemental

filing with the Commission identifying the entity or entities to which the output of the facility would be sold, once that determination was made.

6. On April 19, 2018, the Applicant filed a letter with the Commission stating that the project plans to sell the power output of the facility to Fifth Third Bancorp, a financial services company headquartered in Cincinnati, Ohio with offices in North Carolina.

7. On March 27, 2018, the Applicant filed an amendment to its application stating that the facility's site location has been modified by removing one parcel of land and adding other parcels of land located south and north of NC Highway 42 and east of Indian Spring Road. After additional public notice and review by the Clearinghouse, the Commission issued an amended CPCN on June 20, 2018. The amendment included a revised site layout.

8. On July 27, 2018, the Applicant filed a letter notifying the Commission that all membership interests in Aulander Holloman Solar, LLC had been sold to Holloman Owner, LLC.

9. On November 29, 2018, the Commission issued an Order Transferring Record, Closing Docket, And Finding Application Incomplete in a separate CPCN proceeding, in docket no. SP-6476, Sub 0. In that Order, the Commission clarified its view that a proposed Qualifying Facility that planned to operate as a merchant facility would be required to seek a CPCN under Rule R8-63, rather than R8-64. This is because Rule R8-64 applies to applications for a CPCN 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 N.C.G.S. § 62-110.8, or any

person “who is seeking the benefits of” 16 U.S.C. § 824a-3 or N.C.G.S. § 62-156. The Commission reasoned that a “logical application of the words ‘seeking the benefits of’ in Commission Rule R8-64(a)(1) is as a reference to the mandatory-purchase obligation of 16 U.S.C. § 824a-3(a)(2),” rather than to the other benefits of QF status.

#### Construction and Changes to the Facility

10. Aulander-Holloman Solar achieved mechanical completion on December 18, 2018, and substantial completion on October 18, 2019. The facility was constructed with an AC capacity of 80 MW. The design layout of the facility was consistent with the information in the Application and subsequent amendments (although inverter specifications were changed due to the availability of string inverters more efficient than the central inverters specified in the application documents).

11. Aulander-Holloman began in 2018 to explore the possibility of increasing the maximum AC capacity of the project, without changing the facility design. On June 12, 2018, the Applicant filed a request with PJM to study the system impacts of increasing the injection capacity of the project from 80 MW to 100 MW.

12. PJM concluded that the Facility could inject up to 100 MW without causing additional impacts to the system or requiring additional upgrade, and issued an Interconnection Service Agreement (ISA) reflecting the higher capacity on February 24, 2020.

13. In June 2020 the Facility modified its transformers and plant controller to accommodate a maximum injection capacity of 100 MW AC. The modification consisted of improving the cooling system on the Facility’s transformer to improve the transformer’s efficiency and allow its capacity (in MVA) to be increased; and changing the set-points on

the Facility's plant controller from 80 MWac to 99.9 MWac. The change, which took approximately three days to effectuate, did not require any other modifications to the facility. No panels were added and the DC rating of the facility did not change.

14. The increase in the Facility's AC capacity was thoroughly studied and approved by PJM. The SunEnergy1 personnel who were at that time responsible for compliance with North Carolina regulatory requirements did not appreciate that the change in the Facility's AC capacity would require notice to the Commission, and did not file such notice.

15. A self-certification as an Exempt Wholesale Generator ("EWG") was filed with FERC on June 21, 2018. On August 7, 2018, Aulander-Holloman filed with FERC for market-based rate authority with an accompanying tariff, which FERC approved effective as of October 7, 2018.

16. On September 28, 2023, the current upstream owner of the Facility, SunEnergy1, LLC and its indirect subsidiary, SE1 Generation Holdings, LLC, entered into an agreement to sell the Facility to via a sale of its indirect parent company to NC Solar (Fund IV) Holdings, LLC, a Delaware limited liability company and an affiliate of TGC Asset Management LLC.<sup>1</sup>

17. In the course of performing due diligence on the proposed sale of the project, Applicant became aware of its obligation to notify the Commission of the change

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<sup>1</sup> On October 2, 2023, the current and prospective new owners of the facility filed an application for approval of the transaction with FERC.

in capacity, and to seek a CPCN under Rule R8-63 because the Facility no longer qualifies as a QF.<sup>2</sup>

18. Sale of the Facility will not close, and ownership of the Facility will not be transferred, until after all regulatory requirements, including issuance of an amended CPCN, have been complied with.

Request for Issuance of Merchant CPCN under R8-63 and Request for Waiver of Certain Regulatory Requirements

19. The Applicant acknowledges that it is obligated by Rule R8-64(d)(3) to inform the Commission of “any significant changes in the information set forth” in Exhibits 1-5 of its CPCN application. Although the Applicant and its upstream owner endeavor in good faith to comply with all Commission requirements, the relevant personnel simply failed to understand the obligation to inform the Commission of this change.

20. Because of the increase in the Facility’s capacity from 80 MWac to 100 MWac, the fact that the Facility is no longer a QF, and the fact that it is operating as a merchant facility, the Applicant also understands that the Facility requires a merchant facility CPCN issued under Rule R8-63, rather than a QF CPCN issued under R8-64.

21. Concurrently with the filing of this Motion, the Applicant is filing an Application for a CPCN issued under Rule R8-63.

Request for Waiver

22. Because of the unique history and circumstances of the Facility—most notably the fact that the Commission has already issued a CPCN for the Facility under R8-

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<sup>2</sup> On September 21, 2023, Aulander-Holloman notified FERC that it was withdrawing its FERC Form 556 based on the fact that it was no longer a QF.

64, and the Facility has already been constructed—the Applicant submits that good cause exists to waive certain requirements of Rule R8-63. The Applicant requests that the Commission exercise its discretion to waive the following requirements:

a. R8-63(b)(1)(iii), which requires the filing of financial information about the Applicant. The Applicant has already demonstrated that it (and its upstream owner) has the financial resources and sophistication to finance, construct, and operate the Facility.

b. R8-63(b)(5), which requires the application to be accompanied by prefiled testimony, because the existing record in docket no. SP-5259, along with the application submitted this same day, demonstrates that the project is consistent with the public convenience and necessity.

c. R8-63(b)(6), 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 having an interest in the proposed generating facility. The State Clearinghouse received the original CPCN application (and the 2018 amendment to the site plan) and the State agencies with an interest in the Facility have already provided their comments in docket no. SP-5259. The site plan for the facility has not changed since then, and so further Clearinghouse review would serve no purpose.

d. R8-63(d), which provides that after receipt of a complete application (as determined by the Public Staff), the Commission shall “issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.” Public notice of the planned Facility was already provided and



no party commented in opposition to the Facility. Since issuance of the original (and amended) CPCN, the Facility has been constructed and the design of the facility has not changed (other than as specifically described herein). Additional public notice or a hearing would serve no purpose.

*Request for Issuance of CPCN*

23. As demonstrated by the Commission's prior orders granting a CPCN for the facility and the information included in the Application submitted herewith, issuance of an amended CPCN for the Facility under Rule R8-63 would be consistent with the public convenience and necessity.

24. Need for the Facility is demonstrated by the existence of an executed offtake agreement with a buyer in PJM (Fifth Third Bancorp), and by the continued high demand for renewable energy in PJM.<sup>3</sup>

25. As discussed in the Application and supporting documents, the Facility is not eligible for, and will not obtain, reimbursement of any Upgrade costs incurred in connection with the Facility. Nor did the construction of the Facility or the increase in its capacity to 100 MWac trigger the need for any Affected System Upgrades. Consequently, the Facility has not imposed and will not impose any costs on North Carolina retail ratepayers.

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<sup>3</sup> In addition to information on this topic provided in the Application, the Applicant requests that the Commission take judicial notice of its findings in Orders issued in other merchant CPCN dockets that as to the need for renewable energy in Dominion Energy's North Carolina service territory and in the PJM Market. See Order Granting Certificate Of Public Convenience And Necessity, Docket No. EMP-119, Sub 0 (Jan. 5, 2023) at 16.

REQUEST FOR AMENDED AND REISSUED CPCN AND WAIVER OF CERTAIN  
REGULATORY REQUIREMENTS

For the foregoing reasons, Applicant respectfully requests that the Commission issue an Order:

1. For good cause, waiving certain requirements of Rule R8-63 as specified herein;
2. Finding that construction of the Aulander-Holloman Solar project and the increase in its capacity to 100 MWac is consistent with the public convenience and necessity, as that standard applies to merchant generating facilities;
3. Issuing a CPCN under Rule R8-63 for the facility at a revised capacity of 100 MWac; and
4. Cancelling the Amended CPCN issued under Rule R8-64 in Docket No. SP-5259, Sub 0.

Respectfully submitted this the 26th day of October, 2023.

/s/ Ben Snowden  
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STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NOS. SP-5259, SUB 0  
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of )  
Application of Aulander Holloman Solar, )  
LLC, for a Certificate of Public Convenience ) **VERIFICATION**  
and Necessity to Construct an 80-MW Solar )  
Facility in Bertie County, North Carolina )

I, Kenny Habul, being first duly sworn, depose and say that I am Manager of Aulander Holloman Solar, LLC, and in such capacity, I have read the foregoing Motion to Amend and Reissue Certificate of Public Convenience and Necessity and Request for Limited Waiver and know the contents thereof, and by my signature below verify that the contents are true and correct to the best of my knowledge.



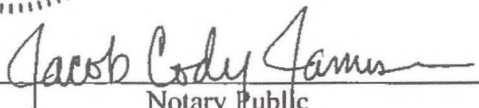
Kenny Habul

Pitt County, North Carolina <sup>(initials)</sup>  
~~Connecticut~~

Signed and sworn before me this day by  
Kenny Habul

Date: October 26, 2023



  
Notary Public

My Commission Expires: March 16, 2024

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing Motion on all parties of record in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 26th day of October, 2023.

Electronically submitted,

/s/ Benjamin L. Snowden