



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

November 9, 2022

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

Re: Docket No. EMP-110, Sub 0
Application of Sumac Solar LLC for a Certificate of Public Convenience and
Necessity to Construct a 120-MW Solar Facility in Bertie County, North Carolina

Dear Ms. Dunston:

In connection with the above-referenced docket, I transmit herewith for filing on behalf of the Public Staff the attached Proposed Order.

By copy of this letter, I am forwarding a copy to all parties of record by electronic delivery.

Sincerely,
Electronically submitted
/s/ Robert B. Josey
Staff Attorney
robert.josey@psncuc.nc.gov

Attachment

cc: Parties of Record

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STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-110, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Sumac Solar LLC for a)
Certificate of Public Convenience and) PROPOSED ORDER OF
Necessity to Construct a 120-MW Solar) THE PUBLIC STAFF
Facility in Bertie County, North Carolina)

HEARD: Tuesday, September 6, 2022, at 1:00 p.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chair Charlotte A. Mitchell, presiding, Commissioner Kimberly W. Duffley, and Commissioner Daniel G. Clodfelter

APPEARANCES:

For Sumac, LLC:

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Jonathan L. Taggart
Fox Rothschild LLP
434 South Fayetteville Street, Suite 2800
Raleigh, NC 27601

For the Using and Consuming Public:

Robert B. Josey, Staff Attorney
Nadia L. Luhr, Staff Attorney
William E. H. Creech, Staff Attorney
Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
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BY THE COMMISSION: On April 16, 2020, Sumac Solar, LLC (Sumac or Applicant) filed an application for a certificate of public convenience and necessity (CPCN), pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63, to construct a solar energy facility (the Facility) with a capacity of 120 MW in Bertie County, North Carolina. In support of the application, Sumac filed the testimony and exhibits of Kara Price.

On April 23, 2020, the Public Staff filed a Notice of Completeness stating that it had reviewed the CPCN application and considered the application to be complete. In addition, the Public Staff requested that the Commission issue a procedural order.

On April 28, 2020, the Commission issued its Order Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice (“Procedural Order”). The Procedural Order: (1) established a deadline for intervention in this matter of May 29, 2020; (2) scheduled a public hearing on Tuesday, June 23, 2020, at 6:00 p.m. at the Bertie County Courthouse for the purpose of receiving public witness testimony regarding the Applicant’s application for a CPCN; (3) scheduled a hearing on Monday, July 13, 2020, at 2:00 p.m. for the purpose of receiving expert witness testimony regarding the Applicant’s application for a CPCN; and (4) required the Applicant to publish Public Notice of the Application once a week for four successive weeks. The Procedural Order further provided that the Commission may cancel the public witness hearing if no substantial written complaints regarding the proposed Facility are filed with the Commission on or before ten days following the last day of the publication of notice.

On May 12, 2020, the Applicant filed the testimony of Donna Robichaud.

On May 29, 2020, the Public Staff filed the testimony of Evan D. Lawrence.

On June 4, 2020, the Applicant filed an Affidavit of Publication.

On June 11, 2020, the Applicant filed a Motion to Cancel Hearings, stating that ten days had lapsed since the last day of the publication of notice, and to the best of the Applicant's knowledge, no written complaints had been received regarding the proposed Facility. The motion requested that if no substantial written complaints had been received regarding the proposed Facility, the Commission cancel the public hearing scheduled for June 23, 2020.

On June 16, 2020, the Commission issued an Order noting that it had not received any written complaints regarding the proposed Facility and that no party had requested to intervene in this proceeding, and cancelling the public witness hearing scheduled for June 23, 2020.

On June 22, 2020, the Commission issued an Order Cancelling Expert Witness Hearing and Requiring Additional Testimony, cancelling the scheduled expert witness hearing and directing the Applicant to file additional testimony and exhibits addressing a number of questions posed by the Commission.

On July 13, 2020, the State Clearinghouse filed a letter with attached comments from multiple state agencies, stating that no further State Clearinghouse review action was needed for compliance with the North Carolina Environmental Policy Act.

On August 12, 2020, the Applicant filed the additional testimony and exhibits of Donna Robichaud.

On October 15, 2020, Sumac filed a Letter notifying the Commission that Geenex Solar, LLC (Geenex) had sold Sumac to EDF Renewables Development, Inc (EDF Renewables).

On November 16, 2020, Sumac filed a Supplemental Application, updating the information provided in its Application for a CPCN filed on April 16, 2020, and the Supplemental Testimony of Emily Dalager. Also on November 16, 2020, the Public Staff filed the supplemental testimony of Evan D. Lawrence.

On May 27, 2021, the Applicant and Sweetleaf Solar, LLC (Sweetleaf) filed a Motion for Stay of Proceedings, requesting that the Commission stay proceedings in this docket and in Docket No. EMP-111, Sub 0 (Application of Sweetleaf Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 94-MW Solar Facility in Halifax County, North Carolina), pending further order of the Commission, so that the parties and the Commission may have the benefit of additional interconnection-related information prior to filing additional testimony or conducting any evidentiary hearings. The Applicant explained that since receipt of the Duke Energy Progress, LLC (DEP) Affected System Study dated April 5, 2021, PJM has informed Sumac and Sweetleaf, both of which are in the AD1 cluster, would provide revised interconnection studies for Sumac and Sweetleaf in the fall of 2021. The Applicant further explained that PJM was currently in the process of re-tooling the system impact studies for projects in the

AC2 cluster (immediately prior to AD1) to account for changes in the interconnection queue, that PJM would then re-tool the AD1 project studies, and that PJM anticipated delivering revised studies for the AD1 cluster in September 2021. In addition, the Applicant stated that the revisions to the AC2 and AD1 studies would require DEP to revise its April 5, 2021 Affected System Study.

On June 3, 2021, the Commission issued an Order Granting Request for Stay of Proceedings, providing that the Applicant shall file any additional interconnection studies it receives for the Facility and may propose an appropriate procedural schedule after receipt of the additional interconnection studies.

On June 1, 2022, the Applicant filed the supplemental testimony of Amanda Mack and the second supplemental testimony of Donna Robichaud.

On July 22, 2022, Sumac filed revised PJM Interconnection Studies for the Facility.

On July 25, 2022, the Public Staff filed a Consent Motion for Procedural Order in the present docket, as well as in Docket Nos. EMP-110, Sub 0 and EMP-119, Sub 0 (Application of Macadamia Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 484-MW Solar Facility in Washington County, North Carolina), and EMP-119, Sub 1 (Application of Macadamia Solar LLC for a Certificate of Environmental Compatibility and Public Convenience and Necessity to Construct a Transmission Line in Washington County, North Carolina).

On July 29, 2022, the Public Staff filed the second supplemental testimony of Evan D. Lawrence.

On August 5, 2022, the Commission issued its Order Accepting Testimony, Requiring Further Testimony, and Scheduling Hearings. The order accepted the second supplement testimony of Public Staff witness Lawrence; provided that the Applicant may file supplemental reply testimony on or before August 12, 2022; scheduled the expert witness hearing in Docket No. EMP-110, Sub 0 to immediately follow the expert witness hearing in Docket No. EMP-119, Subs 0 and 1 on Tuesday, September 6, 2022; and scheduled the expert witness hearing in EMP-111, Sub 0 to immediately follow the hearing for Docket No. EMP-110, Sub 0.

On August 12, 2022, the Applicant filed the second supplemental reply testimony and exhibits of Donna Robichaud.

On August 30, 2022, the Public Staff filed a motion for leave to file joint supplemental testimony, as well as the joint supplemental testimony of Jay Lucas and Evan Lawrence.

On September 2, 2022, the Commission issued its Order Accepting Supplemental Testimony and Providing Questions to be Answered at Hearings (September 2 Order). The September 2 Order accepted the joint supplemental testimony of Public Staff witnesses Lucas and Lawrence and directed the Applicant and the Public Staff to produce witnesses at the September 6, 2022 expert witness

hearing to provide testimony addressing specific questions that were provided in the order.

Also on September 2, 2022, the Public Staff filed a letter providing an update on its negotiations and resolution of outstanding issues between the Public Staff and the Applicant.

On September 6, 2022, the Commission convened the hearing for Docket No. EMP-119, Subs 0 and 1 in the Commission Hearing Room 2115 at 1:00 p.m., as scheduled. Upon opening the hearing, the Chair noted that the parties waived cross-examination of each other's witnesses and that the witnesses were being presented solely for the purpose of answering the questions posed by the Commission in its September 2 Order. Because the issues to be addressed by those questions are common among the three dockets, the Commission found good cause to consolidate the proceedings in Docket Nos. EMP-110, Sub 0; EMP-111, Sub 0; and EMP-119, Subs 0 and 1, solely to receive testimony on the Commission questions. The Commission noted that a copy of the transcript of the consolidated hearing would be placed in all three dockets and that the Commission would issue a subsequent order in each respective docket accepting into the record the testimony and exhibits of the parties' witnesses filed in each docket.

At the September 6, 2022 consolidated hearing for the purpose of addressing the questions in the September 2 Order, the attorney for the Applicants made a motion to cancel any subsequent hearings to be held in Docket Nos. EMP-110, Sub 0 and EMP-111, Sub 0.

On September 8, 2022, the Commission issued its Order Excusing Witnesses, Accepting Testimony, Canceling Expert Witness Hearing, and Requiring Proposed Orders.

Also on September 8, 2022, the Public Staff filed Public Staff Late-Filed Exhibit No. 1.

On October 19, 2022, the Applicant filed in this docket an Affected System Operating Agreement (ASOA) between Sumac and DEP, explaining that DEP filed this ASOA with the Federal Energy Regulatory Commission (FERC) and with the Commission in Docket No. E-100, Sub 170 on October 17, 2022.

FINDINGS OF FACT

1. Sumac is a North Carolina limited liability company. Sumac is wholly owned by EDF Renewables, a Delaware corporation registered to do business in the State of North Carolina.
2. In compliance with N.C.G.S. § 62-110.1 and Commission Rule R8-63, Sumac filed with the Commission an application and supplemental application for a CPCN authorizing the construction of a 120 MW_{AC} solar PV electric generating facility located on approximately 1,269 acres outside of Windsor in Bertie County, North Carolina, which was later reduced to 80 MW_{AC}.
3. The application has met all requirements for publication of notice.
4. The Facility will be an 80 MW_{AC} PV array with single-axis tracking.

5. The Facility will be interconnected to the grid operated by Dominion Energy North Carolina (DENC).

6. Construction of the Facility is anticipated to begin in 2024, and the expected commercial operation date for the Facility is 2025.

7. No further State Clearinghouse review action by the Commission is required for compliance with the North Carolina Environmental Policy Act.

8. Sumac is financially and operationally able to undertake the construction and operation of the Facility.

9. Sumac is one of the earliest-queued active projects in Dominion territory of PJM without an executed Interconnection Service Agreement. Based on PJM's Generation Interconnection System Impact Study Report revised in July 2022 (July 2022 SIS Report), Sumac has cost responsibility for \$14,073,759 in new system upgrade from PJM, which will be funded by Sumac.

10. The Facility has a Levelized Cost of Transmission (LCOT) of \$3.72 per megawatt-hour (MWh) if the Facility is allocated all of the assigned upgrades on the Dominion system but the Facility's LCOT could decrease to as low as \$1.20/MWh if later-queued projects are allocated some of the network upgrade costs.

11. Sumac, Sweetleaf, and Macadamia Solar, LLC (Macadamia) are in the PJM AD1 cluster and trigger incremental affected system upgrades costing \$150,000 on DEP's Greenville-Everetts 230 kV transmission line. Sumac has

entered into an Affected System Operating Agreement with DEP to provide the funds for the construction of these upgrades. The LCOT for the affected system upgrades, including the \$1.6 million fee for expedited construction, if attributed to solely to Sumac is \$0.41/MWh and \$0.05/MWh when considering all three facilities in the AD1 cluster triggering the affected system upgrade.

12. Sumac has shown a need based on the projected demand in the PJM region, projections for corporate purchase of energy and renewable energy credits from solar facilities in the southeast market of PJM, and projected load growth in PJM.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 – 6

These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not in dispute. These findings are supported by Sumac's application and supplemental application, and the testimony of Sumac witnesses Price, Mack, Robichaud, and Dalager.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7

The evidence supporting this finding of fact is located in the State Clearinghouse comments filed in this docket.

On July 13, 2020, the State Clearinghouse filed a letter with attached comments from multiple state agencies. The letter stated that, because of the nature of the comments, no further State Clearinghouse review action was needed for compliance with the North Carolina Environmental Policy Act.

Based on the foregoing, the Commission concludes that no further State Clearinghouse review action is required for compliance with the North Carolina Environmental Policy Act.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8

The evidence supporting this finding of fact is located in Sumac's application and supplemental application the testimony of Sumac witnesses Price, Mack, Robichaud and the supplemental testimony of Emily Dalager. This finding of fact is not disputed by any party.

Sumac is wholly owned by EDF Renewables. Witness Dalager explained that the Facility was initially developed by Geenex, a Delaware limited liability company, and was later fully acquired by EDF Renewables. Geenex will continue participating in the development of the Facility until it achieves commercial operation. Witness Price testified that Geenex develops high-quality solar projects ultimately for sale to its partners and investors, and that Geenex is skilled in all aspects of a solar project's development including site evaluation, real estate procurement, facility and interconnection engineering, environmental analysis, power purchase agreements, and federal, state, and local permitting processes. Geenex's corporate history, business model, financial capabilities, and expertise in the development of solar projects are set forth in Exhibit 1, Items (ii) and (iii) to the application.

Sumac witness Dalager testified regarding EDF Renewables' technical experience and financial capabilities to own and operate the Facility. She stated

that EDF Renewables has the experience to build, own, and operate solar power generation facilities, including the Facility. She explained that EDF Renewables develops, builds, and operates clean energy power plants in 22 countries, and that, as of October 2020, its North American portfolio consisted of 16 GW of developed projects and 11 GW of operating assets under service contracts. She added that EDF Renewables has an additional 26 GW of projects in development. In addition, EDF Renewables has completed construction of two solar generating facilities in the Southeastern Electric Reliability Council (SERC) region, comprising a combined 154.8 MW, and currently has two solar generating facilities totaling 271.9 MW under construction in SERC.

Regarding financing, witness Dalager explained that EDF Renewables builds projects, some of which have capital costs exceeding \$500 million, on-balance sheet. She stated that successful construction of EDF Renewables projects will not be contingent on third party capital. According to witness Dalager, EDF Renewables works with large tax equity investors and has raised more than \$5.5 billion to date. She stated that tax equity is not invested until the project has neared completion, and that the balance of long-term capital is provided by EDF Renewables. Financial statements for EDF Renewables were provided as Supplemental Schedule 2.

Based on the foregoing and the entire record in this proceeding, the Commission concludes that Sumac is financially and operationally able to undertake the construction and operation of the Facility.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-12

The evidence supporting these findings of fact is located in Sumac's application and the supplemental application, the testimony and exhibits of Sumac witnesses Price, Mack, Robichaud, and Dalager, the testimony and exhibits of Public Staff witnesses Lucas and Lawrence, the Public Staff's letter filed with the Commission on September 2, 2022, informing the Commission of an agreement between the parties, and the ASOA filed on October 19, 2022.

N.C.G.S. § 62-110.1(e) states that "no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that the construction will be consistent with the Commission's plan for expansion of electric generating capacity." Commission Rule R8-63(b)(3) also requires a merchant plant application to include a description of the need for the facility in the "state and/or region." This requirement is an outgrowth of the 1991 Empire Power Company case in Docket No. SP-91, Sub 0, which requires an independent power producer to obtain a contract or a written commitment from a utility to demonstrate need.

In 2001, the Commission initiated a generic proceeding in Docket No. E-100, Sub 85, to consider changes to the certification requirements for merchant plants. As impetus for its Order, the Commission cited the Energy Policy Act of 1992, which encouraged independent power production and competition in the wholesale power market through the creation of exempt wholesale generators and the ability of FERC to issue wheeling orders requiring utilities to allow access to

their transmission grids for wholesale power transactions.¹ Further, the Commission cited FERC Order 2000 as “encouraging the formation of regional transmission organizations which would operate interconnected transmission systems, reduce the cost of transmitting power to more distant markets, and further enhance wholesale competition.”² In the E-100, Sub 85 Order, the Commission ordered the Public Staff to file a proposal for certification requirements for merchant plants.³ In its proposal, the Public Staff recommended that the Commission address in its proceeding how the public convenience and necessity for an independent power producer would be demonstrated “when the facility is intended in whole or in part to serve . . . load outside of North Carolina, on varying bases and for varying duration.”⁴

In its Order adopting the certification rule, the Commission stated “[i]t is the Commission’s intent to facilitate, and not to frustrate, merchant plant development. Given the present statutory framework, the Commission is not in a position to abandon any showing of need or to create a presumption of need. However, the Commission believes that a flexible standard for the showing of need is appropriate.”⁵

¹ *Order Initiating Further Proceedings*, Docket E-100, Sub 85, at 3 (issued on February 7, 2001).

² *Id.*

³ *Id.*

⁴ Public Staff’s Initial Comments, Docket No. E-100, Sub 85, at 8 (January 10, 2000).

⁵ Order Adopting Rule, Docket No. E-100, Sub 85, at 7 (issued May 21, 2001).

The Commission has determined in previous merchant plant proceedings that “it is appropriate for the Commission to consider the total construction costs of a facility, including the cost to interconnect and to construct any necessary transmission Network Upgrades, when determining the public convenience and necessity of a proposed new generating facility.”⁶

The Commission has also determined that “the use of the levelized cost of transmission (LCOT) provides a benchmark as to the reasonableness of the transmission Network Upgrade cost associated with interconnecting a proposed new generating facility.”⁷ Further, the Commission has explained that “the very reason the CPCN statute was enacted was to stop the costly overexpansion of facilities to serve areas that did not need them.”⁸ Lastly, the Commission has noted, based on policies established explicitly in N.C.G.S. § 62-2, that the “legislature intends the Commission to encourage cost-efficient siting of generation facilities, and thus that the Commission has the authority to consider all costs borne as a result of that siting decision.”⁹

Sumac originally held two positions in the PJM interconnection queue AD1-022/23, but according to Sumac witness Robichaud in her second supplemental

⁶ See Order Denying Certificate of Public Convenience and Necessity for Merchant Plant Generating Facility, *In the Matter of Application of Friesian Holdings, LLC for a Certificate of Convenience and Necessity to Construct a 70-MW Solar Facility in Scotland County, North Carolina*, Docket No. EMP-105 Sub 0, at 6 (issued June 11, 2020) *aff'd*, *State ex. Rel. Utils. Comm'n v. Friesian Holdings, LLC*, 281 N.C. App. 391, 869 S.E.2d 327 (2022).

⁷ *Id.*

⁸ *Id.* at 17. See also *High Rock Lake Ass'n*, 97 N.C. App. at 140-41, 245 S.E.2d at 790; *State ex rel. Utils. Comm'n v. Empire Power*, 112 N.C. App. 265, 280, 435 S.E.2d 553, 561 (1994).

⁹ *Id.* at 17-18

testimony withdrew the AD1-023 queue position and eliminated one of the network upgrades allocated to Sumac. Public Staff witness Lawrence stated in his supplemental testimony that as a result of the removal of the AD1-023 interconnection request, the withdrawal of other projects from the queue, and the reclassification of system upgrades required for Sumac to interconnect, the cost of the PJM required upgrades for Sumac decreased from \$135,990,000 to \$14,073,759. Witness Robichaud also stated that since the network upgrades would be constructed in PJM's territory, there is no cost allocation to DEP's ratepayers.

Witness Robichaud calculated that the LCOT for the allocated cost of the PJM network upgrades assigned to Sumac to be \$3.72 per MWh if the Facility is allocated all of the assigned upgrades on the Dominion system but the Facility's LCOT could decrease to as low as \$1.20/MWh if later-queued projects are allocated some of the network upgrade costs. Because Sumac will be responsible for paying these interconnection-related costs, and North Carolina ratepayers will not bear any portion of the costs, the LCOT for the PJM network upgrades in this proceeding does not raise concerns for the Commission.

In Public Staff witness Lawrence's second supplemental testimony, he stated that DEP released a revised affected systems study report for the PJM AD1 cluster on June 8, 2022, which stated that DEP, since its last affected systems study report for the AD1 cluster in September of 2021, had decided to rebuild the Greenville-Everetts 230 kV transmission line reducing the affected systems upgrade costs assigned to the AD1 cluster from \$10 million to \$350,000.

Public Staff witness Lawrence testified that based on many unique factors present in this case, including DEP's decision to replace the Greenville-Everetts 230kV transmission line, leaving the incremental cost of the affected system upgrades allocated to the AD1 cluster at \$350,000 and the cost efficiencies that could take place if the incremental affected systems upgrades were completed concurrently with DEP's scheduled construction, the Public Staff recommended approval of Sumac's CPCN subject to certain conditions. Witness Robichaud, in her second supplemental reply testimony, stated that during negotiations for the ASOA, DEP stated that the costs for the upgrades would only be \$150,000.

Witness Robichaud also testified that Macadamia was seeking to expedite the upgrades at a cost of approximately \$1.6 million. She further stated that Macadamia is seeking an ASOA that would require it to fund the upgrade and the expediting fees but would not provide any reimbursement of those costs from DEP. In addition, she noted that Sumac may enter into a side agreement with Macadamia to provide a portion of the funding for the DEP upgrade, but that no such agreement had yet been reached.

In their joint supplemental testimony filed August 30, 2022, Public Staff witnesses Lucas and Lawrence expressed concern over the possibility of DEP ratepayers ultimately being responsible for the cost of expediting the construction of the upgrades in light of FERC's decision on the ASOA between DEP and American Beech Solar LLC, in which FERC ruled that the modification to the ASOA's reimbursement provision was not just and reasonable.

On September 2, 2022, however, the Public Staff filed a letter informing the Commission that Macadamia, Sweetleaf, and Sumac had agreed not to seek expedited construction of the network upgrades on the Greenville-Everetts line. The Public Staff therefore recommended approval of the CPCN applications for all three projects and that the Commission forego any conditions on the CPCNs that may prevent the applicants and DEP from executing an ASOA that provides for reimbursement of the estimated \$150,000 to construct the incremental network upgrades.

Ultimately, Sumac, rather than Macadamia, signed an ASOA with DEP for the affected system upgrades. DEP filed the Sumac ASOA with FERC, and with the Commission in Docket No. E-100, Sub 170, on October 17, 2022. The Applicant also filed the ASOA in this Docket on October 19, 2022. The Sumac ASOA provides for the construction of the Greenville-Everetts network upgrades at an estimated cost of \$150,000. In addition, the cover letter filed with the ASOA indicates that DEP filed the ASOA with FERC unexecuted because it is actively litigating the issue of whether it is appropriate for FERC to require DEP to provide reimbursement to the customer under the ASOA.

Based on Public Staff witness Lawrence's testimony recommending approval of Sumac's CPCN application, the Commission agrees that given the unique circumstances in this docket, including DEP's decision to rebuild the Greenville-Everetts line and the efficiencies that can be achieved by constructing the affected system network upgrades at issue at the same time as the rebuilding

of the line; the relatively low cost of the affected system upgrades at issue;¹⁰ and that Sumac, Sweetleaf and Macadamia will be able to interconnect once the upgrades are constructed, the need for and cost of the affected systems upgrades should not prevent Sumac from receiving a CPCN in this particular instance.

In its analysis of public convenience and necessity in the context of merchant generating facilities, the Commission has considered the long-term energy and capacity needs in the State and region, as well as system reliability concerns. As described in Exhibit 3 of the application, the project will interconnect to PJM, which coordinates the movement of electricity through all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. Exhibit 3 states that there are several opportunities to sell the output of the Facility, including the PJM wholesale market, ancillary services sales under the PJM tariffs, and corporate agreements. The applicant anticipates contracting the sale of energy, capacity, and Renewable Energy Credits through PJM, and load growth for the PJM service area of North Carolina is expected to average between 0.9 and 1.1% per year over the next ten years. In addition, demand for renewable power is expected to increase in the Southeast over the expected lifetime of the project.

¹⁰ Sumac witness Robichaud testified that the LCOT for the affected system upgrades would be \$0.41 if all the affected systems upgrade costs were assigned to Sumac and \$0.05 if the costs were assigned to Sumac, Sweetleaf, and Macadamia. The Commission notes that these LCOT calculations were before the \$1.6 million expedited construction fee was removed. Accordingly, the LCOT for Sumac alone and for all three facilities would be significantly lower when calculated with only the remaining \$150,000 of affected system upgrades.

As the history of Commission Rule R8-63(b)(3) described above makes clear, the statement of need requirement is a “flexible standard” that is consistent with the Commission’s Order Adopting Rule in Docket No. E-100, Sub 85, issued on May 21, 2001. When considering the demonstration of need, the Commission must also weigh the costs of the Facility, whether and to what extent those costs may be borne by ratepayers, and the benefits provided to those incurring the costs in determining the need for the Facility.

Therefore, for all the reasons explained in this Order, the Commission finds that the construction of the Facility is in the public interest and meets the public convenience and necessity as required by N.C.G.S. § 62-110.1. However, the certificate will be conditioned in the manner described below to ensure that the Commission is notified of any future material revisions in the cost estimates for the interconnection facilities and network upgrades, including network upgrades on affected systems.

IT IS, THEREFORE, ORDERED as follows:

A certificate of public convenience and necessity shall be issued to Sumac Solar LLC for the construction of an 80 MW_{AC} solar PV merchant generating facility to be located in Bertie County, North Carolina. This certificate shall be subject to the following conditions:

1. The Applicant shall construct and operate the facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements.

2. The CPCN shall be subject to Commission Rule R8-63(e) and all orders, rules, and regulations as are now or may hereafter be lawfully made by the Commission.

3. The Applicant shall file with the Commission in this docket any significant revisions in the cost estimates for the construction of the facility itself, interconnection facilities, network upgrades, or affected system upgrades, or any other significant change in costs, within 30 days of becoming aware of such revisions.

4. The Applicant shall file a copy of any executed Affected System Operating Agreement with the Commission at the same time such filing is made at the Federal Energy Regulatory Commission (at least 61 days prior to commencing construction of the upgrades).

5. If at any time the Applicant seeks reimbursement for any interconnection facilities, network upgrade costs, affected system costs, or other costs required to allow energization and operation of the facility, the Applicant shall notify the Commission no later than 60 days before seeking reimbursement.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____ 2022.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk