

**NORTH CAROLINA UTILITIES COMMISSION  
NOTICE TO PARTIES**

Docket No. EMP-103, SUB 0

Exceptions Due on or Before: July 31, 2019

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 (original and thirty (30) copies) 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 July 31, 2019 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. EMP-103, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application of Albemarle Beach Solar, )  
LLC, for a Certificate of Public ) RECOMMENDED ORDER  
Convenience and Necessity to ) ISSUING CERTIFICATE  
Construct an 80-MW Solar Facility in )  
Washington County, North Carolina )

HEARD: Tuesday, June 4, 2019, at 6:30 p.m., Washington County Courthouse, 120  
Adams Street, Plymouth, North Carolina

BEFORE: Hearing Examiner Patrick Buffkin

APPEARANCES:

For Albemarle Beach Solar, LLC:

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

For the Using and Consuming Public:

Megan Jost, Staff Attorney, Public Staff – North Carolina Utilities  
Commission, 4326 Mail Service Center, Raleigh, NC 27699

**BUFFKIN, HEARING EXAMINER:** On September 21, 2015, in Docket No. SP-6476, Sub 0, Albemarle Beach Solar, LLC (Applicant), filed an application seeking a certificate of public convenience and necessity (CPCN) pursuant to N.C. Gen. Stat. § 62-110.1(a) and Commission Rule R8-64 for construction of an 80-MW<sub>AC</sub> solar photovoltaic (PV) electric generating facility to be located on both sides of Mackeys Road and Albemarle Beach Road in Roper, Washington County, North Carolina.

On September 23, 2015, also in Docket No. SP-6476, Sub 0, the Commission issued an Order Requiring Publication of Notice, requiring the Applicant (1) to publish public notice of the application in the manner required by N.C.G.S. § 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 demonstrating that the application and notice have been provided to the utility. In addition, that Order directed the Chief Clerk of the Commission to deliver notices to the Clearinghouse Coordinator of the Office of Policy

and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.

On or after November 5, 2015, complaints were filed in Docket No. SP-6476, Sub 0, by John B. Dunn,<sup>1</sup> Norma Brown, Al and Brenda Hartkopf, and Timothy Pharr.

On September 22, 2016, the Applicant filed an amendment to the application removing parcels of land and adding another parcel to the site of the proposed facility.

On September 9, 2016, the Commission issued an Order setting a hearing for the purpose of receiving evidence as to whether a CPCN should be issued to the Applicant, and directing the Applicant to publish notice of the public hearing and to pre-file testimony.

On October 6 and October 10, 2016, the Commission issued Orders canceling the previously scheduled hearing and clarifying that all complaints filed in Docket No. SP-6476, Sub 0, remain pending, and that the individuals who submitted those complaints are entitled to a hearing in this proceeding. In addition, the October 10, 2016 Order noted that the Applicant's plan to add an additional parcel of land to the site of the proposed facility justified requiring additional public notice and further review of the application by the State Clearinghouse. The Order further stated that, unless the pending

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<sup>1</sup> On July 12, 2019, the Commission received an additional consumer statement of position from Mr. Dunn. In summary, Mr. Dunn alleges that the hearing held in this proceeding on July 4, 2019, was held "behind locked doors" and "entry was obtained only by contacting the local sheriff," and that by the time "entry was obtained" the meeting was adjourned and no further comments or questions were allowed. Therefore, he argues that the meeting was invalid as it was held in violation of State law related to meetings of public bodies and that "all actions taken subsequent to it are also invalid." He "demand[s] that all further actions in this matter to cease."

The Hearing Examiner disagrees with Mr. Dunn's factual allegations and with the impact, if any, that his arguments have on this proceeding for several reasons. First, Mr. Dunn uses the plural pronoun "we" throughout his statement, implying that he is appearing in a representative capacity. It is unclear to the Hearing Examiner who else Mr. Dunn purports to represent, and, in any event, Mr. Dunn is not a licensed attorney and is, therefore, ineligible to participate in this proceeding in a representative capacity. Second, the Hearing Examiner observed that approximately 20 individuals were present for the hearing held on June 4, 2019, undermining the allegation that it was difficult or impossible to gain access to the room where the hearing was held, at least for those individuals who were prompt in their attendance. Third, the Hearing Examiner observed Mr. Dunn being physically present prior to the close of the hearing and he failed to come forward either prior to the close of public witness portion of the hearing (when the Hearing Examiner inquired as to whether anyone came in after the hearing began, Tr. Vol. 1, p. 23) or prior to the close of the hearing itself (when the Hearing Examiner again inquired as to whether there were any questions prior to the adjournment of the hearing, Tr. Vol. 1, p. 92). It was only after the adjournment of the hearing that Mr. Dunn introduced himself and asked to be heard. As a measure of some relief to Mr. Dunn and as a matter of course, the Applicant's witness agreed to remain in the hearing room to answer questions from individuals present. Tr. Vol. 1, p. 13. Finally, as to the substance of Mr. Dunn's complaint against the proposed facility, the Applicant's witness addressed each of the concerns he expressed. Thus, there is no prejudice to Mr. Dunn resulting from his having been unable to personally testify at the hearing. Therefore, the Hearing Examiner concludes that the conduct of the hearing was proper in every respect, that Mr. Dunn's arguments to the contrary are not persuasive, and that his allegations and arguments have no impact on the legality of the Commission's proceeding.

complaints were withdrawn and no further complaints received, a hearing would be scheduled at an appropriate time and place.

On November 12, 2018, the Applicant filed a second amendment to its application, noting that the location of the site of the proposed facility has changed as a result of the removal of parcels of land from, and the addition of parcels of land to, the site of the proposed facility. In addition, the Applicant stated that an E911 address had been assigned to the property, and that the facility would now be planned to come online in phases before December of 2020. Based on the Applicant's second amendment, the proposed facility will be located on the south side of Mackeys Road, east and west of Cross Road, and northeast of Woodlawn Road, in Roper, Washington County, North Carolina.

On November 29, 2018, the Commission issued an Order determining that the Applicant erred in applying for a CPCN pursuant to Commission Rule R8-64 (the rule applicable to CPRE Program participants, qualifying cogeneration facilities, and small power producers) and should instead have applied for a CPCN pursuant to Commission Rule R8-63 (the rule applicable to merchant plant facilities). The Commission, therefore, declared the application to be an application for a CPCN for the construction of an electric generating facility that will be operated as a merchant plant, and, accordingly, directed that Docket No. SP-6476, Sub 0, be closed, that the record in that docket be transferred to the present docket (Docket No. EMP-103, Sub 0), and that all complaints filed in Docket No. SP-6476, Sub 0, remain pending before the Commission in the present docket. The Commission further determined that the application, as transferred, was incomplete as it did not include direct pre-filed testimony as required by Commission Rule R8-63, and permitted the Applicant to supplement its application with such testimony.

On March 28, 2019, the Applicant filed the direct testimony and exhibits of Linda Nwadike, which were amended by further filings on April 10 and 11, 2019.

On April 11, 2019, the Public Staff filed the notice required pursuant to Commission Rule R8-63(d), stating that the Public Staff has reviewed the application and giving notice that the Public Staff considers the application to be complete. The Public Staff, therefore, requested that the Commission issue a procedural order setting the application for hearing, requiring public notice thereof, and addressing any other procedural matters.

On April 26, 2019, as amended by further Order issued on May 1, 2019, the Commission issued an Order Scheduling Hearing and Requiring Public Notice, setting this matter for hearing on June 4, 2019, at 6:30 p.m., at the Washington County Courthouse in Plymouth, North Carolina, and establishing a procedural schedule to allow for the pre-filing of direct expert testimony and for intervenors to participate in this proceeding. The Order also required the Applicant to publish notice of the hearing in the newspaper which the Applicant previously published notice of the application, and to mail a copy of the notice of the hearing to each of the individuals who filed a complaint in this proceeding. In addition, that Order 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 for distribution by the Coordinator to State agencies having an interest in the application.

On May 20, 2019, the Applicant filed a Certificate of Service, evidencing that the notice of the hearing was mailed to each of the individuals who filed a complaint in this proceeding.

On May 29, 2019, the Applicant filed an Affidavit of Publication demonstrating that the notice of the hearing had been published in The Roanoke Beacon.

On May 24, 2019, the Public Staff filed the direct testimony of Evan D. Lawrence.

No persons have sought to intervene in this proceeding.

Based upon the foregoing, and the entire record in this proceeding, the Hearing Examiner makes the following

#### FINDINGS OF FACT

1. The Applicant is organized under the laws of the State of North Carolina with its principal place of business in Mooresville, North Carolina. The Applicant is a subsidiary of SunEnergy1, LLC.

2. In compliance with N.C.G.S. § 62-110.1(a) and Commission Rule R8-63, the Applicant properly filed with the Commission an application for a CPCN authorizing the construction and operation of a solar PV electric generating facility with a generating capacity up to 80-MW<sub>AC</sub> to be located in Washington County, North Carolina. The Applicant proposes to operate the facility as a merchant plant, selling the power generated at the facility under a “virtual PPA” with Facebook, Inc (Facebook).

3. The application states that the proposed facility will be located on approximately 700 acres on the south side of Mackeys Road, east and west of Cross Road, and northeast of Woodlawn Road, in Roper, Washington County, North Carolina.

4. The facility will consist of solar PV panels, inverters, transformers, racking, posts, wiring, utility poles, communication poles, a security camera, collector station and accessory equipment. The facility will be interconnected to the electric transmission system owned and operated by Virginia Electric and Power Company d/b/a Dominion Energy North Carolina.

5. Construction of the facility is projected to occur on a one year timeline with the facility being placed into service in phases prior to December 2020. The facility has an expected useful life of at least 20 years.

6. The Applicant is financially fit and operationally able to undertake the construction and operation of the facility as a merchant plant, financed by private

companies rather than ratepayers. If assets become stranded, the facility owner will face the financial consequences, not captive North Carolina retail electric customers. Under the proposed ownership structure, the construction costs of the facility will not qualify for inclusion in, and will not be considered in a future determination of the rate base of a public utility pursuant to N.C.G.S. § 62-133. Thus, construction of the proposed facility creates no financial risk to North Carolina retail electric customers.

7. The granting of the CPCN in this proceeding should be subject to the following conditions:

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

b. That the Applicant or any successor certificate holder will not assert that issuance of the CPCN in any way constitutes authority to exercise a power of eminent domain, and it will abstain from attempting to exercise such power;

c. That the Applicant shall not undertake any ground-disturbing activities on the 225 acres that were identified by the North Carolina Department of Natural and Cultural Resources as having not been previously surveyed by an archeologist until the Applicant obtains such a survey and commits to implement the recommendations of the archeologist, if any;

d. That the Applicant shall not undertake any ground-disturbing activities on the parcels that were added to the site of the proposed facility by the Applicant's amendment filed November 12, 2018, until the Commission receives further comments from State agencies having an interest in the application and the State Clearinghouse indicates that no further review action by the Commission is required for compliance with the North Carolina Environmental Policy Act facility;

e. That, if the North Carolina Department of Natural and Cultural Resources provides comments recommending that a qualified archeologist conduct a further survey of the parcels that were added to the site by the Applicant's amendment filed in this docket on November 12, 2018, then the Applicant shall obtain a report from a qualified archeologist and implement all recommendations of the archeologist's report with regard to any sites of historical interest within the parcels that were added to the site by the Applicant's amendment filed November 12, 2018;

f. That the Applicant shall file with the Commission a progress report and any revisions in the cost estimates for the facility on an annual basis, including any storage systems to be constructed at a later date, with

the first report due no later than six months from the date of issuance of the CPCN; and

g. That 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.

8. The Applicant demonstrated the need for the proposed facility based on the anticipated growth in demand for electric energy in the PJM region, Dominion Energy's service territories, and state and federal policies promoting the development of renewable energy resources and merchant power plants. In addition, the Applicant's plans to sell the power generated at the facility and the renewable energy credits (RECs) earned by the facility further demonstrates the need for the facility.

9. The Applicant demonstrated that construction of the proposed facility is consistent with the public convenience based the public benefits of solar-powered electric generation, the investment in the local economy, and the Applicant's commitments to construct and to operate the facility in compliance with federal, State, and local laws and required permits. Compliance with these requirements includes measures that mitigate the project's impact on adjoining properties and the environment, and, thus, adequately address many of the concerns raised by the public witness.

10. It is reasonable, appropriate, and serves the public interest to grant the requested CPCN to the Applicant, as conditioned herein.

## DISCUSSION OF EVIDENCE AND CONCLUSIONS

The evidence in support of these findings of fact is found in the direct testimony of the Applicant's witness Linda Nwadike, filed on March 28, 2019, and amended by further filings on April 10 and 11, 2019, the direct testimony of Public Staff witness Lawrence filed May 24, 2019, and the testimony at the June 6, 2019 hearing.

The amended application for a 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 public hearing on June 4, 2019, two public witnesses testified regarding the proposed facility: Brenda Hartkopf and William Dotson. Ms. Hartkopf testified that she lives nearby the site of the proposed facility. She expressed a number of questions and concerns that she would like to have answered, including, whether the panels that make up the facility emit radiation; what environmental permits the facility is required to obtain and comply with; who would be responsible for repair and clean-up in the event that the facility is damaged; how the construction and operation of the facility would impact local

taxes and electric rates; what chemicals, if any, will be used on the site of the facility; what would happen if the Applicant goes bankrupt; and who would be responsible for repairing damage to nearby properties in the event that a weather event causes the facility's components to become airborne. Mr. Dotson expressed support for the issuance of the CPCN to the Applicant.

At the conclusion of the public witness testimony, Linda Nwadike testified on behalf of the Applicant. Witness Nwadike testified that the 80-MW solar PV electric generating facility will interconnect with the electric transmission system owned by Dominion North Carolina Energy and sell the electricity generated at the facility at wholesale to a retail customer. Digital Realty, a leading global provider of data center, colocation, and interconnection solutions, has entered into a purchase power agreement (PPA) on behalf of Facebook to support Facebook's renewable energy goals at data center facilities leased from Digital Realty. SunEnergy1, the Applicant's parent company, has entered into a long-term PPA for SunEnergy1 to deliver 80 MW of solar energy capacity to Facebook. Under the terms of the agreement, all renewable energy certificates and environmental claims will be delivered to Facebook. Witness Nwadike testified that there are strong market conditions in the PJM market that will create sustainable off-take for the facility's power production. She testified that Dominion Energy North Carolina has committed to increasing its use of renewable power to generate 5,000 MW of electricity by 2028. The annual net energy growth rates for PJM over the next ten years are expected to grow by 0.4% for PJM and by 1.1% for the Dominion Virginia Power zone. Summer peak load for PJM and the Dominion Virginia Power zone is expected to grow by 0.9% per year over the next ten years. The winter peak load growth in PJM is expected to grow at an average of 0.4% per year over the next ten-year period, and by 1.1% per year for the Dominion Virginia Power zone.

Applicant witness Nwadike also testified that the facility will bring a variety of financial benefits to Washington County where it will be located. Witness Nwadike anticipates that Washington County will realize property and real estate taxes from the project. In addition to these financial benefits, the Applicant will create community benefits by enhancing the County's reputation as an attractive and friendly environment for advanced manufacturing, technology, and related jobs. Local contractors and businesses, such as installation, fencing, landscaping, and machine rental companies will receive sales opportunities from the construction and operation of the facility. During the approximately year-long construction process, the facility will offer full-time construction jobs. The Applicant expects to hire up to 1,200 workers for the duration of the construction phase.

Witness Nwadike also testified in response to the questions raised by public witness Brenda Hartkopf. She testified that the solar panels that will be installed are silicon based and contain no toxic materials. She also testified that the facility will have a 300-foot setback from residential properties and a 75-foot setback from nonresidential properties, and that an evergreen vegetative buffer must be provided around the facility where no vegetation is already present. Witness Nwadike further testified that the Washington County Zoning Ordinance requires that the Applicant provide a decommissioning plan

and post a bond, and that a Soil and Erosion Control Permit must be obtained required prior to construction of the facility.

Evan Lawrence then testified on behalf of the Public Staff. Witness Lawrence testified to the components of the facility and the Applicant's plans for interconnecting the facility with Dominion Energy North Carolina's electric system. He further testified that that the Applicant's amended application complies with the filing requirements set forth in Commission Rule R8-63. In addition, he testified that the State Clearinghouse has not completed its review of the amended application.

Witness Lawrence next testified that the Public Staff does not have any recommendations with regard to the siting of the proposed facility or its environmental impact. Witness Lawrence testified that the Public Staff has reviewed the complaints filed in this proceeding, and that the Public Staff believes that the concerns raised regarding compatibility with existing land uses and environmental impacts are more appropriately addressed through the local permitting process and through the environmental permitting process. Witness Lawrence noted 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. He further noted that witness Nwadike testified that Washington County has a solar farm ordinance that requires the Applicant to obtain a special use permit for its proposed facility.<sup>2</sup> In addition, he testified that the Public Staff does not have particular expertise in the area of the impacts of electric generation on the environment, and that these issues are best left to the purview of environmental regulators who do have this expertise and who are responsible for issuing specific environmental permits for electric generating facilities. Witness Lawrence concluded his testimony by recommending that the Commission issue the requested CPCN subject to the following conditions: (1) that the Applicant construct and operate the facility in strict accordance with applicable laws and regulations, including the provisions of all permits issued by the North Carolina Department of Environmental Quality; (2) that the Applicant shall not begin construction until the State Clearinghouse files comments indicating that no further review action by the Commission is required for compliance with the North Carolina Environmental Policy Act; (3) that the CPCN 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; and (4) that the Applicant shall file with the Commission in this docket a progress report and any revisions in the cost estimates for the facility on an annual basis, including any storage systems to be constructed at a later date, with the first report due no later than six months from the date of issuance of the CPCN. In response to questions from the Hearing Examiner, witness Lawrence explained his understanding of a "virtual PPA" and testified that he agrees with witness Nwadike that the construction and operation of the Applicant's facility will not have an impact on the rates paid by electric customers in Washington County.

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<sup>2</sup> Witness Nwadike testified that the Washington County Board of Commissioners approved the issuance of a Special Use Permit for the facility, and submitted a letter from the Director of Planning/Safety at Washington County evidencing the same as Exhibit 4 to her testimony.

The Hearing Examiner has carefully considered the testimony of the public witnesses and the responsive testimony of the Applicant's witness Nwadike and of the Public Staff's witness Lawrence. The Hearing Examiner finds that the foregoing evidence, including the Applicant's having executed a contract for the sale of the electric output of the facility, demonstrates the need for the electric output of the facility.

The contested issue is whether the issuance of the requested CPCN, and the construction and operation of the proposed facility, is consistent with the public convenience. After careful review of the entire record, the Hearing Examiner determines that the Applicant adequately addressed the questions raised by public witness Hartkopf. Further, the testimony of public witness Dotson supports the issuance of the requested CPCN. In addition, the Applicant's commitments to construct and operate the facility in compliance with applicable laws and regulations, including any local zoning and environmental permitting requirements include measures that mitigate potential inconvenience to the public. Moreover, the Hearing Examiner agrees with Public Staff witness Lawrence that a number of the questions and concerns raised have been, will be, or are better addressed by agencies with expertise and regulatory authority in the areas of environmental and natural resource protection and protection of the public health, or through the local zoning process.

In the Commission's April 24, 2008 Order in Docket No. SP-231, Sub 0, 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 has obtained a special use permit from Washington County and committed to comply with the requirements of that permit. Therefore, the Hearing Examiner agrees with the Applicant and the Public Staff that the CPCN should be subject to conditions that require compliance with these laws and regulations. The Hearing Examiner further agrees that compliance with these requirements includes measures that mitigate the impact on adjoining neighbors, and finds that this evidence supports issuance of the requested CPCN as consistent with the public convenience. Based upon the foregoing and the entire record herein, the Hearing Examiner finds that issuing the requested CPCN, subject to the conditions set forth herein, is consistent with the public convenience.

On July 11, 2019, the Applicant and the Public Staff filed a joint proposed order. Along with the joint proposed order, the Applicant requested expedited consideration of the pending amended application in light of a construction deadline. As relevant here, the Applicant's request for expedited consideration seeks a ruling on the amended application

prior to the submission of comments by the State Clearinghouse, with regard to the parcels that were added to the site by the Applicant's amendment filed November 12, 2018. On May 27, 2016, the State Clearinghouse filed comments from the North Carolina Department of Natural and Cultural Resources (DNCR), which indicates that an archeologist survey was conducted as to a portion of the original site, but not as to 225 acres within the project boundary. DNCR noted that this portion of the project site is in a "high probability area" for historical significance and recommended that the Applicant conduct a further survey if this portion of the site will be subject to land-disturbing activity.

The State Clearinghouse review process is an important component of the Commission's review of a CPCN application, and the Commission does not take lightly the comments received from state agencies or the recommendations made in those comments. In particular, the Commission is the only agency well-positioned to compel compliance with recommendations to preserve sites of historical interest within the boundary of a site of a proposed electric generating facility. The Hearing Examiner, nonetheless, recognizes that the timing of the Commission's receipt of comments is beyond the Applicant's control, resulting in a delay in the commencement in construction that has consequences for the Applicant and the counter-party(ies) to the "virtual PPA" that is central to the plans for selling the electric output of the facility. After careful consideration, the Hearing Examiner concludes that it is appropriate to consider the amended application on an expedited basis, with three additional conditions on the issuance of the CPCN: (1) that the Applicant shall not undertake any ground-disturbing activities on the 225 acres that were identified by the North Carolina Department of Natural and Cultural Resources as having not been previously surveyed by an archeologist until the Applicant obtains such a survey and commits to implement the recommendations of the archeologist, if any; (2) that the Applicant shall not undertake any ground disturbing activities on the parcels that were added to the site of the proposed facility by the Applicant's amendment filed November 12, 2018, until the Commission receives further comments from State agencies having an interest in the application and the State Clearinghouse indicates that no further review action by the Commission is required for compliance with the North Carolina Environmental Policy Act facility; and (3) that, if DNCR provides comments recommending that a qualified archeologist conduct a further survey of the parcels that were added to the site by the Applicant's amendment filed in this docket on November 12, 2018, then the Applicant shall obtain a report from a qualified archeologist and implement all recommendations of the archeologist's report with regard to any sites of historical interest within the parcels that were added to the site by the Applicant's amendment filed November 12, 2018.

Based upon the foregoing and the entire record in this proceeding, and consistent with the foregoing findings of fact and the supporting evidence and conclusions, the Hearing Examiner finds that it is reasonable, appropriate, and serves the public interest to issue the requested CPCN to the Applicant, as conditioned herein. The Hearing Examiner, therefore, concludes that the CPCN should be issued to the Applicant as requested in its amended application subject to the conditions set forth herein.

IT IS, THEREFORE, ORDERED as follows:

1. That a certificate of public convenience and necessity shall be, and is hereby issued to Albemarle Beach Solar, LLC, for the construction of an 80-MW<sub>AC</sub> solar PV merchant generating facility to be located in Washington County, North Carolina. This certificate is subject to the following conditions:

- a. That Albemarle Beach Solar, LLC, construct and operate the facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements;
- b. That Albemarle Beach Solar, LLC, or any successor certificate holder will not assert that issuance of the CPCN in any way constitutes authority to exercise a power of eminent domain, and it will abstain from attempting to exercise such power;
- c. That Albemarle Beach Solar, LLC, shall not undertake any ground-disturbing activities on the 225 acres that were identified by the North Carolina Department of Natural and Cultural Resources as having not been previously surveyed by an archeologist until the Applicant obtains such a survey and commits to implement the recommendations of the archeologist, if any;
- d. That Albemarle Beach Solar, LLC, shall not undertake any ground-disturbing activities on the parcels that were added to the site of the proposed facility by the Applicant's amendment filed November 12, 2018, until the Commission receives further comments from State agencies having an interest in the application and the State Clearinghouse indicates that no further review action by the Commission is required for compliance with the North Carolina Environmental Policy Act facility;
- e. That, if the North Carolina Department of Natural and Cultural Resources provides comments recommending that a qualified archeologist conduct a further survey of the parcels that were added to the site by Albemarle Beach Solar, LLC's amendment filed in this docket on November 12, 2018, then Albemarle Beach Solar, LLC, shall obtain a report from a qualified archeologist and implement all recommendations of the archeologist's report with regard to any sites of historical interest within the parcels that were added to the site by Albemarle Beach Solar, LLC's amendment filed November 12, 2018;
- f. That Albemarle Beach Solar, LLC, shall file with the Commission a progress report and any revisions in the cost estimates for the facility on an annual basis, including any storage systems to be

constructed at a later date, with the first report due no later than six months from the date of issuance of the CPCN; and

- g. That 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.

2. That Albemarle Beach Solar, LLC, shall file with the Commission a progress report and any revisions in the cost estimates for the facility on an annual basis, including any storage systems to be constructed at a later date, with the first report due no later than six months from the date of issuance of the CPCN; and

3. That Appendix A hereto shall constitute the certificate of public convenience and necessity issued for the facility.

ISSUED BY ORDER OF THE COMMISSION.

This the 15<sup>th</sup> day of July, 2019.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in blue ink, appearing to read "Janice H. Fulmore".

Janice H. Fulmore, Deputy Clerk

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP-103, SUB 0

Albemarle Beach Solar, LLC  
192 Raceway Drive  
Mooresville, North Carolina 28117

is hereby issued this

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
PURSUANT TO N.C. Gen. Stat. § 62-110.1**

for an 80-MW solar photovoltaic merchant plant electric generating facility to be commenced within three years of this Certificate

located

on the south side of Mackeys Road, east and west of Cross Road, and northeast of Woodlawn Road, in Roper, in Washington County, North Carolina

subject to the following conditions: (1) that Albemarle Beach Solar, LLC, construct and operate the facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements; (2) that Albemarle Beach Solar, LLC, or any successor certificate holder will not assert that issuance of the CPCN in any way constitutes authority to exercise a power of eminent domain, and it will abstain from attempting to exercise such power; (3) that Albemarle Beach Solar, LLC, shall not undertake any ground-disturbing activities on the 225 acres that were identified by the North Carolina Department of Natural and Cultural Resources as having not been previously surveyed by an archeologist until the Applicant obtains such a survey and commits to implement the recommendations of the archeologist, if any; (4) that Albemarle Beach Solar, LLC, shall not undertake any ground disturbing activities on the parcels that were added to the site of the proposed facility by the Applicant's amendment filed November 12, 2018, until the Commission receives further comments from State agencies having an interest in the application and the State Clearinghouse indicates that no further review action by the Commission is required for compliance with the North Carolina Environmental Policy Act facility; (5) that, if the North Carolina Department of Natural and Cultural Resources provides comments recommending that a qualified archeologist conduct a further survey of the parcels that were added to the site by Albemarle Beach Solar, LLC's amendment filed in this docket on November 12, 2018, then Albemarle Beach Solar, LLC, shall obtain a report from a qualified

archeologist and implement all recommendations of the archeologist's report with regard to any sites of historical interest within the parcels that were added to the site by Albemarle Beach Solar, LLC's amendment filed November 12, 2018; (6) that Albemarle Beach Solar, LLC, shall file with the Commission a progress report and any revisions in the cost estimates for the facility on an annual basis, including any storage systems to be constructed at a later date, with the first report due no later than six months from the date of issuance of the CPCN; and (7) that 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.

ISSUED BY ORDER OF THE COMMISSION

This the 15<sup>th</sup> day of July, 2019

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Janice H. Fulmore". The signature is written in a cursive style with a large initial "J" and "F".

Janice H. Fulmore, Deputy Clerk