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JAN 09 2019

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December 31, 2018

Ms. Martha Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 N. Salisbury Street
Raleigh, NC 27603-5918

*RE: Belafonte Farm, LLC
Amended Certificate of Public Convenience and Necessity and
Registration as a New Renewable Energy Facility
Docket SP-5252, Sub 0*

Dear Ms. Jarvis:

This letter is intended to apprise the North Carolina Utilities Commission (the "Commission") of a sale-leaseback transaction involving the new renewable energy facility described and recognized by the Commission in the above referenced docket (the "Facility"). Through this docket, Belafonte Farm, LLC ("Applicant") was issued an Amended Certificate of Public Convenience and Necessity (the "CPCN") for the Facility and obtained registration for the Facility as a new renewable energy facility (the "New RE Facility Registration"). Applicant is party to a Purchase Power Agreement (the "Power Purchase Agreement") and a North Carolina Interconnection Agreement (the "Interconnection Agreement") with Duke Energy Progress, LLC (the "Utility") that relate to the Facility.

Commission Rule R8-64(d)(3) requires the holder of a certificate of public convenience and necessity, both before and after the completion of construction of the generating facility that is the subject of the certificate, to advise the Commission and the involved utility of any plans to sell, transfer or assign the certificate or the generating facility or of any significant changes to the information required by Rule R8-64(b)(1). Similarly, Commission Rule R8-66(h) requires the owner of a renewable energy facility that has registered with the Commission to notify the Commission and the NC-RETS tracking system of any material change in status, including an ownership change.

On behalf of Applicant, we respectfully submit this letter under and pursuant to the foregoing rules and request that the Commission accept the instant filing and take no further action in this docket. Our action in this docket is based on precedent of the Commission involving the type of transaction discussed herein. According to prior discussions with the North Carolina Utilities Commission Public Staff (the "Public Staff") concerning the type of transaction described in this letter, and prior filings for similar transactions, this notice filing is the appropriate method to reflect the proposed transaction in this docket.

Applicant proposes to sell the Facility to a statutory trust wholly-owned by [REDACTED] ("Investor"), in connection with the financing of the Facility. Applicant will enter into a sale-leaseback financing arrangement with Investor, pursuant to which Applicant will transfer legal title to the Facility to Investor.¹ As part of the sale-leaseback transaction, Investor and Applicant will enter into an equipment lease (the "Equipment Lease") for the Facility.

The Equipment Lease is a triple-net lease which, during the lease term, among other matters: (i) gives Applicant the exclusive right to use, operate and maintain the Facility to generate and sell renewable energy and (ii) obligates Applicant to pay all taxes, maintain required insurance, repair, maintain and replace the Facility as needed, and to otherwise assume the full risk of loss with respect to the Facility. Although it will hold legal title to the Facility, at no time during the lease term will Investor have operational control of the Facility. Upon the expiration of the lease term, Applicant has the option to purchase the Facility for fair market value or to return it to Investor.² Applicant will remain party to the Power Purchase Agreement with Utility, which is collaterally assigned

¹ Sale-leasebacks are a common type of arrangement in the solar industry.

² Applicant acknowledges that further filings with the Commission may be necessary at the end of the lease term, if Applicant does not exercise its purchase option, or upon any other transfer of operational control in the Facility to a third party.

to Investor as part of the sale-leaseback financing transaction. Based on recent discussions with Utility, Applicant will also remain party to the Interconnection Agreement with Utility, in which case the Interconnection Agreement is also collaterally assigned to Investor as part of the sale-leaseback financing transaction.³

Applicant has represented to us that all factual information in its certificate application regarding the nature of the Facility, the nameplate capacity of the Facility, the location and description of the Facility, associated costs, Facility plans and required permits will not be affected by the change in legal ownership described above. For informational purposes, the information specified in R8-64(b)(1)(i) concerning Investor is included on Exhibit A attached to this letter.

Applicant has further represented to us that (i) the Facility will not be located within one mile of any renewable energy facility owned or controlled by Applicant, Investor or any of their affiliates and (ii) no public utility will have ownership in any entity holding an interest in the Facility. As the Facility will have a maximum dependable capacity under five (5) megawatts (AC), the requirements of R8-64(b)(2) were not included in the application and need not be addressed in further or related notices to the Commission.

In support of Applicant's request, we note that, at all times before and after completion of the aforementioned sale-leaseback transaction, the existing certificate holder, Applicant, will maintain decision-making and operational control of the Facility. Investors in a sale-leaseback structure who similarly purchase a renewable energy facility and then lease it back to the operator have been recognized by the Federal Energy Regulatory Commission ("FERC") as "passive investors that do not exercise control or decision-making authority over the leased facilities, and are not otherwise in the business of selling or producing electric energy."⁴ FERC has disclaimed jurisdiction over such parties.

We respectfully request that the Commission similarly recognize Investor's status as a passive investor/owner and allow all relevant filings, certificates and registrations,

³ Applicant has confirmed with the Utility that, based upon representations provided to the Utility regarding this transaction that are materially the same as the representations provided herein, no transfer or further action is required with respect to the Power Purchase Agreement or the Interconnection Agreement.

⁴ See *Alta Wind Holdings, LLC*, Docket No. EL 10-85-000 "Order Granting Petition for Declaratory Order Disclaiming Jurisdiction" (Nov. 24, 2010), 133 FERC 61,178 (2010); see also *Catalina Solar, LLC*, Docket No. EL 13-77-000 "Order Granting Petition for Declaratory Order Disclaiming Jurisdiction" (Aug. 22, 2013), 144 FERC 61,141 (2013).

including the CPCN and the New RE Facility Registration (and its associated registration in NC-RETS), and all relevant agreements between Applicant and the Utility to remain with and in the name of Applicant, until such time as the Equipment Lease terminates, or other circumstances occur that would cause Applicant to no longer retain decision-making and operational control of the Facility. As previously indicated, the Public Staff has supported the approach outlined in this letter with similar financial transactions involving other facilities throughout North Carolina.

Thank you for your assistance, and please do not hesitate to contact me if you have any questions or require further information. We look forward to your response.

Very truly yours,

BLANCO TACKABERY & MATAMOROS, P.A.

A handwritten signature in blue ink, reading "Daniel M. Vandergriff". The signature is stylized with a large, looped "D" and a long, sweeping flourish at the end.

Daniel M. Vandergriff

DMV/djm

cc: Duke Energy Progress, LLC
North Carolina Renewable Energy Tracking System

EXHIBIT A

