STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition to Revise Commission Rules R8-63 and R8-64	)))	**Public Staff's Reply Comments**

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and respectfully submits the following reply comments in response to the Commission's Order Requesting Comments in the above-captioned docket.

I. Background

On August 19, 2021, the Public Staff filed a Petition to Revise Commission Rules R8-63 and R8-64 (Petition). In support of its Petition, the Public Staff stated that it has seen a steady increase in the number of electric merchant plant (EMP) applications in non-utility generation on the North Carolina transmission system, in the Dominion Energy North Carolina (DENC), Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP, together with DEC, Duke) service territories. The Public Staff explained that facilities applying for a Certificate of Public Convenience and Necessity (CPCN) in constrained areas pursuant to Commission Rule R8-63 may trigger significant network upgrades. The Public Staff also explained that it has seen an increasing number of applications for CPCN renewals and amendments by small power producers, and that Commission Rule

R8-64 should be amended to clarify issues related to those applications. The Public Staff requested that the Commission establish an expedited comment period on the rule revisions.

On August 26, 2021, the North Carolina Sustainable Energy Association (NCSEA) filed a Motion to Stay the Proceedings Pending Appeal. NCSEA stated that the Friesian matter is now pending before the North Carolina Court of Appeals.[1] NCSEA noted that, together with the North Carolina Clean Energy Business Alliance, it filed a joint Notice of Appeal and Exceptions on August 10, 2020. In its Notice of Appeal and Exceptions, it set forth exceptions stating the Commission's Order Denying Certificate of Public Convenience and Necessity for Merchant Generating Facility issued in Docket No. EMP-105, Sub 0 (Friesian Order) inappropriately considered Federal Energy Regulatory Commission (FERC)-jurisdictional costs and that the Commission considering network upgrades and the levelized cost of transmission (LCOT) in determining whether to approve a CPCN application falls outside of the Commission rules.

On September 1, 2021, the Public Staff filed a response to NCSEA's Motion to Stay asserting that the Commission should not delay the rulemaking and that proposed changes are intended to standardize and streamline the application process. On September 20, 2021, the Commission denied NCSEA's Motion to Stay and directed the parties to file initial comments by October 19, 2021 and reply comments by November 16, 2021. Pursuant to a Request for Extension filed by

[1] *State ex rel. Utilities Commission v. Friesian Holdings, LLC*, *et al.*, No. COA 20-867 (argument heard Sep. 21, 2021).

NCSEA, the deadline for initial comments was extended to November 2, 2021 and reply comments to November 30, 2021. On November 2, 2021, NCSEA and the Carolinas Clean Energy Business Alliance (CCEBA) filed comments. The following parties requested and the Commission granted intervention to: NCSEA, CCEBA, Carolina Industrial Group for Fair Rates (CIGFUR) I, II, and III, and the Carolina Utility Customers Association (CUCA).

On November 22, 2021, the Public Staff filed a Motion for Extension to extend the time for reply comments to December 14, 2021. On November 24, 2021, the Commission granted the requested extension. The Public Staff addresses the comments of CCEBA and NCSEA on the Petition below as follows.

II. House Bill 951 and the Carbon Plan

NCSEA and CCEBA both raise concerns in their comments regarding the recently enacted House Bill 951, Session Law 2021-165. As they note, this legislation mandated that the Commission adopt a Carbon Plan by December 31, 2022. NCSEA states that House Bill 951 will "materially affect the future of CPCN applications in North Carolina," and that it "does not believe it is efficient or constructive to change a rule now that will likely also require further rule changes within the next few years."[2] NCSEA further argues that multiple rulemakings related to CPCNs for solar and wind projects will hinder the state's efforts to meet the requirements of House Bill 951 to reduce carbon emissions, and that the proposed revisions impose barriers on the installation of new solar.

[2] NCSEA Comments at 2-3.

CCEBA similarly argues that the Carbon Plan adopted by the Commission will "fundamentally alter the energy market" in North Carolina and "likely affect the requirements for CPCN applications."[3] It further states that the enactment of House Bill 951 "shows that it is the General Assembly's intent that significant additional [solar] penetration needs to occur prior to 2030 and that the manner of achieving that goal will be in large part up to the Commission to determine."[4]

Despite the forthcoming adoption of a Carbon Plan, it is important to proceed expeditiously with the proposed revisions to Commission Rules R8-63 and 64. As stated in the Petition, many of the proposed revisions to the rules are intended to incorporate information in the application that is typically requested by the Public Staff or the Commission during the review process, specifically, information related to network upgrade costs, which have become a significant issue in the EMP proceedings pending before the Commission, and which is necessary for understanding all the costs of a proposed facility. The revisions are also intended to make the application requirements under Commission Rule R8-63 consistent with those in Commission Rule R8-64, to streamline the CPCN process by removing the requirement for State Clearinghouse review, and to clarify procedures related to the amendment and renewal of CPCNs.

The revisions proposed by the Public Staff are distinct and separate from the broader policy questions associated with the Carbon Plan, which will be centered on finding a least-cost generation mix to meet House Bill 951's carbon

[3] CCEBA Comments at 2-3.
[4] NCSEA Initial Comments at 2.

reduction mandate. The Public Staff agrees with NCSEA and CCEBA that it is likely that House Bill 951 and the Carbon Plan may necessitate changes to several of the Commission's rules in the future, but the vague possibility of future rulemakings should not serve as a barrier to the undertaking of rule revisions that are necessary for a better application process at the present time. Furthermore, House Bill 951 and the forthcoming Carbon Plan will likely result in an increase in the number of CPCN applications in the future, and it will be prudent to have the revised rules in place before the volume of applications begins to increase even further. Therefore, the Public Staff respectfully requests that the Commission move forward expeditiously with the proposed revisions to Rules R8-63 and 64.

III. The *Friesian* Appeal

In its comments, NCSEA restates its position[5] that the Commission should not consider rule changes at this time because an appellate decision on the Friesian Order may materially affect the rulemaking. As the Public Staff stated before in Response to the NCSEA Motion to Stay filed in this docket, the rule changes to Commission Rule R8-63 are intended to standardize and streamline the process of CPCN applications.

NCSEA asserts that the "Public Staff seeks to enact a new R8-63 merchant plant CPCN rule that seeks to circumvent [FERC] jurisdiction by taking questions tied to transmission costs for a merchant plant outside the FERC and placing it

[5] NCSEA first raised this argument in its Motion to Stay filed on August 26, 2021. The Commission denied the Motion in its Order Requesting Comments issued on September 20, 2021.

instead with the Commission."[6] As the Commission is aware, and has already been addressed in other filings in this docket, the Public Staff disagrees that the Commission is preempted from considering costs when determining whether an applicant has demonstrated its facility meets the public convenience and necessity. To the contrary, N.C. Gen. Stat. § 62-110.1 requires the Commission to consider the costs of merchant generating facilities and the existing Commission Rule R8-63 also requires the applicant to provide an estimate of the costs. The proposed rule revision specifies the types of cost information that the Public Staff believes is necessary for it to make a recommendation on an application. State-jurisdictional applications and FERC-jurisdictional applications affect the same transmission lines in North Carolina, and Congress has specifically left siting authority to the states. FERC recognized such when developing the crediting policy at issue in *Friesian*, stating that "the approval and siting of new generating facilities is ultimately under the control of state authorities."[7]

At the current time, while the parties are awaiting a decision on the Friesian Order from the Court of Appeals, merchant generator CPCN applications continue to be filed and considered by the Commission. These applications include very large facilities that have not yet been studied by the interconnecting utility or the affected system, and have the potential to require significant network upgrades.

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[6] NCSEA Initial Comments at 2.

[7] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 at P 627, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

The Public Staff believes that it would benefit all the parties and the Commission to establish in this rulemaking proceeding, rather than through ad hoc adjudications, the requirements and information necessary to proceed with an application, especially with regard to whether an application is considered "complete" for purposes of Commission Rule R8-63 prior to receipt of interconnection studies detailing costs that may ultimately be borne by North Carolina ratepayers and other potential impacts to the grid.

The Public Staff continues to believe it is appropriate to address the proposed revisions to the rule now to provide clarity to all interested parties regarding whether the completion of interconnection studies should be a prerequisite to obtaining approval of a CPCN application for a merchant generator. The current market in PJM for renewable energy as well as various state policy goals in the region will only serve to increase the interest in siting renewable merchant generators in the State in the coming years.

Once the North Carolina Court of Appeals issues a decision on the Friesian Order and it has been determined that the appeals have been exhausted, and if that decision or any subsequent decision does limit the information the Commission may consider when determining whether a merchant generator meets the public convenience and necessity, NCSEA is not without recourse. NCSEA, or any other party with an interest, may petition the Commission to reconsider its decision in this proceeding or initiate a new rulemaking that takes into account new authority. At the present time, however, it is appropriate to adopt rules consistent with existing precedent that the Commission is not preempted by federal law from

considering network upgrade cost information when determining whether an application meets the public convenience and necessity pursuant to Commission Rule R8-63.

IV. Responses to Comments on Specific Proposed Rule Revisions

A. Commission Rule R8-63

Areas of Consensus

There were certain proposed rule changes that both CCEBA and NCSEA noted they either support or do not object to as follows.

- Commission Rule R8-63(b)(2): NCSEA supports the revision to allow for a written description of the site where no street address is readily available.[8]
- Commission Rule R8-63(b)(3): NCSEA supports the additional requirements of subsection (b)(3) to provide information related to energy storage for merchant plant CPCN applications and states that they would seek further granularity that specifies the cost of energy storage systems separate from the generating facility.[9] The Public Staff agrees with NCSEA's proposed modification and proposes the following additional revision to Commission Rule R8-63(b)(3)(vi):

> (vi) If the facility includes energy storage, the following information: (1) a description of the technology and the supporting components, (2) the cost of the energy storage system separate from the

[8] NCSEA Initial Comments at 3.

[9] NCSEA Initial Comments at 3. NCSEA objects to revisions to R8-63(b)(3) subsections (iv), (ix), (x), (xi), (xiii), and (xiv).

> generating facility, (3) whether the facility is AC or DC connected, (4) how the Applicant plans to charge the energy storage system, (5) any operational restrictions included in the Interconnection Agreement, (6) output capacity in megawatts (DC), and (7) energy storage capability in megawatt-hours;

- Commission Rule R8-63(b)(3),(7), and (8): CCEBA notes no objection to these sections as they conform with requirements for small power producers in Commission Rule R8-64.[10]
- Commission Rule R8-63(11): Both CCEBA and NCSEA support the proposal to eliminate State Clearinghouse review.[11] NCSEA states it will "remove some administrative hurdles in granting a merchant plant CPCN" and will improve efficiency. CCEBA states that it agrees this proposal removes a source of delay.

Commission Rule R8-63(b)(3) – Facility Information

The addition of Exhibit 3 outlined in the proposed revisions to Commission Rule R8-63(b)(3) are designed to align Commission Rules R8-63 and 64, with regard to general information on the specifics of the facility including location, design, and interconnection points. As noted above, CCEBA does not object to the addition of this exhibit and NCSEA agrees only with certain subsections. Specifically, NCSEA objects to subsection (iv) which requires a description of the transmission and distribution facilities to which the facility will interconnect along with a color map. The Public Staff disagrees; the point of interconnection (POI) is relevant and is

[10] CCEBA Comments at 6.
[11] *Id* at 6-7.; NCSEA Initial Comments at 4.

basic information the Commission should have in considering the siting of a generation facility in the State. Furthermore, the Public Staff routinely requests this information of merchant plant applicants in discovery and receives it without objection, if it is not already provided in the application. Furthermore, this is important information to be accessible to the public as the specific location of the POI may impact neighboring properties.

NCSEA further objects to subsections (ix),(x),(xii), and (xiii) of the proposed revisions to Commission Rule R8(b)(3), stating they are details "not relevant to the granting of certification of public necessity [*sic*] and need."[12] NCSEA states that these provisions "all increase the requirements of applicants, sometimes seeking information outside their control or possession."[13] The cited subsections above require the following information: the Applicant's general plan for sale of the electricity; any provisions for wheeling electricity; arrangements for firm, non-firm or emergency generation, if applicable; projected annual sales in megawatt-hours; and whether the applicant intends to produce renewable energy certificates. These provisions go directly towards the demonstration of need most merchant plant generators provide in their applications. This information is both relevant to the demonstration of need and generally within the control and possession of the Applicant. The Public Staff does not believe this information is overly burdensome to provide and it is helpful for the Public Staff to have this information in the application, rather than seeking it in discovery, shortening the Public Staff's time

[12] NCSEA Initial Comments at 4.
[13] *Id.*

to review and investigate relevant information in making a recommendation to the Commission.

Commission Rule R8-63(b)(5) – Cost Information and Interconnection Studies

CCEBA in its comments opposes the proposed revision to Rule R8-63 that would include the addition of an Exhibit 5 to merchant applications that requires the completion of interconnection studies. CCEBA states that these studies have been "notoriously difficult to obtain in a timely manner from incumbent utilities and nearby affected systems, such as PJM."[14] The Public Staff does not dispute that it has historically been difficult to obtain timely interconnection studies due to the nature of serial studies and backlogs in the interconnection queues. However, with the queue reform effort underway in the Duke Energy service territories to move to annual cluster studies, there should be more timely and predictable delivery of interconnection studies.

With regard to affected systems studies, CCEBA states in its comments that it has filed a Complaint at FERC about the coordination of affected systems studies between DEP and PJM, FERC Docket No. EL21-92-000. On August 25, 2021, CCEBA filed a motion to withdraw the Complaint, stating that PJM and DEP have committed to work with CCEBA on the issues raised in the Complaint through settlement. On August 30, 2021, DEP filed an answer to the Complaint noting that DEP and PJM have agreed to undertake a process to consider the issues in the

[14] CCEBA Initial Comments at 4.

Complaint outside of litigation and return to FERC with any proposed changes to the Joint Operating Agreement between Duke and PJM to resolve the issues raised in the Complaint.[15]

The Public Staff understands that CCEBA and Duke are negotiating a potential settlement to resolve issues with regard to the delivery of affected systems studies for projects located in DENC Service territory that are triggering affected systems studies on DEP's system. And, similar to the queue reform effort in North Carolina, PJM is currently hosting a queue reform stakeholder process to implement requirements that should result in fewer delays in the PJM interconnection queue, which ultimately inform the affected systems studies.[16]

While the Public Staff believes that recently initiated reforms and other state and federal efforts will reduce queue study timelines and delays, it remains the case that the merchant plant applicants are dependent upon the delivery of

[15] In FERC's Notice of Withdrawal, it states that the parties intend to file any resulting amendments to PJM and DEP's Joint Operating Agreement with the Commission under section 205 of the Federal Power Act no later than mid-December 2021. *Notice of Withdrawal*, ER21-92-000 (Sept. 3, 2021). At the time of this filing, the Public Staff has no knowledge that the parties have made a filing at FERC to amend PJM and DEP's Joint Operating Agreement.

[16] Information on the PJM Interconnection Process Reform Task Force can be found at https://www.pjm.com/committees-and-groups/task-forces/iprtf (last accessed Dec. 8, 2021). According to a recent presentation provided to stakeholders, PJM proposes to transition to a new study process for Cluster AE and later clusters. See December 7, 2021 PJM presentation, https://www.pjm.com/-/media/committees-groups/task-forces/iprtf/2021/20211207/20211207-item-03a-transition-proposal.ashx (last accessed December 13, 2021).

As the Public Staff has noted in other dockets, such as EMP-116, Sub 0 and EMP-119, Sub 0, there are other large projects in the later PJM clusters that could potentially impact the seam between DENC and DEP, including: an 2600 MW offshore wind facility off the coast of North Carolina (AE2-122, -123, and -124); a 1210 MW solar project in North Carolina (AF1-236); and a 2600 MW offshore wind facility off the coast of Virginia (AF1-123, -124, and -125), among others. In the Public Staff's opinion, given the current identified upgrades in the DENC service territory from the aforementioned interconnection requests and other projects, extensive transmission upgrades will be required to maintain the safety and reliability of the Bulk Electric System, inclusive of upgrades along the seam between DENC and DEP. These extensive upgrades on the DEP system could result in costs to ratepayers in the hundreds of millions of dollars.

interconnection studies to enter into an interconnection agreement. Thus, asking the applicants to provide those interconnection studies as part of a CPCN application will not unduly burden those applicants. In comments, NCSEA and CCEBA oppose the requirement to provide interconnection studies because they believe it is too burdensome on the applicant as it requires the applicant's reliance on third parties outside of their control (i.e., the interconnecting utilities).[17] This argument is a red herring; the entire interconnection process relies on those third parties by design, as the utilities are ultimately responsible for the continued safe and reliable operation of the grid. The Commission is not limited to requiring only information in a CPCN application that is solely within the control of the applicant.

Whether an applicant applies for a CPCN prior to or after receiving those studies, it will have to progress through the study processes and obtain interconnection studies required by the proposed revisions to this rule before its facility can commence operation. The question before the Commission on this specific rule provision is whether the facility should have a CPCN prior to receiving the results of those studies or whether the Commission should have the opportunity to review the results of those studies before issuing the CPCN.

It is notable that state jurisdictional projects seeking CPCNs under Commission Rule R8-64, whose facilities are not reimbursed by utilities and their ratepayers for the cost of network upgrades and who are directly assigned those costs, often make an economic decision regarding whether the facility is viable

[17] NCSEA Initial Comments at 4; CCEBA Comments at 4.

once it receives its system impact study and facilities study. Similarly, many merchant plant applications for facilities in DENC service territory with applications before the Commission today have received a system impact study from the PJM interconnection study process before applying for their CPCN, likely because under the participant funding model that operates in a Regional Transmission Organization, those facilities rely on that cost information in making decisions regarding whether the facility is economically viable. The Public Staff continues to believe it is appropriate for the Commission to have similar information when determining whether merchant plants are in the public interest because of those facilities' impacts to the grid, their network upgrade costs, and any potential affected systems network upgrade costs that will be passed on to North Carolina ratepayers pursuant to the FERC crediting policy and Duke Energy's Joint Open Access Transmission Tariff.

CCEBA further argues that "[o]wners of merchant plants should have the right and ability to know going into the interconnection study process whether and under what circumstances the Commission will certificate their projects." CCEBA states that the Commission should issue a conditional CPCN based on a defined level of reimbursable upgrade costs prior to an applicant being studied to avoid applicants being subject to penalties if they withdraw from the queue during a cluster study.

As CCEBA notes, this type of conditional CPCN is a proposal currently being considered by the Commission in Docket No. EMP-116, Sub 0 (Juno Solar). In that case, the Public Staff recommended denial of the application without

prejudice, with the opportunity for the applicant to refile once its study costs are known.[18] The Juno Solar conditional CPCN application proposes a $4/MWh levelized cost of transmission (LCOT) cap with the CPCN terminating if the facility goes over the cap once interconnection study network upgrade costs are known.

Consistent with the position the Public Staff takes in this proceeding, we recommend the Commission wait until the study costs are known before granting the CPCN. Whether the interconnection customer chooses to enter a cluster study process and be subject to withdrawal penalties[19] is a business risk the merchant plant applicant assumes prior to applying for a certificate. CCEBA and Juno Solar advocate for a bright-line test to determine whether network upgrade costs are reasonable based on a specified LCOT value. Applying a bright-line test to all merchant plant applications, however, is inconsistent with Commission precedent and decisions from North Carolina courts regarding the application of the CPCN standard pursuant to N.C.G.S. § 62-110.1.

The Commission has recognized that the public convenience is a flexible standard. In the Friesian Order, the Commission cited to State ex rel. Utils. Comm'n v. Casey, which states:

[18] Direct Testimony of Dustin R. Metz, Docket No. EMP-116, Sub 0 (Oct. 26, 2021).

[19] The Juno project is specifically entering the Transitional Cluster Study Process in DEP. Once a facility enters Phase 2 of that study process, the withdrawal penalty is 9x the actual study costs. There are not similar penalties for projects that are eligible for and elect to participate in the Transitional Serial Study Process. For projects in the Duke Service territories, if they opted out of the transitional study process, they can elect to participate in the Definitive Interconnection System Impact Study process, which has significantly lower withdrawal penalties. If the merchant plant is located in DENC service territory, it is subject to PJM Interconnection procedures, and, at this point in time, any impacts on the Duke Energy systems as affected systems are studied serially.

> The doctrine of convenience and necessity has been the subject of much judicial consideration. No set rule can be used as a yardstick and applied to all cases alike. This doctrine is a relative or elastic theory rather than an abstract or absolute rule. The facts in each case must be separately considered and from those facts it must be determined whether or not public convenience and necessity require a given service to be performed or dispensed with. . . . The convenience and necessity required are those of the public and not of an individual or individuals.

245 N.C. 297, 302, 96 S.E.2d 8, 14 (1957) (internal quotations omitted).[20] To the extent CCEBA asserts that applicants are without guidance regarding what specific value for the LCOT would be acceptable to the Public Staff or the Commission, the Public Staff has repeatedly stated that the 2019 Lawrence Berkeley National Lab Report provides a benchmark for reasonableness. The Commission has also relied on the study in making its findings and conclusions in many CPCN orders. While the data in that report may soon be stale, it is indicative of the type of data the Public Staff will consider when determining whether to recommend to the Commission that a facility's network upgrade costs are reasonable. Due to the changing nature of markets and grid technologies, it is important that this standard remain flexible and each case be considered on its unique facts.

Essentially, the Public Staff believes that merchant plant applicants that have not been studied by the interconnecting utilities are seeking CPCNs too early in the generation facility's development process. The Commission should have the best and most complete information available before it determines whether granting a CPCN is in the public interest and meets the public convenience and necessity, and that includes important information on the impacts the project will

[20] Friesian Order at 8.

have on the grid and what it may cost North Carolina ratepayers to accommodate a merchant generation facility that is potentially sending its power off-system.

When considering the public interest, the Commission also looks to the overall mix of generation in the State. The Public Staff believes that as part of that analysis it would be helpful for the Commission to see the results of cluster studies, if the applicant participates in a cluster study, and the total magnitude of the impacts of the cluster study from all projects in the cluster when considering a CPCN application, which can only be known after those interconnection studies are completed.

Commission Rule R8-63(b)(6)

In its comments, NCSEA objects to Exhibit 6 in proposed Commission Rule R8-63(b)(6), which requires the applicant to provide a description of need for the facility. NCSEA states that it "believes this requirement falls wildly outside the requirements of the CPCN application and requires a prohibitively onerous task upon application."[21] First, to the extent NCSEA believes the burden of proof to demonstrate need does not lie with the applicant, the Public Staff strongly disagrees. It is the applicant's burden to demonstrate need and the Commission has clearly stated the burden of proof is with the applicant.[22] It is contrary to the intent underlying N.C.G.S. § 62-110.1 to construct a generator and any associated network upgrades to facilitate interconnection if it is not needed.

[21] NCSEA Initial Comments at 5.

[22] Friesian Order at 8 ("[t]he burden is on the applicant to provide this substantive evidence and demonstrate that the CPCN should be granted").

Second, the information detailed in proposed Section (b)(6) is consistent with the Commission's orders requesting supplemental testimony in several recent EMP dockets.[23] In these dockets, the Applicants have not objected to these requests and have provided testimony answering the Commission's questions. As stated above, but particularly with regard to Sections (b)(5) and (6), the Public Staff is seeking to streamline and standardize the application process. If the applicant has the opportunity to provide this information upfront, it will provide adequate notice to an applicant of the requirements before making an application and it will obviate the need to file supplemental testimony on this same information.

Commission Rule R8-63(e)(4)

CCEBA comments that the rule revisions requiring the submission of interconnection studies fail to address whether changes to interconnection studies would require a CPCN holder to notify the Commission and amend its certificate pursuant to the revised subsection (e)(4) if the utility were to change or amend those interconnection studies.[24] The Public Staff understands this concern and, should the Commission require submission of the interconnection studies specified in the proposed rule, agrees that it is appropriate to make a further clarification to Section (e) of the proposed rule that changes in interconnection studies do not require an amendment to the CPCN. Section (f) of the proposed rule provides that if the cost of network upgrades increases, the applicant must notify the Commission within 30 days. The Public Staff believes this notification is likewise

[23] *See, e.g.,* Order Requiring Additional Testimony, Docket No. EMP-108, Sub 0 (June 22, 2020).

[24] CCEBA Comments at 5.

sufficient once the CPCN has issued for purposes of changes to interconnection studies and the costs associated with network upgrades.[25] To address this concern, the Public Staff proposes that subsection (e)(4) be further amended to state that "utility changes or revisions to interconnection studies" are exemplary of a change that does not require amendment to the certificate with the qualification that changes to the interconnection study that result in an increase the output of the facility, change the proposed boundary of the facility, or materially alter the location of the proposed point of interconnection do require an amendment.

Renewal Period under Commission Rules R8-63 and R8-64

CCEBA states in comments that it is opposed to the reduction in term from five years to three years before renewal is required for a CPCN in both Commission Rules R8-63 *and* 64.[26] The current Commission Rule R8-63 provides that a CPCN must be renewed if construction does not begin within three years.[27] The current Commission Rule R8-64 provides that a CPCN must be renewed if construction does not begin within five years.[28] The Public Staff amended only Commission Rule R8-64 in its Petition to make it consistent with the existing language in Commission Rule R8-63.

[25] It should be noted that NCSEA objects to this provision, stating in its comments that "merchant generator facilities trigger upgrades related to the transmission lines on the grid fall with the jurisdiction of FERC and not the Commission." NCSEA Initial Comments at 6. The Commission has determined that it is not preempted from considering the total cost, including network upgrade costs, when determining whether the facility is in the public interest. *See* Friesian Order, Finding of Fact No. 11, at 6.

[26] CCEBA Comments at 7-8.

[27] *See* Commission Rule R8-63(e)(3): "The certificate must be renewed if the applicant does not begin construction within three years after the date of the Commission order granting the certificate."

[28] *See* Commission Rule R8-64(d)(2).

B. Commission Rule R8-64

Commission Rule R8-64(d)(3) – CPCN Renewal Period

CCEBA in its comments opposes the proposed revision to Commission Rule R8-64(d)(3), which would reduce the period after which a CPCN must be renewed if construction has not yet begun on the facility. The Public Staff proposed reducing this renewal period from five years to three years in order to make it consistent with the three-year renewal period in the similar provision in Commission Rule R8-63. CCEBA stated that the proposed revision is unnecessary and would impose an additional administrative burden without associated benefits, as many projects would likely move forward within a five-year period. Upon consideration of CCEBA's comments, the Public Staff does not oppose leaving the current five-year renewal period in Commission Rule R8-64(d)(3) in place.

Commission Rule R8-64(b)(3) – Application Requirements

In its comments, NCSEA seeks clarification on proposed Commission Rule R8-64(b)(3)(xiv), which requires applicants to provide information regarding other states' renewable energy mandates. NCSEA further states that it is "hesitant" to require applicants to provide information on non-North Carolina clean energy mandates since such out-of-state mandates are applicable to utilities, not small power producers.

The Public Staff agrees to clarify the proposed language, as it is intended to only require an applicant to provide information regarding another state's renewable energy mandate if the applicant intends to produce renewable energy

certificates for compliance with that specific state's renewable energy mandate. The Public Staff does not believe that such a requirement would be burdensome on the applicant, particularly as it only asks for information as to whether the renewable energy certificates are "eligible for compliance with" the relevant state's renewable energy mandate.

The Public Staff therefore recommends that Attachment B of the Petition be further revised by adding the following revisions to Commission Rule R8-64(b)(3)(xiv):

> Whether the applicant intends to produce renewable energy certificates and whether the renewable energy certificates ~~that~~ are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard or, if intended to be used for compliance with another state's renewable energy mandate, whether it will be eligible for compliance with that state's renewable energy mandate.

Commission Rule R8-64(b)(6) – Application Requirements

In its comments, NCSEA opposes the proposed revisions to Commission Rule R8-64(b)(6), stating that the revised rule "greatly increases the requirements for large scale solar CPCN applicants," reduces efficiencies, and requires information that "may be outside the control or possession of the applicant."[29] Specifically, with respect to the proposed R8-64(b)(6)(iii)e., NCSEA objects to the requirement that applicants file with their application "[a]ll studies associated with interconnection of the facility." NCSEA states that this requirement would violate FERC's interpretation that the establishment of a legally enforceable obligation (LEO) turns on the QF's commitment, not the utility's actions. NCSEA argues that

[29] Comments of NCSEA at 6.

because the formation of an LEO in North Carolina requires a CPCN, the requirement for the applicant to provide all studies associated with interconnection would "impermissibly dictate that the utility's actions control the formation of a LEO for a small power producer."[30]

The Public Staff emphasizes, as discussed above with regard to the requirement for interconnection studies in Commission Rule R8-63, that the proposed requirement for the applicant to file all studies associated with interconnection of the facility with its application is consistent with the information currently requested of merchant generator applicants by the Public Staff and the Commission during the review of applications filed pursuant to Commission Rule R8-63. The Public Staff believes that interconnection studies are necessary for understanding and evaluating all the costs of a proposed facility. That such information originates from a party other than the applicant should not serve as a bar to its being required as part of a CPCN application.[31] It is simply pertinent information that the applicant must obtain in order for the Public Staff and the Commission to have sufficient information for review of an application. While the Public Staff maintains it is appropriate for small power producers to submit this information when applying for a CPCN, the Public Staff would not consider the application "incomplete" for purposes of our recommendation whether to approve

[30] NCSEA Initial Comments at 6-7.

[31] Rule R8-64 currently requires other information in an application that must originate with other parties. For example, Rule R8-64(b)(4) requires "[a] complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility," and "[a] copy of those that have been obtained should be filed with the application," while "a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained."

or deny the CPCN under Commission Rule R8-63. For small power producers that certify as Qualifying Facilities, the Public Staff recognizes the demonstration of need is met by the purchase obligations of the utilities pursuant the Public Utility Regulatory Policies Act.

Conclusion

Therefore, the Public Staff requests that the Commission adopt the Public Staff's proposed rule revisions as provided in the Petition with the further revisions as described in these comments.

Respectfully submitted this the 14th day of December, 2021.

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CERTIFICATE OF SERVICE

I certify that a copy of these Reply Comments has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 14th day of December, 2021.

Electronically submitted
/s/ Layla Cummings