

**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) ORDER REQUESTING COMMENTS
and R8-64)

BY THE CHAIR: On August 19, 2021, the Public Staff filed a Petition to Amend Commission Rules R8-63 and R8-64. In the Petition, the Public Staff notes that sections of Rules R8-63 and R8-64 are interrelated and should be addressed in a single comprehensive rulemaking. The Public Staff further requests that the Commission establish an expedited comment period for comments on its proposed rule changes.

Commission Rule R8-63 addresses applications for certificates of public convenience and necessity (CPCN) for electric merchant plants; Commission Rule R8-64 addresses applications for a CPCN by CPRE program participants, qualifying cogenerators, and small power producers. The Public Staff states in its Petition that there has been an increase in the number of CPCN applications under both rules.

For applications under Commission Rule R8-63, the Public Staff notes that N.C. Gen. Stat. § 62-110(e) requires the Commission to consider the construction costs of a proposed generating facility and that the Commission has indicated it will consider the total costs to construct a facility, including the necessary interconnection and network upgrade costs. In its Petition, the Public Staff requests several rule changes to R8-63 to require applicants filing under that rule to provide additional cost information for a proposed facility, including information currently required under Rule R8-64.

In the Petition, the Public Staff proposes changes to Rule R8-64 to require applicants filing under that rule to provide additional information at the time of application, and to clarify when an applicant should seek an amendment to a CPCN or file a notice of change. The Public Staff also proposes to conform the time period for renewals of CPCNs granted under Rule R8-64 with the time period for renewals of CPCNs granted under Rule R8-63, requiring applicants that have not begun construction of a proposed facility to seek renewal of a CPCN after three years under both rules.

The Public Staff also requests several changes applicable to both Rule R8-63 and Rule R8-64, including a requirement that applicants file for a renewal of a CPCN before its expiration, and elimination of the State Clearinghouse Review process.

On August 26, 2021, the North Carolina Sustainable Energy Association (NCSEA) filed a Motion to Stay Proceedings Pending Appeal. In its Motion, NCSEA notes that it has

filed an appeal of the Commission's *Order Denying Application for a Certificate of Public Convenience and Necessity for a Merchant Generating Facility* in Docket No. EMP-105, Sub 0 (Friesian) on the grounds that the Commission inappropriately considered Federal Energy Regulatory Commission (FERC) jurisdictional costs in its decision to deny a CPCN. In its Motion, NCSEA states that the outcome of that appeal may materially affect the rulemaking the Public Staff seeks and requests that the Commission stay this proceeding pending the outcome of that appeal.

On September 1, 2021, the Public Staff filed a response to NCSEA's Motion to Stay. In its response, the Public Staff asserts that the Commission should not delay the requested rulemaking and that its proposed rule changes are intended to standardize and streamline the process of CPCN applications. The Public Staff notes that the Commission currently requests all applicants under Rule R8-63 to file the supplemental cost information it is seeking to add under the rule revisions, and that the Public Staff also seeks this information during its investigations of the applications. The Public Staff further notes that, while there is not a definite time for the ruling on the appeal of the Commission's Friesian Order, applicants continue to file CPCN applications under these rules.

After careful consideration, the Chair finds good cause to deny NCSEA's Motion to Stay and to solicit comments on the Public Staff's requested revisions to Commission Rules R8-63 and R8-64. The Chair is not persuaded that an expedited review is necessary at this time.

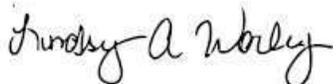
IT IS, THEREFORE, ORDERED as follows:

1. That on or before October 19, 2021, persons having an interest in this matter may file petitions to intervene in this docket;
2. That on or before October 19, 2021, all parties may file initial comments addressing the proposed changes to Commission Rules R8-63 and Rule R8-64 as filed by the Public Staff on August 19, 2021; and
3. That all parties may file reply comments on or before November 16, 2021.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of September, 2021.

NORTH CAROLINA UTILITIES COMMISSION



Lindsey A. Worley, Acting Deputy Clerk