

Re: Application of Friesian Holdings, LLC, for a Certificate of Public Convenience and Necessity to Construct a 70-MW Solar Facility in Scotland County, North Carolina
Docket No. EMP-105, Sub 0

Dear North Carolina Utilities Commission:

The Solar Energy Industries Association (“SEIA”) respectfully submits this statement of position to the North Carolina Utilities Commission (“Commission”) regarding the application of Friesian Holdings, LLC (“Friesian”) in the above-referenced docket for a Certificate of Public Convenience and Necessity (“CPCN”) to construct and operate a 70 MW solar photovoltaic generating facility in Scotland County (the “Facility”). SEIA is deeply concerned about the Commission’s October 25, 2019 Interlocutory Order on Legal Issues, Scheduling Hearing, Allowing Filing of Testimony, and Establishing Discovery Guidelines (the “October 25 Order”) issued in this proceeding. Contrary to the October 25 Order, SEIA believes the Commission does not have the authority to deny a CPCN for a merchant generation facility based on the cost of required upgrades to the interconnecting utility’s transmission system (“Network Upgrades”) where the cost allocation of those Network Upgrades is within the exclusive jurisdiction of the Federal Energy Regulatory Commission (“FERC”). Specifically, SEIA believes that such action by the Commission is preempted by the Federal Power Act and associated FERC precedent. But if the Commission does consider the costs of the Network Upgrades in ruling on Friesian’s CPCN application, SEIA believes that the Commission should also consider the substantial public benefits of the Network Upgrades and grant the CPCN.

SEIA is the national trade association of the U.S. solar energy industry, which now employs more than 250,000 Americans. SEIA works with its member companies to create jobs and diversity, champion the use of cost competitive solar in America, remove market barriers, and educate the public on the benefits of solar energy. SEIA rarely intervenes in state or federal regulatory proceedings related to specific solar projects, and only does so when issues raised in such proceedings constitute legal or policy considerations that are important to the solar industry as a whole. SEIA believes that the Commission’s decision in the October 25 Order to consider the costs of FERC-jurisdictional Network Upgrades in a CPCN proceeding rises to such a level.¹

SEIA agrees with and supports the legal arguments previously put forth by Friesian, the North Carolina Clean Energy Business Alliance, and the North Carolina Sustainable Energy Association in this proceeding as to why it is impermissible as a matter of federal law for the Commission to consider Network Upgrade costs in deciding whether to grant a CPCN to a generating facility interconnected pursuant to a FERC-jurisdictional tariff. To SEIA’s knowledge, no CPCN for any generating facility in the country – solar or otherwise – has ever been denied based solely upon concerns related to FERC-jurisdictional Network Upgrade costs associated with such generating facility. Nevertheless, in the October 25 Order the Commission concluded, without any substantive explanation, that it “may consider the costs for future

¹ The comments contained in this filing represent the position of SEIA as a trade organization on behalf of the solar industry, but do not necessarily reflect the views of any particular member with respect to any issue.

network upgrades that are required to accommodate a proposed electric generating facility when considering an application for a CPCN pursuant to N.C.G.S. § 62-110.1 and Commission Rule R8-63.”² It thus appears that the Commission has adopted a novel interpretation of its authority – one that has never been applied by any state utility commission anywhere in the country – that would allow it to deny the CPCN for the Facility based on the required Network Costs. SEIA believes that this position constitutes an impermissible overreach by the Commission into an area exclusively within FERC’s jurisdiction, and SEIA respectfully urges the Commission to reconsider this holding of the October 25 Order.³

Should the Commission nevertheless proceed to consider the Network Upgrade costs, SEIA believes that building the Friesian Network Upgrades serves the public convenience and public interest and that the CPCN should therefore be granted. The Network Upgrades associated with the Facility will help to promote the development of solar facilities in North Carolina by relieving significant transmission congestion in Southeastern North Carolina, the portion of the state best suited for solar development and where many solar projects are already under development. Without the Network Upgrades associated with the Facility, the opportunity for further solar development in North Carolina will be greatly diminished, as will the state’s ability to achieve Governor Cooper’s goal of reducing carbon emissions in North Carolina 70% by 2030. Additionally, Duke Energy⁴ has identified more than 1,500 MW of solar resources (of which about 773 MW are queued in Tier 1 North Carolina counties) beyond the Friesian project that cannot proceed without the Friesian Upgrades.⁵ The development of solar projects in Southeastern North Carolina that will be unlocked via the Friesian Network Upgrades will generate millions of dollars of economic activity and new jobs in some of North Carolina’s Tier 1 counties.⁶ Finally, Duke Energy has stated that its proposed 1235-MW Combined Cycle Plant in Cumberland County (Q399) is interdependent on Friesian’s Network Upgrades and will thus utilize most (if not all) of the Friesian Network Upgrades.⁷

² The briefs and arguments leading to the October 25 Order also addressed the Commission’s authority under state law to consider Network Upgrade costs in deciding whether to issue a CPCN. SEIA takes no position on that issue but notes that the October 25 Order expressly ruled on the state law issue without specifically mentioning the question of federal pre-emption. However, since the Commission has allowed for the consideration of Network Upgrade costs in the CPCN evidentiary hearing, it appears to have implicitly concluded that such action is not precluded by federal law.

³ SEIA does not contend that the Commission could never deny a CPCN to a FERC-jurisdictional facility. Such a facility must still satisfy state requirements with respect to the siting of electric generating facilities, such as environmental and land-use considerations and fuel-source mandates. However, the treatment of the cost of Network Upgrades for such a facility is exclusively within FERC’s jurisdiction and thus cannot be the basis for CPCN denial.

⁴ For the purposes of this letter, “Duke Energy” refers collectively to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC.

⁵ See Testimony of Brian C. Bednar, p. 12, filed on November 26, 2019, in Docket No. EMP-105, Sub 0.

⁶ See *id.*

⁷ See Duke Energy Progress, LLC’s response to Friesian’s Data Request No. 2.

Accordingly, to the extent that the Commission disagrees with SEIA's position that it cannot consider the costs of FERC-jurisdictional Network Upgrades as a matter of law in a CPCN proceeding, SEIA believes that the Commission should also consider the totality of the *benefits* to North Carolinians that will result from the Network Upgrades. Importantly, this is a position that is shared by Duke Energy, as evidenced by a pair of letters filed December 6, 2019 in the above-referenced docket.⁸ Notably, in one of those letters, Duke Energy's North Carolina President stated that Duke Energy "believes that the Commission should consider the benefits of the Network Upgrades in rendering its decision in this proceeding. Such benefits . . . include the following: (1) allowing for the interconnection of a substantial amount of renewable resources in the southeast portion of DEP's service territory, (2) avoiding queue paralysis and substantial delays in interconnection for certain projects, (3) and minimizing certain short-term challenges associated with the Duke [Energy's] queue reform plans."⁹ The Duke Energy Progress Letter discusses these benefits in more detail, and as demonstrated therein, the benefits associated with the Network Upgrades are substantial. Failure to complete the Network Upgrades will likely result in substantial hardships for the public at large in North Carolina, including the likely "complete paralysis of the interconnection queue" in Southeastern North Carolina.¹⁰

For the foregoing reasons, SEIA respectfully requests that the Commission consider its comments herein and grant the CPCN to Friesian.

Respectfully submitted,

A handwritten signature in black ink that reads "M. Clark". The signature is written in a cursive, flowing style.

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⁸ See North Carolina President Letter Regarding Friesian CPCN Application, filed December 6, 2019, in Docket No. EMP-105, Sub 0 ("Duke North Carolina President Letter"); DEP Letter Regarding Friesian CPCN Application, filed December 6, 2019, in Docket No. EMP-105, Sub 0 ("Duke Energy Progress Letter").

⁹ See Duke North Carolina President Letter at 1.

¹⁰ See Duke Energy Progress Letter at 3.