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July 14, 2021

VIA ELECTRONIC FILING

Kimberley Campbell
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, North Carolina 27603

Re: Docket No. EMP-114, Sub 0
Oak Trail Solar, LLC

Dear Chief Clerk:

Enclosed for filing in the above-referenced docket is the Applicant's Proposed Order Granting Certificate. By copy of this letter, I am forwarding a copy to all parties of record.

Please let me know if you have any questions.

Sincerely,

/s/ E. Merrick Parrott

Enclosure

cc: briefs@ncuc.net
Reita Coxtton (via email Reita.Coxton@psncuc.nc.gov)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-114, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Oak)	
Trail Solar, LLC for a Certificate of)	
Public Convenience and Necessity to)	PROPOSED ORDER
Construct a 100-MW Solar Facility in)	GRANTING CERTIFICATE
Currituck County, North Carolina)	

HEARD: Monday, May 17, 2021 at 2:00 p.m., via WebEx videoconference

BEFORE: Commissioner Kimberly W. Duffley, presiding, Chair Charlotte A. Mitchell, and Commissioner Daniel G. Clodfelter

APPEARANCES:

For Oak Trail Solar, LLC

Katherine E. Ross
E. Merrick Parrott
Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601

For the Using and Consuming Public:

Reita Coxton, Staff Attorney
Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, NC 27699-4300

BY THE COMMISSION: On September 17, 2020, Oak Trail Solar, LLC (Oak Trail or Applicant), filed an application for a Certificate of Public Convenience and Necessity (CPCN) pursuant to G.S. § 62-110.1(a) and

Commission Rule R8-63 for the construction of a solar photovoltaic (PV) electric generation facility up to 100-MW_{AC} (Facility) to be located in Currituck County, south of S. Mills Road (NC 1227), on the east and west sides of Puddin Ridge Road, and on the north and south sides of Cooper Garrett Road, near Moyock (the Application). On the same date, Oak Trail prefiled the direct testimony of Matt Crook and Wyatt Toolson in support of the Application. Oak Trail contemporaneously filed its registration as a New Renewable Energy Facility in accordance with Commission Rule R8-66 (the Registration).

On September 29, 2020, the Public Staff filed a Notice of Completeness stating that it had reviewed the Application as required by Commission Rule R8-62(d) and considered the Application to be complete. In addition, the Public Staff requested that the Commission issue a procedural order.

On December 14, 2020, the Commission issued an Order that, among other things, required Oak Trail to provide additional testimony, established a procedural schedule for the filing of petitions to intervene and testimony, scheduled the Application for hearing, and directed Oak Trail to publish public notice once a week for four consecutive weeks.

On December 16, 2020, the Commission issued an Errata Order to correct a typographical error concerning the time of the expert witness hearing.

On December 18, 2020, the Commission issued an Order rescheduling the public witness hearing, revising deadlines related to the public witness hearing, and revising the required public notice.

On January 6, 2021, Oak Trail filed a written consent to the Commission to hold the public witness hearing by remote means.

On January 15, 2021, the Public Staff filed its written consent to holding the public witness hearing by remote means.

On January 19, 2021, the North Carolina Department of Administration filed comments through the State Clearinghouse stating that it had determined that no further State Clearinghouse review action on Oak Trail's part was needed for compliance with the North Carolina Environmental Policy Act.

On January 25, 2021, Oak Trail filed an affidavit of publication as required by the Commission in its December 14 Order.

On February 1, 2021, the Commission issued an Order canceling the public witness hearing because no member of the public registered to testify at the hearing and no written complaints were filed.

On February 22, 2021, Oak Trail filed supplemental testimony of Matt Crook to provide responses to the additional testimony required by the Commission in its December 14 Order.

On March 22, 2021, the Public Staff filed the testimony of Evan Lawrence, Utilities Engineer, Electric Division. Mr. Lawrence's testimony recommended that the Commission issue the CPCN, subject to the following four conditions:

- i. The Applicant shall file a copy of an executed Affected System Operating Agreement (ASOA) with the Commission at the same time such filing is made at Federal Energy Regulatory Commission (FERC) (at least 61 days prior to commencing construction on the upgrades);
- ii. The Applicant shall file a verified statement acknowledging that, under Duke's Affected Systems Business Procedure and PJM's

OATT, the Interconnection Customer is responsible for all affected system Network Upgrade Costs assigned to the Applicant's facility, if any, without reimbursement;

iii. The Applicant shall notify the Commission of any change in the cost estimates for the construction of the Facility itself, interconnection facilities, network upgrades, or affected system costs within 30 days of becoming aware of such change; and

iv. If, at any time, the Applicant seeks reimbursement for any interconnection facilities, network upgrade costs, affected system costs, or other costs required to allow energization and operation of the Facility (including as a result of any change to the DEP OATT or any other governing document(s)), the Commission weigh the costs to be borne by DEP's retail and wholesale customers with the generation needs in the state or region consistent with its ruling in its Order Denying Application for a Certificate of Public Convenience and Necessity for a Merchant Generating Facility requested by Friesian Holdings, LLC, 6 in Docket No. EMP-105, Sub 0.

On April 12, 2021, Oak Trail filed a motion for extension of time to file rebuttal testimony, which was granted on April 13, 2021.

On April 16, 2021, Oak Trail filed a notice of change of upstream ownership. Oak Trail also provided amended Application materials, supplemental testimony of Matt Crook, and testimony of Christopher Loehr to update the Application materials to reference the new upstream ownership.

On April 21, 2021, Oak Trail filed a motion for further extension of time to file rebuttal testimony, which was granted on April 23, 2021.

On April 30, 2021, Oak Trail filed the rebuttal testimony of Frank Bristol to respond to the Public Staff's testimony of Evan Lawrence. Mr. Bristol testified that Oak Trail's interconnection costs were final and there were no affected systems costs assigned to the Facility. Mr. Bristol's testimony was supported by three exhibits: (1) Oak Trail's fully executed Interconnection Service Agreement

(ISA) with PJM Interconnection, LLC and Virginia Electric and Power Company (VEPCO); (2) the Affected System Study Report for the PJM Interconnection Cluster AD2; and (3) an email from PJM dated April 28, 2021, which confirmed that “DEP reviewed the two queue positions for [Oak Trail] during the study process and determined that there were no impacts to their system. No further DEP study is required.” Mr. Bristol’s testimony stated that Oak Trail would consent to the following conditions to its CPCN, which were based on the CPCN issued to Camden Solar LLC in docket EMP-109 Sub 0:

- (a) Oak Trail Solar, LLC will construct and operate the Facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements;
- (b) Oak Trail Solar, LLC will not assert that the issuance of the certificate in any way constitutes authority to exercise any power of eminent domain, and it will abstain from attempting to exercise such power;
- (c) Oak Trail Solar, LLC will comply with all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the Commission; and
- (d) Oak Trail Solar, LLC shall file with the Commission in this docket any revisions in the cost estimates for the interconnection facilities, network upgrades (including network upgrades on affected systems), or any other significant change in costs within 30 days of becoming aware of such revisions.

On May 3, 2021, both Oak Trail and the Public Staff filed consent to the Commission holding the evidentiary hearing by remote means.

On May 5, 2021, Oak Trail filed a supplemental rebuttal exhibit. The supplemental rebuttal exhibit was an email from Duke dated May 5, 2021, which stated that “DEP Transmission Planning has confirmed these [Oak Trail queue positions] have no impact.”

On May 12, 2021, Oak Trail filed a list of potential cross-examination exhibits for the remote evidentiary hearing.

On May 14, 2021, Oak Trail filed a list of potential re-direct exhibits for the remote evidentiary hearing.

On May 14, 2021, the Public Staff filed changes to Mr. Lawrence's testimony. The Public Staff also filed Mr. Lawrence's testimony summary.

On May 17, 2021, the matter came on for an evidentiary hearing as ordered. Oak Trail presented the direct, supplemental, and amended testimony and exhibits of Matt Crook, the direct testimony and exhibits of Christopher Loehr, and the rebuttal testimony and exhibits of Franklin Bristol. The Public Staff presented the direct testimony of Evan D. Lawrence, Engineer, Public Staff Electric Division.

On May 19, 2021, Oak Trail filed the cross-examination and redirect exhibits that were used by Oak Trail during the May 17, 2021 evidentiary hearing.

On June 21, 2021, the Commission issued an Order requiring proposed orders or briefs on or before thirty days from the issuance of the transcript.

On June 14, 2021, the transcript of the evidentiary hearing was issued.

FINDINGS OF FACT

1. Oak Trail Solar, LLC is a Delaware limited liability company authorized to do business in the State of North Carolina. Oak Trail is a wholly owned indirect subsidiary of Leeward Renewable Energy, LLC (Leeward).

2. In compliance with G.S. § 62-110.1 and Commission Rule R8-63, the Applicant filed with the Commission an application for a CPCN authorizing

the construction of the Facility to be built on approximately 880 acres in Currituck County south of S. Mills Road (NC 1227), on the east and west sides of Puddin Ridge Road, and on the north and south sides of Cooper Garrett Road, near Moyock. Contemporaneous with the Application, Oak Trail filed its registration as a New Renewable Energy Facility pursuant to G.S. § 62-133.8 and Commission Rule R8-66.

3. The Facility is a solar PV electric generation system and will be interconnected to the grid operated by VEPCO d/b/a Dominion Energy North Carolina (DENC). Construction of the Facility is anticipated to begin in December 2021 and the expected commercial operation date for the Facility is as early as November 2022.

4. The Facility's anticipated gross capacity is 245,000 MWh and net capacity is 218,460 MWh per year.

5. The Application has met all requirements for State Clearinghouse review and publication of notice.

6. Oak Trail is financially fit and operationally able to undertake the construction and operation of the Facility.

7. The Facility will generate renewable energy certificates (RECs) that could be used by an electric power supplier in North Carolina to meet the requirements of Senate Bill 3 or in the PJM region to meet renewable energy portfolio standards.

8. Oak Trail has a fully executed Power Purchase Agreement (PPA) with a large Commercial and Industrial customer for the entirety of the Facility's output, as well as the RECs generated by the Facility.

9. Oak Trail made a sufficient showing of need based on the projected demand in the PJM Region, the requirements for and commitments by investor-owned utilities to generate electricity from renewable resources such as solar generation, and the demand by corporate and industrial customers for generation from renewable resources.

10. Oak Trail has a fully executed ISA. Under the ISA, Oak Trail is responsible for \$10,002,252 in interconnection costs. All such interconnection costs will be borne by Oak Trail and will not be reimbursed by PJM or DENC and will not be passed on by DENC to ratepayers.

11. The Facility has a Levelized Cost of Transmission (LCOT) of \$1.94, which compares favorably to the average LCOTs identified in the 2019 Lawrence Berkeley National Laboratory Interconnection Cost Study (LBNL Study) for solar in MISO (\$1.56), PJM (\$3.22), and EIA (\$2.21).

12. The Commission has carefully considered and weighed all evidence and arguments presented in this proceeding, and finds that Oak Trail has shown that the Application is in the public interest and that public convenience and necessity requires that the Application be granted with the following conditions: (a) Oak Trail Solar, LLC will construct and operate the Facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements; (b) Oak Trail Solar, LLC

will not assert that the issuance of the certificate in any way constitutes authority to exercise any power of eminent domain, and it will abstain from attempting to exercise such power; (c) Oak Trail Solar, LLC will comply with all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the Commission; and (d) Oak Trail Solar, LLC shall file with the Commission in this docket any revisions in the cost estimates for the interconnection facilities, network upgrades (including network upgrades on affected systems), or any other significant change in costs within 30 days of becoming aware of such revisions.

13. It is reasonable and appropriate to accept the registration of the Facility as a New Renewable Energy Facility pursuant to G.S. § 62-133.8 and Commission Rule R8-66.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 1 – 5

These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not in dispute. These findings are supported by the Application and the testimony of Oak Trail witnesses Crook and Loehr.

A copy of the Certificate of Authority issued by the Secretary of State of North Carolina establishing the authority of Oak Trail to do business in this State was filed in the docket on September 17, 2020 as an exhibit to the Application.

An examination of the Application and testimony and exhibits of Oak Trail's witnesses confirms that the Applicant has complied with all filing requirements of the law and Commission rules associated with applying for a certificate to construct a merchant plant in North Carolina.

According to the Application and the testimony of Oak Trail witness Crook, the Facility will be located on approximately 880 acres in Currituck County, North Carolina. A map of the proposed Project Area was included as an exhibit with the Application.

As described in the Application, a collection substation and a three breaker ring bus interconnection substation will be constructed near the point of interconnection (POI), within the boundaries of the property under control by Oak Trail, and a short generator tie line will be used to connect the Facility to the DENC transmission line adjacent to the site.

Commission Rule R8-66 requires the owner, including an electric power supplier, of each renewable energy facility that intends for RECs it earns to be eligible for use by an electric power supplier to comply with G.S. § 62-133.8 to register the facility with the Commission. Oak Trail's filing includes certified attestations that: (1) the Facility is in substantial compliance with all federal and State laws, regulations and rules for the protection of the environment and conservation of natural resources; (2) the Facility will be operated as a new renewable energy facility; (3) Oak Trail will not remarket or otherwise resell any RECs sold to an electric power supplier to comply with G.S. § 62-133.8; and (4) Oak Trail consents to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers.

The Commission concludes that Oak Trail has complied with the Commission's rules for registration as a New Renewable Energy Facility.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT 6

The evidence supporting this finding of fact may be found in the Application and the testimony of Oak Trail witnesses Crook and Loehr. This finding is not disputed by any party.

Oak Trail is a wholly owned indirect subsidiary of Leeward. Oak Trail was organized to develop the Facility. Financial statements for Leeward were provided, under seal, with Mr. Loehr's testimony as Amended Application Addendum 2. Leeward has the capability to arrange adequate assurances, guarantees, financing and insurance for Oak Trail's development, construction, and operation. As stated in the Application, as amended on April 16, 2021, Leeward owns and operates a portfolio of 22 wind and solar farms across nine states, totaling more than 2 GW of installed capacity, and has approximately 14 GW of new wind, solar, and energy storage projects under development across the United States including an expansive development pipeline of solar projects across more than 20 states.

As testified by Oak Trail witness Loehr, Leeward structures and arranges project financings through a dedicated in-house staff of finance professionals. Leeward will arrange the financing of the Facility, which will include a construction loan financing. A third party may be brought in later to provide tax-equity financing. Oak Trail witness Loehr testified that Leeward has raised billions of dollars of debt and equity financing and has obtained financing from a wide group of global institutions, including JP Morgan, Wells Fargo, Citibank, GE Energy Financial Services and Union Bank.

Oak Trail witness Crook testified regarding the managerial and technical capability of Leeward. He testified that Leeward is an experienced operator of renewable energy facilities. Leeward and its affiliated companies currently own and operate more than 2 GW of renewable energy generation projects across nine states. NovaSource Power Services (NovaSource) is contracted to provide operations and maintenance services for the Facility. NovaSource operates more than 1,000 commercial, industrial, and utility scale solar projects totaling 3.5 GW of production and operates across 5 continents and 22 US states.

Based on the foregoing, the Commission concludes that Leeward's experience in the construction and operational control of renewable energy facilities demonstrates that Oak Trail has access to the financial and operational capability to successfully construct the Facility.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 7 – 9

The evidence supporting these findings of fact may be found in the Application and the testimony of Oak Trail witness Crook. These findings are not disputed by any party.

Rule R8-63(3) requires a merchant plant application to include a description of the need for the facility in the "state and/or region." This requirement has evolved over the years from the requirement articulated in the 1991 Empire Power Company case in Docket SP-91, Sub 0 that an independent power producer (IPP) such as Oak Trail obtain a contract or a written commitment from a utility to demonstrate need. In 2001, the Commission initiated a generic proceeding in Docket E-100, Sub 85 to consider changes in

the certification requirements for merchant plants. As impetus for its Order, the Commission cited the Energy Policy Act of 1992 which encouraged independent power production and competition in the wholesale power market through the creation of exempt wholesale generators and the ability of the Federal Energy Regulatory Commission to issue wheeling orders requiring utilities to allow access to their transmission grids for wholesale power transactions. *Order Initiating Further Proceedings*, Docket E-100, Sub 85, February 7, 2001 (the E-100, Sub 85 Order), p. 3. Further, the Commission cited FERC Order 2000 as “encouraging the formation of regional transmission organizations which would operate interconnected transmission systems, reduce the cost of transmitting power to more distant markets, and further enhance wholesale competition.” *Id.* In the E-100, Sub 85 Order, the Commission ordered the Public Staff to file a proposal for certification requirements for merchant plants. *Id.* In its proposal, the Public Staff recommended that the Commission address in its proceeding how the public convenience and necessity for an IPP would be demonstrated “when the facility is intended in whole or in part to serve –

...

b. Load outside of North Carolina, on varying bases and for varying duration.”¹

In its Order adopting the certification rule, the Commission stated “[i]t is the Commission’s intent to facilitate, and not to frustrate, merchant plant development. Given the present statutory framework, the Commission is not in a position to abandon any showing of need or to create a presumption of need [as

¹ Public Staff’s Initial Comments, Docket E-100, Sub 85, pg. 8 (January 10, 2000).

had been urged by two commenting utilities]. However, the Commission believes that a flexible standard for the showing of need is appropriate.”²

As described in the Application, PJM is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia. This region includes over 65 million people, and projections of load are increasing. The load growth projects in the PJM service area in Dominion Energy territory, including North Carolina, is expected to average between 1.2% and 1.4% per year over the next 10 years versus the PJM RTO load growth projections to average 0.6% over the next 10 years.³ The Application and testimony of Oak Trail witness Crook support the required showing of need in that the Facility can help meet increases in peak energy requirements forecasted in DENC’s most recent Integrated Resource Plan and can contribute to meeting increases in peak load growth forecasted for PJM, as evidenced in documents cited in the Application.

Oak Trail has a fully executed PPA with a large Commercial and Industrial customer for the entirety of the Facility’s output, as well as the RECs generated by the Facility. The Facility will be registered as a New Renewable Energy Facility and will participate in the North Carolina Renewable Energy Tracking System (NC-RETS) for the generation of RECs. The RECs will initially be sold to

² Order Adopting Rule, Docket E-100, Sub 85, pg. 7 (May 21, 2001).

³ <https://www.pjm.com/-/media/library/reports-notice/state-specific-reports/2019/2019-north-carolina-state-infrastructure-report.ashx?la=en> at 23.

the PPA counterparty pursuant to the PPA. However, if that contract were to end, the RECs would be eligible to be sold to and used by an electric power supplier in North Carolina to meet the requirements of Senate Bill 3 or in the PJM region to meet renewable energy portfolio standards.

As the history of the rule described above makes clear, the statement of need requirement is a “flexible standard” consistent with the Commission’s intent to encourage merchant plant development to meet needs both within North Carolina and in the region. The Commission concludes that there has been a sufficient showing of need for the Facility in the state and/or in the PJM region.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 10 – 11

The evidence supporting these findings of fact may be found in the Application and the testimony of Oak Trail witnesses Crook and Bristol.

Oak Trail has a fully executed ISA which includes \$10,002,252 in estimated interconnection costs. There are no planned upgrades assigned to earlier queued generators in the PJM queue that are contingent to Oak Trail and the scope of upgrades required to interconnect the Facility is final and not subject to change. As testified to by Oak Trail witnesses Crook and Bristol, the \$10,002,252 estimated costs reflected in the ISA are subject to true-up only for actual construction costs. Such actual construction costs will not be known until construction of the Facility is complete. However, there is no risk to ratepayers with respect to the estimated or actual costs because, as described in the Application, Mr. Crook’s testimony, and Mr. Bristol’s testimony, such costs will be borne by Oak Trail, will not be reimbursed to Oak Trail by PJM or DENC, and will

not be passed on to ratepayers. Public Staff witness Lawrence also testified that “[Oak Trail’s] PJM costs are set”, *Tr. 125:5-6*, and that “the interconnection costs are known and they are covered in the [ISA].” *Tr. 130:2-6*.

There are no affected system impacts or affected system costs assigned to the Facility in the System Impact Studies, Facilities Study, or fully executed ISA. In addition, Mr. Bristol’s testimony included written confirmation from both PJM and Duke that (1) there is no impact to Duke as an affected system and (2) that there are no affected systems costs assigned to the Facility. The following evidence in the record supports that there are no affected systems costs assigned to the Facility: (1) PJM’s Oak Trail System Impact Studies state that there are no affected system upgrades assigned to the Facility; (2) Oak Trail’s fully executed ISA sets out no affected system upgrades; (3) PJM’s Open Access Transmission Tariff (OATT) requires coordination with any identified affected systems operators during the study phase and for PJM to include the results, if available, in the system impact study or the facilities study; (4) PJM independently confirmed that Duke studied the Oak Trail queue positions and found no affected systems issues; (5) Duke independently confirmed that “DEP Transmission Planning has confirmed these [Oak Trail queue positions] have no impact [on DEP’s system]”; and (6) Duke has provided the Public Staff with a list of PJM queue positions being studied for affected systems and neither of Oak Trail’s queue positions were included on the list. Public Staff witness Lawrence testified that there are no known affected systems upgrades assigned to the Facility. *Tr. 86-87:23-2*.

The Commission has found in previous merchant plant dockets that “it is appropriate for the Commission to consider the total construction costs of a facility, including the cost to interconnect and to construct any necessary transmission network upgrades, when determining the public convenience and necessity of a proposed new generating facility.”⁴ The Commission also found that “the use of the levelized cost of transmission (LCOT) provides a benchmark as to the reasonableness of the transmission network upgrade cost associated with interconnecting a proposed new generating facility.”⁵ The Facility has an LCOT of \$1.94, which compares favorably to the average LCOTs identified in the 2019 LBNL Interconnection Cost Study for solar in MISO (\$1.56), PJM (\$3.22), and EIA (\$2.21).

Based on the foregoing, the Commission concludes that the interconnection costs associated with the Facility are reasonable and do not pose a risk to ratepayers. However, the Order will be conditioned as described below to ensure that the Commission is notified of any future material revisions in the cost estimates for the interconnection facilities and network upgrades, including network upgrades on affected systems.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 12 – 13

The evidence supporting these findings of fact may be found in the Application and the testimony of Oak Trail witness Bristol.

⁴ See Order Denying Certificate of Public Convenience and Necessity for Merchant Plant Generating Facility, *In the Matter of Application of Friesian Holdings, LLC for a Certificate of Convenience and Necessity to Construction a 70-MW Solar Facility in Scotland County, North Carolina*, Docket No. EMP-105 Sub 0, at 6 (issued June 11, 2020).

⁵ *Id.*

The public convenience and necessity standard is flexible and requires that the distinct facts of each case be considered. See, e.g., *State ex rel. Utils. Comm'n v. Casey*, 245 N.C. 297, 302, 96 S.E.2d 8, 12 (1957). The decision of whether to grant or deny a CPCN must rest upon substantive evidence; it cannot rest on speculation or sentiment. Cf. *Howard v. City of Kinston*, 148 N.C. App. 238, 246, 558 S.E.2d 221, 227 (2002). The burden is on the applicant to provide this substantive evidence and demonstrate that the CPCN should be granted.

No party to the docket is recommending that the CPCN be denied. The only open question is regarding the conditions to be placed on the CPCN that appropriately balance three factors, including (i) not frustrating the development of this merchant plant, (ii) fairness to the Applicant, and (iii) the protection of ratepayers.

The Public Staff has raised questions related to the Facility's potential future impacts to affected systems. Mr. Lawrence testified "I don't know, and the Public Staff, we aren't aware of at what point that final date is, whether it's when [the] facility is constructed, when further studies are completed, or if it is final now." *Tr. 106-107:23-3*. Public Staff witness Lawrence testified that the Public Staff's conditions were meant to "[a]t the earliest point possible if those costs arise for us to know about it and to be able to try to make a determination on the situation with minimal risks to everybody involved." *Tr. 120:13-17*.

The Commission finds that the Public Staff's recommended conditions in this matter are based on speculative concerns and are not based on the specific facts of Oak Trail. For example, Public Staff's proposed condition 1 is that "The

Applicant shall file a copy of an executed Affected System Operating Agreement (ASOA) with the Commission at the same time such filing is made at Federal Energy Regulatory Commission (FERC) (at least 61 days prior to commencing construction on the upgrades).” However, Oak Trail does not have an ASOA because it does not have affected systems costs. Further, related to this condition, Mr. Lawrence conceded that “[o]f course, you cannot file something you don’t have.” *Tr. 128:2-3.*

The Commission finds that the Applicant’s proposed conditions filed with Mr. Bristol’s testimony are appropriate based on the specific facts in this case. The Applicant’s proposed conditions include a condition that “Oak Trail Solar, LLC shall file with the Commission in this docket any revisions in the cost estimates for the interconnection facilities, network upgrades (including network upgrades on affected systems), or any other significant change in costs within 30 days of becoming aware of such revisions.” If any affected systems costs were to arise in the future, as is Public Staff’s concern, this condition is sufficient to ensure the Commission and the Public Staff are notified of such new affected systems costs and could address any concerns over such real and known affected systems costs at that time.

In addition, Commission Rule R8-63(e) and (f) set forth a number of conditions to be imposed on a certificate granted by the Commission, including that:

(1) The certificate shall be subject to revocation if (a) any of the federal, state, or local licenses or permits required for construction and operation

of the generating facility not obtained or, having been obtained, are revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30) days' written notice and opportunity to cure.

(2) 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.

(3) A certificate holder must notify the Commission in writing of any plans to sell, transfer, or assign the certificate and the generating facility.

(4) All applicants must submit annual progress reports and any revisions in cost estimates, as required by G.S. § 62-110.1(f) until construction is completed.

For all of the reasons explained in this Order and subject to the conditions imposed herein, the Commission finds that the construction of the Facility is in the public interest and justified by the public convenience and necessity as required by G.S. § 62-110.1. The Commission further finds good cause to accept registration of the Facility as a New Renewable Energy Facility. Oak Trail shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year. To the extent that Oak Trail is not otherwise

participating in a REC tracking system, it will be required to participate in the NC-RETS REC tracking system in order to facilitate the issuance of RECs.

IT IS THEREFORE, ORDERED as follows:

1. That a Certificate of Public Convenience and Necessity should be, and is hereby, granted to Oak Trail for the construction of a solar photovoltaic electric generation facility up to 100-MW_{AC} to be located in Currituck County, North Carolina. This Order shall constitute the Certificate. This Certificate is subject to the following conditions:

(a) Oak Trail Solar, LLC will construct and operate the Facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements;

(b) Oak Trail Solar, LLC will not assert that the issuance of the certificate in any way constitutes authority to exercise any power of eminent domain, and it will abstain from attempting to exercise such power;

(c) Oak Trail Solar, LLC will comply with all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the Commission; and

(d) Oak Trail Solar, LLC shall file with the Commission in this docket any material revisions in the cost estimates for the interconnection facilities, network upgrades (including network upgrades on affected systems), or any other significant change in costs within 30 days of becoming aware of such revisions.

2. That the registration statement filed by Oak Trail for its solar photovoltaic facility located in Currituck County, North Carolina, as a New Renewable Energy Facility shall be, and is hereby, accepted.

3. That Oak Trail shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2021.

NORTH CAROLINA UTILITIES COMMISSION

Joann R. Snyder, Deputy Clerk