



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

July 13, 2018

Samuel E. Yates
Eagle Solar & Light, LLC
4005 2nd Avenue South
Birmingham, AL 35222

RE: EGL-1, Sub 0

Dear Mr. Yates,

This correspondence concerns the electric generator lessor application filed with the North Carolina Utilities Commission in the above-referenced docket on June 15, 2018.

The Public Staff believes that the application is not yet complete for the reasons set forth in the attachment hereto. Pursuant to Commission Rule R8-73(f)(4) the Public Staff shall, within 20 business days after the application is filed with the Commission, file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete and identifying any deficiencies. If you desire to pursue the application further, please file all the missing information and exhibits or corrections as noted on the attachment. The time for the Public Staff's and Commission's review of each application will begin once a completed application is received.

Sincerely yours,

Electronically submitted
/s/ Robert B. Josey
robert.josey@psncuc.nc.gov

c: Chief Clerk
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**PUBLIC STAFF ELECTRIC GENERATOR LESSOR (EGL) APPLICATION REVIEW
PURSUANT TO COMMISSION RULE R8-73 AND G.S. 62-126.6**

Applicant: Eagle Solar & Light, LLC
Docket: EGL-1, Sub 0
Date of Application: May 11, 2018
Date of Deficiency Letter: June 8, 2018
Date of Revised Application: June 15, 2018

Instructions to the Applicant: *Please file with the Commission amended applications and supplemental information requested to cure the deficiencies listed below. Once complete, the revised application will be reviewed for completeness and lack of deficiencies.*

Application Item 13. The revised application item 13 adds the Duke Energy Progress (DEP) territory, in addition to Duke Energy Carolinas (DEC) originally listed. The Applicant is advised to transmit notice to both DEC and DEP as described within the Commission's June 6, 2018 *Order Requiring Mailing of Notice*.

G.S. 62-126.6(a)(4). The lease should describe the performance guarantee concerning energy production and how the guarantee will be enforced. Under the heading "Minimum Annual Energy Generation" starting on page 3, bullet #6 states that:

The time period in which Photovoltaic (Solar) disruptions due to Duke Energy (or subsequent utility) outages (which disable the solar energy generation per NEC2014 690.12), Acts of God, or other unexpected catastrophes, if any, negligence, etc., will be deducted from the annual computation of energy generation for the 12 month calendar period.

The Public Staff believes that this statement is vague and lacks sufficient detail to provide a customer with reasonable certainty as to the coverage and enforcement of the performance guarantee. Please provide sample performance guarantee language that provides additional clarity. The Public Staff recommends that the applicant consult with a private attorney with experience in these matters. For additional information regarding sample performance guarantee language, the applicant may also wish to consult resources such as the November 2015 "Best Practices for Developing Availability Guarantee Language in Photovoltaic (PV) O&M Agreements" Report by Sandia National Laboratories, the sample contracts prepared by the NREL Solar Securitization and Solar Access to Public Capital Working Group, or other similar industry resources.

- <http://prod.sandia.gov/techlib/access-control.cgi/2015/1510223.pdf>
- https://financere.nrel.gov/finance/content/solar-securitization-and-solar-access-public-capital-sapc-working-group#standard_contracts

G.S. 62-126.6(a)(5).

- (a) The lease should indicate the total cost to the customer for the life of the agreement.
- (b) The lease should indicate the cost of any interest, installation fees, document preparation fees, service fees, or other costs to the customer.
- (c) The lease should indicate the total number of payments, including interest, over the leased term.

Regarding (a) and (c): there is some conflict between the total number of payments (120) and the total cost of monthly payments to the consumer (\$19,950). Assuming the first payment is pro-rated, the total cost of monthly payments should be equal to or less than \$19,950. Please clarify this language (for example, stating that \$19,950 is the “not to exceed” price of the monthly payments).

Regarding (b): what taxes, or portion of taxes, are passed on to the lessee? If the lessee is not responsible for any taxes resulting from the leased system, this should be stated clearly.

G.S. 62-126.6(a)(6). Conflicting information exists within the contract regarding the solar rebate that is available to the customer.

- In the “Contract Terms” section, the amount due to Lessor at system completion and initiation (\$7,200) “approximates the anticipated Duke Energy solar rebate”. Presumably, the Lessee would pay the Lessor the \$7,200 upfront and then claim and keep for themselves the solar rebate from Duke Energy.
- However, Section 5 of the lease further states that the “Lessee agrees to reasonably cooperate with Lessor so it may claim any... rebates... from the system. This may include... applications for rebates from the... local utility, and giving these... rebates to the Lessor”. This appears to allow the Lessor to have a legal claim to the full rebate amount from the Lessee, *in addition to* the upfront payment.

Please review and clarify the language in both sections to make clear how the rebate transfer is handled. Either the Lessee pays the Lessor for the rebate upfront, and then keeps the rebate, or the Lessee agrees to work with the Lessor to obtain the rebate and transfer it to the Lessor.

G.S. 62-126.6(a)(7). Please define the “Limited Warranty” and “Warranty” terms used throughout the lease. A separate lease section entitled “Warranty” may be necessary.

G.S. 62-126.6(a)(8). In order to consistently utilize capitalized terms defined within the lease, “The Transfer of this Lease to Modify or Transfer Ownership of The Solar Energy Facility,” should be replaced with “The transfer of this Lease to modify or transfer ownership of the System.”

G.S. 62-126.6(a)(9). In order to consistently utilize capitalized terms defined within the lease, “The Transfer of this Lease to Modify or Transfer Ownership of The Real Property, to which the solar facility...” should be replaced with “The transfer of this Lease to modify or transfer ownership of your Property, to which the System...”

G.S. 62-126.6(a)(11). The rate used in the “estimated Annual Energy Savings” and the “Minimum Guaranteed Annual Energy Generation” sections are incorrectly calculated by dividing the *total* energy cost by the total kWh consumed. This is an inaccurate representation of rates because the total energy cost consists of a variable energy cost and a fixed Customer Charge. Lessee is not able to reduce the Basic Customer Charge through a net metering agreement. **Rates used within the lease should be based upon the appropriate DEC and DEP rate schedules.**

In addition, as ESL has signaled its intent to offer solar leases to commercial customers, please provide a sample lease showing expected energy savings for a General Service customer with a demand charge.

Other Lease Issues:

- The amount due of \$7,200, which approximates the Duke Energy rebate amount, is based on the system’s DC capacity rating. The Duke Energy solar rebate program is based upon the AC rating of the inverter.¹
- The first subsection under Contract Terms indicates \$7,200 will be due at “System Completion and Initiation” and then immediately follows with “amount due at contract execution.” **Please clarify when this payment is due.**
- “The Lessor will remove the System from the premises at no cost to you” should be added under the section on “Choices at the end of the lease term.”
- The section on insurance has been changed from lessor will insure to lessee will insure against all loss and damage. Conversely, the Loss and Damage section indicates lessor will be responsible for the cost and expense to have the system repaired. Also, the System Maintenance section states “Lessor will maintain and repair the System during the Lease Term, at no additional cost to Lessee.” **Please clarify who is responsible for insuring, maintaining, and repairing the system.**
- Section 3 of the lease states that the lessor “will provide 24/7 web-enabled monitoring at no additional cost to Lessee, as specified in the agreement.” **Please clarify who is responsible for providing internet access for the monitoring system.** If the lessee will be required to maintain and make available, at their cost, internet access for the monitoring system, this requirement needs to be specified in the lease agreement.

¹ See NCUC Docket Nos. E-7 Sub 1166 and E-2 Sub 1167, *Order Modifying and Approving Riders For Solar Rebate Program*.

- Section 4 of the lease requires the Lessee to keep the panels clean, pursuant to the Limited Warranty. There is no Limited Warranty, and this obligation is contrary to other sections of the lease that indicate lessor is responsible for cleaning (i.e., within the Minimum Guaranteed Annual Energy Generation section, there is a provision requiring the Lessee to provide ESL with roof access for any and all maintenance and module cleaning). **Please clarify who is responsible for cleaning the panels.**