

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement)	ORDER ADOPTING RULE R8-73
G.S. 62-126.7)	

BY THE COMMISSION: On October 17, 2017, the Commission issued an Order initiating this proceeding to adopt or modify the Commission's rules, as necessary, to implement the certification process for electric generator lessors pursuant to G.S. 62-126.7, as enacted by House Bill 589 (S.L. 2017-192). To facilitate said implementation, the Commission in that Order proposed a new rule (Proposed Rule) and a proposed application (Proposed Application) to obtain a certificate to engage in business as an electric generator lessor. That Order also set a schedule for intervention and receipt of comments, proposed rule or rule revisions, and replies thereto. Finally, that Order made parties to this proceeding all parties of record to Docket No. E-100, Sub 150.

On or after November 14, 2017, the following parties were allowed to intervene in this proceeding: North Carolina Electric Membership Corporation (NCEMC), North Carolina Sustainable Energy Association (NCSEA), Blue Ridge Electric Membership Corporation (Blue Ridge EMC), Haywood Electric Membership Corporation (Haywood EMC), Piedmont Electric Membership Corporation (Piedmont EMC), Rutherford Electric Membership Corporation (Rutherford EMC), North Carolina Waste Awareness and Reduction Network, Inc. (NC WARN), Solar Energy Industry Association (SEIA), and Fayetteville Public Works Commission (FPWC).

Between November 3, 2017, and November 9, 2017, Duke Energy Progress, LLC and Duke Energy Carolinas, LLC (collectively, Companies), NCEMC, NCSEA, SEIA, FPWC, Southern Environmental Law Center (SELC), and NC WARN filed initial comments. On November 22, 2017, the Companies, NCSEA, and the Public Staff of the North Carolina Utilities Commission (Public Staff) filed reply comments. No other parties filed initial or reply comments.

After carefully considering the initial and reply comments and the suggested revisions to the Proposed Rule and Proposed Application filed in this proceeding, the Commission adopts Rule R8-73, as set forth in Appendix A to this Order. In addition, the Commission adopts the application to obtain a certificate to engage in the business of electric generator leasing, as set forth in Appendix B to this Order. In this Order, the Commission summarizes the positions of the parties, and discusses its conclusions with respect to the issues raised by the parties. Suggestions or comments not specifically discussed herein have been considered and decided as reflected in the final rule and

application attached hereto. In adopting Rule R8-73 and the corresponding application, the Commission endeavored to give full effect to the intent of the General Assembly, as expressed in the plain language of G.S. 62-126.7 and the other pertinent provisions of Article 6B of Chapter 62 of the North Carolina General Statutes (Distributed Resources Access Act or Act).

SUMMARY OF COMMENTS

NCEMC

In its comments, NCEMC expresses concern that the Proposed Application could confuse the public, through its reference to electric membership corporation (EMC) service territory, into mistakenly thinking that an EMC customer can lease a solar energy facility. NCEMC argues that because solar leasing pursuant to G.S. 62-126.7 is not permissible in EMC service areas, it would be inappropriate to include a reference to EMC service providers in any final rule or application adopted by the Commission.

FPWC

In its initial comments, FPWC takes issue with the portion of the Proposed Application that references a “municipal electric service provider.” Similar to NCEMC’s point regarding EMC service territory, FPWC states that an electric generator lessor cannot solicit or engage in business in the service territory of a municipal electric service provider, pursuant to G.S. 62-126.9, unless the municipal electric service provider first elects to operate as an electric generator lessor and offers such leases within its own service territory. As a result, contends FPWC, the Proposed Application could create confusion among market participants regarding customer eligibility. To address this concern, FPWC suggests that the Commission include a footnote after the reference in its Proposed Application to a “municipal electric service provider” that specifies the requirement that an electric generator lessor may engage in business in a municipal electric service provider’s service territory only if the municipal electric service provider itself first has been deemed an electric generator lessor and offers such leases within the municipal provider’s own service territory.

NC WARN

In its initial comments, NC WARN states that the Proposed Rule and Proposed Application appear thorough without being burdensome. NC WARN does, however, contend that the Proposed Rule and Proposed Application are lacking in that neither requires an applicant to file with the Commission a proposed lease or, alternatively, a list of terms and conditions to be included in a future lease. NC WARN suggests inclusion of the following prescriptive list of lease terms and conditions: no upfront payments required of the lessee, the lessee’s option to pre-pay the lease or a portion of the lease to reduce subsequent monthly payments owed, the lessee’s option to own the system at the end of the lease term in exchange for payment of a nominal amount to transfer ownership, sufficient detail to inform the lessee about what would happen when the lease is no longer in effect or if the lessee wants to discontinue the lease early, sufficient detail to inform the

lessee about each party's responsibility for removal of the installed facility and restoration of the roof following removal, annual reconciliation between lease payments and amount of electricity actually produced by the system, no credit checks required of the lessee, the lessee's option to include battery storage in the lease, and the lessee's option to select a long-term lease of 20 years.

In addition to the lease terms and conditions for which NC WARN advocates, NC WARN recommends that the Commission should require each electric generator lessor to report on an annual basis the bill savings and electricity generated by the leased systems. NC WARN argues that an electric generator lessor, and particularly an offering utility lessor, should provide electric generator facility financing only, with equipment procurement and installation priced and installed independently by qualified in-state installers. Finally, NC WARN recommends that a utility-sponsored leasing program should include a set-aside, containing more favorable lease terms, for religious entities, schools, hospitals, local government operations, and other nonprofit entities.

SEIA

In its initial comments, SEIA argues that the Commission should clarify in more detail the application and review process to provide increased predictability to potential market entrants. SEIA first takes issue with the Proposed Rule's requirement that an applicant must demonstrate that it "has a reasonable and adequate knowledge of the business of owning and leasing solar facilities." SEIA contends that this requirement could potentially exceed an applicant's burden, pursuant to G.S. 62-126.7(b). SEIA further contends that the Proposed Rule is not clear on what qualifies as "reasonable and adequate knowledge," nor how such knowledge would be measured. SEIA suggests that the Commission either define what would constitute "reasonable and adequate knowledge," or consider whether such requirement already is addressed by requiring the applicant to show what is required by statute, namely that an applicant is "fit, willing and able to conduct business in accordance with the provisions of [the Act]." G.S. 62-126.7(b). SEIA further suggests that one way such fitness could be demonstrated is by an applicant having offered such leases or other similar third-party owned products in other jurisdictions.

SEIA next takes issue with subsection (b)(1)(iii) of the Proposed Rule, namely SEIA's contention that an applicant is required to provide more information than is necessary. In particular, SEIA contends that an applicant should not be required to list "the electric service providers within whose assigned service territory the applicant proposes to engage in or solicit business as an electric generator lessor." If the Commission's concern is that offering utilities should be made aware prospectively that the one-percent cap (1%), as set forth in G.S. 62-126.5(d), potentially could be reached in a given service territory, SEIA contends that such information should be tracked and accessible through interconnection applications. Relatedly, SEIA expresses concern that subsection (b)(5)(iv) of the Proposed Rule could result in duplicative paperwork and an unnecessary administrative burden on lessors. While SEIA agrees that it is necessary for the Commission to have a record of each leased facility and its respective compliance

with applicable law, the same goal instead could be accomplished by tracking this information through interconnection applications.

SEIA next takes issue with subsection (b)(5)(ii) of the Proposed Rule, which requires applicants to demonstrate financial solvency and adequate insurance coverage as part of the application process. SEIA argues that such requirements exceed the fitness showing required in G.S. 62-126.7(b). SEIA argues that the consumer protection concerns in the statute seem more focused on ensuring that consumers understand the terms of the lease contract, rather than evaluating the underlying financial health of potential lessors. In addition, SEIA asserts that, to its knowledge, no other jurisdiction imposes a financial solvency requirement on potential lessors. SEIA argues that, if the Commission determines that such a requirement is necessary, then such a standard should be reasonable and clearly defined so that potential market entrants can comply. SEIA suggests that any liability insurance coverage requirement be consistent with those required by the State of North Carolina for electrical contractors or other solar contractors. In support of this position, SEIA contends that it was not the intent of the General Assembly to subject electric generator lessors to more stringent requirements than other solar industry participants who interact directly with the consuming public.

SEIA next expresses concern that subsection (b)(5)(v) of the Proposed Rule, which requires a solar lease to meet the requirements of G.S. 62-126.6 and precludes a lessor from using the metered output as the basis for payments made under the lease, could potentially conflict with the statutory requirement that lessors provide a performance guarantee to lessees. SEIA contends, on the other hand, that the language of the Proposed Rule implies that a lessor cannot use metered output of the leased facility as the basis for guaranteeing, or otherwise providing compensation for, system performance. SEIA requests that this section of the Proposed Rule be clarified to help lessors better be able to comply with the terms of the statute.

SEIA next takes issue with the requirement that an applicant must consent to the auditing of its books and records by the Public Staff and the Commission. SEIA requests that the Commission establish a clear set of rules and guidelines about when such an audit would be ordered. SEIA advocates for a limitation on this authority, namely that such an audit only occur in the event of an active investigation of a lessor.

SEIA expresses concern over several references to the rights of “any interested person” with respect to the application and certificate reviews and investigation processes. SEIA requests that the Commission better define the grounds upon which someone properly can challenge an application, complain about a lessor, or otherwise participate in the review processes. SEIA opposes that, as currently written, the Proposed Rule seems automatically to require a hearing upon receipt of an application challenge or complaint, regardless of whether either has merit. In support of this position, SEIA argues that the unintended consequences could include unnecessary delay, expense, and undefinable risk to an applicant. SEIA suggests that the Commission reserve the right of challenging an application only to those parties who would have a material or financial interest in the specific project for which the application is submitted. Furthermore, SEIA

requests that the Commission establish an expedited review process first to determine whether a challenge to an application presents a legitimate issue of material fact before requiring a hearing. Similarly, SEIA requests that the Commission require that a complaint must meet certain minimum requirements before pursuing an investigation or opening a proceeding.

Finally, SEIA objects to the Proposed Rule's imposition upon the lessor to prove the lessor's own compliance with applicable laws and rules, in the event that a complaining party raises allegations of the lessor's non-compliance. SEIA argues that the complaining party, not the lessor, should have the burden of proving that a lessor is not complying with governing laws and rules.

SELC

In its initial comments, SELC notes that the Proposed Rule does not distinguish between non-utility electric generator lessors and the offering utilities or offering utilities' affiliates. SELC argues that, as regulated monopoly public utilities, the Companies could have a potential competitive advantage over non-utility electric generator lessors necessitating mitigation by the Commission. SELC suggests that the Commission consider whether the offering utilities should be subject to restrictions or disclosures above and beyond the requirements for a non-utility electric generator lessor. In particular, SELC argues that the Companies have an advantage related to brand recognition, customer acquisition, and pre-existing access to the following valuable, non-publicly available customer data: electricity usage, location, payment history, and contact information. Non-utility electric generator lessors, on the other hand, first must establish a business presence in order to successfully engage in the business of solar leasing. To mitigate the potential imbalance of power that could result, argues SELC, the Commission could require the Companies as part of their application to engage in business as an electric generator lessor to certify that they will not use existing customer data or relationships to acquire solar leasing customers. SELC further suggests that a violation of this assurance should result in revocation of the Companies' respective certificates to offer solar leasing.

SELC also contends that information regarding aggregated installed capacity should be made publicly available to track progress toward the statutory cap, pursuant to G.S. 62-126.5(d). To facilitate such transparency, SELC recommends that the offering utilities should file with the Commission quarterly updates reporting the current level of installed capacity in the leasing program on each offering utility's system. SELC, alternatively, suggests that the offering utilities be required to file with the Commission updates when increments of each one-quarter of a percent (0.25%) are reached until the statutory cap is reached.

Finally, SELC takes issue with the placeholder amount of insurance coverage referenced in the Proposed Rule. SELC notes that House Bill 589 does not include a liability insurance requirement for certification of electric generator lessors. SELC contends that, if the Commission decides to require such insurance, the coverage

requirement should balance the need for both consumer protection and a competitive market. SELC further contends that any insurance coverage requirements should not be so high as to discourage small businesses from engaging in the business of electric generator leasing.

NCSEA

In its initial comments, NCSEA states that it generally supports the Proposed Rule, with three exceptions. First, NCSEA states that the Proposed Rule references, but does not clarify, insurance coverage requirements for electric generator lessors. In response, NCSEA argues that the insurance requirements of Section 6.15 of the North Carolina Interconnection Procedures also would be applicable to leased solar facilities and, consequently, any additional requirement beyond the coverage already required is unnecessary. See Order Approving Revised Interconnection Standard, Docket No. E-100, Sub 101 (May 15, 2015) (North Carolina Interconnection Procedures, Section 6.15).

Second, NCSEA states that the Proposed Rule uses inconsistent directives with regard to the proper procedure to follow for solar leasing facility ownership changes. In Proposed Rule subsection (c)(2), for example, an ownership change seemingly requires Commission approval. In Proposed Rule section (d), however, a certificate holder only would be required to notify the Commission in the event of an ownership change. NCSEA recommends that the Commission rectify this inconsistency by deleting the approval requirement set forth in Proposed Rule subsection (c)(2) and the corresponding provision contained in the Proposed Application, while retaining the notification requirement set forth in Proposed Rule section (d).

Third, NCSEA suggests two improvements to the dispute resolution process set forth in the Proposed Rule. NCSEA expresses concern that subsection (g)(1) and section (d) of the Proposed Rule, as written, could have the unintended consequence of third parties arbitrarily requesting Commission investigation and review so as to disrupt an electric generator lessor's business operations. NCSEA further express concern that subsection (g)(4) of the Proposed Rule places on the lessors themselves the burden of proof to show their own compliance with applicable statutes and Commission rules. NCSEA argues that the burden of proof instead should be on the complaining party to show that an electric generator lessor is not complying with governing laws and rules.

In addition, NCSEA contends that two issues should have been, but were not, addressed in the Proposed Rule. Like SELC, NCSEA references the statutory cap of total installed capacity on an offering utility's system, based upon the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. NCSEA contends that electric generator lessors and lessees should have visibility into the amount of leased solar energy facility capacity installed on an offering utility's system. To facilitate visibility and transparency for electric generator lessors and lessees alike, contends NCSEA, the offering utilities should be required to file with the Commission reports or updates about total installed capacity and the previous five-year average of the offering utility's coincident retail peak demand. Second, NCSEA

references the customer generator lessee reservation process that the offering utilities are required to manage. NCSEA argues that the Commission should, through its rulemaking, exercise oversight of each offering utility's reservation process.

In its reply comments, NCSEA states that it agrees with SEIA that the Commission should provide additional details clarifying how the application and review processes will work. NCSEA further agrees with SEIA that the Commission should allow lessor applicants to demonstrate fitness to conduct business in North Carolina based upon a demonstrated history of offering leases and other solar products in compliance with the laws of other jurisdictions. NCSEA concurs with both SEIA and SELC that the Commission should carefully decide any liability insurance requirement such that it would ensure consumer protection without creating an unnecessary or undue burden for lessors.

Also in its reply comments, NCSEA reiterates its concern that the Proposed Rule apparently mandates an investigation upon receipt of a complaint against a lessor. Accordingly, NCSEA agrees with SEIA's recommendation that the Commission amend the applicable portion of the Proposed Rule accordingly. NCSEA further agrees with SEIA that the Commission should amend subsection (b)(5)(v) of the Proposed Rule to make clear that leases may not be based exclusively on the metered output of a generating facility, but may include performance guarantees.

In response to SELC's comment that access to pre-existing customer data could potentially provide the offering utilities a competitive advantage over non-utility lessors, NCSEA suggests that the Commission adopt a policy similar to the rules implementing the competitive procurement of renewable energy. See Order Adopting and Amending Rules, Docket No. E-100, Sub 150 (November 6, 2017). In that proceeding, the Commission limited the use of non-publicly available information by the offering utilities and their affiliates.

In response to NCEMC and FPWC's comments, NCSEA states that it supports both parties' recommendations and that incorporating the same will reduce the likelihood of inadvertent violations of the laws and rules governing lessors' conduct. Finally, NCSEA supports SELC's suggestion that the offering utilities should be required to file reports with the Commission to track progress toward the statutory cap. Accordingly, NCSEA reiterates its request that the Commission adopt such a reporting requirement.

The Companies

In their initial comments, the Companies state that they generally support the Proposed Rule and the Proposed Application. However, the Companies point out that the Proposed Rule contains a placeholder for the amount of insurance coverage an electric generator lessor would be required to obtain before obtaining Commission certification to conduct business. The Companies suggest that the Commission adopt a rule that would require electric generator lessors to obtain sufficient insurance coverage to protect consumers who choose to lease solar facilities.

In their reply comments, the Companies generally concur with NCSEA and SELC that it would be reasonable for the offering utilities to report to the Commission on the total capacity of all leased solar energy facilities installed on each offering utility's system, in addition to the North Carolina Coincident Peak Demand. To that end, the Companies recommend that the offering utilities be required to file with the Commission an annual report, on or before April 1 of each year, identifying the aggregate total capacity of all leased solar energy facilities installed on their respective systems during the preceding calendar year as compared to each offering utility's North Carolina Coincident Peak Demand. To collect this information, the Companies suggest that the electric generator lessors be required to identify on their Interconnection Request Application Form that the facility will be leased. The offering utilities could then track the information, and in addition suggest that such information be submitted to the Commission as part of the Small Generator Interconnection Consolidated Annual Report filed each March. See Docket No. E-100, Sub 113B.

The Companies agree with both NCEMC and FPWC's recommendations regarding changes to the Proposed Rule's references to EMCs and municipal electric service providers, respectively.

The Companies disagree with SELC's recommendation that the Commission should impose constraints on the offering utilities' ability to use existing customer relationships and non-public data to provide solar leasing opportunities to each utility's own customers. The Companies note that they already are subject to a Code of Conduct that limits their usage of the types of customer-related information and marketing efforts that form the basis of SELC's objections. The Companies contend that the Code of Conduct does not prohibit such activities and, to the contrary, actually contemplates such practices. Furthermore, the Companies argue that SELC identified neither a consumer benefit nor protection that inclusion of such a requirement purportedly would promote. In addition, the Companies state that customers may, at any time, authorize the Companies to disclose non-public customer information, such as billing history or usage data, to a third-party electric generator lessor. As far as an affiliate of the Companies potentially accessing such non-public customer information, the Companies contend that the Code of Conduct would prohibit such activity absent express customer authorization. Accordingly, the Companies argue that their continued compliance with the Code of Conduct is sufficient with respect to the electric generator leasing program.

The Companies generally disagree with SEIA that the Commission's Proposed Rule requirements are unduly burdensome on third-party electric generator lessors, or otherwise are unreasonable. Specifically, the Companies disagree with SEIA's contention that subsection (b)(5)(iv) of the Proposed Rule would result in duplicative filings and increased administrative burden to be borne by third-party electric generator lessors. The Companies contend that such filing requirements are consistent with applicable law and existing Commission rules and, furthermore, that the Proposed Rule provision would impose no greater burden on electric generator lessors than all other renewable energy generator owners. See, e.g., G.S. 62-110.1(g); Commission Rule R8-65.

The Companies further disagree with SEIA's contention that subsection (b)(5)(v) of the Proposed Rule is inconsistent with the statutory performance guarantee requirement. See G.S. 62-126.6(a)(4). The Companies also disagree with the implication that such guarantee could take the form of a payment. Rather, the Companies contend that the performance guarantee merely is a consumer protection mechanism by which the lessee should have the right to terminate the lease if the system is underperforming.

The Companies contend that SEIA's suggestion that the Commission should define who constitutes an interested party for purposes of challenging or complaining about an electric generator lessor is unnecessary on the grounds that existing Commission precedent and rules recognize that the right to intervene in a Commission proceeding is not infinite. See, e.g., Commission Rule R1-19(d); Order Denying Petition to Intervene, Docket Nos. G-5, Sub 508, G-23, Sub 2 (August 17, 2009). The Companies similarly believe that Commission precedent and applicable procedural rules offer sufficient guidance to allow the Commission to distinguish between a meritorious challenge and a frivolous complaint. The Companies, therefore, take the position that SEIA's requests to modify these provisions are unnecessary, as the relevant sections of the Proposed Rule reasonably align with existing procedural rules and standards of the Commission.

Although the Companies generally are not opposed to NC WARN's suggestion that electric generator lessors should be required to file with the Commission a proposed lease, the Companies point out that G.S. 62-126.6 already provides detailed requirements and disclosures to be included in an electric generator lease. They, therefore, seem satisfied that subsection (b)(5)(v) of the Proposed Rule, which requires an applicant to provide proof or certification that its lease meets the statutory requirements, is sufficient. The Companies oppose NC WARN's proposed list of prescriptive lease requirements on the following grounds: the Companies contend that such a list is unnecessary, the Companies contend that such a list is inapplicable to all leases, and that the Proposed Rule sufficiently addresses an applicant's compliance with the statutorily-prescribed list of lease requirements. Furthermore, the Companies note that the Commission will have ongoing oversight and jurisdiction, as necessary and appropriate pursuant to governing law, of an electric generator lessor's operations and lease agreements.

Public Staff

In its reply comments, the Public Staff states that while it did not file initial comments, it generally is supportive of the Proposed Rule and the Proposed Application. The Public Staff also included in its reply comments suggested revisions to the Proposed Rule and the Proposed Application. In response to NCEMC and FPWC's comments, the Public Staff states that it supports both parties' recommendations and included the changes accordingly in its redlined proposed rule.

The Public Staff does not take a position on the specific amount of insurance coverage appropriate for electric generator lessors to obtain, but opines that inclusion of such a requirement is appropriate and potentially could serve a different purpose than the

liability coverage required for interconnection customers pursuant to the North Carolina Interconnection Procedures. See Order Approving Revised Interconnection Standard, Docket No. E-100, Sub 101 (May 15, 2015) (Section 6.15). However, the Public Staff recommends deletion of the phrase “and the financial ability to settle any damage claims for which it is liable” from subsections (b)(5)(ii) and (c)(3)(ii) of the Proposed Rule.

In response to SEIA’s concerns regarding the application review process addressed by section (f) of the Proposed Rule, the Public Staff notes the Commission’s existing discretionary authority to appropriately determine who constitutes an “interested person” for purposes of intervening, and whether a protest raises a material issue of fact sufficient to warrant an investigation or hearing. Accordingly, the Public Staff contends that section (f) of the Proposed Rule should remain, as written, in the final rule.

While the Public Staff recognizes the importance of including a mechanism through which the Commission can retain jurisdiction and investigate complaints, as necessary, the Public Staff submits that modifications to section (g) of the Proposed Rule are necessary to ensure that the Commission maintains its ability to investigate the merits of a complaint before determining whether to open a formal proceeding on the matter. The Public Staff similarly agrees with SEIA and NCSEA that the complaining party should bear the burden of proof to show that the electric generator lessor is not in compliance with governing law. Accordingly, the Public Staff included redlined changes to section (g) of the Proposed Rule in its reply comments.

In response to NCSEA and SEIA’s concerns regarding the language contained in subsection (b)(5)(v) of the Proposed Rule, the Public Staff disagrees and opines that the proposed language should remain intact. In support of this position, the Public Staff contends that Commission precedent has held that payments of any kind based on the metered output of electricity constitute the sale of electricity and, as such, performance guarantees based on metered output of the leased facility would violate G.S. 62-126.5(b). See Order Issuing Declaratory Ruling, Docket No. SP-100, Sub 31 (April 15, 2016).

In response to SELC’s recommendation that the offering utilities should be subject to additional limitations to avoid attaining a competitive advantage over third-party electric generator lessors, the Public Staff states that the General Assembly authorized participation by the Companies in the electric generator leasing program. The Public Staff further states that the Companies, and any affiliate thereof, already are subject to the utility Codes of Conduct. In addition, the Public Staff notes that the Commission can impose additional limitations, as necessary, on the Companies at the time of Commission review and approval of an offering utility’s solar leasing program.

In response to NC WARN’s advocacy for certain prescriptive guidelines for electric generator lease terms and conditions, the Public Staff contends that such provisions are unnecessary for inclusion in governing rules at this time and that such terms will be developed by market participants as the market develops. The Public Staff further contends that the set-aside for certain market participants, as suggested by NC WARN,

is not contemplated by the statute and therefore, should not be included in the Commission's rulemaking.

In response to NCSEA's discussion of the reservation system for capacity by customer generator lessees, pursuant to G.S. 62-126.5(d), the Public Staff recommends that the Commission require the offering utilities to make their reservation system available online and to provide clear instructions regarding the process for reserving capacity in the program. The Public Staff agrees with both SELC and NCSEA that the offering utilities should be required to make publicly available information on participation in solar leasing programs to allow all parties, and the public, to track progress toward the statutory cap. The Public Staff recommends that these filings should be made as an offering utility reaches increments of one-quarter of a percent (0.25%) until the statutory cap is reached. In addition to these filings, the Public Staff recommends that the installed capacity and the reservation capacity being held by each offering utility, as well as the percentile that each category represents toward the statutory cap, should be included in each utility's Small Generator Interconnection Annual Reports filed in Docket No. E-100, Sub 113B.

In its redlined proposed application form, the Public Staff states that it utilizes a certification form similar to that which is submitted to the Commission for renewable energy facility registration statements. See Commission Rule R8-66. In addition, the Public Staff's proposed application form requires applicants to include exhibits providing sufficient evidence of their compliance with governing law, including copies of sample lease agreements.

Finally, the Public Staff recommends that, upon approval of an application to operate as an electric generator lessor, the Commission should maintain a public list on its website, to include contact information for all certified lessors. The Public Staff states that this could be accomplished by rule or separate Commission Order.

DISCUSSION AND CONCLUSIONS

Based upon the foregoing and the entire record in this proceeding, the Commission adopts Rule R8-73, as set forth in Appendix A to this Order. In addition, pursuant to G.S. 62-126.7(a), the Commission adopts the Application for a Certificate to Engage in Business as an Electric Generator Lessor, as set forth in Appendix B to this Order, as the form prescribed for applying for such certificates.

The Commission carefully considered all comments, reply comments, proposed rule revisions, and proposed application revisions filed in this proceeding. The Commission notes that, in large part, the parties generally do not oppose the majority of the Proposed Rule provisions and, for the provisions that some parties do oppose, the objections seem limited to a narrow set of finite issues. The parties' filings and proposed rule revisions were quite helpful to the Commission in this proceeding to implement G.S. 62-126.7.

As an initial matter, the Commission determines that Rule R8-73 primarily should be a rule governing the filing and review requirements of the electric generator leasing program pursuant to G.S. 62-126.7. Thus, the Commission reserves judgment on a number of issues proposed and discussed by the parties in this proceeding until completed applications are received, at which time those issues may become ripe for Commission review and decision. For example, the filings of the Public Staff and other intervenors appear to contemplate, and Rule R8-73 requires, that the offering utilities and their affiliates also will have to apply for a certificate to engage in business as an electric generator lessor. In reviewing those applications, the Commission will consider at that time issues related to the Companies' access to non-publicly available data in their business operations as potential electric generator lessors.

The Commission concludes that the revisions proposed by the Public Staff to both the Proposed Rule and the Proposed Application are appropriate and generally should be included in Rule R8-73 and the final application. The Public Staff's proposed changes, among other things, incorporate the revisions advanced by NCEMC and FPWC with respect to the potential confusion that could result from the Proposed Application's reference to electric membership corporations and municipal electric service providers. The Commission agrees with the concerns raised and, accordingly, adopts the recommended change to delete from the Proposed Application the reference to "electric membership corporation." To address the concern regarding the Proposed Application's reference to "municipal electric service provider," the Commission adopts the Public Staff's recommended change to add a footnote to the Proposed Application, clarifying that an electric generator lessor may seek to engage in or solicit business as an electric generator lessor in the assigned service territory of a municipal electric service provider only, in accordance with G.S. 62-126.9, if the municipal electric service provider has itself been deemed an electric generator lessor and offers solar leases within its own service territory.

Similarly, the Public Staff's proposed revisions also address the concerns of many parties to this proceeding with regard to section (g) of the Proposed Rule, namely the striking of language seeming to suggest that the Commission automatically must open a proceeding upon receipt of a complaint against a certificate holder. In addition, the Public Staff makes permissive, rather than mandatory, the Commission's procedural responsibilities in its review of an existing certificate, allowing the Commission more discretion to dismiss frivolous complaints, while still investigating and acting as otherwise appropriate in response to meritorious ones. Finally, consistent with NCSEA's recommendation, the Public Staff revises the language such that the complaining party, rather than the certificate holder itself, has the burden of proving that the certificate holder has not complied with applicable statutes or Commission rules. The Commission reserves the right, however, to institute its own investigation or hearing against an electric generator lessor, in which case the lessor still would have the burden of proof. The Commission also adopts the Public Staff's proposed changes, which further preserve the Commission's ability to require a certificate holder to make appropriate filings to demonstrate its compliance with the provisions of Article 6B of Chapter 62, as necessary. Accordingly, the Commission adopts modified suggestions advanced by the Public Staff

and NCSEA, and seemingly supported by multiple other parties, into Rule R8-73 and the final application to engage in business as an electric service provider.

The Commission also adopts various formatting suggestions advanced by the Public Staff, after finding that the proposed modifications streamline the text of the rule and conform to the conventions of other Commission rules. In addition, the Commission finds it reasonable and helpful to include the references to additional legal business entities in information field six of the Proposed Application, as proposed by the Public Staff. For the same reasons, the Commission adopts the Public Staff's proposed additional information fields addressing ownership entities that are incorporated in another jurisdiction outside North Carolina and requesting the applicant's electronic mailing address. The Commission agrees with the Public Staff's recommendation to strike the requirement that an applicant possess the "financial ability to settle any damage claims for which it is liable" on the grounds that the solvency and insurance protection requirements adequately ensure consumer protection. Finally, in an effort to ensure a thorough application review process in a manner consistent with other Commission application reviews, the Commission adopts the Public Staff's recommendation to include a requirement that the applicant submit exhibits demonstrating its compliance with applicable statutes and Commission rules, including the following: proof of good standing with the North Carolina Department of the Secretary of State, a description of the applicant's fitness, a description of the applicant's financial solvency, a copy of all forms used for leases, and any applicable merger information.

The Commission notes that the inclusion of a requirement that an applicant must attach as an exhibit to its application all lease forms to be used in the electric generator leasing program addresses the concerns of NC WARN and other parties that the Commission may not be able to thoroughly review lease terms and conditions prior to certification. However, the Commission generally rejects NC WARN's argument that a prescriptive list of lease terms and conditions should be required of electric generator lessors. While the General Assembly enacted a detailed list of requirements for lease agreements offered by an electric generator lessor, pursuant to G.S. 126-6, such requirements involve required content and disclosures for the protection of customer lessees. Article 6B of the Act is silent as to the substantive requirements of the terms of the lease that NC WARN suggests in its comments. The Commission concludes that the General Assembly's intent in authorizing and regulating the leasing of solar energy facilities through the enactment of Article 6B of the Act was to foster a competitive market for the leasing of solar facilities. In such a market, consumers can shop around and choose the substantive lease options that best meet their interests. Adopting NC WARN's proposed required lease offerings seemingly would make all electric generator lessors the same and, thereby, stifle rather than promote a competitive solar leasing market.

The Commission agrees with NCSEA that subsection (c)(2) and section (d) of the Proposed Rule seemingly contradict one another in that subsection (c)(2) appears to require Commission approval prior to a change in ownership of an electric generator lessor, while section (d) appears only to require notification to the Commission of such

change. Accordingly, the Commission keeps in its final rule section (d), but deletes subsection (c)(2).

Perhaps the most discussed issue, about which the Public Staff declined to take a position, is the specific amount of general liability insurance coverage that an electric generator lessor should be required to carry and maintain. It bears noting that no party proposed a specific amount of coverage that would strike the balance between addressing the need for consumer protection, while not deterring small or new market entrants. The Public Staff supports the requirement that such insurance, separate and apart from the requirements contained in the North Carolina Interconnection Procedures, is appropriate. Similarly, the Companies support the requirement of electric generator lessors carry and maintain general liability coverage in an amount necessary to ensure adequate consumer protection. SEIA and NCSEA, meanwhile, oppose the requirement on the grounds that it exceeds the statutory requirements and is unnecessary because of the insurance coverage already required by the North Carolina Interconnection Procedures. SELC's position is that, if the Commission requires liability insurance coverage, it should be in an amount that balances the interests of consumer protection and the encouragement of a competitive market. Without a proposed amount of insurance limits advanced by any party, the Commission utilized SEIA's recommendation that it should look to relevant state contracting boards to determine a reasonable amount of required insurance. The Commission also referred, pursuant to the recommendation of several other parties, to the insurance requirements set forth in the North Carolina Interconnection Procedures. After reviewing these sources, the Commission, in its discretion, finds a requirement that an electric generator lessor carry and maintain \$100,000 in general liability insurance limits to be reasonable and appropriate. This amount appears generally consistent with the bonding requirement for a limited license issued by the North Carolina Board of Examiners of Electrical Contractors, and with the liability coverage required by Section 6.15.1 of the North Carolina Interconnection Procedures. The Commission finds this amount to be adequate to ensure consumer protection, but not overly burdensome so as to discourage a competitive marketplace. Relatedly, the Commission assumes that the installers of electric generator facilities will be properly licensed by the North Carolina Board of Examiners of Electrical Contractors, and bonded or insured accordingly. Furthermore, the Commission notes that G.S. 62-126.3(f) requires that a solar energy facility obtain permission, before operating, from several state and federal agencies. Thus, the Commission recognizes that it is not the only agency through which consumers' interests are furthered. For these reasons, the Commission concludes that a required general liability insurance policy with limits of \$100,000 will further the General Assembly's intent to balance consumer protection with encouraging a competitive market.

The Commission further agrees with SEIA that the requirement that an applicant for an electric generator lessor application must demonstrate that it possesses "reasonable and adequate knowledge of the business of owning and leasing solar energy facilities" is unnecessary because an applicant's fitness already encompasses aspects such as industry knowledge. The Commission stresses, however, that it would cast doubt upon an applicant's requisite fitness if an applicant were unable to demonstrate such

knowledge, but does not find a need to adopt industry “knowledge” as a separate, express requirement in the rule.

Based upon the foregoing and the entire record in this proceeding, the Commission adopts Rule R8-73, as set forth in Appendix A, attached hereto. The Commission further adopts the application to obtain a certificate to engage in the business of solar energy facility leasing, as set forth in Appendix B to this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of January, 2018.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Linnetta Threatt".

Linnetta Threatt, Deputy Clerk

Rule R8-73. APPLICATIONS FOR CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS AS AN ELECTRIC GENERATOR LESSOR; TRANSFERS; AND NOTICE

(a) Scope of Rule.

- (1) This rule applies to applications for a certificate to engage in business as an electric generator lessor filed pursuant to G.S. 62-126.7 by any person seeking to own and lease one or more solar energy facilities as authorized by and subject to the provisions of Article 6B of Chapter 62.
- (2) The terms and definitions set forth in G.S. 62-126.3 apply for the purposes of this rule.
- (3) This rule shall apply to any offering utility, or any other person or entity who owns and leases a solar energy facility to another person, holds itself out as doing so or able to do so, solicits another person to enter into a lease of a solar facility, or that proposes such a transaction or arrangement, by whatever name, which substantively functions as a lease of a solar energy facility, without regard to whether such person or entity intends to do so for pecuniary gain.

(b) The Application.

- (1) The Application shall be comprised of the following:
 - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the applicant;
 - (ii) A statement of whether the applicant is an individual, a partnership, a limited liability company, or a corporation; and, if a partnership, the name, telephone number, business address, and electronic mailing address of each partner; and, if a limited liability company, the name, telephone number, business address, and electronic mailing address of each member; and, if a corporation, the name, telephone number, business address, and electronic mailing address of each corporate officer; and, if a foreign corporation, whether domesticated in North Carolina;
 - (iii) A listing of the electric service providers within whose assigned service territory the applicant proposes to engage in or solicit business as an electric generator lessor;
 - (iv) The proof or certification required by G.S. 62-126.7 and this Rule, as appropriate; and
 - (v) A verification that the person submitting the application is authorized to do so on behalf of the applicant, has read and knows the content of the application, and that the contents of the application are true to the best of his or her information or belief.
- (2) Application for authority to engage in business as an electric generator lessor shall be made on the form furnished by the Commission and any exhibits must be attached thereto and made a part of the application. The original and three (3) complete copies of the application, including exhibits, must be filed with the Commission with a copy to the Public Staff. The original and the copies shall be fastened separately. No application shall be deemed filed until the Commission receives and collects the filing fee as set forth in G.S. 62-300.

- (3) Applications filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should the Commission schedule a hearing on the application or establish a proceeding to review the certificate, the requirements of G.S. 84-4 and G.S. 84-4.1 shall apply.
- (4) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must sign and verify the application. The names and addresses of the officers of the corporation must be given and a certified copy of the corporate charter filed with the application. If the applicant is a limited liability company, a manager of the limited liability company must sign and verify the application. The names and addresses of the principal members and managers of the limited liability company must be given and a certified copy of the articles of organization filed with the application.
- (5) Pursuant to G.S. 62-126.7, the applicant shall provide proof or certification of the following:
 - (i) That the applicant is fit, willing, and able to own and lease solar energy facilities;
 - (ii) That the applicant is financially solvent, able to obtain and continue adequate insurance protection, and able to maintain its equipment in a safe, dependable manner;
 - (iii) That the applicant maintains minimum limits of \$100,000 of general liability insurance coverage;
 - (iv) That the applicant will register with the Commission each solar energy facility that the applicant owns and leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or a report of proposed construction and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard, an application to register the facility as a new renewable energy facility pursuant to Rule R8-66;
 - (v) That the applicant's lease agreements meet the requirements of G.S. 62-126.6, and that any payments made under the lease are not based upon the metered output of the leased facility;
 - (vi) That the applicant will consent to the auditing of its books and records by the Public Staff and the Commission insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State;

- (vii) That the applicant will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers; and
 - (viii) That the applicant will annually file on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.
- (c) Sale or Transfer of the Certificate.
- (1) No transfer or sale of a certificate may occur before the transferee or buyer, respectively, certifies to the Commission its present and future compliance with G.S. 62-126.7 and makes the following additional representations:
 - (i) That the transferee or buyer is fit, willing, and able to own and lease solar energy facilities;
 - (ii) That the transferee or buyer is financially solvent, able to obtain and continue adequate insurance protection, and maintain its equipment in a safe, dependable manner;
 - (iii) That the transferee or buyer maintains minimum limits of \$100,000 of general liability insurance coverage;
 - (iv) That the transferee or buyer will register with the Commission each solar energy facility that the transferee or buyer leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or report of proposed construction and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard, an application to register as a new renewable energy facility;
 - (v) That the transferee or buyer's lease agreements meet the requirements of G.S. 62-126.6, and that any payments made under the lease are not based upon the metered output of the leased facility;
 - (vi) That the transferee or buyer will consent to the auditing of its books and records by the Public Staff and the Commission insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State;
 - (vii) That the transferee or buyer will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers; and
 - (viii) That the transferee or buyer will annually file on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.

- (2) If the transferee or buyer is a corporation, a true and accurate or certified copy of its corporate charter must be filed with said certification unless same is already on file with the Commission. If the transferee or buyer is a limited liability company, a true and accurate or certified copy of its articles of organization must be filed with said certification unless same is already on file with the Commission.
- (d) Amendment to Certificate. A holder of a certificate to engage in business as an electric generator lessor shall notify the Commission within fifteen (15) days of any material change in status, including change in the assigned service territories where the certificate holder is operating as an electric generator lessor.
- (e) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (f) Procedure upon receipt of Application. - Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
 - (1) The Chief Clerk will assign a new docket or sub-docket number to the filing.
 - (2) The Commission will issue an order requiring the applicant to transmit notice thereof to each offering utility or municipal electric service provider within whose assigned service territory the applicant proposes to operate. The applicant shall be responsible for filing with the Commission a signed and verified certificate of service to the effect that the application and notice have been mailed to each offering utility or municipal electric service provider within whose assigned service territory the applicant proposes to operate.
 - (3) If the applicant does not file the certificate of service within twelve (12) months of the Commission's order requiring mailing of notice, the Commission will dismiss the application.
 - (4) No later than twenty (20) business days after the application is filed with the Commission, the Public Staff shall file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information.
 - (5) If no protests raising material issues of fact to the granting of the application are filed with the Commission within thirty (30) days after the certificate of service is filed, and the Commission does not order a hearing on its own initiative, the Commission shall proceed to decide the application on the basis of information contained in the application and exhibits and the recommendation required by subsection (f)(4) of this rule.

- (6) If a protest raising a material issue of fact to the granting of the application is filed within thirty (30) days after the certificate of service is filed, the Commission shall set the application for hearing and cause notice thereof to be given to the applicant and all other parties of record.
- (g) Review, Suspension, Reinstatement, or Revocation of Certificate.
 - (1) Upon the request of an electric public utility, a municipal electric service provider, an electric membership corporation, the Public Staff, a customer generator lessee, or other person having an interest in a certificate holder's conduct of its business, or upon the Commission's own motion for good cause, the Commission shall investigate whether the electric generator lessor is conducting business in compliance with the provisions of Article 6B of Chapter 62, the conditions on the certificate, or a lawful order of the Commission.
 - (2) In reviewing the certificate, the Commission may issue an order requiring the certificate holder to make appropriate filings to demonstrate its compliance with the provisions of Article 6B of Chapter 62 and this Rule, and setting a schedule for the proceeding, including setting the matter for hearing.
 - (3) By issuance of the order establishing a review proceeding, the Commission, in its discretion, may suspend the certificate and require the certificate holder to immediately cease and desist from engaging in business as an electric generator lessor.
 - (4) At any hearing instituted upon request of a complaining party for the purpose of reviewing the certificate holder's compliance with the provisions of Article 6B of Chapter 62 and this Rule, the complainant shall have the burden of proof. At any other hearing, including a hearing instituted by the Commission, the burden of proof shall be on the electric generator lessor.
 - (5) After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a suspension of a certificate, or revoke a certificate. In addition, the Commission may impose a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence for any person whom the Commission determines either directly or indirectly engaged in any unfair or deceptive practice in the leasing of solar energy facilities, otherwise violated the requirements of G.S. 62-126.6, or operated in violation of the terms of the certificate.
 - (6) The certificate shall be subject to administrative revocation if the certificate holder fails to file the certificate of compliance required by this rule on or before April 1 of each year, or if the certificate holder is demonstrated to have failed to conduct business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers, and that fact is brought to the attention of the Commission.

(h) Procedure on Complaint that a Person is Operating without a Certificate.

- (1) Upon complaint of an electric public utility, a municipal electric service provider, an electric membership corporation, the Public Staff, a customer generator lessee, or other person having an interest in the conduct of a person who is alleged to be operating as an electric generator lessor without a valid certificate, the Commission shall enter upon a proceeding to investigate the complaint.
- (2) In a proceeding to investigate a complaint that a person is alleged to be operating as an electric generator lessor without a valid certificate, the Commission shall issue an order establishing the proceeding, requiring appropriate filings from the parties, and setting a schedule for the proceeding, including setting the matter for hearing.
- (3) By issuance of the order establishing a proceeding to investigate a complaint that a person is alleged to be operating without a valid certificate, the Commission may require such person to immediately cease and desist from engaging in business as an electric generator lessor.
- (4) At the hearing in a proceeding to investigate a complaint that a person is alleged to be operating without a valid certificate, the complainant shall have the burden to show that the person is soliciting business or otherwise operating as an electric generator lessor without a valid certificate.
- (5) The Commission, upon determining that the person is soliciting business or otherwise operating as an electric generator lessor without a valid certificate may, by final order issued in such an investigatory proceeding, declare such person to have violated the provisions of Article 6B of Chapter 62, restrain permanently the person from engaging in the conduct complained of, and impose a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence.

(i) Reporting.

- (1) Each offering utility shall file with the Commission a report, on or before April 1, 2019, and each calendar year thereafter, which contains the following information: (i) the total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to G.S. 62-126.7; (ii) the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand; and (iii) the percentage of available installed capacity remaining until the statutory cap set forth in G.S. 62-126.5(d) is reached.
- (2) In addition to the report required in subsection (i)(1) of this Rule, the offering utility shall file with the Commission a notice when the total installed capacity of all solar energy facilities installed on the utility's system that are leased pursuant to G.S. 62-126.7 represents 0.25 percent, 0.5 percent, and 0.75 percent of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The report required by this subsection shall be filed within twenty (20) days after the offering utility having reached the respective level of installed capacity.

North Carolina Utilities Commission

Application for a Certificate to Engage in Business as an Electric Generator Lessor – Rule R8-73

This form is applicable to applications for a Certificate to Engage in Business as an Electric Generator Lessor (CBEGL) as required by G.S. 62-126.7.

<p>You may file this application electronically; please see www.ncuc.net/electronicfiling.html for instructions. If you file a paper version, you must file the original plus three (3) copies. The mailing address is:</p> <p>Chief Clerk NC Utilities Commission 4325 Mail Service Center Raleigh, NC 27699-4300</p>		
	Information required by Rule R8-73	Applicant's Response
<u>1</u>	Applicant's full and correct name	
<u>2</u>	Applicant's business address	
<u>3</u>	Applicant's business telephone number	
<u>4</u>	Applicant's electronic mailing address	
<u>5</u>	The Applicant is (check one)	<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company
<u>6</u>	If a partnership, corporation, or LLC, the name, telephone number, and business and electronic mailing address of each general partner, principal managing officer or member/manager (add additional sheets if necessary)	
<u>7</u>	If a corporation, the state and date of incorporation	
<u>8</u>	If a corporation that is incorporated outside of North Carolina, is it domesticated in North Carolina?	
<u>9</u>	Applicant's agent for the purposes of this application, if applicable	
<u>10</u>	Agent's business address	
<u>11</u>	Agent's telephone number	
<u>12</u>	Agent's electronic mailing address	
<u>13</u>	Identify each electric service provider within whose assigned service territory that the Applicant proposes to engage in or solicit business as an electric generator lessor (e.g. Duke Energy Progress, Duke Energy Carolinas, municipal electric service provider*, etc.)	

*An electric generator lessor may seek to engage in or solicit business as an electric generator lessor in the assigned service territory of a municipal electric service provider only in accordance with G.S. 62-126.9 if the municipal electric service provider has itself been deemed an electric generator lessor and offers solar leases within its own service territory.

PROVISIONS

14. A holder of a certificate to engage in business as an electric generator lessor shall notify the Commission within fifteen (15) days of any material change in status, including change in the assigned service territories where the certificate holder is operating as an electric generator lessor.

REQUIRED EXHIBITS

15. If the Applicant is a corporation, limited liability company, limited partnership, or other legal business entity, enclose a copy of the certification from the North Carolina Department of the Secretary of State (Articles of Incorporation or Application for Certificate of Authority for Limited Liability Company, etc.). (Must match name on Line 1 of application.)
16. If the Applicant is a corporation, limited liability company, or partnership, enclose a certified copy of the articles of incorporation, articles of organization, or partnership agreement, respectively. (Must match name on Line 1 of application.)
17. Enclose a description of how the Applicant is fit, willing, and able to own and lease solar energy facilities.
18. Enclose a description of the Applicant's financial solvency, ability to obtain and continue adequate insurance coverage, and ability to maintain its equipment in a safe, dependable manner.
19. Enclose a copy of all forms used for leases to customer generator lessees that comply with the requirements of G.S. 62-126.6.

CERTIFICATIONS

1. ☐ YES ☐ NO

Does the Applicant maintain minimum limits at least \$100,000 of general liability insurance coverage?

2. ☐ YES ☐ NO

Does the Applicant commit that it will register with the Commission each solar energy facility that the Applicant owns and leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or report of proposed construction, and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and

Energy Portfolio Standard, an application to register the facility as a new renewable energy facility pursuant to Rule R8-66?

3. ☐ YES ☐ NO

Does the Applicant commit that its lease agreements will meet the requirements of G.S. 62-126.6 and the payments made under the lease will not be based upon the metered output of the leased facility?

4. ☐ YES ☐ NO

Does the Applicant consent to the auditing of its books and records by the Commission and the Public Staff insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State?

5. ☐ YES ☐ NO

Does the Applicant commit to conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers?

6. ☐ YES ☐ NO

Does the Applicant commit to annually file, on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and Commission Rule R8-73?

SIGNATURE

Application shall be signed and verified by an authorized representative of the Applicant. (If the Applicant is a limited liability company, a manager of the limited liability company must sign and verify the application. If the Applicant is a partnership, a partner must sign and verify the application. If the Applicant is a corporation, a duly authorized officer of the corporation must sign and verify the application.)

Signature: _____

Printed Name: _____

Title: _____

Date: _____

VERIFICATION

STATE OF _____

COUNTY OF _____

_____ personally appeared before me this day and, being first duly sworn, says that he or she is authorized to submit this application on behalf of the Applicant, has read and knows the content of the application, and the contents of the application are true to the best of his or her information or belief.

WITNESS my hand and notarial seal, this _____ day of _____, 20____.

My Commission Expires: _____

Signature of Notary Public

Name of Notary Public – Typed or Printed

The name of the person who completes and signs the application must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. This original verification must be affixed to the original application, and a copy of this verification must be affixed to each of the three (3) copies that are also submitted to the Commission.