

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 134

FILED

SEP 23 2014

In the Matter of:)
Filing Requirements for New Electric)
Generators)

COMMENTS of the Staff
Utilities Commission

NCSEA'S COMMENTS

On 8 September 2014, the North Carolina Utilities Commission (“Commission”) issued an *Order Requesting Comments on Proposed Rule Changes* (“*Order*”) in the above-referenced docket. The North Carolina Sustainable Energy Association (“NCSEA”) files these comments pursuant to the *Order*. Given the Commission’s desire to clarify Commission Rule R8-64 and make it easier to administer, NCSEA recommends five revisions to Rule R8-64. NCSEA appreciates the Commission’s consideration of NCSEA’s recommendations. NCSEA’s proposed revisions are detailed below.

Recommendation No. 1:

The Commission’s *Order* contains the following language (including proposed strike-throughs and underlined amendments):

(2) In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a projected dependable capacity of 5 megawatts or more available for such sale shall include in the application the following ~~information and~~ three additional exhibits:

Order, p. 10 of Appendix A.

The phrase “projected dependable capacity” appears in Rule R8-64(b)(2) in the block quote above and in Rule R8-66(b)(1)(III), another Commission rule that governs the registration of renewable energy facilities. It appears renewable project developers are construing the phrase differently depending on the rule.

With regard to Rule R8-66(b)(1), it is NCSEA's understanding that owners who register renewable energy facilities representing intermittent capacity – *e.g.*, wind and solar projects decoupled from storage – frequently interpret the rule's phrase "projected dependable capacity" to mean "projected dispatchable capacity." As a result, these registrants are frequently indicating in their registrations that the non-dispatchable, intermittent nature of their projects necessitates reporting that their projects have *zero* projected dependable capacity.

With regard to Rule R8-64, it is NCSEA's understanding that owners who apply for CPCNs for facilities representing intermittent capacity frequently interpret the rule's phrase "projected dependable capacity" to mean "maximum nameplate capacity." As a result, even though these applicants may be reporting zero projected dependable capacity under Rule R8-66, they are providing the additional, more detailed information required by Rule R8-64 where their projects' maximum nameplate capacities are greater than 5 megawatts.

NCSEA believes the Commission, while considering other revisions to Rule R8-64, should consider revising the language of Rule R8-64(b)(2) so that it conforms to current practice. Specifically, NCSEA recommends (a) replacing the phrase "projected dependable capacity" with the phrase "maximum nameplate capacity" and (b) adding "greater than" before "5 megawatts"¹ so that the language reads as follows (including proposed strike-throughs and underlined amendments):

¹ It is NCSEA's understanding that the Commission may not be interested in making major substantive changes to the rules being revised. For this reason, NCSEA is not making a recommendation with regard to the 5 megawatt threshold set out in the rule. If the Commission is interested in making substantive changes, it could *consider increasing* the threshold to 10 or 20 megawatts. Some of NCSEA's members have suggested that

(2) In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a ~~projected dependable~~ maximum nameplate capacity of greater than 5 megawatts or more available for such sale shall include in the application the following ~~information and~~ three additional exhibits:

Recommendation No. 2:

NCSEA understands that some CPCN applicants currently file certain portions of their applications confidentially. To conform Rule R8-64 to applicants' current practice and to existing Rule R8-63(c), NCSEA recommends that a new subsection (b)(7) be added that reads (including underlined amendments):

(7) 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.

NCSEA asks that the Commission note that the above proposed language is the exact language that already exists in Rule R8-63(c) and expressly permits applicants for merchant plant CPCNs to file portions of the applications under seal.

Recommendation No. 3:

NCSEA recommends a revision to the noticing portion of Rule R8-64 that conforms to practical changes in the newspaper business in the State *and* to a related recent statutory technical change. Rule R8-64(c)(1) current provides in pertinent part:

The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed

this might be an appropriate revision given the evolving North Carolina marketplace. Such a change would streamline more filings and, in turn, reduce the time spent by the clerk's office reviewing filings to ensure all exhibits are attached and rule-compliant.

This rule language appears to mirror language in N.C. Gen. Stat. § 62-82(a) as the statute existed prior to the 2013 legislative session. It is NCSEA’s understanding that, in many parts of the State, local *daily* newspapers of general circulation no longer exist. It is also NCSEA’s understanding that this practical reality prompted the General Assembly to revise N.C. Gen. Stat. § 62-82(a) during the 2013 legislative session. A technical change bill deleted the word “daily” from the statutory newspaper publishing requirement. N.C. Sess. Law 2013-410, § 29. Given that the amended statute and the current rule ultimately require *weekly* notice for four successive weeks, NCSEA proposes that subsection (c)(1) be revised to eliminate the need to use a “daily” newspaper and be promulgated as follows (including proposed strike-throughs):

The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a *daily* newspaper of general circulation in the county where the generating facility is proposed to be constructed

Recommendation No. 4

Rule R8-64(b)(6) currently provides that “[t]he application and 12 copies shall be filed with the Chief Clerk of the Utilities Commission.” This language appears to have been promulgated prior to the advent of electronic filing. NCSEA recommends that the language be revised to take the possibility of electronic filing into account and read as follows (including proposed strike-throughs and underlined amendments):

Unless filed electronically pursuant to Rule R1-28, ~~the application and 12 copies shall be filed with the Chief Clerk of the Utilities Commission.~~

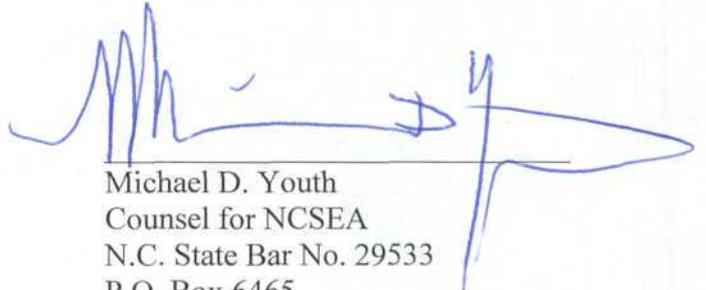
NCSEA asks that the Commission note that the additional prefatory clause language proposed is the exact language that was added to Rule R1-25(c) upon the

introduction of electronic filing. *See Order*, Appendix A at p. 1, Commission Docket No. M-100, Sub 139 (13 November 2013).

Recommendation No. 5

Under the Commission's proposed revisions to Rule R8-64, any applicant required to file an Exhibit 8 must include "[a] detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year." With regard to the phrase "on-peak and off-peak" included therein, NCSEA suggests an additional clarifying sentence be added that essentially reads: "The explanation shall include but not be limited to a statement of the specific on-peak and off-peak hours underlying the applicant's quantification of anticipated kilowatt and kilowatt-hour outputs (*e.g.*, CSP-29 Option A hours, 2012 PP-N Option B hours)."

The foregoing comments are respectfully submitted, this the 23rd day of September, 2014.

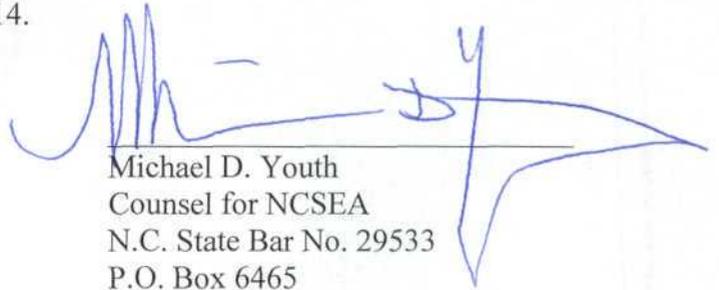


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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments, together with any attachments, by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 23rd day of September, 2014.



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