

**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 PROPOSING RULES
G.S. 62-126.7		AND REQUESTING COMMENTS

BY THE COMMISSION: Part IV of House Bill 589 (Session Law 2017-192), which became law on July 27, 2017, directs the Commission to adopt rules to implement the provisions of newly enacted Article 6B of Chapter 62 of the General Statutes, the Distributed Resources Access Act (the Act). The Act declares that, “as a matter of public policy it is in the interest of the State to encourage the leasing of solar energy facilities for retail customers and subscription to shared community solar energy facilities.” G.S. 62-126.2. Further, the General Assembly finds and declares that in encouraging the leasing of and subscription to solar energy facilities pursuant to the Act, “cross-subsidization should be avoided by holding harmless electric public utilities’ customers that do not participate in such arrangements.” Id. In furtherance of these policy goals, G.S. 62-126.7 requires the Commission to, among other things, establish a certification process for regulating persons who seek to engage in the business of leasing of a solar energy facility.

The Commission finds good cause to propose a new rule to implement the certification requirement for electric generator lessors pursuant to G.S. 62-126.7. The Commission invites interested persons to petition to intervene and to provide comment on, or propose revisions to, proposed Commission Rule R8-72, which is attached hereto as Attachment A, and the proposed application form applicable to certificates to engage in business as an electric generator lessor, which is attached hereto as Attachment B.

IT IS, THEREFORE, ORDERED as follows:

1. That DEC and DEP are hereby made parties of record in this proceeding, and the participation of the Public Staff is recognized pursuant to G.S. 62-15(d) and Commission Rule R1-19(e);
2. That other parties desiring to become formal participants and parties of record in this proceeding shall file petitions to intervene in accordance with the applicable Commission rules on or before November 8, 2017;
3. That parties may file initial comments, suggestions, or proposed rules or rule revisions as provided herein on or before November 8, 2017;

4. That the parties may file reply comments, suggestions, or additional proposed rules or rule revisions as provided herein on or before November 22, 2017;

5. That the Commission will proceed as appropriate following receipt of these comments; and

6. That the Chief Clerk shall transmit a copy of this Order to all parties of record in Docket No. E-100, Sub 150.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of October, 2017.

NORTH CAROLINA UTILITIES COMMISSION

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

Linnetta Threatt, Acting Deputy Clerk

Rule R8-72. 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 person within its scope 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 a transaction or arrangement, by whatever name, which substantively functions as a lease of a solar energy facility, without regard to whether such person 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, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the report 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 subsections (b)(5) or (c)(3) of this rule, as may be 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 to 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 verify the application. The names and addresses of the principal managing officers of the corporation must be given and a certified copy of the corporate charter 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 and has a reasonable and adequate knowledge of the business of owning and leasing solar energy facilities;
 - (ii) That the applicant is financially solvent and able to obtain and continue adequate insurance protection, maintenance of safe, dependable equipment, and the financial ability to settle any damage claims for which it is liable;
 - (iii) That the applicant maintains minimum limits of liability insurance coverage 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 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 the 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 October 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.

(c) Application for Approval of Sale or other Transfer of the Certificate.

- (1) Application for approval of sale or other transfer of a certificate to engage in business as a solar generator lessor shall be typewritten, filed with the Commission with a copy to the Public Staff, by providing an original and three (3) copies and accompanied by a filing fee as set forth in G.S. 62-300. Such applications may necessarily differ according to the nature of the transaction involved, but shall include, at a minimum, the following:
 - (i) The names and addresses of all parties to the transaction.
 - (ii) A full and complete explanation of the nature of the transaction and its purpose.
- (2) If the application is for approval of a sale of the certificate or a sale of a controlling interest in the corporate entity holding a certificate, a copy of the proposed sales agreement must be filed with the application and must contain the entire agreement between parties, including (i) an accurate description of the operating rights and other property to be transferred, and (ii) the purchase price agreed upon, and all the terms and conditions with respect to the payment of the same.
- (3) No sale or other transfer of a certificate will be approved unless the buyer complies with the provisions of G.S. 62-126.7 and of this Rule, by certifying to the Commission, as therein required, the following:
 - (i) That the applicant is fit, willing, and able to own and lease solar energy facilities and has a reasonable and adequate knowledge of the business of owning and leasing solar energy facilities;
 - (ii) That the applicant is financially solvent and able to obtain and continue adequate insurance protection, maintenance of safe, dependable equipment, and the financial ability to settle any damage claims for which it is liable;
 - (iii) That the applicant maintains minimum limits of liability insurance coverage of \$_____ general liability insurance coverage;
 - (iv) That the applicant will register with the Commission each solar energy facility that the applicant leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or report of proposed construction, and, an application to register as a new renewable energy facility, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard;
 - (v) That the applicant's lease agreements meet the requirements of G.S. 62-126.6, and the 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 October 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.
- (4) If the transferee is a corporation, a true and accurate or certified copy of its corporate charter must be filed with said application unless same is already on file with the Commission.
- (5) If the application is for approval of a merger of two or more persons who hold one or more certificates, or of any agreement by which one electric generator lessor seeks to acquire an interest in or control over another electric generator lessor, the application shall set out the purpose of such merger, combination or agreement, and the extent of any transfers of operating rights or other properties of the electric generator lessors involved, the changes in the financial status and obligations of the individual electric generator lessors involved, and all other matters necessary to a full understanding of the transaction and its effect upon other electric generator lessors.
- (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 ownership change or 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 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 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 automatically dismiss the application.
 - (4) No later than twenty (20) business days after the application is filed with the Commission, the Public Staff shall, and any other interested persons may, 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 notice is given, 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 is filed within thirty (30) days which raises material issues of fact to the granting of the application, 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, an electric membership corporation, the Public Staff, a customer generator lessee, or 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 enter upon a proceeding to 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 a proceeding to review the certificate, the Commission shall issue an order establishing the proceeding, requiring the certificate holder to make appropriate filings, 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 the hearing set to review the certificate holder's compliance with the provisions of Article 6B, the certificate holder shall have the burden to show its compliance.
 - (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 October 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, an electric membership corporation, the Public Staff, a customer generator lessee, or 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 the person to make appropriate filings, 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 person filing the complaint 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, 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.

North Carolina Utilities Commission

Application for a Certificate to engage in Business as an Electric Generator Lessor – Rule R8-72

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.

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 12 copies. The mailing address is:

Chief Clerk
NC Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4325

Information required by Rule R8-72	Applicant's Response
Applicant's full and correct name	
Applicant's business address	
Applicant's business telephone number	
Applicant's electronic mailing address	
The Applicant is (check one)	Individual Partnership Corporation
If a partnership, the name and address of each general partner (add additional sheets if necessary)	
If a corporation, the state and date of incorporation	
Applicant's agent for the purposes of this application, if applicable	
Agent's business address	
Agent's telephone number	
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, electric membership corporation, municipal electric service provider, etc.)	
Provide Proof of Certification of the following:	
Describe how the Applicant is fit, willing, and able to own and lease solar energy facilities and has a reasonable and	

adequate knowledge of the business of owning and leasing solar energy facilities	
Describe the Applicant's financial solvency and ability to obtain and continue adequate insurance protection, maintenance of safe, dependable equipment, and the financial ability to settle any damage claims for which it is liable	
Does the Applicant maintains minimum limits of liability insurance coverage of \$_____ general liability insurance coverage	
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 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?	
Does the Applicant's lease agreements meet the requirements of G.S. 62-126.6?	
Does the Applicant consent to the auditing of its books and records by 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?	
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?	
Does the Applicant commit to annually file on or before October 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and Commission Rule R8-71?	

VERIFICATION

STATE OF _____

COUNTY OF _____

_____ personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he or she believes.

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 15 copies that are also submitted to the Commission.