

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. EMP-115, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Cherry Solar, LLC, for a	)	ORDER SCHEDULING HEARINGS,
Certificate of Public Convenience and	)	REQUIRING FILING OF
Necessity to Construct a 180-MW Solar	)	TESTIMONY, ESTABLISHING
Facility in Northampton County, North	)	PROCEDURAL GUIDELINES, AND
Carolina	)	REQUIRING PUBLIC NOTICE

BY THE PRESIDING COMMISSIONER: On November 13, 2020, Cherry Solar, LLC, (Applicant), filed an application pursuant to N.C. Gen. Stat. § 62-110.1 and Commission Rule R8-63 for a certificate of public convenience and necessity (CPCN) to construct a 180-MW<sup>AC</sup> solar photovoltaic (PV) electric generating facility to be located in Northampton County, North Carolina, and to be operated as a merchant generating facility.

In support of its application the Applicant filed the direct testimony of Linda Nwadike, as well as several exhibits. In summary, witness Nwadike states that construction of the 180-MW solar PV facility is anticipated to begin on or about the first quarter of 2023, with the expected commercial operation date being as early as the fourth quarter of 2023. She further states that the location of the proposed facility is 922 Oak Grove Church Road, 1315 Oak Grove Church Road, 105 Crossvine Lane, and 610 Cherry Tree Road, in the Town of Gaston, Northampton County, North Carolina. Witness Nwadike testifies that the Applicant's proposed generating facility will enter into a shared facility agreement with an adjacent solar generating facility owned by Oak Solar, LLC, in order to use the interconnection facilities that are built to accommodate Oak Solar, LLC, and that the expected service life of the facility is 40 years.

On November 24, 2020, the Public Staff filed a Notice of Completeness stating that the Public Staff has reviewed the application as required by Commission Rule R8-63(d) and that the Public Staff considers the application to be complete. In addition, the Public Staff requests that the Commission issue a procedural order setting the application for hearing, requiring public notice pursuant to N.C.G.S. § 62-82, and addressing any other procedural matters.

The Presiding Commissioner finds good cause to schedule the hearing to receive public witness testimony and the hearing to receive expert witness testimony.

The Presiding Commissioner notes that the Commission has seen an increase in the number of merchant plant facility applications. Due to the increase in non-utility generation on the North Carolina system and the Commission's statutory duty to examine

the long-range needs for the generation of electricity in North Carolina, the Presiding Commissioner finds good cause to require the filing of additional testimony and exhibits in this proceeding addressing the following questions:

1. Are there any network upgrades to DENC's or any affected system's transmission system required to accommodate the operation of the Applicant's proposed facility? If so, provide the amount of network upgrades on DENC's or any affected system's transmission system, if any, required to accommodate the operation of the Applicant's proposed facility.

2. If there are any required system upgrades, does the Applicant have Levelized Cost of Transmission (LCOT) information for the system upgrades? If so, provide the LCOT information for any required transmission system upgrades or modifications.

3. Is there any interconnection study available for the proposed facility? If so, provide any interconnection study received for the proposed facility. If the Applicant has not received a study, provide a date by when the study is expected to be completed.

4. Is the Applicant aware of any system other than the studied system that is or will be affected by the interconnection? If yes, explain the impact and basis.

5. Is the Applicant proposing to sell energy and capacity from the facility to a distribution utility regulated by the Commission? If so, provide a discussion of how the facility's output conforms to or varies from the regulated utility's most recent Integrated Resource Plan (IRP).

6. Is the Applicant proposing to sell energy and capacity from the proposed facility to a distribution utility not regulated by the Commission but serving retail customers in North Carolina (e.g. co-op or muni)? If so, discuss how the facility's output conforms to or varies from the purchasing distribution utility's long-range resource plan.

7. Is the Applicant proposing to sell energy and capacity from the proposed facility to a purchaser who is subject to a statutory or regulatory mandate with respect to its energy sourcing (e.g., a REPS requirement or Virginia's new statutory mandate for renewables)? If so, explain how, if at all, the proposed facility will assist or enable compliance with that mandate. In addition, provide any contracts that support that compliance.

8. Does the Applicant have a Power Purchase Agreement (PPA), REC sale contracts or contracts for compensation for environmental attributes for the output of the proposed facility? If so, provide any PPA agreements, REC sale contracts, or contracts for compensation for environmental attributes for the output of the facility.

In addition, the Presiding Commissioner finds good cause to apply the following guidelines regarding discovery in this docket, subject to modification for good cause shown:

1. Any deposition which a party desires to take shall be taken before the deadline for filing of Public Staff and intervenor testimony. Notice of deposition shall be served on all parties at least seven days prior to the taking of the deposition. Notice of deposition and all other discovery notices, requests and motions shall be served on the appropriate parties by hand delivery or facsimile, or by electronic delivery if the receiving party has agreed to receipt by electronic delivery.

2. Any motion for subpoena of a witness to appear at the evidentiary hearing shall be filed with the Commission before the deadline for filing of Public Staff and intervenor testimony, shall be served by hand delivery or facsimile to the person sought to be subpoenaed at or before the time of filing with the Commission, and shall make a reasonable showing that the evidence of such person will be material and relevant to an issue in the proceeding. See N.C.G.S. § 62-62. Unless an objection is filed, the Chief Clerk shall issue the requested subpoena 24 hours after such motion is filed.

3. Formal discovery requests related to the application and the Applicant's prefiled direct testimony shall be served on the Applicant not later than fourteen days prior to the deadline for filing of Public Staff and intervenor testimony. The party served shall have up to ten calendar days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than ten days prior to the deadline for filing of Public Staff and intervenor testimony.

4. Formal discovery requests of the Public Staff or intervenors shall be served not later than three days after such testimony is filed. The party served shall have up to three calendar days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than five days after that party's testimony was filed.

5. Formal discovery requests related to the Applicant's prefiled rebuttal testimony shall be served on the Applicant not later than two days after such testimony is filed. The party served shall have up to two calendar days to file with the Commission objections to the discovery requests on an item-by-item basis, but in no event shall objections be filed later than three days after the rebuttal testimony was filed. Discovery related to rebuttal testimony shall be limited to new material introduced in such rebuttal testimony and will be carefully scrutinized upon objection that such discovery should have been sought during the initial period of discovery from the Applicant.

6. Discovery requests need not be filed with the Commission when served; however, any party filing objections shall attach a copy of the relevant discovery request to the objections. Each discovery request, or part thereof, to which no objection is filed shall be answered by the time objections are due, subject to other agreement of the affected parties or other order of the Commission. Upon the filing of objections, the party

seeking discovery shall have two days to file a motion to compel with the Commission, and the party objecting to discovery shall have one day thereafter to file a response. All objections, motions to compel, and responses shall be served on the other affected party at or before the time of filing with the Commission.

7. A party shall not be granted an extension of time to pursue discovery because of that party's late intervention or other delay in initiating discovery.

The Presiding Commissioner recognizes that in the past most discovery has been conducted in an informal manner without the need for Commission involvement or enforcement, and that such has been generally successful. The above guidelines are without prejudice to the parties conducting informal discovery or exchanging information by agreement at any time with the understanding that such will not be enforceable by the Commission if outside the guidelines.

In March 2020, Governor Roy Cooper issued a progression of Executive Orders that declared a State of Emergency in North Carolina to coordinate the response and protective actions to prevent the spread of coronavirus (COVID-19). The Executive Orders place restrictions on business operations and mass gatherings including limiting face-to-face indoor meetings to no more than ten people and require social distancing between individuals of at least six feet. Based on the current state of uncertainty regarding future requirements to assist in preventing the spread of COVID-19, the Presiding Commissioner finds good cause to conduct the hearings in this matter remotely via Webex.

IT IS, THEREFORE, ORDERED as follows:

1. That a remote hearing shall be held via Webex on Wednesday, January 27, 2021, at 7:00 p.m. for the purpose of receiving public witness testimony regarding the Applicant's application, as amended, for a CPCN. A link to view the hearing will be available at [www.ncuc.net](http://www.ncuc.net). The remote hearing for the purpose of receiving public witness testimony shall be subject to the following conditions:

- (1) On or before Wednesday, January 13, 2021, all parties shall file a statement consenting to holding the public witness hearing by remote means, or a statement objecting to same;
- (2) On or before Wednesday, January 13, 2021, all parties shall send the name, phone number, and email address of each attorney that will participate in the hearing on the party's behalf directly to the Commission via email at [ncucwebex@ncuc.net](mailto:ncucwebex@ncuc.net); and
- (3) Members of the public that would like to testify must register in advance of the hearing, no later than 5:00 p.m. on Friday, January 22, 2021, by contacting the Public Staff by calling 866-380-9816. When registering, provide your name, docket number (EMP-115, Sub 0), telephone number,

and the topic of your testimony. Only individuals registered with the Public Staff by 5:00 p.m. on Friday, January 22, 2021, will be allowed to testify at the public witness hearing.

2. That the Commission may cancel the public witness hearing if no substantial written complaints regarding the proposed facility are filed with the Commission on or before Monday, January 25, 2021;

3. That a remote hearing shall be held via Webex on Thursday, May 27, 2021, at 10:00 a.m. for the purpose of receiving expert witness testimony regarding the Applicant's application for a CPCN. A link to view the hearing will be available at [www.ncuc.net](http://www.ncuc.net). The hearing for the purpose of receiving expert witness testimony will be subject to the following conditions:

- (1) On or before Thursday, May 13, 2021, all parties shall file a statement consenting to hold the hearing by remote means, or a statement objecting to the same;
- (2) On or before Thursday, May 13, 2021, each party shall send the name, phone number, and email address of each attorney and witness that will participate in the hearing on the party's behalf directly to the Commission via email at [ncucwebex@ncuc.net](mailto:ncucwebex@ncuc.net);
- (3) On or before Monday, May 24, 2021, parties shall file a list of potential cross-examination exhibits and provide copies of the exhibits, pre-marked but not numbered, to the other parties and to the Commission via email at [ncucexhibits@ncuc.net](mailto:ncucexhibits@ncuc.net);
- (4) On or before Wednesday, May 26, 2021, the parties shall file a list of potential redirect examination exhibits and provide copies of the exhibits, pre-marked but not numbered, to the other parties and the Commission via email at [ncucexhibits@ncuc.net](mailto:ncucexhibits@ncuc.net);
- (5) On or before Wednesday, May 26, 2021, the parties shall provide a copy of witness testimony summaries to the other parties and the Commission via email at [ncucexhibits@ncuc.net](mailto:ncucexhibits@ncuc.net);
- (6) On Tuesday, June 1, 2021, parties shall file their cross-examination and redirect exhibits used in the hearing marked as indicated during the hearing; and
- (7) Parties and witnesses will be required to refrain from disclosing confidential information during the hearing, including during direct examination, cross examination, and redirect examination. If a party believes that this requirement will materially affect the party's presentation of evidence or

examination of a witness, the party shall bring this to the attention of the Presiding Commissioner at the beginning of the hearing.

4. That the Applicant shall publish the Public Notice attached hereto as Appendix A in a newspaper having general circulation in Northampton County once a week for four successive weeks;

5. That the Chief Clerk of the Commission shall transmit electronic copies of the application and the Public Notice attached hereto as Appendix A to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application;

6. That the Applicant shall file affidavits of publication demonstrating that the application was published pursuant to this Order;

7. That the Applicant shall file the additional testimony described herein on or before Thursday, March 11, 2021;

8. That any person having an interest in this proceeding may file a petition to intervene stating such interest on or before Thursday, April 15, 2021;

9. That the direct testimony and exhibits of the Public Staff and other intervenors shall be filed on or before Thursday, April 15, 2021;

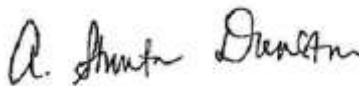
10. That the Applicant may file rebuttal testimony and exhibits on or before Thursday, April 29, 2021; and

11. That the parties shall comply with the discovery guidelines established herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of December, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "A. Shonta Dunston".

A. Shonta Dunston, Deputy Clerk

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. EMP-115, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application of Cherry Solar, LLC, for a )  
Certificate of Public Convenience and )  
Necessity to Construct a 180-MW Solar ) PUBLIC NOTICE  
Facility in Northampton County, North )  
Carolina )

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has scheduled a remote public hearing to be held online via Webex on Wednesday, January 27, 2021, at 7:00 p.m. The purpose of the hearing is to receive public witness testimony regarding the application of Cherry Solar, LLC, for a certificate of public convenience and necessity (CPCN) to construct a 180-MW<sub>AC</sub> solar photovoltaic (PV) electric generating facility to be located in Northampton County, North Carolina, and to be operated as a merchant generating facility. A link to view the hearing will be available at [www.ncuc.net](http://www.ncuc.net). Members of the public that would like to testify must register in advance of the hearing, no later than 5:00 p.m. on Friday, January 22, 2021, by contacting the Public Staff by calling 866-380-9816. When registering, provide your name, docket number (EMP-115, Sub 0), telephone number, and the topic of your testimony. Only individuals registered with the Public Staff by 5:00 p.m. on Friday, January 22, 2021, will be allowed to testify at the public witness hearing

In support of its application the Applicant filed the direct testimony of Linda Nwadike, as well as several exhibits. In summary, witness Nwadike states that construction of the 180-MW solar PV facility is anticipated to begin on or about the first quarter of 2023, with the expected commercial operation date being as early as the fourth quarter of 2023. She further states that the location of the proposed facility is 922 Oak Grove Church Road, 1315 Oak Grove Church Road, 105 Crossvine Lane, and 610 Cherry Tree Road, in the Town of Gaston, Northampton County, North Carolina. Witness Nwadike testifies that the Applicant's proposed generating facility will enter into a shared facility agreement with an adjacent solar generating facility owned by Oak Solar, LLC, in order to use the interconnection facilities that are built to accommodate Oak Solar, LLC, and that the expected service life of the facility is 40 years.

On November 24, 2020, the Public Staff filed a Notice of Completeness stating that the Public Staff has reviewed the application as required by Commission Rule R8-63(d) and that the Public Staff considers the application to be complete.

Additional information about the application is available for review by the public on the Commission's website and online docket system at [www.ncuc.net](http://www.ncuc.net).

The Public Staff is authorized by statute to represent consumers in proceedings before the Commission. Written statements to the Public Staff should include any information that the writers wish to be considered by the Public Staff in its investigation of the matter. Such statements should be addressed to Mr. Christopher J. Ayers, Executive Director, Public Staff, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326.

The Attorney General is also authorized by statute to represent consumers in proceedings before the Commission. Statements to the Attorney General should be addressed to The Honorable Josh Stein, Attorney General, 9001 Mail Service Center, Raleigh, North Carolina, 27699-9001. Written statements may be emailed to [utilityAGO@ncdoj.gov](mailto:utilityAGO@ncdoj.gov).

Written statements will be considered by the Commission in reaching its decision but do not receive the same consideration as testimony provided by public witnesses at a hearing.

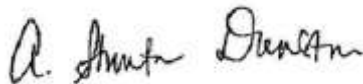
Any person desiring to intervene in the proceeding as a formal party of record should file a petition under North Carolina Utilities Commission Rules R1-5 and R1-19 on or before Friday, March 26, 2021. Such petitions should be filed with the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325. The direct testimony and exhibits of expert witnesses to be presented by intervenors should also be filed with the Commission on or before Thursday, April 15, 2021.

The Commission may cancel the public witness hearing if no substantial written complaints regarding the proposed facility are received by the Commission's Chief Clerk on or before Monday, January 25, 2021.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of December, 2020.

NORTH CAROLINA UTILITIES COMMISSION

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A. Shonta Dunston, Deputy Clerk