

**STATE OF NORTH CAROLINA UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-108 SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of American Beech Solar)	
LLC for a Certificate of Public)	MOTION TO STAY
Convenience and Necessity to Construct)	
a 110-MW Solar Facility in Halifax)	
County, North Carolina)	

American Beech Solar LLC (“American Beech Solar” or the “Applicant”) by and through counsel, moves the Commission to stay further activities in this proceeding, pending further Order of the Commission. In support of its motion, American Beech Solar shows as follows:

1. On January 28, 2020, American Beech Solar 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 110-MWAC solar photovoltaic (“PV”) electric generating facility to be located in Halifax County, North Carolina, and operated as a merchant generating facility (“the Project”).

2. On February 6, 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.

3. On March 12, 2020, this Commission issued an *Order Scheduling Hearing, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice*, which (1) established a deadline for intervention in this matter on April 16, 2020; (2) scheduled a public hearing on May 20, 2020, at the Halifax County Historical Courthouse, for the purpose of receiving public witness testimony regarding the Applicant’s application for a CPCN;

(3) scheduled a hearing on May 21, 2020 for the purpose of receiving expert witness testimony regarding the Applicant's application for a CPCN; and (4) required the Applicant to publish notice of the Application once a week for four successive weeks.

4. On April 15, 2020, the Public Staff filed the Testimony of Jay B. Lucas. Mr. Lucas recommended that the Commission grant the CPCN, subject to certain conditions.

5. On May 15, 2020, the Commission issued an *Order Cancelling Hearings, Rescheduling Public Witness Hearing, and Requiring Public Notice*, which rescheduled the public witness hearing to June 24, 2020; and also cancelled the hearing set for May 21, stating that the expert witness hearing would be rescheduled by further order of the Commission. On June 19, 2020, the Commission cancelled the Public Hearing.

6. On June 22, 2020, the Commission issued an *Order Requiring Additional Testimony* from the parties relating to issues including Affected System Upgrade costs and other interconnection costs associated with the Project. The Applicant filed supplemental testimony on July 9, 2020; the Public Staff filed supplemental testimony on July 22; and the Applicant filed supplemental reply testimony on July 29.

7. On October 7, 2020, Duke Energy Progress, LLC (“DEP”) and Duke Energy Carolinas, LLC (collectively, “Duke”) filed comments in Docket No. E-100, Sub 170, relating to Duke’s Affected System Study Process and cost allocation. Duke’s comments stated that under its new Affected System Operating Agreement (“ASOA”) template, Duke would no longer provide reimbursement to interconnection customers for the cost of Affected System Upgrades on Duke’s system.

8. On November 17, 2020, the Public Staff filed a Motion for Leave to File the Second Supplemental Testimony of Jay B. Lucas, along with proposed testimony relating to Affected

System Upgrades on the DEP system that might be triggered by the Project or by other merchant plants seeking interconnection in Dominion Energy's North Carolina service territory.

9. On May 11, 2021, American Beech Solar executed an Affected System Operating Agreement ("ASOA") with DEP, providing for the construction of Affected System Upgrades associated with the AC1 cluster at an estimated total cost of approximately \$31 million. On May 20, 2021, DEP filed the ASOA with the Commission in docket no. E-100, Sub 170. The same day, DEP filed the ASOA with the Federal Energy Regulatory Commission ("FERC"). *Duke Energy Progress, LLC*, FERC Docket No. ER21-1955.

10. On May 12, 2021, Edgecombe Solar Energy LLC, the developer of another North Carolina merchant solar plant in the AC1 cluster (not affiliated with the Applicant) filed a Complaint with FERC challenging as unlawful Duke's policy of refusing to reimburse interconnection customers for Affected System Upgrade costs. *Edgecombe Solar Energy LLC v. Duke Energy Progress, LLC, Duke Energy Carolinas, LLC, and Duke Energy Florida, LLC*, FERC Docket No. EL21-73-000. American Beech Solar filed comments in support of the complaint on June 1, 2021. On June 10, American Beech Solar filed comments in the FERC docket relating to its ASOA, requesting that FERC accept the ASOA, subject to the outcome of Edgecombe Solar's Complaint proceeding.

11. The question of whether interconnection customers who construct Affected System Upgrades on DEP's system are entitled to reimbursement of the costs of those Upgrades is now pending before FERC, and is expected to be resolved by late summer or early fall 2021. In light of concerns that the Public Staff and the Commission have expressed relating to the potential for such costs to be reimbursed and passed on to customers, the Applicant submits that a FERC decision on the pending complaint will provide clarity on an issue of critical significance to the

Commission's decision-making in this matter. The Applicant therefore submits that the Commission should stay proceedings in this case until FERC issues an order resolving the Complaint.

12. The Commission has issued orders staying proceedings in several other pending EMP dockets (including EMP-103, Sub 0, EMP-110, Sub 0, and EMP-111, Sub 0), pending further developments relating to Affected System Upgrades and costs.

13. Counsel for the Applicant has contacted the Public Staff, which does not oppose issuance of a stay.

Wherefore, the Applicant respectfully requests that this proceeding be stayed pending further order of the Commission, and not dismissed, and that no supplementation of the application or further activities be required during the period of the stay. The Applicant shall notify the Commission of FERC's ultimate decision regarding the Complaint proceeding and American Beech Solar's ASOA.

Respectfully submitted, this the 25th day of June, 2021.

KILPATRICK TOWNSEND & STOCKTON LLP

By: Benjamin L. Snowden

Benjamin L. Snowden
N.C. State Bar No. 51745
4208 Six Forks Road
Suite 1400
Raleigh, North Carolina
Telephone: (919) 420-1719
E-mail: bsnowden@kilpatricktownsend.com

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **Motion to Stay** upon all parties of record by electronic mail and/or first-class United States mail.

This the 25th day of June, 2021.



Benjamin L. Snowden