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January 31, 2020

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Kim Campbell  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury St.  
Raleigh, NC 27603

**Re: Docket No. EMP-104, Sub 0 – Amended site plan**

Dear Ms. Campbell:

Pursuant to Commission Rule R8-64(d), BayWa r.e. Solar Projects, LLC, on behalf of its subsidiary Fern Solar LLC (“Fern Solar,” or “Applicant”), files this letter to provide the North Carolina Utilities Commission (“the Commission”) with updated information concerning the Certificate of Public Convenience and Necessity (“CPCN”) for the 100 MW solar project under development in Edgecombe County, North Carolina (“the Project”).

Fern Solar filed its application for a CPCN under Commission Rule R8-63 on November 27, 2018. The Project completed public notice and Clearinghouse review with no comments in opposition to the application. On June 7, 2019, the Commission issued an Order granting the application and issuing a CPCN for the Project. Construction began on the facility in October 2019.

During the due diligence process associated with obtaining permanent financing for the Project, the Applicant discovered that during the engineering process, the proposed arrangement of solar panels for the Project had changed slightly in comparison to the site plan submitted with the CPCN application. Such field changes are very common in the project development process as the panel arrangement is optimized for site conditions.

The revised panel arrangement is entirely within the property boundaries depicted in the site plan submitted with Fern Solar’s Application. The total paneled area of the site has decreased by about 15%, as improvements in module efficiency have enabled the number of panels to be reduced without decreasing the Project’s total output.

However, a small number of panels (representing approximately 1.08% of the total paneled area of the project) on the 1200 acre site will now extend marginally outside the “fence line” of the

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project as depicted on the prior site plan.<sup>1</sup> A site plan depicting the revised panel arrangement relative to the original site plan is included as Attachment A.

In response to requests from the site landowners, Fern Solar has also made minor changes to the location of six access points on the site. All of the revised access points have been approved by NCDOT, NCDEQ, and Edgecombe County zoning authorities, and have the approval of the landowners who abut the corresponding road cuts. Each of the revised access points abuts the same project landowner as before, with no non-project landowner abutting the access road. The revised access points are also highlighted on Attachment A.

Both the revised panel arrangement and the changes to access points are consistent with the Conditional Use Permit (“CUP”) for the project approved by Edgecombe County. Approval of the CUP required extensive environmental and site plan review by the Edgecombe County Board of Adjustment.

The State Clearinghouse based its initial agency review on the site plan submitted with the CPCN application. However, given the high-level nature of agency review and the environmental and cultural assessments that have been performed on the site, it is unlikely that the marginal changes to the site plan would result in any further comment from state agencies. In addition to environmental and cultural assessments conducted prior to the Clearinghouse providing comments on the application in February and May 2019, the project has been subject to additional environmental review since the CPCN was issued. These reviews have taken into account the modified area in the revised site plan.<sup>2</sup> They include an Aquatic Species Surveys and Habitat Assessment prepared by the Timmons Group, which concluded that construction activity on the site would be unlikely to impact sensitive aquatic species (Attachment B); as well as comments from the Department of the Interior’s U.S. Fish and Wildlife Service (USFWS), which were requested by the U.S. Army Corps of Engineers (USACE) and which resulted in a determination that the proposed action is not likely to adversely affect bald eagles or any federally-listed endangered or threatened species, their formally designated critical habitat, or species currently proposed for listing under the Endangered Species Act (Attachment C).

BayWa respectfully requests that the Commission administratively approve an amendment to the project site plan without requiring additional public notice or further review by the State Clearinghouse. BayWa submits that administrative approval is appropriate because of: (1) the *de minimis* nature of the changes to the site plan, which are entirely within the parcel boundaries previously identified in the original CPCN application; (2) the fact that all access point changes

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<sup>1</sup> To be clear, the original site plan indicated that some construction activity, such as the installation of drainage basins, would occur outside the fence line. However, as the original site plan did not depict the project’s proposed “Limits of Disturbance” (LOD) (the area in which construction and development activities may be conducted pursuant to the project’s Conditional Use Permit), the fence line provides the closest indicator on the site plan of where panels might be located.

<sup>2</sup> All of the major equipment on the site (PV modules, inverters, transformers, and trackers), including the panels in the additional area, is sited to avoid the 100-year floodplain and delineated wetlands. All wetland and stream crossings required for access road routing have been approved by required state and federal regulatory agencies.

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have been reviewed and approved by the site landowners as well as adjacent landowners; (3) the extensive review that has already been conducted of the revised site plan; and (4) the Project's lack of proximity to any residential neighborhoods or other stakeholders that might be particularly sensitive to small changes in the site's layout. Administrative approval would be consistent with past practice, under which the Commission has approved such *de minimis* site plan changes (including changes to access points) without requiring additional public notice or Clearinghouse review. See, e.g., *Order Issuing Amended Certificate*, Docket No. SP-7950 Sub 0 (Jan. 24, 2020).

If the Commission does require additional review, BayWa requests that Fern Solar be permitted to undertake limited construction activities, including construction of perimeter fencing, erosion control measures, pile installation, equipment pads, and underground wiring ("Limited Construction") on the additional area pending completion of that process. Construction on the overall Project site has already commenced, and Fern Solar is under time pressure to complete construction in order to comply with its contractual obligations.

Any construction activity would be conducted by Fern Solar at its own risk, pending final Commission action.

Thank you for your consideration,

Sincerely,



Benjamin L. Snowden  
Kilpatrick Townsend Stockton LLP  
*Counsel for BayWa r.e. Solar Projects, LLC*