

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 156**

In the Matter of:)	
Rulemaking Proceeding to Implement)	NCSEA’S INITIAL
G.S. 62-126.7)	COMMENTS

NCSEA’S INITIAL COMMENTS

The North Carolina Sustainable Energy Association (“NCSEA”), who has petitioned to intervene in the above-captioned proceeding, submits these initial comments in response to the *Order Proposing Rules and Requesting Comments* (“Order”) issued by the North Carolina Utility Commission (“Commission”) in this docket on October 17, 2017. The Commission’s *Order* included a proposed rule to implement the certification requirement for electric generator lessors pursuant to G.S. 62-126.7 (“proposed rule R8-72”). NCSEA is generally supportive of the Commission’s proposed rule R8-72, but wishes to provide comments on three specific aspects of the proposal and two additional aspects that were not included in the Commission’s proposal.

I. ISSUES ADDRESSED IN THE COMMISSION’S PROPOSAL

NCSEA is generally supportive of the Commission’s proposed rule R8-72, but wishes to comment on certain aspects of the proposal. First, the Commission has not specified insurance coverage requirements in sections (b)(5)(iii) and (c)(3)(iii) of proposed rule R8-72. NCSEA would suggest that the Commission look to the insurance requirements contained in Section 6.15 of the North Carolina Interconnection Procedures, Forms, and Agreements (“Interconnection Standard”). Given that the insurance requirements of Section 6.15 of the Interconnection Standard would also be applicable to leased solar

generation facilities, NCSEA does not believe that it is necessary to require a substantial additional general liability insurance requirement.

Second, the Commission's proposed rule contains inconsistent language regarding the requirements for a certificate holder when corporate ownership changes. According to proposed rule R8-72(c)(2), "a sale of a controlling interest in the corporate entity holding a certificate" requires Commission approval. However, proposed rule R8-72(d) requires that "A holder of a certificate . . . shall notify the Commission . . . of any material change in status, including ownership change . . ." The authority granted to the Commission by G.S. 62-126.7 over electric generator lessors is fundamentally different from the authority granted to the Commission over regulated utilities. It is NCSEA's belief that it is unnecessary for certified lessors to obtain Commission approval for a change in upstream ownership. Accordingly, NCSEA would propose the Commission delete the reference in proposed rule R8-72(c)(2), but retain the notification requirement in proposed rule R8-72(d).

Finally, NCSEA believes that the dispute resolution process in the Commission's proposal can be improved in two manners. First, proposed rule R8-72(g)(1) states that upon request, "the Commission shall enter upon a proceeding to investigate" whether the electric generator lessor is operating in compliance with statutory requirement. However, G.S. 62-126.7(d) states that upon request, "the Commission may review the certificate" of an electric generator lessor. NCSEA is concerned that, in addition to being inconsistent with the statutory authority, the mandatory language of proposed rule R8-72(g)(1) may have the unintended consequence of allowing parties to disrupt the business operations of an electric generator lessor because the Commission does not have the discretionary

authority to dismiss unfounded complaints. NCSEA is further concerned that proposed rule R8-72(g)(4) dictates that “the certificate holder shall have the burden to show its compliance.” This violates the accepted principle that the accused are presumed to be innocent until the other side proves their case. NCSEA recommends that the Commission amend proposed rule R8-72(g)(4) to direct that the complaining party bears the burden of proof to show that the electric generator lessor is not in compliance with statutory and regulatory requirements.

II. ISSUES NOT ADDRESSED IN THE COMMISSION’S PROPOSAL

While not addressed in the Commission’s *Order*, NCSEA wishes to draw the Commission’s attention to two additional aspects of the governance of leasing of solar energy facilities that may require action by the Commission. First, G.S. 62-126.5(d) sets forth that:

The total installed capacity of all solar energy facilities on an offering utility’s system that are leased pursuant to this section shall not exceed one percent (1%) of the previous five-year average of the North Carolina retail contribution to the offering utility’s coincident retail peak demand. The offering utility may refuse to interconnect customers that would result in this limitation being exceeded.

Because the offering utility may refuse to interconnect customers that would result in the 1% limitation being exceeded, lessors and lessees require visibility to the amount of leased solar energy facilities on an offering utility’s system. Accordingly, NCSEA believes that it is important for the Commission to address, by rule or by order in this docket or a different proceeding, whether offering utilities should be required to file reports or updates about total installed capacity and the previous five-year average of the offering utility’s coincident retail peak demand.

Second, G.S. 62-126.5(d) further requires that:

Each offering utility shall establish a program for new installations of leased equipment to permit the reservation of capacity by customer generator lessees, whether participating in a public utility or nonutility lessor's leasing program, on its system, including provisions to prevent or discourage abuse of such programs. Such programs must provide that only prospective individual customer generator lessees may apply for, receive, and hold reservations to participate in the offering utility's leasing program. Each reservation shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned except as part of the sale of the underlying premises.

Inasmuch as G.S. 62-126.10 directs the Commission to adopt rules to implement Article 6B of Chapter 62 of the General Statutes, including G.S. 62-126.5(d), NCSEA believes that it is necessary for the Commission to exercise oversight of the reservation processes used by offering utilities.

III. CONCLUSION

NCSEA respectfully requests that the Commission consider the issues raised in these comments A in its deliberations in this proceeding.

Respectfully submitted, this the 8th day of November, 2017.

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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 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 8th day of November, 2017.

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