

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-107, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Halifax County Solar LLC)	ORDER GRANTING MOTION,
for a Certificate of Public Convenience and)	REOPENING RECORD, RECEIVING
Necessity to Construct an 80-MW Solar)	ADDITIONAL EVIDENCE INTO THE
Facility in Halifax County, North Carolina)	RECORD, REQUIRING PUBLIC
)	STAFF RECOMMENDATION, AND
)	PROVIDING NOTICE OF TIMELINE
)	FOR ISSUANCE OF FINAL ORDER

BY THE COMMISSION: On June 11, 2020, in the above-captioned proceeding, the Commission issued an order granting a certificate of public convenience and necessity (CPCN) pursuant to N.C. Gen. Stat. § 62-110.1(a) and Commission Rule R8-63 to Halifax County Solar LLC (Applicant) for the construction of an 80-MW_{AC} solar photovoltaic (PV) generating facility (Facility) to be located in Halifax County, North Carolina, and to be operated as a merchant plant. In reaching the conclusion that the Applicant should be issued the CPCN, the Commission made the following finding:

Finally, based on the testimony of Applicant witness Killenberg and Public Staff witness Lucas, the Commission finds that the Applicant does not expect to fund any costs for transmission network upgrades and that any potentially necessary network upgrade costs paid by the Applicant to PJM would not be eligible for reimbursement. The evidence indicates that the possibility the Facility will require any transmission network upgrades is remote because the Applicant will be constructing a new substation on the 115-kV transmission line to which it will be connected, and that substation will be for the sole use of the Facility.

. . . The Commission concludes due to the siting of the Facility, the Facility is consistent with the orderly expansion of electricity generating capacity in the region, presents no risk of service degradation or any financial impact on North Carolina's electricity generation, transmission and distribution infrastructure and no risk of overbuilding of generation facilities in this region of North Carolina.

Order Issuing Certificate for Merchant Generating Facility, *Application of Halifax County Solar LLC for a Certificate of Public Convenience and Necessity to Construct an 80-MW Solar Facility in Halifax County, North Carolina*, No. EMP-107, Sub 0, at 3 (N.C.U.C. June 11, 2020). The CPCN issued to the Applicant is expressly subject to all orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the Commission. *Id.* at App. A.

On July 13, 2020, the Public Staff filed a Motion for Reconsideration requesting that the Commission exercise its authority pursuant to N.C. Gen. Stat. § 62-80 to reopen the record for the receipt of additional evidence on the issue of affected system costs and to amend, as necessary, its Findings of Fact and Conclusions of Law from its June 11, 2020 Order granting the Applicant a CPCN for construction of the Facility.

On July 29, 2020, the Commission issued an Order requiring the Applicant to file a response to the Public Staff's motion on or before August 3, 2020.

On August 3, 2020, the Applicant filed a brief in opposition to the Public Staff's motion and the supporting affidavit of Christopher Killenberg, who previously testified on the Applicant's behalf in this proceeding.

Pursuant to N.C.G.S. § 62-80:

The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as herein provided for original orders or decisions.

The Commission's decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission's discretion. *State ex rel. Utilities Comm'n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *State ex rel. Utilities Comm'n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998).

Based upon the foregoing and the entire record herein the Commission determines that it is in the public interest to reopen the record to receive additional evidence regarding the current information on affected system costs that has been brought to the Commission's attention by the Applicant and the Public Staff since the Commission issued its order granting the CPCN to the Applicant. The Commission, therefore, will grant the Public Staff's motion and reopen the record in this proceeding for the purpose of admitting into the record the verified affidavit of Christopher Killenburg attached to the Applicant's August 3, 2020 brief. Moreover, in light of the Public Staff's recommendation and supplemental testimony filed in Docket No. EMP-108, Sub 0 regarding the CPCN application of American Beech Solar LLC, another merchant plant alleged to be similarly situated to Applicant with respect to transmission costs associated with the same DEP Network Upgrade at issue in this docket,¹ the Commission further requests the Public Staff to file a recommendation in this docket, and any supplemental supporting

¹ Supplemental Testimony of Jay B. Lucas at 3-16, *Application of American Beech Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 110-MW Solar Facility in Halifax County, North Carolina*, No. EMP-108, Sub 0 (N.C.U.C. July 22, 2020).

testimony, addressing the Applicant's allegation of similarities between the DEP Network Upgrade transmission costs potentially applicable to it and American Beech. The Commission will require the Public Staff to file its recommendation and supporting testimony, if any, on or before five business days after the date of this Order. Upon filing, the Public Staff's recommendation and any supporting testimony will be admitted into the record.

Further, recognizing the significant adverse consequences that a protracted reconsideration of the decision to grant the CPCN could have on the Applicant and its business planning, the Commission endeavors to mitigate the potential for such consequences by hereby providing notice of its intent to issue a final order on reconsideration in this docket within one week of the filing of the Public Staff's recommendation.

Finally, the facts and circumstances in this proceeding are unique. Therefore, the Commission determines that this Order should not be cited by the Applicant or any other party as precedent in support of a request for future Commission action in any proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the record in this proceeding shall be, and the same is hereby, reopened;
2. That the verified affidavit of Christopher Killenberg filed in this docket on August 3, 2020, shall be, and is hereby, admitted into the record;
3. That on or before August 20, 2020, the Public Staff shall file its recommendation and any supporting testimony in light of its recommendation and supplemental testimony filed in Docket No. EMP-108, Sub 0; and
4. That this Order is based on the unique facts and circumstances involved in this docket and shall not be cited by the Applicant or any other party as precedent in support of a request for future Commission action in any proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of August, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk