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NORTH CAROLINA UTILITIES COMMISSION (NCUC) RULE R8-64. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY QUALIFYING COGENERATOR OR SMALL POWER PRODUCER; PROGRESS REPORTS.

(a) Scope of Rule.

(1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18) or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).

(2) For purposes of this rule, the term “person” shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.

(3) The construction of a facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.

(4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant’s beginning of construction before the obtaining of the certificate.

(b) The Application.

(1) The application shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the Commission requires. It shall contain, among other things, the following information, either embodied in the application or attached thereto as exhibits:

(i) The full and correct name, business address and business telephone number of the applicant;

(ii) A statement of whether the applicant is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name and business address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina;

(iii) The nature of the generating facility, including the type and source of its power or fuel;

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(iv) The location of the generating facility set forth in terms of local highways, streets, rivers, streams, or other generally known local landmarks together with a map, such as a county road map, with the location indicated on the map;

(v) The ownership of the site and, if the owner is other than the applicant, the applicant's interest in the site;

(vi) A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;

(vii) The projected maximum dependable capacity of the facility in megawatts;

(viii) The projected cost of the facility;

(ix) The projected date on which the facility will come on line;

(x) The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity; any provisions for wheeling of the electricity; arrangements for firm, non-firm or emergency generation; the service life of the project; and the projected annual sales in kilowatt-hours; and

(xi) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.

(2) In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a projected dependable capacity of 5 megawatts or more available for such sale shall include in the application the following information and exhibits:

(i) A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;

(ii) Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project;

(iii) A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs;

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- (iv) The most current available balance sheet of the applicant;
- (v) The most current available income statement of the applicant;
- (vi) An economic feasibility study of the project;
- (vii) A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application;
- (viii) A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on-peak and off-peak, for each month of the year;
- (ix) A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and
- (x) A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.

(3) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.

(4) Applications filed on behalf of a corporation are not subject to the provision of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.

(5) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.

(6) The application and 30 copies shall be filed with the Chief Clerk of the Utilities Commission.

(c) Procedure upon receipt of Application. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:

(1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice

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have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.

(2) The Chief Clerk will deliver 16 copies of the application and the notice 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.

(3) If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

(4) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.

(d) The Certificate.

(1) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and operation of the generating facility is not obtained and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.

(2) The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate.

(3) Both before the time construction is completed and after, all certificate holders must advise both the Commission and the utility involved of any plans to sell, transfer, or assign the certificate or the generating facility or of any significant changes in the information set forth in subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes.

(e) Reporting. — All applicants must submit annual progress reports until construction is completed.

(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08.)