

R8-73 APPLICATIONS FOR CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS AS AN ELECTRIC GENERATOR LESSOR; TRANSFERS; AND NOTICE

(a) Scope of Rule.

- (1) This rule applies to applications for a certificate to engage in business as an electric generator lessor filed pursuant to G.S. 62-126.7 by any person seeking to own and lease one or more solar energy facilities as authorized by and subject to the provisions of Article 6B of Chapter 62.
- (2) The terms and definitions set forth in G.S. 62-126.3 apply for the purposes of this rule.
- (3) This rule shall apply to any offering utility, or any other person or entity who owns and leases a solar energy facility to another person, holds itself out as doing so or able to do so, solicits another person to enter into a lease of a solar facility, or that proposes such a transaction or arrangement, by whatever name, which substantively functions as a lease of a solar energy facility, without regard to whether such person or entity intends to do so for pecuniary gain.

(b) The Application.

- (1) The Application shall be comprised of the following:
 - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the applicant;
 - (ii) A statement of whether the applicant is an individual, a partnership, a limited liability company, or a corporation; and, if a partnership, the name, telephone number, business address, and electronic mailing address of each partner; and, if a limited liability company, the name, telephone number, business address, and electronic mailing address of each member; and, if a corporation, the name, telephone number, business address, and electronic mailing address of each corporate officer; and, if a foreign corporation, whether domesticated in North Carolina;
 - (iii) A listing of the electric service providers within whose assigned service territory the applicant proposes to engage in or solicit business as an electric generator lessor;
 - (iv) The proof or certification required by G.S. 62-126.7 and this Rule, as appropriate; and
 - (v) A verification that the person submitting the application is authorized to do so on behalf of the applicant, has read and knows the content of the application, and that the contents of the application are true to the best of his or her information or belief.
- (2) Application for authority to engage in business as an electric generator lessor shall be made on the form furnished by the Commission and any exhibits must be attached thereto and made a part of the application. The original of the application, including exhibits, must be filed with the Commission with a copy to the Public Staff. No application shall be deemed filed until the Commission receives and collects the filing fee as set forth in G.S. 62-300.
- (3) Applications filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should the Commission schedule a hearing on the application or establish a proceeding to review the certificate, the requirements of G.S. 84-4 and G.S. 84-4.1 shall apply.
- (4) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must sign and verify the application. The names and addresses of the officers of the corporation must be given and a certified copy of the corporate charter filed with the application. If the applicant is a limited liability company, a manager of the limited liability company must sign and verify the application. The names and addresses of the principal members and managers of the limited liability company must be given and a certified copy of the articles of organization filed with the application.
- (5) Pursuant to G.S. 62-126.7, the applicant shall provide proof or certification of the following:
 - (i) That the applicant is fit, willing, and able to own and lease solar energy facilities;
 - (ii) That the applicant is financially solvent, able to obtain and continue adequate insurance protection, and able to maintain its equipment in a safe, dependable manner;
 - (iii) That the applicant maintains minimum limits of \$100,000 of general liability insurance coverage;

- (iv) That the applicant will register with the Commission each solar energy facility that the applicant owns and leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or a report of proposed construction and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard, an application to register the facility as a new renewable energy facility pursuant to Rule R8-66;
- (v) That the applicant's lease agreements meet the requirements of G.S. 62-126.6, and that any payments made under the lease are not based upon the metered output of the leased facility;
- (vi) That the applicant will consent to the auditing of its books and records by the Public Staff and the Commission insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State;
- (vii) That the applicant will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers; and
- (viii) That the applicant will annually file on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.

(c) Sale or Transfer of the Certificate.

- (1) No transfer or sale of a certificate may occur before the transferee or buyer, respectively, certifies to the Commission its present and future compliance with G.S. 62-126.7 and makes the following additional representations:
 - (i) That the transferee or buyer is fit, willing, and able to own and lease solar energy facilities;
 - (ii) That the transferee or buyer is financially solvent, able to obtain and continue adequate insurance protection, and maintain its equipment in a safe, dependable manner;
 - (iii) That the transferee or buyer maintains minimum limits of \$100,000 of general liability insurance coverage;
 - (iv) That the transferee or buyer will register with the Commission each solar energy facility that the transferee or buyer leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or report of proposed construction and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard, an application to register as a new renewable energy facility;
 - (v) That the transferee or buyer's lease agreements meet the requirements of G.S. 62-126.6, and that any payments made under the lease are not based upon the metered output of the leased facility;
 - (vi) That the transferee or buyer will consent to the auditing of its books and records by the Public Staff and the Commission insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State;
 - (vii) That the transferee or buyer will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers; and
 - (viii) That the transferee or buyer will annually file on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.
- (2) If the transferee or buyer is a corporation, a true and accurate or certified copy of its corporate charter must be filed with said certification unless same is already on file with the Commission. If the transferee or buyer is a limited liability company, a true and accurate or certified copy of its articles of organization must be filed with said certification unless same is already on file with the Commission.

(d) Amendment to Certificate. A holder of a certificate to engage in business as an electric generator lessor shall notify the Commission within fifteen (15) days of any material change in status, including change in the assigned service territories where the certificate holder is operating as an electric generator lessor.

(e) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal.

Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

(f) 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 Chief Clerk will assign a new docket or sub-docket number to the filing.
- (2) The Commission will issue an order requiring the applicant to transmit notice thereof to each offering utility or municipal electric service provider within whose assigned service territory the applicant proposes to operate. The applicant shall be responsible for filing with the Commission a signed and verified certificate of service to the effect that the application and notice have been mailed to each offering utility or municipal electric service provider within whose assigned service territory the applicant proposes to operate.
- (3) If the applicant does not file the certificate of service within twelve (12) months of the Commission's order requiring mailing of notice, the Commission will dismiss the application.
- (4) No later than twenty (20) business days after the application is filed with the Commission, the Public Staff shall file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information.
- (5) If no protests raising material issues of fact to the granting of the application are filed with the Commission within thirty (30) days after the certificate of service is filed, and the Commission does not order a hearing on its own initiative, the Commission shall proceed to decide the application on the basis of information contained in the application and exhibits and the recommendation required by subsection (f)(4) of this rule.
- (6) If a protest raising a material issue of fact to the granting of the application is filed within thirty (30) days after the certificate of service is filed, the Commission shall set the application for hearing and cause notice thereof to be given to the applicant and all other parties of record.

(g) Review, Suspension, Reinstatement, or Revocation of Certificate.

- (1) Upon the request of an electric public utility, a municipal electric service provider, an electric membership corporation, the Public Staff, a customer generator lessee, or other person having an interest in a certificate holder's conduct of its business, or upon the Commission's own motion for good cause, the Commission shall investigate whether the electric generator lessor is conducting business in compliance with the provisions of Article 6B of Chapter 62, the conditions on the certificate, or a lawful order of the Commission.
- (2) In reviewing the certificate, the Commission may issue an order requiring the certificate holder to make appropriate filings to demonstrate its compliance with the provisions of Article 6B of Chapter 62 and this Rule, and setting a schedule for the proceeding, including setting the matter for hearing.
- (3) By issuance of the order establishing a review proceeding, the Commission, in its discretion, may suspend the certificate and require the certificate holder to immediately cease and desist from engaging in business as an electric generator lessor.
- (4) At any hearing instituted upon request of a complaining party for the purpose of reviewing the certificate holder's compliance with the provisions of Article 6B of Chapter 62 and this Rule, the complainant shall have the burden of proof. At any other hearing, including a hearing instituted by the Commission, the burden of proof shall be on the electric generator lessor.
- (5) After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a suspension of a certificate, or revoke a certificate. In addition, the Commission may impose a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence for any person whom the Commission determines either directly or indirectly engaged in any unfair or deceptive practice in the leasing of solar energy facilities, otherwise violated the requirements of G.S. 62-126.6, or operated in violation of the terms of the certificate.
- (6) The certificate shall be subject to administrative revocation if the certificate holder fails to file the certificate of compliance required by this rule on or before April 1 of each year, or if the certificate holder is demonstrated to have failed to conduct business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers, and that fact is brought to the attention of the Commission.

- (h) Procedure on Complaint that a Person is Operating without a Certificate.
- (1) Upon complaint of an electric public utility, a municipal electric service provider, an electric membership corporation, the Public Staff, a customer generator lessee, or other person having an interest in the conduct of a person who is alleged to be operating as an electric generator lessor without a valid certificate, the Commission shall enter upon a proceeding to investigate the complaint.
 - (2) In a proceeding to investigate a complaint that a person is alleged to be operating as an electric generator lessor without a valid certificate, the Commission shall issue an order establishing the proceeding, requiring appropriate filings from the parties, and setting a schedule for the proceeding, including setting the matter for hearing.
 - (3) By issuance of the order establishing a proceeding to investigate a complaint that a person is alleged to be operating without a valid certificate, the Commission may require such person to immediately cease and desist from engaging in business as an electric generator lessor.
 - (4) At the hearing in a proceeding to investigate a complaint that a person is alleged to be operating without a valid certificate, the complainant shall have the burden to show that the person is soliciting business or otherwise operating as an electric generator lessor without a valid certificate.
 - (5) The Commission, upon determining that the person is soliciting business or otherwise operating as an electric generator lessor without a valid certificate may, by final order issued in such an investigatory proceeding, declare such person to have violated the provisions of Article 6B of Chapter 62, restrain permanently the person from engaging in the conduct complained of, and impose a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence.
- (i) Reporting.
- (1) Each offering utility shall file with the Commission a report, on or before April 1, 2019, and each calendar year thereafter, which contains the following information: (i) the total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to G.S. 62-126.7; (ii) the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand; and (iii) the percentage of available installed capacity remaining until the statutory cap set forth in G.S. 62-126.5(d) is reached.
 - (2) In addition to the report required in subsection (i)(1) of this Rule, the offering utility shall file with the Commission a notice when the total installed capacity of all solar energy facilities installed on the utility's system that are leased pursuant to G.S. 62-126.7 represents 0.25 percent, 0.5 percent, and 0.75 percent of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The report required by this subsection shall be filed within twenty (20) days after the offering utility having reached the respective level of installed capacity.

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