STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Certification Requirements) ORDER ADOPTING RULE
for New Generating Capacity in North Carolina)

BY THE COMMISSION: On November 17, 1999, the Commission initiated a proceeding in this docket by issuing an Order requesting comments on whether a generic rulemaking proceeding should be undertaken to address a number of concerns, including the filing requirements for a certificate of public convenience and necessity to construct new electric generating capacity intended to serve wholesale load on a merchant plant basis. Interested parties -- including utilities, consumer advocates and independent power producers (IPPs) -- intervened, and the Commission received written comments from them. The Commission subsequently issued an Order on April 26, 2000, holding the proceeding in abeyance "pending resolution of electric industry restructuring issues by the legislature or until some future event warrants further consideration of the issues raised..."

Such an event warranting further consideration in this docket occurred earlier this year. At the January 23, 2001 meeting of the Study Commission on the Future of Electric Service in North Carolina, the Study Commission redirected its focus to encouraging a robust and competitive wholesale market, and, consistent with that new focus, Senator Hoyle, as Co-Chair of the Study Commission, asked the Utilities Commission to review the requirements for certification of new electric generating capacity in North Carolina with a view toward streamlining the process. G.S. 62-110.1(a) requires that any electric generating facility to be directly or indirectly used for furnishing public utility service, whether constructed by a public utility or other person, must have a certificate of public convenience and necessity from the Utilities Commission before construction. There was no Commission Rule specifically addressing the filing requirements for merchant plants.

The Commission issued its Order Initiating Further Proceedings in this docket on February 7, 2001. By that Order, the Commission requested proposals and comments on what filing requirements are appropriate for certification of merchant plants, what new or revised Commission Rules should be adopted to implement such filing requirements, and how Commission procedures for certification of merchant plants may be streamlined. The Public Staff filed a proposed Rule R8-63 in this docket on March 14, 2001. Comments and reply comments have been filed by the following parties, all of whom have been allowed to intervene and participate herein: the Public Staff; the Attorney General (AG); Duke Power, a Division of Duke Energy Corporation (Duke); Carolina Power & Light Company (CP&L); Virginia Electric and Power Company, d/b/a Dominion North Carolina Power

(Dominion); Piedmont Natural Gas Company, Inc. (Piedmont); the Carolina Utility Customers Association, Inc. (CUCA); the Carolina Industrial Groups for Fair Utility Rates (CIGFUR); Enron America (Enron); Dynegy Inc. (Dynegy); Calpine Eastern Corporation (Calpine); PG&E National Energy Group (PG&E); the Public Works Commission of the City of Fayetteville; and the Electric Power Supply Association.

The Commission has carefully weighed and considered all of the comments. On the basis thereof, the Commission will adopt a new Commission Rule R8-63 as reflected in the attached Appendix A. The Commission will not try to summarize all of the comments, but will instead identify and discuss some of the major disagreements in the comments and some of the key provisions of the new Rule. These are discussed below:

Definition of Merchant Plant. The Public Staff's proposed Rule defined a merchant plant as an electric generating facility, other than a qualifying facility under PURPA, the output of which will be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility. There was little controversy as to this definition. CUCA suggested refining the definition to provide that a utility selling at retail may not own a merchant plant except through a separate subsidiary, but that suggestion raises issues that are pending in other Commission proceedings and are better handled there.

The Commission adopts the Public Staff's proposed definition as Rule R8-63(a)(2). This definition determines the scope and applicability of the new Rule adopted herein.

Prefiling of Information. At present, Commission Rule R8-61 requires all applicants proposing an electric generating facility with a capacity of 300 MW or more to prefile certain preliminary information at least 120 days before filing the certificate application itself. The Public Staff's proposed Rule would exempt merchant plants from the prefiling requirement of Rule R8-61. There was no outright opposition to the Public Staff's proposal. CP&L and Duke proposed eliminating the prefiling for utilities as well as merchant plants. They asked that Rule R8-61 be revised to allow the information that must now be prefiled 120 days before an application to be filed with the application instead, thus making the change applicable to all applications.

The Commission adopts the Public Staff's recommendation as Rule R8-63(a)(3). Eliminating the prefiling requirement of Rule R8-61 for merchant plants is a major step toward speeding up and streamlining the certification of merchant plants in North Carolina. The Commission will not adopt the recommendation of the utilities. If a utility is building a merchant plant, it will come under the new Rule adopted herein and will be exempt from prefiling. The question of whether a utility building a retail, rate-base generating plant should be exempt from the prefiling requirement of Rule R8-61 presents different issues and is not within the scope of this proceeding, which is focused on merchant plants. The utilities may pursue their argument in an appropriate docket if they wish.

Information Required as to the Applicant and the Proposed Facility. There is much disagreement as to exactly what information should be required in the application for a certificate for construction of a merchant plant. Among other items, the Public Staff's proposed Rule R8-63(b)(1)(A) and (B) would require that the applicant file financial information such as an annual report or a balance sheet and income statement; estimated construction costs; a proposed site layout of plant equipment and transmission interconnections; a list of other federal, state, and local permits and applications and their status; and a general description of transmission facilities to be used or the need for rights-of-way for new transmission.

The Public Staff argued that its proposed Rule would require only the fundamental information about the applicant and facility that the Commission needs in order to grant a certificate. The Public Staff agreed that merchant plants should be easier to certify than utility plants, but said that there are still significant issues and risks. The Public Staff argued that the information required by its proposed Rule is not extensive and will provide a minimum level of assurance. The AG agreed with the Public Staff. The AG supported streamlining but said that certain information is necessary for the Commission to fulfil its statutory duties. The AG argued that the Commission "will better serve the public by requiring sufficient information in applications for meaningful public consideration and comment."

Duke and some of the IPP intervenors -- such as Enron, Dynegy and PG&E -- opposed many of these proposed filing requirements. Duke would eliminate the requirement that an applicant provide its annual report or its balance sheet and income statement, saying that the Commission need not evaluate an applicant's creditworthiness. Duke would compress the information about the facility itself, eliminating such things as a site layout and a description of transmission facilities. Enron, Dynegy and PG&E generally commented that the above filing requirements are unnecessary, that the Commission need not micro-manage or exercise independent oversight as to these items because they will all be addressed by the developer through his due diligence and general plant development, and that the market will consider all these items and only viable plants will get built.

CUCA would go even further than other parties in eliminating information required in the certificate application. CUCA would only require a basic description of the applicant and facility, and even that could include "reasonable ranges" for size and in-service date to allow for modifications of plans. CUCA commented that information as to estimated construction costs should be limited to "confirmation that the costs...are 'consistent with projects of similar type and size.'"

The Commission takes its charge to streamline certification of merchant plants very seriously. However, the Commission has certain statutory duties with respect to the construction of electric generation. Statutes require that certain basic information be

provided and that the Commission stay informed as to the state of electric generation in North Carolina. Moreover, by statute, the Commission's certification process serves a public notice function. On balance, the Commission decides to adopt the filing requirements proposed by the Public Staff, except as modified hereinafter. In doing so, the Commission wishes to stress several points. First, the Commission does not believe that the filing requirements adopted herein are onerous or that they will frustrate developers. Indeed, it would appear from the comments that developers will have to come up with all of this information anyway; nothing really new is being required. While this rulemaking process was pending, three applicants for merchant plant certificates, not wanting to wait, filed certificate applications based on the Public Staff's proposed Rule. The Commission takes this as an indication that these filing requirements are not overly burdensome and will not chill merchant plant development in the State. Further, the Commission does not intend to micro-manage merchant plant development. Finally, the Commission emphasizes that any applicant may ask for a waiver of any filing requirement if reason exists and good cause for a waiver is shown. The Commission believes that this decision reflects an appropriate balance between streamlining the certification process and meeting statutory obligations and the public interest.

Information on Market Power. The Public Staff's proposed Rule R8-63(b)(1)(B)(vii) would require that an application for a merchant plant certificate include information about other generating facilities and/or sites intended for such facilities in the region that the applicant or an affiliate owns and/or controls. The Public Staff commented that such information will help the Commission "obtain a comprehensive view of the developing wholesale market." The AG commented that it is necessary to consider market power information such as this in a certificate proceeding in order to encourage wholesale competition. CIGFUR also wanted information about market power in the application and stated that the Commission should deny certification if market power concerns are not resolved.

Duke and CP&L opposed this filing requirement. They argued that the requirement is vague and irrelevant and would needlessly complicate the certificate process. Calpine would either eliminate or at least clarify the requirement. Calpine found some of the proposed language unclear, and the Public Staff responded with some clarifications in its reply comments. PG&E would eliminate information on affiliated facilities or sites, arguing that anti-trust and market abuses are the purview of other fora. CUCA wanted market power addressed in an appropriate forum but said that market power concerns should not impede the streamlining of certification in this docket.

The Commission concludes that some information bearing on market power is appropriate and should be required in merchant plant certificate applications. The Commission will require information on other facilities of the applicant or one of the applicant's affiliates. For these purposes, the region is defined as the Southeastern Electric Reliability Council region. Information as to certificates that have been granted

for other plants not yet constructed, though not included in the Public Staff's proposed Rule, will also be required. The Commission is less convinced as to the importance of information on other sites intended for such facilities in the region, and such information will not be required at this time. It should be noted that the Commission has recently undertaken a survey in a separate docket of how many possible sites are suitable for merchant plant development in the State.

Information on Natural Gas Capacity and Supply . The Public Staff's proposed Rule R8-63(b)(1)(B)(iv) would require that certificate applications for gas-fired merchant plants include information about the proximity of existing natural gas facilities, any new dedicated natural gas facilities to be constructed, and any contracts or tariffs for interstate pipeline capacity. The Public Staff commented that North Carolina has limited natural gas interstate pipeline capacity and that it would be unwise to certify a plant if the plant could only operate part-time due to capacity limits.

CUCA commented that the Public Staff is over-regulating, that the market will not allow a plant to be built if its gas supply is inadequate, and that requiring too much information will discourage new electric generation. This filing requirement was also opposed by parties such as Enron, Dynegy, PG&E, and Calpine. They argued that requiring information about arrangements for pipeline capacity is excessive, that the Commission should not weigh the commercial viability of each project's fuel strategy, and that a plant will simply not be built if it doesn't have capacity.

Piedmont intervened and commented on the arrangements of gas-fired merchant plants for pipeline capacity and gas supply. First, Piedmont agreed that an application should provide details as to proposed natural gas capacity and supply and that the public interest requires examination of such arrangements since available capacity is already subscribed and there is already high demand for existing gas supply. Second, Piedmont commented that gas-fired merchant plants can cause swings in operational pressure and flow of pipelines, which may affect service to the North Carolina LDCs. Piedmont argued that the Commission should require applicants to show that they will not adversely impact existing natural gas service in the State. Third, Piedmont argued that the Commission should, as part of the certification process, require that applicants for merchant plant certificates get service from the local LDC, rather than bypass the LDC and connect directly with an interstate pipeline.

PG&E objected to Piedmont's proposals as "bad business and bad law." Calpine also objected, arguing that the impact of a new generating facility on existing gas service is not an appropriate issue for a certificate proceeding and that requiring a new facility to get service from the local LDC may be in conflict with federal law. CUCA stated that bypass is legal in North Carolina and that Piedmont is only out to "protect its monopoly..."

For the reasons previously cited, the Commission adopts the Public Staff's

recommendation. Again, the Commission does not mean to micro-manage merchant plant development but feels that this is appropriate information to keep the Commission informed as to the development of electric generation in the State. The Commission shares Piedmont's concerns about the operational and economic impact of gas-fired merchant plants on the gas pipeline system and on other customers. However, the Commission feels that such issues can and should be addressed in individual certificate proceedings. Although the Commission has expressed concerns as to bypass of local LDCs by new merchant plants, the Commission believes that this is an issue best addressed in certificate cases where individual fact situations are presented.

Showing of Need. The issue of what must be shown to establish the need for a merchant plant is one of the main concerns that prompted this proceeding to streamline certification procedures. In its 1992 decision regarding Empire Power Company in Docket No. SP-91, the Commission dismissed a certificate application for a merchant plant, stating that as a minimum filing requirement "an IPP proposing to sell its electricity to a North Carolina utility must first obtain and allege as part of its certificate application either a contract or a written commitment from the utility." The Commission addressed this old requirement in the order initiating the present proceedings. In the February 7, 2001 Order in this docket, the Commission recognized that the environment in which the Empire decision was made has changed in many crucial ways, and the Commission commented that "Empire is not a decision whose reasoning the Commission would follow per se today because the reasoning behind it does not reflect the situation in the industry today." The Order left open the issue of what new requirement would be adopted.

In the comments that have been filed herein, no party advocated that the Empire requirement be retained. The Public Staff's proposed Rule R8-63(b)(1) would require that applications for certificates for merchant plants include a showing of need as follows: "A description of the need for the facility in the state and/or region, with supporting documentation. This documentation shall include, as appropriate, either (i) contracts or preliminary agreements for the output of the facility, or (ii) information demonstrating that there is a need for the applicant's power in its intended market." Public Staff stated that this would be "an adequate but much less specific showing of need."

Duke would simplify the statement of need even more by eliminating the reference to contracts or preliminary agreements. Duke said that that sounds too much like the old Empire requirement. Duke would have an applicant simply show that there is a need for the generation in its intended market. Dominion commented that no showing of need should be required at all because retail customers do not need protection from over-expansion of generation. If any showing of need is retained, Dominion stated that it should be quite general. CP&L stated that an appropriate standard for showing need would be whether reserve margins will fall below some threshold level within the region.

CUCA and Dynegy both supported a general statement of need in the state and/or

region. Enron would keep the first sentence proposed by the Public Staff but delete the second as too restrictive. Calpine suggested adopting a presumption that need could be shown by forecasts or declining reserve margins. PG&E urged the Commission to find a presumption of need in recent federal law encouraging wholesale competition or to adopt a very low threshold, such as general growth in the region. PG&E wanted to limit intervention on the issue of need to the Public Staff and AG, but CP&L opposed the idea of limiting intervention.

It is the Commission's intent to facilitate, and not to frustrate, merchant plant development. Given the present statutory framework, the Commission is not in a position to abandon any showing of need or to create a presumption of need. However, the Commission believes that a flexible standard for the showing of need is appropriate. The Commission adopts the first sentence of the Public Staff's recommendation but will not adopt the second sentence. The Commission agrees with Duke that the reference to "contracts or preliminary agreements" in the second sentence brings to mind the old Empire requirement and might raise doubts as to whether the Commission has truly abandoned that requirement. The Commission has abandoned the contract requirement of Empire as inappropriate in today's environment.

Utility-Affiliate Pricing. In connection with recent mergers, Duke, CP&L, and Dominion each agreed to codes of conduct which address utility-affiliate pricing. The Commission approved these codes of conduct and ordered the utilities to comply with them. In general, these codes of conduct require that, for inter-company exchanges, an affiliate must pay the utility the higher of fully allocated cost or market price and the utility must pay its affiliate the lower of fully allocated cost or market. In this proceeding, Duke argued that the pricing rules in these codes of conduct effectively preclude utility affiliates from developing merchant plants in North Carolina and that the Commission should use the present rulemaking proceeding to change the rules. Duke would add a provision to this new Rule to the effect that utilities may purchase from merchant plants owned by their affiliates at market rates approved by the Federal Energy Regulatory Commission and that such rates will be deemed reasonable for retail ratemaking purposes.

The Public Staff, AG, and CIGFUR all pointed out that such a provision would be contrary to the codes of conduct that Duke and other utilities agreed to in recent merger proceedings and that the provision raises important issues that are beyond the scope of this proceeding. The Commission agrees that Duke's proposal raises issues beyond the scope of this proceeding and should be considered in other dockets.

Procedure upon Receipt of Application. The Commission wants to avoid delays in processing applications for merchant plant certificates. The Public Staff's proposed Rule R8-63(d) would allow 10 days after receipt of an application for the Public Staff to examine it and give notice whether it is complete or is deficient in some way. The Commission would require any missing information to be provided and then issue a procedural order

scheduling a hearing once everything is filed. The Public Staff said that this procedure would allow deficiencies to be handled promptly and would allow a procedural order to be issued without waiting for the matter to be placed on a Commission agenda. Duke and CP&L would allow "any party in interest" to point out deficiencies in an application.

The Commission generally adopts the Public Staff language. Allowing a procedural order to be issued without the matter being placed on a Monday morning Commission agenda should expedite handling. The Commission will allow parties other than the Public Staff to point out deficiencies in an application, consistent with the procedure that Rule R1-17(f)(1) now provides for general rate case applications. However, in recognition of its unique responsibilities, the Commission will require that the Public Staff file notice within 10 days of every application filing stating its opinion as to whether the application is complete or deficient and, if deficient, in what way it is deficient. This filing by the Public Staff will prompt the Commission's procedural order.

Scheduling a Hearing. The Public Staff's proposed Rule R8-63(b)(3) would require that supporting testimony be filed with the application and proposed Rule R8-63(d) would provide that the Commission issue an order "setting the matter for hearing" once a complete application is filed. The Public Staff stated that a public hearing is required by G.S. 62-110.1(e) and that it would save time to require prefiled testimony along with the application and to schedule a hearing on every application right at the outset.

CUCA, citing G.S. 62-82(a), argued that the Commission should announce a presumption that certificates will be issued without a hearing and that a complaint demonstrating good cause should be required before a hearing will be held. CUCA would therefore eliminate the pre-filing of testimony. CP&L agreed that there should be a presumption that no hearing is required unless good cause is shown.

Once again, the Commission's interest is in expediting the processing of merchant plant applications. There is a conflict between G.S. 62-110.1(e) and G.S. 62-82(a). Both deal with applications for a certificate for an electric generating facility but G.S. 62-110.1(e) states, "The Commission shall hold a hearing on each such application..." while G.S. 62-82(a) only requires that a hearing be held "upon complaint..." G.S. 62-110.1(e) is the more recent enactment, having been added in 1975. The Public Staff, citing G.S. 62-110.1(e), would schedule a hearing in every case right from the start. They explain, "If not set at the outset, there is a clear potential for delay if a hearing is later determined to be appropriate." Both Duke and Enron filed proposed rules that agree with the Public Staff on this point. The Commission agrees that scheduling a hearing on every application up front will tend to streamline procedures for certification of merchant plants.

Revocation of the Certificate. The Public Staff's proposed Rule R8-63(e) would provide for revocation of a certificate, after notice and opportunity for correction, under certain circumstances, e.g., if other permits are not obtained, if reports are not filed or fees

not paid, or if material inaccurate information has been filed. Dynegy expressed concerns about the revocation provisions, arguing that any revocation should be discretionary, that any revocation should be triggered only by significant noncompliance or malfeasance, and that due process guarantees of notice and hearing should be observed. In its reply comments, the Public Staff revised its proposal in response to such concerns. The only other comment on this issue was by CUCA, which would allow for revocation only pursuant to G.S. 62-80 and the conditions set forth in the order granting the certificate.

The Commission adopts the revised language of the Public Staff, which makes very specific and strict provisions for revocation.

Transfer of the Certificate. The Public Staff's proposed Rule R8-63(e) would require the certificate holder to notify the Commission of any plans to sell, transfer, or assign the certificate and facility. PG&E commented that it should be clear that notice of transfers would be for information only and that the Commission has no authority to approve or deny a sale or assignment of a certificate. The Public Staff commented that the Commission has authority to impose appropriate conditions on certificates, including a condition that any subsequent transfer be subject to Commission approval. The Public Staff feels that the Commission needs some continuing authority as to how the merchant plant is being used after the certificate is issued, both for planning purposes and for preventing market power abuses. The Public Staff did not propose that approval of transfers be required by this Rule, but the Public Staff apparently intends to propose such a condition as individual certificate applications are decided.

The Commission adopts the requirement that a certificate holder give notice of any plans to sell, transfer or assign the certificate and facility. This requirement of notice is not as controversial as the further issue raised by the Public Staff -- whether the Commission should assert authority to approve transfers. That issue is an appropriate matter for individual certificate cases and will be considered if and when it arises in such dockets.

Other Certificate Conditions. CUCA commented that a merchant plant certificate should be subject to a condition that the applicant receive and maintain other regulatory approvals and a condition that the applicant abstain from trying to exercise eminent domain power. The Public Staff agreed to CUCA's suggestion for a condition as to eminent domain. The AG suggested that the matter of putting conditions in certificates be considered later so as not to hold up this proceeding. As indicated in the previous discussion, the Commission agrees with the AG and will decide what conditions to attach to certificates as individual certificate cases come to decision.

In conclusion, the Commission has carefully considered all of the proposed Rules and comments herein, and the Commission hereby adopts new Rule R8-63, attached hereto as Appendix A. The Commission believes that this Rule streamlines the certification process for merchant plants while providing the Commission with the

information it needs under current law. This new Rule eliminates the 120-day prefiling requirement, clarifies application filing requirements, replaces the old contract requirement with a new liberal standard for showing need, and lays out procedures to bring applications to decision promptly. The development of a competitive wholesale market is in an early stage in this State. There is still a role for the Commission to ensure an adequate and reliable supply of electricity. At this point, incremental steps are appropriate. However, the Commission will monitor practice under the new Rule, and the Commission stands ready to consider further ideas for maximizing the benefits of the emerging market while reducing risks of the transition to a new industry structure.

IT IS, THEREFORE, ORDERED that the Commission adopts new Commission Rule R8-63, attached hereto as Appendix A.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of May, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

rg052101.01

Rule R8-63. Application for certificate of public convenience and necessity for merchant plant; progress reports.

(a) Scope of Rule.

(1) This rule applies to an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) by any person seeking to construct a merchant plant in North Carolina.

(2) For purposes of this rule, the term "merchant plant" means an electric generating facility, other than one that qualifies for and seeks the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156, the output of which will be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility pursuant to G.S. 62-133.

(3) Persons filing under this rule are not subject to the requirements of Rule R1-37 or Rule R8-61.

(b) Application.

(1) The application shall contain all of the information hereinafter required, with each item labeled as set out below. Any additional information may be included at the end of the application.

(A) The Applicant:

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

(ii) A description of the applicant, including the identities of its principal participant(s) and officers, and the name and business address of a person authorized to act as corporate agent or to whom correspondence should be directed; and

(iii) A copy of the applicant's most recent annual report to stockholders, which may be attached as an exhibit, or, if the applicant is not publicly traded, its most recent balance sheet and income statement. If the

applicant is a newly formed entity with little history, this information should be provided for its parent company, equity partner, and/or the other participant(s) in the project.

(B) The Facility:

(i) The nature of the proposed generating facility, including its type, fuel, size, and expected service life; the anticipated beginning date for construction; the expected commercial operation date; and estimated construction costs;

(ii) A detailed description of the location of the generating facility, including a map with the location marked;

(iii) The proposed site layout of all major equipment and a diagram showing the generator, plant distribution system, startup equipment, and provisions for transmission interconnection;

(iv) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;

(v) A list of all needed federal, state, and local approvals related to the facility and site, identified by title and the nature of the needed approval; a copy of such approvals or a report of their status; and a copy of any application related to eligible facility and/or exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992, including attachments and subsequent amendments, if any;

(vi) A general description of the transmission facilities to which the facility will have access or the necessity of acquiring rights-of-way for new facilities; and

(vii) Information about generating facilities in the Southeastern Electric Reliability Council region which the applicant or an affiliate has any ownership interest in and/or the ability to control through leases, contracts, options, and/or other arrangements and information about certificates that have been granted for any such facilities not yet constructed.

(C) Statement of Need: A description of the need for the facility in the state and/or region, with supporting documentation.

(2) The application shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant.

(3) The application shall be accompanied by prefiled direct testimony incorporating and supporting the application.

(4) The Chief Clerk will deliver ten (10) copies of the application to the Clearinghouse Coordinator in the Department of Administration for distribution to State agencies having an interest in the proposed generating facility.

(c) 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.

(d) Procedure upon Receipt of Application. No later than ten (10) business days after the application is filed with the Commission, the Public Staff shall, and any other party in interest may, file with the Commission and serve upon the applicant a notice 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. Upon receipt of all required information, the Commission will promptly issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.

(e) The Certificate.

(1) The certificate shall specify the name and address of the certificate holder; the type, size, and location of the facility; and the conditions, if any, upon which the certificate is granted.

(2) The certificate shall be subject to revocation if (a) any of the federal, state, or local licenses or permits required for construction and operation of the generating facility is not obtained or, having been obtained, is revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30)

days' written notice and opportunity to cure.

(3) The certificate must be renewed if the applicant does not begin construction within two years after the date of the Commission order granting the certificate.

(4) A certificate holder must notify the Commission in writing of any plans to sell, transfer, or assign the certificate and the generating facility.

(f) Reporting. All applicants must submit annual progress reports and any revisions in cost estimates, as required by G.S. 62-110.1(f) until construction is completed.