

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	REQUEST FOR
Request for Declaratory ruling by)	DECLARATORY RULING
Col Francis X. De Luca USMCR(RET))	

Pursuant to G.S. §§ 1-253 and 62-60 and Rule R1-5 of the Rules and Regulations of the N.C. Utilities Commission (the "Commission"), the Francis X. De Luca respectfully requests that the Commission issue a declaratory ruling that Fresh Air Energy, LLC is a public utility pursuant to G.S 62-3(23) for the purposes of the public utilities act.

In support of its Request for Declaratory Ruling Francis X. De Luca Submits the following:

Background

Fresh Air Energy L.L.C. seeks to construct a 65-MW Solar Generating Facility to be situated on a total of seven parcels located at 1255 Grogan Road, approximately 3.90 miles to the east of the Town of Mayodan, 2.90 miles to the south of the Town of Stoneville, and 4.58 miles southwest of the Town of Providence in Stoneville, Rockingham County, NC. Fresh Air Energy plans to sell the electricity generated to Duke Energy Carolinas, LLC.

Statutory and Regulatory Background

Fresh Air Energy meets the definition of a public utility as defined under § 62-3(23) because the company will produce electricity "...to or for the public for compensation..." In addition, Fresh Air Energy does not fall under any of the exemptions from being a public utility in the statute. Fresh Air Energy will sell the electricity it produces to Duke Energies Carolina LLC (Docket no. SP-2665 SUB 47) who will then provide the electricity for use by the public. Fresh Air Energy, LLC is also applying for a certificate of public convenience and necessity consistent with § 62-3(2) for public utilities.

Additional Public Policy Interest

A finding that Fresh Air Energy is a public utility is consistent with the stated declaration of policy under § 62-2 including inter alia, § 62-2(a)(1), to regulate public utilities in the interest of the public, § 62-2(a)(3a) regarding fixing of rates in a manner to result in the least cost mix of generation and § 62-2(a)(5).

Furthermore, as filed in REBUTTAL TESTIMONY OF KENDAL C. BOWMAN ON BEHALF OF DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC for DOCKET NO. E-100, SUB 148, the following statements are pertinent for issuing a declaratory ruling that Fresh Air Energy LLC is a public utility pursuant to G.S 62-3(23) for the purposes of the public utilities act. On page 6 of the filing the it is stated the North Carolina Electric Membership Corporation is concerned about the "undeniable" cost increases resulting from the influx of solar in North Carolina. On pages 11 and 31 of the filing it refers to "overpayment" of as much as \$1 billion by customers.

By recognizing solar facilities such as Fresh Air Energy LLC as a public utility, North Carolina will have access to information to determine the true costs of solar power. We have information for legacy

generators such as Duke and Dominion. We currently do not have access to information from any of the new qualifying facilities (QF) generators and, just like legacy generators, that information is crucial to determining what costs the ratepayer should bear.

Respectfully submitted this 18th Day of May, 2017

By Francis X. De Luca
Col Francis X. De Luca USMCR(Ret)

Wake County
North Carolina

I Destiney Goodman certify that Francis X. De Luca personally appeared before me this day and acknowledged the due execution of this foregoing instrument.

Witness my hand and official seal this 17th day of May 2017

Destiney Goodman
Official Signature of Notary
Destiney Goodman Notary Public
Notary's printed or typed name

My commission expires: Feb. 15, 2021

DESTINEY GOODMAN
Notary Public
Wilson Co., North Carolina
My Commission Expires Feb. 15, 2021