



NextEra Energy Resources, LLC

Submitted to Catawba County by  
Blackburn Solar, LLC

## Catawba County Conditional Rezoning Application

Blackburn Solar Project  
Blackburn Solar, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408

12 May 2023

Project No.: 0554704

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## 1. APPLICATION FORM & OWNER AUTHORIZATION LETTERS

## Catawba County Rezoning/Ordinance Text Amendment Application

Applicant Blackburn Solar, LLC Phone # (917) 836-8352  
Applicant's Fax \_\_\_\_\_ Applicant's Email Heath.Barefoot@nexteraenergy.com  
Applicant's Mailing Address 700 Universe Blvd City, State, Zip Juno Beach, FL 33408  
Property Owner Multiple- See attached Phone # \_\_\_\_\_  
Property Owner's Mailing Address See attached City, State, Zip See attached  
Parcel 911 Address 5256 HICKORY-LINCOLNTON HWY (SR 1008), LINCOLNTON, NC 28092 PIN # 361704739646, 361704615203, 361601499954, 361602782925  
Subdivision Name and Lot # See attached survey  
Current Zoning District R-40 Proposed Zoning District R-80 (CD)

Type of Rezoning Application:

☐ **General Rezoning**

- The general information listed below shall be submitted with the rezoning application.

☐ **Planned Development Rezoning**

- All information contained in the Planned Development Chart of the Procedures Manual is to be shown on a plan submitted with the application and the general information below.

☐ **Special District Rezoning**

- All information contained in the Special District Development Chart of the Procedures Manual is to be shown on a plan submitted with the application and the general information below.

☒ **Conditional District Rezoning**

- All information contained in the Conditional District Development Chart of the Procedures Manual is to be shown on a plan submitted with the application. The complete application includes the general information below and specific development conditions substantially agreed to by the staff and applicant as well as a development agreement if applicable.

☐ **Manufactured Home Park Rezoning**

- All information contained in the Manufactured Home Park Development Chart of the Procedures Manual is to be shown on a plan submitted with the application and the general information below.
- Proposed Park Name \_\_\_\_\_

☐ **Ordinance Text Amendment**

- Submit general information listed below.

**General Information to be attached:**

- ☒ If a portion of an existing parcel is requested to be rezoned, a survey of the portion of the parcel(s) covered by the proposed amendment at a scale no smaller than 1 inch equals 200 feet, on a 18 x 24 inch map and one 8 x 11 inch map (30 copies).
- ☒ Submittal of 30 copies of each map including digital copies in .pdf or .jpg format.
- ☐ If applicable, a legal description of such land
- ☐ If applicable, a detailed statement of any alleged error in the Unified Development Ordinance which would be corrected by the proposed amendment, and a detailed explanation of the manner the proposed amendment will correct the alleged error.
- ☒ A detailed statement of all other circumstances, factors, and reasons, which applicant offers in support of the proposed zoning map or text amendment.
- ☒ Filing Fee: Per Catawba County Fee Schedule

Applicant's Name (Printed) Heath Barefoot

Applicant's Signature  Date 5/12/2023

Property Owners Name (Printed) \_\_\_\_\_

Property Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

# **PROPERTY OWNER AUTHORIZATION AGREEMENT**

## **REZONING APPLICANT**

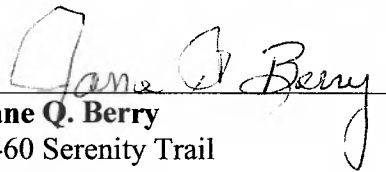
Blackburn Solar, LLC

## **PROPERTY OWNER**

Jane Q. Berry

In accordance with the Catawba County Unified Development Ordinance, the undersigned, as the owner of the parcel of land located in Catawba County that is designated as Tax Parcel Number 361704739646 on the Catawba County Tax Map, hereby joins in and authorizes the attached Rezoning Application and certifies that she consents to the change in zoning for Tax Parcel Number 361704739646 from an R-40 zoning district to an R-80 (CD) zoning district as more particularly depicted on the related conditional rezoning plan, and to subsequent changes to the conditional rezoning plan as part of this Rezoning Application, except for any change in the requested zoning designation. The undersigned does not agree or join in any change to a zoning designation other than to the R-80 (CD) zoning district.

This 9 day of May, 2023.

  
**Jane Q. Berry**  
8460 Serenity Trail  
Ooltewah, TN 37363

## **PROPERTY OWNER AUTHORIZATION AGREEMENT**

### **REZONING APPLICANT**

Blackburn Solar, LLC

### **PROPERTY OWNER**

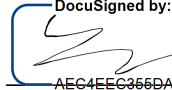
Agri-Land West, LLC

In accordance with the Catawba County Unified Development Ordinance, the undersigned, as the owner of the parcel of land located in Catawba County that is designated as Tax Parcel Number 361602782925 on the Catawba County Tax Map, hereby joins in and authorizes the attached Rezoning Application and certifies that it consents to the change in zoning for Tax Parcel Number 361602782925 from an R-40 zoning district to an R-80 (CD) zoning district as more particularly depicted on the related conditional rezoning plan, and to subsequent changes to the conditional rezoning plan as part of this Rezoning Application, except for any change in the requested zoning designation. The undersigned does not agree or join in any change to a zoning designation other than to the R-80 (CD) zoning district.

This Third day of May, 2023.

**AGRI-LAND WEST, LLC**

DocuSigned by:



AEC4EEC366DA44F...

By: Lucas F. Richard

Title: Member

## **PROPERTY OWNER AUTHORIZATION AGREEMENT**

### **REZONING APPLICANT**

Blackburn Solar, LLC

### **PROPERTY OWNER**

Lee Catawba Lincoln Properties, LLC

In accordance with the Catawba County Unified Development Ordinance, the undersigned, as the owner of the parcel of land located in Catawba County that is designated as Tax Parcel Number 361704615203 on the Catawba County Tax Map, hereby joins in and authorizes the attached Rezoning Application and certifies that it consents to the change in zoning for Tax Parcel Number 361704615203 from an R-40 zoning district to an R-80 (CD) zoning district as more particularly depicted on the related conditional rezoning plan, and to subsequent changes to the conditional rezoning plan as part of this Rezoning Application, except for any change in the requested zoning designation. The undersigned does not agree or join in any change to a zoning designation other than to the R-80 (CD) zoning district.

This <sup>8<sup>th</sup></sup> \_\_\_\_\_ day of May, 2023.

**LEE CATAWBA LINCOLN  
PROPERTIES, LLC**

DocuSigned by:



C505BE782C474DD...

By: Teresa Lee Weese

Title: Manager



# **PROPERTY OWNER AUTHORIZATION AGREEMENT**

## **REZONING APPLICANT**

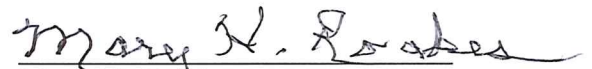
Blackburn Solar, LLC

## **PROPERTY OWNER**

Mary H. Roakes

In accordance with the Catawba County Unified Development Ordinance, the undersigned, as the owner of the parcel of land located in Catawba County that is designated as Tax Parcel Number 361601499954 on the Catawba County Tax Map, hereby joins in and authorizes the attached Rezoning Application and certifies that she consents to the change in zoning for Tax Parcel Number 361601499954 from an R-40 zoning district to an R-80 (CD) zoning district as more particularly depicted on the related conditional rezoning plan, and to subsequent changes to the conditional rezoning plan as part of this Rezoning Application, except for any change in the requested zoning designation. The undersigned does not agree or join in any change to a zoning designation other than to the R-80 (CD) zoning district.

This 5 day of May, 2023.



**Mary H. Roakes**

307 Bethel Drive

Salisbury, NC 28144



## 2. SURVEY

*18 x 24" Hard Copy Provided Separately (x20)*



### 3. APPLICANT OVERVIEW

Blackburn Solar, LLC (Blackburn Solar), a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (NEER), is proposing to construct and operate a 58-megawatt (MW) solar photovoltaic generating facility in unincorporated Catawba County, North Carolina (the “Project”). NEER is a leading clean energy provider and is the world’s largest generator of wind and solar energy. Nearly all of NEER’s electricity (approximately 99 percent) comes from clean or renewable resources, including wind, solar, natural gas and nuclear energy facilities that are located in 49 states and four Canadian provinces. NEER’s success reflects the solid business practices of our parent company, NextEra Energy, Inc., a Fortune 200 company and one of the nation’s leading clean energy companies with approximately 62,000 MW in operation.

NEER is primarily a wholesale power generator, operating power plants and selling the output to utilities, retail electricity providers, power cooperatives, municipal electric providers, and large industrial companies. NEER has been involved in clean energy development since the 1980s and now has a cumulative investment of more than \$62 billion in total assets. NEER has earned a reputation for excellence and experience in developing, constructing, and operating wind and solar projects across North America. NEER operates dozens of universal and small-scale solar projects across the U.S., with generating capacity of approximately 4,000 MW. Renewable energy projects represent a clean, cost-effective option to meet customers’ energy needs. NEER is building strong partnerships with companies across North America that are buying wind-generated and solar-generated electricity to provide to residential and commercial markets. Many electric utilities, cooperatives and municipalities have partnered with NEER to provide clean, renewable power to its customers and citizens. NEER also incorporates environmental stewardship into the design, construction, operation, and maintenance of its facilities.

## 4. PROJECT NARRATIVE

The Project is a 58 MW solar photovoltaic generating facility, which is considered a “solar farm (utility-scale solar application)” under the Catawba County Unified Development Ordinances (UDO). The Project will deliver clean power to the electrical grid owned and operated by Duke Energy Carolinas, LLC, through a new 100-kV transmission line, which will exit the eastern boundary of the Project and connect to a switchyard owned by Duke Energy and accessed from Startown Road.<sup>1</sup>

In order to construct and operate the Project, Blackburn Solar is proposing to rezone approximately 635 acres (the “Project Area”) across four adjacent, mostly vacant and undeveloped parcels (see **Table 4 1**).<sup>2</sup> The parcels total approximately 753 acres and are located approximately five miles west of the Town of Maiden at the southeastern corner of the intersection of Blackburn Bridge Road and Hickory-Lincolnton Highway. The Project Area is in the Southern Piedmont physiographic region within the Town of Startown-South Fork Catawba River watershed (Watershed Unit: 030501020403). Blackburn Solar has entered into a mixture of options to lease and options to purchase with the existing landowners of the four parcels that comprise the Project Area. At the completion of construction, Blackburn Solar will be the operator. The Project is in a rural community characterized by agricultural land use. Surrounding properties are developed with low-density single-family residences, or consist of forested, agricultural, or undeveloped land.

**Table 4-1: Parcel Numbers and Owner Contact Information**

Parcel ID Number	Owner’s Name, Address, and Phone Number	Total Parcel Size (Acres)	Land Agreement by Parcel
361704739646	Jane Quinn Berry 8460 Serenity Trail, Ooltewah, TN 37363	306.7	Purchase Agreement
361704615203	Lee Catawba Lincoln Properties LLC 2121 Buffalo Shoals Road Catawba, NC 28609-8031	211.4	Purchase Agreement
361601499954	Mary H. Roakes 307 Bethel Drive Salisbury, NC 28144-2807	114.2	Lease Agreement
361602782925	Agri-Land West, LLC 105 E. Victoria Court, Suite D Greenville, NC 27858-5755	120.6	Lease Agreement

Source: Catawba County GIS. Real Estate Search. Online: *Catawba County GIS Real Estate Reports (gis.catawbacountync.gov)*. Accessed April 18, 2023

### 4.1 Solar Facility Description

The Project’s solar electric generation facilities will consist primarily of three systems: 1) solar photovoltaic modules (“solar panels”); 2) an electrical collection system; and 3) electrical interconnection equipment. The Project will convert the sun’s energy into electrical energy captured via the solar panels, which will be mounted on support structures and grouped as blocks. Each block of the solar panels will be configured into arrays that convert the energy into power via inverters and transformers, which will deliver the energy to the onsite collection substation.

<sup>1</sup> Blackburn Solar is in the process of finalizing the location of the transmission line route at the time of this submission.

<sup>2</sup> Some of the parcels listed in Table 1 will be subdivided and not included in the Project Area as depicted in the survey included herein.

The proposed panels are wafer based with an anti-reflective coating that are rectangular in shape and black/dark grey in color. The majority of the system will be “single-axis tracking panels” mounted onto structures that would track or follow the sun as it moves in the sky throughout the day, allowing for the most efficient energy production. The axis of rotation would be generally oriented north-south, and the solar panels would face east in the morning and west in the evening. A smaller area of fixed, non-tracking, solar panels will be located in the southern portion of the Project.

The solar panels and tracking systems are supported by galvanized, rust-resistant steel posts spaced approximately 10 to 20 feet apart. The posts will be pile driven into the ground to an approximate depth of 6 to 10 feet below grade. Once mounted, the bottom of each panel will be 1 to 2 feet above grade, while the top would be at approximately 8 to 10 feet above grade. The ancillary equipment would include transformers, circuit breakers, junction boxes, connection cabling, and other electrical equipment, and Supervisory Control and Data Acquisition (SCADA) plant controllers.

Equipment will not be located outside of the Project Area, which is shown on the attached Concept Site Plan (Section 7 of this Application), with the exception of electrical interconnection equipment. Perimeter security fencing and a driveway will be located within the Project Area. The Project will include the installation of a security fence consistent with Section 44-633 (k) of the UDO and safety best practices, which will consist of an at least 8-foot-high chain link fence around the solar array equipment and onsite Project substation. Fencing will also consist of security wildlife fencing with no barbed wire wherever feasible.

Access is anticipated to be off Hickory Lincolnton Highway to the west of the Project Area in two locations as identified on the Concept Site Plan. The Project does not anticipate utilizing lighting and exterior signs, other than warning signs on electrical equipment, warning signs along any fence line along paths where foot traffic is anticipated, and a warning sign concerning voltage at the main gate with the name and local phone number for the operator in case of emergency, consistent with Section 44-633 (i) of the UDO. The main gate will be located behind the proposed vegetative buffers. Permanent signs will be limited to a small placard (approximately 18 inches by 24 inches) with clear warnings to deter access and a notification of high-voltage equipment. Typical sign designs are provided in **Appendix A**.

The substation design is currently being completed. The substation masts and wooden transmission poles are anticipated to be 30-40 feet tall; however, most substation equipment will be lower, with transformers anticipated to be 15 feet tall. The substation equipment will be surrounded by an 8-foot-tall fence (7 feet of chain link topped with 1-foot of barbed wire) with high voltage warning signs.

Views of the Project will be mitigated by the orientation of the Project within the surrounding landscape, existing vegetation, the low profile of the solar panels, enhanced planted vegetative buffers, the placement of planted vegetation where gaps in existing vegetation currently exist, and enhanced setbacks from property lines. Enhanced setbacks include 120-foot front setbacks and 100-foot side and rear setbacks, which is an increase above the UDO requirements of 20-feet and 50-feet, respectively. The Project substation will be located 0.5 mile east of Hickory-Lincolnton Highway at approximately 40-50 feet lower in elevation than the roadway and would be obscured from most road-based views by topography and vegetation.

The Project proposes to implement a professionally designed vegetative buffer incorporating plants of various size and densities at the perimeter for visual screening for nearby properties and public rights-of-way, and enhancement of wildlife utilization. The vegetative buffer, in conjunction with the enhanced setbacks, will assist in blending and keeping with the rural and low-density nature of the surrounding area. Furthermore, the designed vegetative buffer and enhanced setbacks will provide corridors for wildlife movement, and habitat for nesting birds and pollinator species. The vegetative buffer has been specifically designed to exceed the UDO's requirements and will incorporate pollinator-friendly plant species identified

in the *North Carolina Technical Guidance for Native Plantings on Solar Sites*.<sup>3</sup> Buffer design specifications are shown in the Concept Site Plan and are described below:

- The Type 1 Buffer located at the northwest and southwest perimeter, is 30 feet in width and includes 6 evergreen trees, 1 canopy tree, and 12 evergreen shrubs per 100 feet of length.
- The Type 2A Buffer located at the northern perimeter, is 30 feet in width and includes 1 canopy tree, 2 understory trees, 8 evergreen trees, 12 shrubs and 18 native grasses per 100 feet of length.
- The Type 2B Buffer (Wildlife Corridor) at the northern perimeter, is 40 feet in width and includes 1 canopy tree, 3 understory trees, 8 evergreen trees, 12 shrubs and 28 native grasses per 100 feet of length.
- The Type 3 Buffer located at the western perimeter, will have a minimum width of 25 feet, and include 14 evergreen trees in addition to existing mature vegetation, per 100 feet of length.

Blackburn Solar will observe a minimum 30-foot buffer for onsite streams in compliance with state stormwater regulations and a minimum 100-foot buffer from the adjacent South Fork of the Catawba River as to not affect the river or associated floodplain.

All stormwater within areas that will be disturbed by construction will be controlled and directed to the interior of the Project Area, and eventually drain through natural channels to the South fork of the Catawba River. Therefore, stormwater will be prevented from draining to neighboring properties to the north, west, and south. Site design, preparation and construction will be conducted in accordance with local requirements and regulations for erosion and sediment control and land disturbance and state requirements pertaining to stormwater runoff and stormwater controls.

Selective and minimal tree clearing activities will involve the removal of trees for solar array installation and to prevent shading of the solar panels. Minimal site grading and clearing activities are anticipated due to the existing site conditions and the ability of the solar panel racking structures to conform with the existing topography. Best management practices will be implemented prior to ground disturbing activities and will be effectively maintained throughout Project construction until the ground is stabilized. Areas disturbed by grading will be seeded with ground cover designed to quickly stabilize soils to minimize erosion.

It is anticipated that construction would occur over a 12-month period followed by lighter commissioning activities for up to 6 months after construction is complete. Additional phases of the Project are not planned at this time. The Project is planned to be unmanned at operation and is designed to be operated remotely with routine visits for maintenance activities. Operation of the Project will be monitored online 24 hours/day and emergency and normal shutdown procedures can be implemented remotely.

Once construction is completed, the Project will not produce vibration, dust, debris, or excessive traffic and will have no adverse glare or noise impacts to neighbors. Periodic light-duty vehicles will be used for on-going facility maintenance and to clear any litter or debris and to maintain the vegetative buffer. The Project will not present any safety issues or hazards to the surrounding properties.

## 4.2 Proposed Land Dedication

Blackburn Solar has coordinated with the Catawba Lands Conservancy since 2018 to outline a potential land dedication to support conservation and expansion of the Carolina Thread Trail. The eastern boundary of the Project borders the Catawba Lands Conservancy Viles Preserve along the South Fork of the Catawba River for approximately 1.5 miles. Once the Project is approved, Blackburn Solar intends to

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<sup>3</sup> North Carolina Pollinator Conservation Alliance. North Carolina Technical Guidance for Native Plantings on Solar Sites. October 2018. Online: [NC-Solar-Technical-Guidance-Oct-2018.pdf \(ncpollinatoralliance.org\)](https://www.ncpollinatoralliance.org/nc-solar-technical-guidance-oct-2018.pdf). Accessed March 6, 2023.



dedicate an approximately 125-acre area of land to the Catawba Lands Conservancy as a conservation easement, as shown on the Concept Site Plan, subject to final Project design and approval.

The proposed 125-acre land dedication includes space for the Catawba Lands Conservancy and Carolina Thread Trail to design a potential parking area/trailhead at the northwest corner of the Project Area, a corridor through the Project Area and along the northern boundary, and a larger section of land for conservation along the western banks of the South Fork of the Catawba River in both upland and floodplain habitats. Blackburn Solar continues to coordinate with the Catawba Lands Conservancy and the Carolina Thread Trail as partners in Project design, working in good faith towards a land dedication that will function safely and effectively for the goals of all parties.

### 4.3 Community Engagement

Blackburn Solar began community engagement activities in 2020 by conducting initial conversation with neighboring landowners and has actively continued engagement through 2023 to share information and answer questions from the local community. Blackburn Solar hosted “office hour” sessions for landowners and adjacent landowners on Wednesday January 27, 2021, and Thursday January 28, 2021, at the Warehouse 18 Venues in Hickory, NC. All adjacent landowners were notified and provided an opportunity to meet with Blackburn Solar to learn about the Project, ask questions, and provide feedback in an individual, socially distanced setting due to the COVID-19 pandemic. Blackburn Solar incorporated feedback from adjacent landowners by adding enhanced vegetative buffers, which serve as both a visual screen and a “wildlife corridor” along the northern boundary. The wildlife corridor will provide a more protected pathway for wildlife to move to the habitats along the South Fork of the Catawba River, and an enhanced habitat for pollinator species.

Blackburn Solar also conducted an open house community meeting on March 24, 2022, to answer questions and provide Project-specific information to the community. Several community members attended and heard from Blackburn Solar and their contractors, viewed the draft site plan and other educational materials, and asked questions and provided feedback on the Project.

After the Catawba County Board of Commissioners denied the Project’s initial rezoning request in April 2022, Blackburn Solar spent months working to address concerns outlined by nearby landowners and the Catawba County Board of Commissioners. These efforts have resulted in the following actions:

- Conducting an ambient noise study, and moving inverters near the southern boundary of the Project further away from residences;
- Performing additional protected species surveys and coordination with the U.S. Fish and Wildlife Service;
- Revising the grading plans along the northern Project boundary to prevent stormwater from draining to neighboring properties; and,
- Conducting additional public outreach, including:
  - The Chamber of Catawba County Investor 2020 – 2023.
    - Business Leadership Sponsor for Leadership Catawba.
    - Future of Catawba County Summit Supporting Sponsor.
    - Annual Golf Classic Hole Sponsor.
    - Advocacy@Work Legislative Breakfast Attendance.
  - Catawba Lands Conservancy, 2019 – 2023.

- Carolina Thread Trail, 2019 – 2023.
- Outreach via social media, 2020 – 2023.
- Hickory Crawdads Partnership with exhibitor table – June 2022, September 2022 & June 2023.
- Advocate of Council on Adolescents – ‘Event to Prevent,’ November 2022.
- Catawba Science Center Partner – advocate and sponsor of Solar Tree, January 2023.
- Ongoing advocate and supporter of Hickory Young Professionals, 2022 – 2023.
- Ongoing advocate and supporter of Catawba YMCA, 2022 – 2023.
- Ongoing advocate and supporter of United Way Catawba, 2022 – 2023.
- Ongoing advocate and supporter of Hickory Parks and Recreation, 2022 – 2023.
- Foothills Conservancy ‘Peak Protector’ Sponsor, 2023.
- Maiden Business Association, 2023.

#### 4.4 Certificate of Public Convenience and Necessity

Blackburn Solar submitted an application for a Certificate of Public Convenience and Necessity (CPCN) pursuant to Rule R8-64 to the North Carolina Utilities Commission (NCUC) on November 28, 2021. After a CPCN is submitted to the NCUC, the application is forwarded to other North Carolina state agencies for comment on the Project, including but not limited to:

- Wildlife Resource Commission (NCWRC);
- Division of Environmental Quality (DEQ);
- State Historic Preservation Office (SHPO);
- Department of Agriculture and Consumer Services; and,
- Department of Transportation.

On February 10 and 14, 2022, Blackburn Solar was informed that since there were no substantive issues or comments on the Project, no further review or action by the NCUC was required for compliance with the North Carolina Environmental Policy Act. The Project received CPCN approval on December 21, 2022 (**Appendix B**).

## 5. CONSISTENCY WITH SECTION 44-328 OF THE UDO (CONDITIONAL ZONING DISTRICT)

This Section 5, in addition to the Project Narrative in Section 4 above, shall serve as Blackburn Solar's detailed statement of "all other circumstances, factors, and reasons, in support of the proposed zoning [request]" required by Section 44-324(c)(2)(c) of the UDO. Additionally, the Concept Site Plan in Section 7 of this Application meets all of the requirements under Section 44-328(d) of the UDO for a Concept Site Plan that is submitted as part of a conditional rezoning application. Finally, the information below regarding the reasonableness of the Project and this proposed rezoning addresses the factors listed in Section 44-328(f) of the UDO that the Planning Board and Board of Commissioners may consider in evaluating this Application.

### 5.1 Consistency with Catawba County Adopted Plans

In accordance with Section 44-328(f)(1) of the UDO, Blackburn Solar has reviewed the County's adopted Startown Small Area Plan (SAP) and other applicable plans and believes that this proposed rezoning is compatible and consistent with the stated goals and objectives in such plans.

#### 5.1.1 Startown Small Area Plan

The Project Area is located entirely within the Startown SAP planning area and is currently identified as Open Space in Map 3.<sup>4</sup> The Project is consistent with the Startown SAP, in particular the Land Use Plan Recommendations, Community Facilities and Public Services Recommendations, and Natural and Cultural Resources Plan Recommendations.

According to the Future Land Use Recommendation and Residential Densities Map (Map 5) in the Startown SAP, the Project Area is planned to be "Maximum Low Density Residential (1 House per 2 acres)." Since the Project Area's current R-40 zoning classification allows for higher density development than the proposed R-80 zoning classification for a solar farm, rezoning the Project Area from R-40 to R-80 (CD) will make the Project Area more consistent with the Startown SAP.

Additionally, this proposed rezoning is consistent with the Startown SAP's current land use as "open space" since the Project would preserve agricultural land from conversion to higher density uses (i.e., residential and/or commercial development) for the life of the Project, and possibly after depending on landowner preferences. While the farming related activities are ceased during the Project to allow the land under the solar panels to remain fallow, the land could be returned to agricultural use after decommissioning. Higher density development would require more extensive grading of the Project Area, additional impervious cover, and more intensively managed land cover types. These modifications would more significantly alter stormwater flows and contribute to downgradient erosion and flooding to a greater extent than a solar energy facility like the Project.

The Project is also consistent with the Startown SAP's Economic Development Guiding Principles' call for facilitation of new, community-focused economic development in the Startown area. The land dedicated to the Catawba Lands Conservancy would be intended to be utilized as open space in perpetuity. Community Facilities and Public Services Plan Recommendations include a goal to work with landowners and local conservancies to establish passive recreation uses on the South Fork of the Catawba River, which is

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<sup>4</sup> Catawba County. Startown Small Area Plan. 2005. Online: [DEMOCRAPHIC PROFILE \(catawbacountync.gov\)](https://www.catawbacountync.gov/DEMOCRAPHIC%20PROFILE). Accessed March 6, 2023.

consistent with the vision for the land dedication and a Carolina Thread Trail extension within the dedicated land easements.

The Project was carefully designed to minimize impact to natural and cultural resources and is consistent with the guiding principles and recommendations of the Natural and Cultural Resources section of the Startown SAP. Specifically, Blackburn Solar has conducted or is in the process of conducting the following environmental due diligence:

- **Wetlands and Water Resources** – Blackburn Solar conducted a formal wetland delineation within the proposed area of disturbance to identify waters and wetlands under federal or state jurisdiction and is currently in the process of obtaining an Approved Jurisdictional Delineation from the U.S. Army Corps of Engineers (USACE). Blackburn Solar is also in the process of submitting a Nationwide Permit (NWP) 14 Joint Application under Sections 404/401 of the Clean Water Act to the USACE and NC DEQ for limited impacts to jurisdictional wetlands and waters along access roads, associated with culvert installation. As shown on the Concept Site Plan, all solar panels, inverters, access roads, and fencing will be installed outside of regulated floodplains.
- **Federally Protected Species** - Blackburn Solar conducted initial informal consultation with the U.S. Fish and Wildlife Service (USFWS) on April 5, 2021, to discuss Project details related to federally protected species, including threatened or endangered species, bald and golden eagles, and migratory birds. The USFWS concurred with “no effect” findings for federally protected plants. The Project is also within the range of the tri-colored bats and little brown bats, which are proposed to be listed as federally endangered by late 2023 and considered for listing in 2024, respectively. ERM conducted mist net surveys from July 23 to July 25, 2022 to determine presence or absence of bat species that could be within the Project Area. No federally protected species, or other species proposed for listing, were captured during the survey. The USACE will also consult with the USFWS through the NWP 14 process, fulfilling requirements under Section 7 of the Endangered Species Act. Furthermore, Blackburn Solar consulted the USFWS to address community concerns regarding the Project’s potential impacts to eagles and the potential to deter general wildlife from the surrounding area. In an email correspondence from the USFWS dated April 17, 2023, the USFWS noted they are not aware of any bald eagle nests within a 660-foot buffer of the Project, as recommended by the Bald Eagle Management Guidelines established by the USFWS and they are unaware of instances where solar installations have impacted bald eagles. The USFWS is aware of bald eagle occurrences reported at locations along the South Fork of the Catawba River, but they do not believe the Project will affect this species. Additionally, the USFWS responded that they have not seen evidence of solar installations deterring wildlife from the surrounding area, especially when implementing riparian corridors for movement, and stated solar projects have much lower impact than most other development types to wildlife movement in the area. Furthermore, the USFWS states that unlike most developments, solar sites typically have very little human presence to scare off wildlife, and with the inclusion of wildlife corridors many solar sites are quite active with wildlife compared to other development types.
- **Cultural Resources** - Blackburn Solar submitted the required cultural resources study to the NCHPO requesting review of potential impacts to cultural resources. The NCHPO responded on June 18, 2021 with the following statement: “We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed.” This letter is included in Appendix C.
- **DEQ Scoping Meeting** - At Blackburn Solar’s request, the DEQ hosted a scoping meeting about the Project on November 13, 2020. Blackburn Solar requested the voluntary meeting to introduce the Project to North Carolina state agency staff, and to discuss permitting and regulatory requirements. Representatives from the following divisions/sections within the DEQ attended the scoping meeting: Energy, Mineral, and Land Resources Division; Waste Management Division; Hazardous Waste

Section; Water Resources Public Water Supply Section; and Division of Waste Management. The NCWRC also attended the scoping meeting. A representative from the Water Quality Regional Operations Section was not able to attend but reviewed the pre-meeting package and provided initial information about wetlands/waters permitting and well abandonment. Blackburn Solar incorporated the agency feedback from this meeting into the design of the Project in the following ways:

- Incorporating a minimum 100-foot setback on the South Fork of the Catawba River, and a minimum 30-foot setback around all jurisdictional wetlands and waters (setbacks from fences and equipment exceed this minimum wherever practicable);
- Committing to use of biological monitors and conducting biological clearance surveys prior to tree clearing if those activities occur during bat roosting/nursery timeframes;
- Committing to using pollinator-friendly plants in the wildlife corridor buffer along the northern boundary of the Project Area;
- Limiting any impacts to wetlands and waters to four locations where culverts are required for access roads. Blackburn Solar has designed these crossings to limit impacts to the minimum extent practicable, and is submitting a NWP 14 Joint Application to the USACE and DEQ for approval of these limited impacts; and,
- Limiting fencing to only enclosing the solar array equipment and the Project substation, as identified in the Concept Site Plan. The Project will now include security wildlife fencing with no barbed wire per the recommendations of the NCWRC wherever feasible. Corridors through the solar areas, particularly along streams and wetlands, will serve as wildlife corridors allowing passage through the Project to and from conservation land along the South Fork of the Catawba River.

- **CPCN and State Environmental Clearinghouse Review** – As discussed above, the Project received CPCN approval on December 21, 2022.
- **Stormwater and Erosion/Sedimentation Control** - Solar farms like the Project conform to existing terrain and the system installation consists of driving steel support structures and racking systems into the ground surface, which requires minimal grading or excavations. The Project complies with the DEQ's requirements to incorporate 30-foot vegetated buffers adjacent to perennial waterbodies, streams, and intermittent streams; and Blackburn Solar is in the process of developing an Erosion & Sediment Control Plan and will apply for and comply with the National Pollutant Discharge Elimination system (NPDES) NCG010000 General Permit from the NC DEQ and Catawba County prior to ground disturbance. To address community concerns about stormwater runoff, Blackburn Solar has revised the grading plan along the northern boundary to prevent stormwater from draining to the neighboring property to the north.

The Project was designed to minimize visual impacts from surrounding roads and residences as much as possible given topographic limitations, including from Hickory-Lincolnton Highway which is identified as a proposed scenic byway in Map 6A in the Startown SAP. According to the North Carolina Department of Transportation, this section of road is not currently considered a North Carolina Byway.<sup>5</sup> Views of the Project would be limited from surrounding roadways due to a combination of low-profile solar panels, topographic screening, existing vegetative screening, and the enhanced vegetative buffers designed to exceed UDO standards, which are illustrated on the Concept Site Plan. Solar farms are an increasingly common observance from rural roads in North Carolina, and where visible, the Project will not detract from the rural character of the overall area.

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<sup>5</sup> North Carolina Department of Transportation. Interactive North Carolina Byway Map. Online: [NCDOT: North Carolina Byways](https://www.ncdot.gov/transportation/intermodal/transportation-planning/Pages/Byways.aspx). Accessed April 19, 2023.

Additionally, the Project aligns with the Startown SAP as it will not impact or require community facilities or services including roads and transportation, water, sewer, fire, emergency medical services, or schools. During operation, there will not be any substantive increase in traffic or change in traffic patterns. The Project will also include the significant contribution to the County's tax base while also providing a local, clean source of renewable energy.

### **5.1.2 Catawba County Comprehensive Parks Master Plan 2007-2017**

The Project — particularly the dedication of land to the Catawba Lands Conservancy to support development of an extension of the Carolina Thread Trail — is consistent with the following recommendation in the Catawba County Comprehensive Parks Master Plan 2007-2017: "Preserve green space specifically for passive recreational uses, including hiking trails...etc."<sup>6</sup> According to this plan, "the community survey ranked greenway and walking facilities of the highest importance in regards to facilities that could be developed in the County" (page VI-24 to 25).

### **5.1.3 Catawba County Farm & Food Sustainability Plan**

One of the recommended Policy/Regulation guiding principles of Catawba County Farm & Food Sustainability Plan is to "Create a business-friendly environment for agriculture by adopting local policies/regulations that support farms and farm-related business while playing an advocacy role and the State and National level." Strategy #2 includes an action item to implement this guiding principle by supporting agriculture and farm-related businesses, specifically citing solar farms. The Project is consistent with this plan's vision of solar facilities as an agriculture and farm-related business. The Project would be sited on open agricultural fields, which could return to agriculture after the decommissioning if that is the landowner's preference, and which is also a much less intense development type as opposed to other more common developments that could be built on the site.<sup>7</sup>

### **5.1.4 321 Eco-Tech Development Plan**

The Project would be located within the 321 Eco-Tech Development Plan Area, which is bounded on the west by Hickory-Lincolnton Highway.<sup>8</sup> The Project is located outside of existing/proposed Economic Development Opportunity Sites identified in the plan and would not impact those opportunities. This rezoning request is consistent with the 321 Eco-Tech Development Plan (321 Plan) for the reasons stated above in the Startown SAP. A primary focus in the 321 Plan is the "identification of potential green economic and educational opportunities." In this regard, this rezoning request is consistent with the 321 Plan because the Project will be a green economic contributor via an increase in the property taxes it will contribute over its life (as compared to the current agricultural taxation) without being a strain on existing public resources (such as fire response, emergency services) and infrastructure. The Project also has potential for green education opportunities, considering the proposed land dedication to the Catawba Lands Conservancy and potential development of a future trail system associated with the Carolina Thread Trail. Map 8 (Transportation/Multi-Modal Recommendations) identifies the eastern boundary of the Project Area, adjacent to the Viles Preserve, is to be dedicated to the Catawba Lands Conservancy as an extension of the Carolina Thread Trail and the greater Greenway System.

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<sup>6</sup> Catawba County, North Carolina. Comprehensive Parks Master Plan 2007 - 2017. Online: [park\\_master\\_plan\\_for\\_website.pdf](https://www.catawbacountync.gov/park_master_plan_for_website.pdf) ([catawbacountync.gov](https://www.catawbacountync.gov)). Accessed April 19, 2023.

<sup>7</sup> Catawba County Farm and Food Sustainability Plan. Catawba County. April 2013. Online: [adopted\\_plan.pdf](https://www.catawbacountync.gov/adopted_plan.pdf) ([catawbacountync.gov](https://www.catawbacountync.gov)). Accessed April 19, 2023.

<sup>8</sup> Catawba County. 321 Eco-Tech Development Plan: "A Corridor Leading to Progress." July 11, 2011. Online: [adopted\\_321\\_plan.pdf](https://www.catawbacountync.gov/adopted_321_plan.pdf) ([catawbacountync.gov](https://www.catawbacountync.gov)). Accessed April 21, 2023.



### 5.1.5 Carolina Thread Trail

The eastern boundary of the Project borders the Catawba Lands Conservancy Viles Preserve along the South Fork of the Catawba River for approximately 1.5 miles. This rezoning request is consistent with the Carolina Thread Trail Plan<sup>9</sup> because the primary route for the Carolina Thread Trail identified in the Plan follows the eastern boundary of the Project Area along the South Fork of the Catawba River. Blackburn Solar's proposed 125-acre land dedication to the Catawba Lands Conservancy would enable development of that trail on parcels owned by Blackburn Solar west of the river. Blackburn Solar, the Catawba Lands Conservancy, and the Carolina Thread Trail are in continuing, active discussions to create a unique and mutual "green" destination where renewable, "green" energy meets the surrounding natural "green" features, and through which the Carolina Thread Trail is expected to wind.

## 5.2 Statement of Reasonableness of Request

Blackburn Solar's request for the rezoning of approximately 635 acres (Project Area) from R-40 to R-80 (CD) to allow for the construction and operation of a utility-scale solar farm and related facilities (Project) is reasonable and in the public's interest for many reasons. The Project Area meets the minimum size requirements for R-80 zoning and the location of the Project is conducive to development of a utility-scale solar farm as a large area of contiguous, open, and undeveloped land with connectivity to existing transmission infrastructure.

The land uses that surround the Project Area consist of agricultural and farming, rural residential, open space, and other low density uses. Rezoning the Project Area to allow for a solar farm use is reasonable and consistent with the surrounding land uses because a solar farm is considered a low density, temporary use that does not have the negative impacts associated with more intense and dense uses. This proposed rezoning is also reasonable because the zoning districts that surround the Project Area are all R-40, which is very similar to and consistent with the R-80 zoning district. Therefore, "spot zoning" is not a concern with this rezoning request.

The Project will not negatively impact adjacent and adjoining property owners. The Project is generously set back from property lines and sufficiently screened and buffered from adjacent homes and residential uses. Additionally, as stated above the Project will observe enhanced front, rear, and side setbacks which meet and exceed the County's minimum requirements. Once construction is completed, the Project will not produce additional traffic and will not require road or infrastructure upgrades.

Blackburn Solar has also engaged licensed professional engineers to develop a grading plan for the Project. It is being designed such that runoff is maintained within the Project Area boundary and direct runoff would drain through existing intermittent and perennial streams that would be largely preserved within state-mandated vegetated buffers. This design will prevent water runoff to adjacent property owners.

The Project has been designed to mitigate impacts to nearby existing streams and wetlands by enhancing vegetative buffers, conserving open space, and utilizing the latest solar panel equipment and technology. The Project will dedicate approximately 125-acres to the Catawba Lands Conservancy, adjacent to the Viles Preserve, adding important conservation lands to land near the Catawba River to make it the third-largest protected area in the Catawba Lands Conservancy's System. Additionally, the Project allows for the extension of the Carolina Thread Trail through the land dedication area, creating a public benefit and preserving natural habitats adjacent to the Catawba River.

The Project will be quiet, low intensity, and even less impactful than many other low-density residential land uses. Specifically, the Project has been redesigned to relocate solar facilities (inverters) away from residences to ensure only minimal discernable noise will occur (and only during daylight hours).

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<sup>9</sup> Catawba County. Carolina Thread Trail Master Plan for Catawba County Communities. December 2010. Online: [final\\_plan.pdf \(catawbacountync.gov\)](https://www.catawbacountync.gov/files/2010/12/CTT_Master_Plan.pdf) Accessed April 21, 2023.

Additionally, the Project will aid in the preservation of the low-density character of the area as its presence will prevent future large-scale residential or commercial development adjacent to existing rural residences and open space.

The Project does not require water, sewer, trash collection, or transit stops. The Project does not propose to use existing County services and will therefore not place a burden on existing services infrastructure. As stated in Section 5.3 below, the community benefits of solar energy are numerous and include a reduction in greenhouse gasses and air pollution attributable to traditional energy generation activities, diversification of energy mix, and an increase in regional energy reliability. In addition, the development of the Project will include dedication of land area for conservation and development of a wildlife corridor. At the end of the Project lifecycle, which is anticipated to be approximately thirty (30) years, the Project's components and infrastructure will be removed and the land returned to open space in accordance with the Decommissioning Plan for the Project (Appendix D). Blackburn Solar will obtain a performance bond from a company on the U.S. Department of Treasury's listing of certified companies that is approved by the County Planning Director, renews automatically, and includes a minimum 60-day notice to the County prior to cancellation. A bond certificate will be submitted by Blackburn Solar to the County Planning Director each year verifying the performance bond has been properly renewed.

Finally, the Project's development will support the goals of North Carolina's "Energy Solutions for North Carolina" legislation by creating clean solar energy generation and assisting in the reduction of air pollution and emissions. This rezoning also supports the local objectives included in the Startown SAP and other local plans as discussed in detail above. In summary, this rezoning request is reasonable and in the public's interest because the Project is appropriately sized, appropriately designed and sited, will have minimal impact on adjacent uses, and will have a positive impact on the community at large.

### 5.3 Public Benefits of the Blackburn Solar Project

The Project has been developed to exceed standards for utility-scale solar facilities in the UDO and bring unique benefits to the community, consistent with Catawba County's vision for the surrounding area. These benefits include:

- Generation of clean, renewable energy without using water, creating emissions, or producing excessive waste products;
- Placing little to no demand on municipal or County infrastructure and services including roads, water, sewer, fire, emergency medical services or schools;
- Ensuring only minimal discernable noise will occur as a result of the solar farm activity (and only during daylight hours);
- Creating jobs during construction of the Project with indirect economic benefits in the form of local contracting opportunities, equipment sales and rentals, material purchases, and spending on hotels, restaurants, and other local goods and services;
- Bringing economic benefits with a low-profile, quiet development consistent with the rural character of the area;
- Allowing land to be returned to agricultural use or become open space at end of the Project's lifecycle, in accordance with the landowner's preferences;
- Minimizing site grading and clearing activities due to the open existing site conditions and the ability of the module racking structures to conform with the existing topography. Trees at the perimeter of the Project Area will be maintained, to the greatest extent practicable, to provide visual screening from nearby properties and public rights-of-way;

- Observing buffers of a minimum of 30 feet for onsite streams in compliance with state stormwater regulations and minimum 100-foot buffer from the adjacent South Fork Catawba River. Throughout most of the Site, actual buffer distances significantly exceed these minimums;
- Preventing water runoff to adjacent property owners by designing the Site such that runoff is maintained within the Project Area and direct runoff would drain through existing intermittent and perennial streams that would be largely preserved within state-mandated vegetated buffers;
- Dedicating approximately 125-acres to the Catawba Lands Conservancy, adjacent to the Viles Preserve, adding important conservation lands to the western shores of the South Fork of the Catawba River;
- Installing security wildlife fencing with no barbed wire per the recommendations of the NCWRC wherever feasible;
- Potentially extending of the Carolina Thread Trail through the land dedication area, creating a unique opportunity for the public to experience a solar/renewable energy landscape, and the natural habitats adjacent to the South Fork of the Catawba River; and
- Use of professionally designed vegetative buffers incorporating plants of various size and densities at the perimeter of the Project for screening and enhancement of wildlife use. The enhanced setbacks and buffers will assist the Project in blending into and keeping with the rural and low-density nature of the surrounding area. The vegetative buffers have been specifically designed to exceed Catawba County's buffering requirements and will incorporate pollinator-friendly plant species identified in the *North Carolina Technical Guidance for Native Plantings on Solar Sites*. Wider vegetative buffers within the extended setbacks will provide corridors for wildlife movement, and habitat for nesting birds and pollinator species.

## 6. COMPLIANCE WITH SECTION 44-633 OF THE UDO (SOLAR FARM UTILITY-SCALE SOLAR APPLICATION)

In accordance with Section 44-633 of the Catawba County UDO, Table 6-1 below and the Concept Site Plan detail the Project's compliance with the standards for a solar farm (utility-scale solar application).

**Table 6-1: Compliance with Section 44-633 of the UDO**

Code Reference	Requirement	Consistency Description
44-633 (a)	All structures and security fencing must meet a 100-foot front setback measured from the edge of the rights-of-way and 50-foot side and rear setbacks.	All Project structures and security fencing will meet or exceed the required 100-foot front setback measured from the edge of the rights-of-way and 50-foot side and rear setbacks. The Project will observe 120-foot front setbacks and 100-foot side and rear setbacks, a 20-foot and 50-foot increase, respectively. A 100-foot setback has been applied to the South Fork of the Catawba River. Actual buffer distances significantly exceed these minimums throughout most of the site.
44-633(b)	A landscape buffer/screen along all exterior sides of the security fence must consist of: (1) On-site mature vegetation exists at a minimum height of ten feet and depth of 75 feet between the security fence and adjacent property including rights-of-way; or (2) A single row of evergreens in combination with mature vegetation, installed at a height of five feet achieving opacity and a minimum height of ten feet in five years; or (3) A double row of off-set evergreens absent mature vegetation, installed at a height of five feet achieving opacity and a minimum height of ten feet in five years; or (4) A berm combined with evergreen vegetation installed at a height of five feet achieving opacity and a minimum height of ten feet in five years.	The Project was designed to exceed these minimum requirements. As shown on the Concept Site Plan (Section 7), four buffer types ranging in depths from a minimum of 25-feet to 40-feet include dense arrangements of evergreen trees and shrubs, understory trees, and shrubs as well as an assortment of native grasses. All planted buffers, absent mature existing vegetation would be installed at a height of five feet achieving opacity and a minimum height of ten feet in five years.  Some areas have a modified setback based on Project design. These areas are located near the south-central perimeter and north-west perimeter of the Project Area. Each area will exceed the UDO's requirement of 50-feet by 25-feet and 15- feet, respectively.  These expanded buffers are designed to enhance visual screening of the Project, and to provide wildlife corridors along the portions of the northern Project perimeter. Vegetation for the buffers will include pollinator-friendly species identified in the <i>North Carolina Technical Guidance for Native Plantings on Solar Sites</i> .
44-633(c)	Where visibility of the solar farm is increased due to topography, the landscape buffer/screen must be planted on-site in an area that lessens the view of the solar farm. Where visibility of the solar farm is decreased due to topography, the	The landscape buffer/screen has been designed to exceed the UDO standards and lessen the visibility of the solar farm to the greatest extent practicable

Code Reference	Requirement	Consistency Description
	landscape buffer/screen may be reduced. Both shall be determined by the planning director.	
44-633(d)	All solar panels must be constructed to minimize glare or reflection onto adjacent properties and adjacent roadways and must not interfere with traffic or create a safety hazard.	All Project solar panels are sited and designed (and will be constructed) to minimize glare or reflection onto adjacent properties and adjacent roadways and will not interfere with traffic or create a safety hazard. Vegetative buffers are proposed to screen the Project from adjacent properties and roadways. Because the solar panels are obscured from view by the vegetative buffer, glare will not be observed. Solar panels are designed to absorb rather than reflect sunlight and will have an anti-reflective coating to minimize any glare.
44-633(e)	The applicant must secure all necessary approvals and/or permits from NCDOT for the access points for project entrances prior to issuance of a zoning authorization permit.	Blackburn Solar will secure all necessary approvals and/or permits from the North Carolina Department of Transportation for the access points for Project entrances prior to issuance of a zoning authorization permit.
44-633(f)	All construction parking must be located outside of the rights-of-way.	All construction parking will be located outside of the rights-of-way.
44-633(g)	Erosion control measures must be installed at construction entrances in order to minimize off-site soil damage. Existing grass must be maintained in perpetuity sufficient to prevent erosion.	Erosion control measures will be installed at construction entrances/exits in order to minimize off-site soil damage. Existing grass will be maintained in perpetuity sufficient to prevent erosion. Blackburn Solar is in the process of developing an Erosion and Sediment Control Plan and will apply for and receive a National Pollutant Discharge Elimination system (NPDES) NCG010000 General Permit from the DEQ and County prior to ground disturbance.
44-633(h)	The applicant must provide written authorization from the local utility company acknowledging and approving connection to the utility company's grid.	Blackburn Solar has included the written agreement with the local utility company, Duke Energy Carolinas, LLC, acknowledging and approving connection to the utility company's grid. <b>See Appendix E.</b>
44-633(i)	A warning sign concerning voltage must be placed at the main gate to include the name of the solar farm operator and a local phone number for the solar farm operator in case of an emergency.	Blackburn Solar will comply with these requirements and install such signs as necessary. This detail will be shown on the detailed site plan included in the required zoning authorization permit application should this rezoning request be approved. Typical sign designs are provided in <b>Appendix A.</b>
44-633(j)	Power transmission lines must be located underground to the extent practical.	All Project related power transmission lines will be located underground to the extent practical. The collection system will be located entirely underground.

Code Reference	Requirement	Consistency Description
44-633(k)	A security fence equipped with a gate and a locking mechanism must be installed at a minimum height of eight feet along all exterior sides of the solar farm. Landscape buffer/screens, ground cover, security fences, gates, and warning signs must be maintained in good condition until the solar farm is dismantled and removed from the site.	Blackburn Solar will comply with these requirements. An 8-foot security fence equipped with a gate and a locking mechanism will be installed along all exterior sides of the Project. The security fence will consist of an 8-foot chain link wildlife fencing with no barbed wire per the recommendations of the NCWRC.
44-633(l)	The zoning authorization permit is subject to revocation if the planning department is not notified when the solar farm company holding the permit sells or otherwise transfers its interest to another entity or individual.	In the event of a sale or transfer of ownership, Blackburn Solar will notify the Catawba County Planning Department. Blackburn Solar does not currently have plans to sell the Project and will be purchasing a portion of the land upon approval of this rezoning request.
44-633(m)	<p>Removal of solar farm equipment and site restoration:</p> <p>(1) The application must include decommissioning plans that describe the anticipated life of the solar farm, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the solar farm project will be decommissioned and the site restored.</p> <p>(2) Following a continuous six-month period in which no electricity is generated, the permit holder will have six months to complete decommissioning of the solar farm. Decommissioning includes removal of solar panels, buildings, cabling, electrical components, and any other associated facilities below grade as described in the approved decommissioning plan.</p> <p>(3) Prior to the issuance of a zoning compliance certificate, the applicant must provide the county with a performance guarantee as provided in subsection (5) below. For the first ten years of the solar facility's life, the amount of the guarantee shall be 1.25 times the estimated decommissioning cost minus 50 percent the salvageable value, or \$75,000.00, whichever is greater. Estimates for decommissioning the site and salvage value shall be determined by a North Carolina licensed engineer or a licensed contractor. It is the responsibility of the applicant to provide the county with the certified cost estimate.</p> <p>(4) An updated decommissioning plan providing decommissioning costs and salvageable values is required at the ten-year mark and every five years thereafter. A new performance guarantee in the amount of 1.25 times the updated decommissioning cost minus 50 percent of the</p>	<p>The removal of the Project and Project Area restoration will be completed in accordance with the Project's Decommissioning Plan. See Appendix D. Blackburn Solar will obtain a performance bond from a company on the U.S. Department of Treasury's listing of certified companies that is approved by the County Planning Director, renews automatically, and includes a minimum 60-day notice to the County prior to cancellation. A bond certificate will be submitted by Blackburn Solar to the County Planning Director each year verifying the performance bond has been properly renewed. Additionally, if this rezoning request is approved, Blackburn Solar will comply with all of the other decommissioning requirements specified in Section 44-633(m) of the UDO.</p>

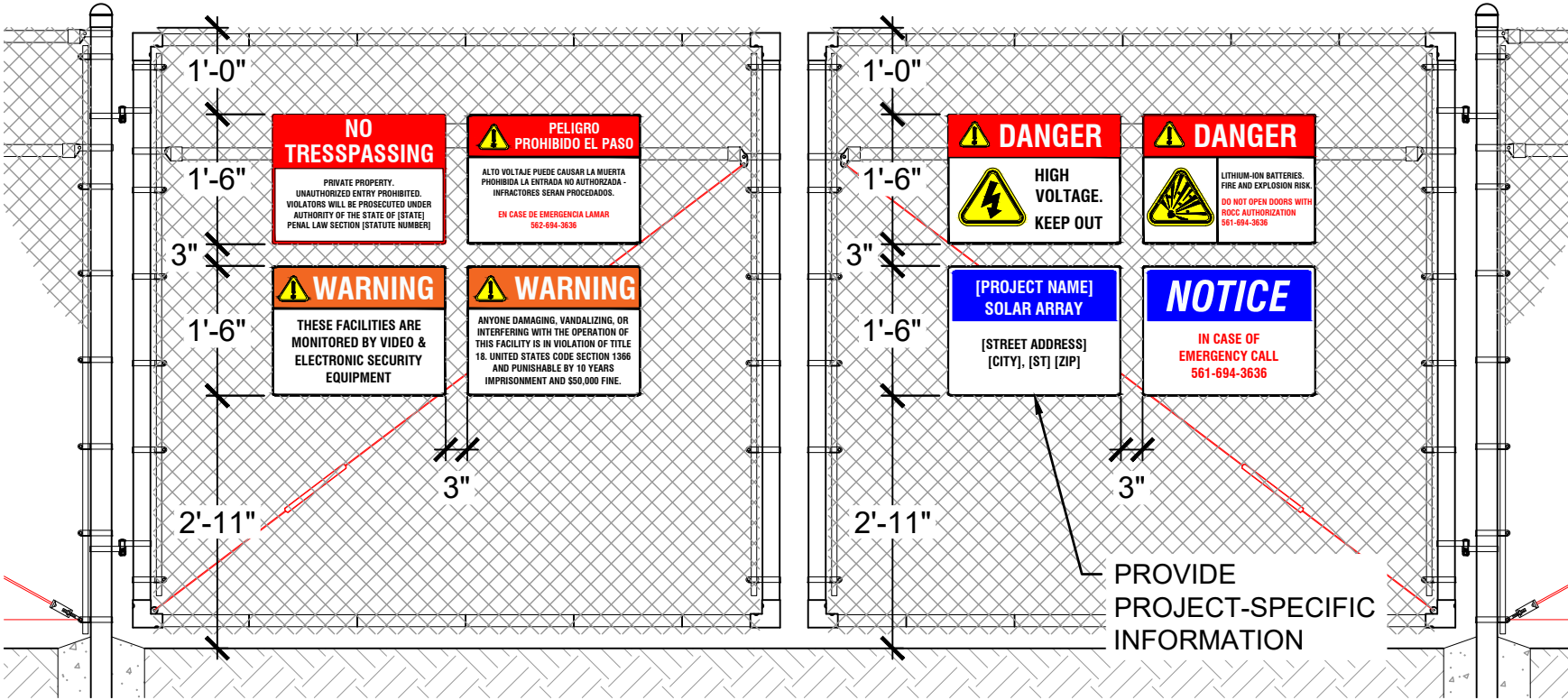


Code Reference	Requirement	Consistency Description
	<p>salvageable value, or \$75,000.00, whichever is greater is required.</p> <p>(5) The following types of performance guarantees are permitted:</p> <ul style="list-style-type: none"> <li>a. A surety or performance bond that renews automatically, includes a minimum 60-day notice to the county prior to cancellation, is approved by the planning director, and is from a company on the U.S. Department of Treasury's listing of certified companies. A bond certificate must be submitted to the planning department each year verifying the bond has been properly renewed.</li> <li>b. A certified check deposited with the county finance director, as escrow agent, who will deposit the check in an interest-bearing account of the county, with all interest accruing to the applicant. Funds deposited with the county finance director will be returned when the solar farm is decommissioned, and any necessary site restoration is completed.</li> <li>c. A no-contest irrevocable bank letter of credit from a banking corporation licensed to do business in the state. The terms of the letter must include the absolute right of the county finance director to withdraw funds from the bank upon certification by the county manager that the terms and conditions of the performance guarantee have been breached. The letter of credit must be valid up to 12 months from the date the performance guarantee was approved.</li> </ul> <p>(6) The full amount of the bond, certified check, or letter of credit must remain in full force and effect until the solar farm is decommissioned and any necessary site restoration is completed.</p> <p>(7) The landowner or tenant must notify the county when the site is abandoned.</p>	

## 7. CONCEPT SITE PLAN

*42 x 30" Hard Copy Provided Separately (x20)*

## **APPENDIX A      TYPICAL SIGN DESIGN**



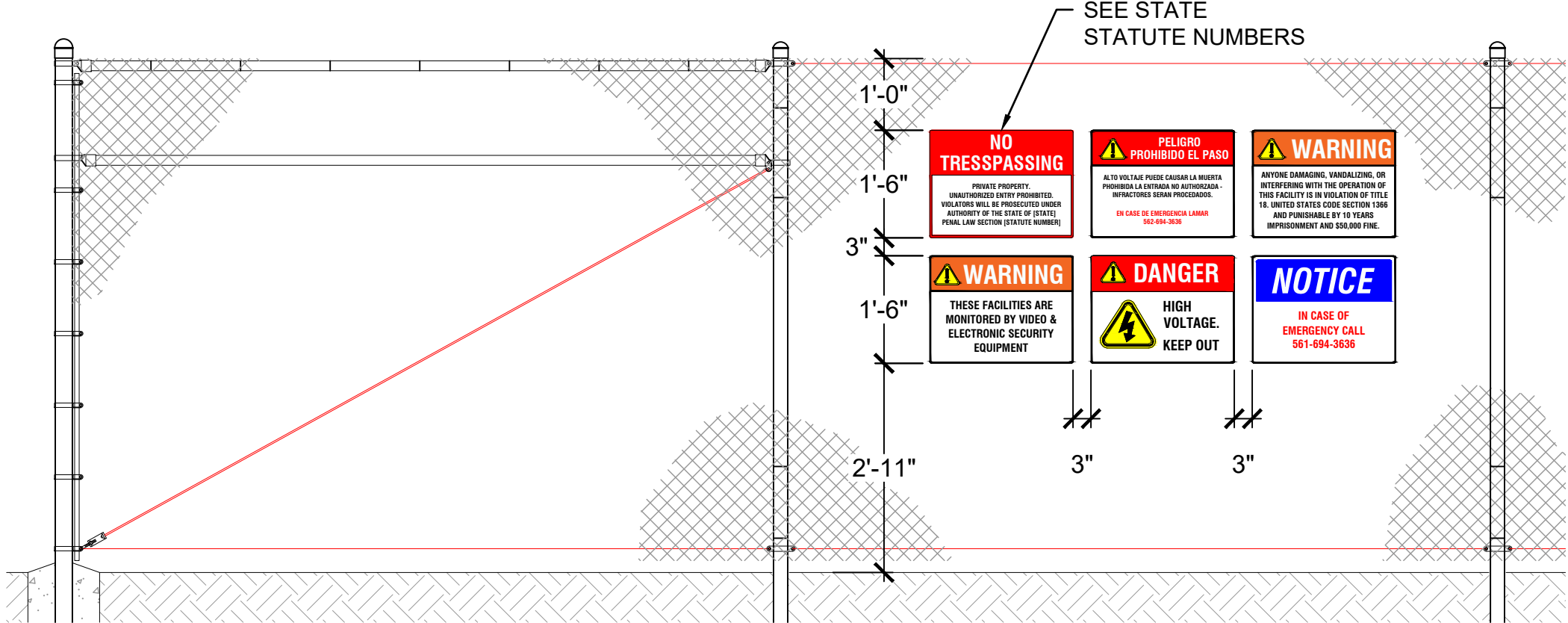
# TYPICAL SIGNAGE

- 1. ALL SIGNS TO BE 18" X 24" IN SIZE
- 2. SIGNS SHALL BE UV RESISTANT AND IN COLOR. SIGN MATERIAL SHALL BE HDPE OR LIGHT GAUGE GALVANIZED STEEL.
- 3. SIGNS SHALL BE ATTACHED TO FENCING WITH PERMANENT FASTENERS.

SCALE: 3/4" = 1'-0"

# TYPICAL SIGNAGE @ GATE

SCALE: 1/2" = 1'-0"



# TYPICAL SIGNAGE @ FENCE

- 1. INSTALL SIGNS EVERY 300'

SCALE: 1/2" = 1'-0"

## **APPENDIX B      CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. SP-40392, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Blackburn Solar, LLC,	)	ORDER ISSUING
for a Certificate of Public Convenience and	)	CERTIFICATE AND ACCEPTING
Necessity to Construct a 58 MW Solar Facility	)	REGISTRATION OF NEW
in Catawba County, North Carolina	)	RENEWABLE ENERGY FACILITY

BY THE COMMISSION: On November 29, 2021, Blackburn Solar, LLC (Applicant) filed an application (Application) seeking a certificate of public convenience and necessity pursuant to N.C. Gen. Stat. § 62-110.1(a) for construction of a 58 MW<sub>AC</sub> solar photovoltaic generating facility to be located at 5256 Hickory Lincolnton Highway, Lincolnton, Catawba County, North Carolina. The Applicant plans to sell the electricity generated by this facility to Duke Energy Carolinas, LLC (DEC).

Also on November 29, 2021, the Applicant filed a registration statement for a new renewable energy facility. The registration statement included certified attestations that: (1) the facility is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources; (2) the facility will be operated as a new renewable energy facility; (3) the Applicant will not remarket or otherwise resell any renewable energy certificates sold to an electric power supplier to comply with N.C.G.S § 62-133.8; and (4) the Applicant will consent to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers.

On December 9, 2021, the Commission issued an Order Requiring Publication of Notice.

On December 15, 2021, the Applicant filed a verified certificate of service stating that the application and the related public notice were provided to DEC on December 13, 2021.

On January 18, 2022, the Applicant filed an affidavit of publication from the Hickory Daily Record stating that the publication of notice was completed on January 5, 2022. No complaints have been received.

On February 10 and 14, 2022, the State Clearinghouse filed comments. Because of the nature of the comments, the cover letter indicated that no further State Clearinghouse review action by the Commission was required for compliance with the North Carolina Environmental Policy Act.



The Public Staff presented this matter to the Commission at its Regular Staff Conference on December 19, 2022. The Public Staff stated that it had reviewed the Application and determined it to be in compliance with the requirements of N.C.G.S. § 62-110.1(a) and Commission Rule R8-64. The Public Staff further stated that the registration statement contains the certified attestations required by Commission Rule R8-66(b). Therefore, the Public Staff recommended approval of the certificate and registration for the facility.

After careful consideration, the Commission finds good cause to approve the application and issue the attached certificate for the proposed solar photovoltaic generating facility. The Commission further finds good cause, based upon the foregoing and the entire record in this proceeding, to accept registration of the facility as a new renewable energy facility. The Applicant shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year and is required to participate in the NC-RETS REC tracking system (<http://www.ncrets.org>) in order to facilitate the issuance of renewable energy certificates.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Blackburn Solar, LLC, for a certificate of public convenience and necessity shall be, and is hereby, approved;
2. That Appendix A shall constitute the certificate of public convenience and necessity issued to Blackburn Solar, LLC, for the 58 MW<sub>AC</sub> solar photovoltaic generating facility located at 5256 Hickory Lincolnton Highway, Lincolnton, Catawba County, North Carolina;
3. That the registration statement filed by Blackburn Solar, LLC, for its solar photovoltaic generating facility located in Catawba County, North Carolina as a new renewable energy facility shall be, and is hereby, accepted;
4. That Blackburn Solar, LLC, shall annually file the information required by Commission Rule R8-66 on or before April 1 of each year; and

5. That Blackburn Solar, LLC, shall renew this certificate by re-compliance with the requirements set forth in Commission Rule R8-64 if it does not begin construction within five years after the issuance of the certificate.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk

Commissioners Jeffrey A. Hughes and Floyd B. McKissick, Jr. did not participate in this decision.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. SP-40392, SUB 0

Blackburn Solar, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408

is hereby issued this

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
PURSUANT TO N.C.G.S. § 62-110.1**

for a 58 MW<sub>AC</sub> solar photovoltaic generating facility

located at

5256 Hickory Lincolnton Highway, Lincolnton, Catawba County, North Carolina,

Subject to all orders, rules, regulations, and conditions  
as are now or may hereafter be lawfully made  
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk

## **APPENDIX C**

## **NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICE LETTER**



**North Carolina Department of Natural and Cultural Resources  
State Historic Preservation Office**

Ramona M. Bartos, Administrator

Governor Roy Cooper

Secretary D. Reid Wilson

June 18, 2021

Emily Tucker-Laird

[emily.laird@erm.com](mailto:emily.laird@erm.com)

ERM

3300 Breckinridge Boulevard, Suite 300

Duluth, Georgia 30096

Re: Construct Blackburn Solar Farm, east of Lincolnton Highway, Catawba County, ER 21-1164

Dear Ms. Tucker-Laird:

Thank you for your email of April 27, 2021, regarding the above-referenced undertaking. We have reviewed the submittal and offer the following comments.

We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed.

The above comments are made pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's Regulations for Compliance with Section 106 codified at 36 CFR Part 800.

Thank you for your cooperation and consideration. If you have questions concerning the above comment, contact Renee Gledhill-Earley, environmental review coordinator, at 919-814-6579 or [environmental.review@ncdcr.gov](mailto:environmental.review@ncdcr.gov). In all future communication concerning this project, please cite the above referenced tracking number.

Sincerely,

A handwritten signature in blue ink that reads "Renee Gledhill-Earley".

for Ramona Bartos, Deputy  
State Historic Preservation Officer

## **APPENDIX D      DECOMMISSIONING PLAN AND COST ESTIMATE**

# **Blackburn Solar Project Decommissioning Plan**

Submitted to Catawba County by  
Blackburn Solar, LLC

May 12, 2022

Blackburn Solar, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408



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## APPENDIX A      DECOMMISSIONING COST ESTIMATE

## 1. OVERVIEW

Blackburn Solar, LLC (Blackburn Solar, or the Applicant) is pleased to provide this Decommissioning Plan (Plan) in support of its Conditional Rezoning Application (Application) to the Catawba County (County) Planning Board and Board of Commissioners in support of the proposed Blackburn Solar Project (Project). The proposed Project is a 58 megawatt (MW) solar photovoltaic (PV) facility. Blackburn Solar is a wholly owned entity of NextEra Energy Resources, LLC, (NEER). This request is in accordance with Sections 44-328 "Conditional zoning district" and 44-633 "Solar farm (utility-scale solar application)" of the Catawba County Unified Development Ordinances (UDO).

The proposed Project is designed to last up to 35 years. At the end of the proposed Project's operation, structures and foundations will be removed and the land restored to prior condition to the extent practicable. After a six-month period in which no electricity is generated, all components of the solar energy system will be removed by the owner or the operator within six (6) months in accordance with this decommissioning plan and Section 44-633(m)(2) of the Catawba County UDO.

### 1.1 Facility Description

The Project is a 58 megawatt (MW) solar photovoltaic (PV) facility located on 635 acres (Project Area) across four privately-owned Catawba County parcels totaling 753 acres. The Project is located in a rural community characterized by agricultural land use. Other surrounding areas are developed with low-density single-family residences, or are forested, undeveloped land. The following is a summary of the major facility components:

- Fixed and tracking style PV modules, racking posts, inverters, and other electrical equipment;
- An onsite Project substation, including inverters, switchgears, transformers, and an equipment pads;
- Utility poles with associated equipment to facilitate interconnection with the Duke Energy Carolinas, LLC (DEC) power grid;
- Underground and overhead electrical lines;
- A network of access roadways; and
- Perimeter fencing.

## 2. NOTIFICATIONS OF DECOMMISSIONING ACTIVITIES

In accordance with Section 44-633(m)(2) of the Catawba County UDO, the property owner or operator will notify the County Planning Department Director of the proposed date of discontinued operations and plans for removal. Blackburn Solar will notify Catawba County when the decommissioning date of the Project is identified.

## 3. DECOMMISSIONING ACTIVITIES & SITE RESTORATION

Prior to commencing decommissioning, Blackburn Solar will coordinate with DEC to disconnect the PV array from the power grid. Decommissioning does not include equipment that may fail during operation, or equipment with a lifespan less than 35 years.

During decommissioning, Project facilities, including above ground and below ground materials (structures, components, and non-utility owned equipment), will be dismantled and removed, including but not limited to perimeter fences, concrete foundations to a depth of 48 inches below grade, steel piles, mounting racks and racking, PV modules, cables, transformers, inverters, and other ancillary equipment. All electrical equipment will be removed for reuse or disposal. The Project infrastructure would be decommissioned in the reverse order of installation activities, to occur within the 6-month decommissioning timeframe. The

attached Decommissioning Cost Estimate provides a detailed description of the anticipated decommissioning activities used to produce the decommissioning cost estimate.

- Panels and fencing would be removed;
- Supporting piles would be pulled out using an excavator and underground conductors would be removed;
- Holes from removing materials would be filled with adjacent top soils;
- After consultation with property owners, unwanted roads, ditches, and access aisles would be de-compacted via disking or harrowing; and
- Excavated materials would be properly recycled or disposed.

Any stormwater control features will be removed unless otherwise approved to remain by the County and the property owner. Every practicable effort will be made to recycle or reuse facility components: Gravel, glass, concrete, rebar, fencing, steel piers, steel racking, solar modules, copper and aluminum wiring, inverters, disconnects, switchgears and transformers will be recycled or disposed of at an authorized solid waste management facility.

### 3.1 Site Restoration and Stabilization

The Project installation will be completed with minimal permanent alterations to the existing Project site. Therefore, upon decommissioning, Blackburn Solar will restore the disturbed areas onsite as close to preconstruction conditions as is reasonably practicable, including removal of structures and foundations to a depth of 48 inches, and the restoration of soil and ground cover in consultation with the landowners. Very limited grading is anticipated to be performed to restore the site to its original condition, because there will be limited grading during installation of the Project.

Some restoration and site stabilization will be required after decommissioning and removal of equipment. Gravel from the access roads will be reclaimed. The disturbed area will be re-graded to an approximation of the original contours, reseeded, and mulched using a seed mix appropriate for the land.

The Project will be dismantled and removed using minimal impact construction equipment. Materials will be safely recycled or disposed. During the decommissioning, Blackburn Solar will use appropriate temporary construction-related erosion and sediment control measures and best management practices (BMPs).

## 4. DECOMMISSIONING COSTS & PERFORMANCE GUARANTEE

The decommissioning costs for the Project are estimated to be \$8,716,985 while the salvage value of the project array is -\$2,012,406 for a net decommissioning cost of \$6,704,579. The decommissioning cost letter is included in **Appendix A**.

### 4.1 Decommissioning Performance Guarantee

Prior to the issuance of a Zoning Compliance Certificate, Blackburn Solar will provide the County with a performance guarantee as required in UDO section 44-633(m)(3), (4), and (5) (a-c). For the first ten years of the Project's life, the amount of the guarantee will be 1.25 times the estimated decommissioning cost minus 50 percent the salvageable value, or \$75,000.00, whichever is greater. The full amount of the bond, certified check, or letter of credit will remain in full force and effect until the proposed Project is decommissioned and any site restoration is completed.

## **4.2 Decommissioning Plan Updates**

An updated decommissioning plan providing updated decommissioning costs and salvageable values will be provided by Blackburn Solar at the ten-year mark and every five years thereafter. Blackburn Solar will provide a new performance guarantee in the amount of 1.25 times the updated decommissioning cost minus 50 percent of the salvageable value, or \$75,000.00, whichever is greater.

## **4.3 Notifications**

As required in UDO section 44-633(m)(7), Blackburn Solar, LLC will work with landowners to ensure the County is notified of the expected date of decommissioning, an expected schedule for decommissioning, and when decommissioning is complete.

**APPENDIX A      DECOMISSIONING COST ESTIMATE**



**BLACK & VEATCH**

**Black & Veatch Corporation**

3550 Green Court, Ann Arbor, MI 48105 USA

P +1 734-622-8619 E [bekkalabp@bv.com](mailto:bekkalabp@bv.com)

May 9, 2023

Catawba County Planning & Zoning Department  
25 Government Drive  
Newton, NC 28658

Blackburn Solar Decom Cost Refresh  
BV Project 416217  
BV File 25.2000

Attention: Mr. Chris Timberlake

Subject: Blackburn Solar Project Decommissioning Cost Estimate and Site Restoration

Black & Veatch was retained by Blackburn Solar, LLC ("Blackburn Solar Project") to provide a decommissioning cost estimate and general description of the site restoration activities associated with the decommissioning of the Blackburn Solar Project at the end of the project's useful life. Black & Veatch has been involved with solar facilities as a consultant and design engineer for nearly 40 years. Black & Veatch has also been an EPC contractor with experience building utility scale solar projects since 2013 and has built many other types of power plants since the late 1980's. Over the past 15 years, Black & Veatch has prepared numerous decommissioning cost estimates for various types of electrical generating plants, including various solar plants similar to the proposed Blackburn Solar Project.

The site restoration will remove all above ground equipment associated with the project, including the electrical substation and the high voltage gen-tie line which connects to the DEC Mull 100 kV transmission line. All below grade items will be removed to a depth of four (4) feet below grade and the solar module support posts will be completely removed. Any electrical casing or conduit below the four-foot depth will remain in place. Gravel access roads will be removed unless the landowner requests that they remain in place. All stormwater and permanent erosion control measures installed as part of the Blackburn Solar Project construction will remain in place as these are assumed to provide a benefit to the landowner.

The net total decommissioning cost for the Blackburn Solar Project is estimated to be \$6,704,579. This is based on a gross total cost of decommissioning of \$8,716,985 and a credit of \$2,012,406 for salvage and recycled materials. The estimated cost is in Second Quarter 2023 dollars and does not include escalation. The cost estimate is based on an end of project useful life scenario and assumes that the solar equipment will have no resale value beyond salvage. The details of the cost estimate are presented in Attachment A.

Very truly yours,

Black & Veatch

A handwritten signature in black ink, reading "Bruce P. Bekkala".

Bruce P. Bekkala, P.E.  
Project Manager

Attachment: Attachment A – Blackburn Solar Project Decommissioning Cost Estimate

cc: Matt Teigen, NextEra Energy Resources  
Brandon Haddock, Black & Veatch  
Paul Nelson, Black & Veatch





## Attachment A - Blackburn Solar Project Decommissioning Cost Estimate

System Summary:		
System Size (AC)	58	MW
Racking System Type	Tracker	
AC/DC Ratio	1.47	

Item Description	Qty	UoM	Unit Cost	Total Cost
<b>Solar Removal</b>				
Road Removal & Restoration	25,840	lf	\$ 26	\$ 673,713
Site Leveling & Seeding	167	ac	\$ 4,554	\$ 760,558
Fencing Removal	45,353	lf	\$ 10	\$ 431,352
Erosion Control	1	ls	\$ 126,445	\$ 126,445
Inverter Removal	19	ea	\$ 4,352	\$ 82,688
Above Grade Cable	1,911,083	lf	\$ 0.36	\$ 688,940
Below Grade Cable	617,458	lf	\$ 0.52	\$ 323,013
Module Removal	204,895	ea	\$ 5.62	\$ 1,150,682
Pile Removal	27,861	ea	\$ 41.38	\$ 1,153,006
Tracker Table Removal	2,886	ea	\$ 406.35	\$ 1,172,637
<b>Substation &amp; Transmission Line Removal</b>				
Electrical Equipment & Structure Removal	26	ea	\$ 5,591	\$ 145,378
Remove Fencing & Foundations	1	ls	\$ 48,649	\$ 48,649
Remove Aggregate & Spread Topsoil	2,610	sy	\$ 12	\$ 30,231
Remove T-Line Structures & Foundations	31	ea	\$ 10,636	\$ 329,721
Remove Substation Cable	2,200	lf	\$ 4	\$ 9,273
Remove Transmission Line Cable	2.50	miles	\$ 26,646	\$ 66,615
Indirect Costs				\$ 1,424,085
Owner's Costs				\$ 100,000
<b>Gross Project Cost</b>				<b>\$ 8,716,985</b>
<b>Salvage Credit</b>				
Insulated Copper Wire	19	tons	\$ (6,280.00)	\$ (119,320)
Bare Copper	41	tons	\$ (7,840.00)	\$ (321,444)
Aluminum	103	tons	\$ (660.00)	\$ (67,980)
Steel	5,576	tons	\$ (180.00)	\$ (1,003,662)
GSU Transformer Sale (Refurbished)	1	LS	\$ (500,000)	\$ (500,000)
<b>Total Salvage Credit</b>				<b>\$ (2,012,406)</b>
<b>Net Total Decommissioning Cost</b>				<b>\$ 6,704,579</b>

## **APPENDIX E      UTILITY INTERCONNECTION AGREEMENT**

**NORTH CAROLINA**  
**FINAL INTERCONNECTION AGREEMENT**  
**For State-Jurisdictional Generator Interconnections**

Effective June 14, 2019

Docket No. E-100, Sub 101

Between

**Duke Energy Carolinas, LLC**

And

Blackburn Solar, LLC

“Blackburn Solar” Project

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Appendix 1 – Glossary of Terms

Appendix 2 – Description and Costs of the Generating Facility, Interconnection Facilities, and Metering Equipment

Appendix 3 – One-line Diagram Depicting the Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades

Appendix 4 – Milestones

Appendix 5 – Additional Operating Requirements for the Utility's System and Affected Systems Needed to Support the Interconnection Customer's Needs

Appendix 6 – Utility's Description of its Upgrades and Best Estimate of Upgrade Costs

This Interconnection Agreement ("Agreement") is made and entered into this 2nd day of August, 2020, by **Duke Energy Carolinas, LLC** ("Utility" or "Company"), and Blackburn Solar, LLC ("Interconnection Customer" or "Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

### **Utility Information**

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-14Q

Address: 400 South Tryon Street

City: Charlotte      State: NC      Zip: 28202

Phone: (866) 233-2290      Fax: (980) 373-5244

### **Interconnection Customer Information**

Name: Blackburn Solar, LLC

Project Name: Blackburn Solar

Attention: Winston Kutte

Address: 700 Universe Blvd. / E-5497

City: Juno Beach      State: FL      Zip: 33408

Phone: (561) 304-5881      Fax: N/A

Project Address: Blackburn Bridge Rd., Lincolnton, NC 28092

Project County: Catawba

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

## **Article 1.      Scope and Limitations of Agreement**

### **1.1      Applicability**

This Agreement shall be used for all Interconnection Requests submitted under the North Carolina Interconnection Procedures except for those submitted under the 20 kW Inverter Process in Section 2 of the Interconnection Procedures.

## 1.2 Purpose

This Agreement governs the terms and conditions under which the Interconnection Customer's Generating Facility will interconnect with, and operate in parallel with, the Utility's System.

## 1.3 No Agreement to Purchase or Deliver Power or RECs

This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power or Renewable Energy Certificates (RECs). The purchase or delivery of power, RECs that might result from the operation of the Generating Facility, and other services that the Interconnection Customer may require will be covered under separate agreements, if any. The Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility.

## 1.4 Limitations

Nothing in this Agreement is intended to affect any other agreement between the Utility and the Interconnection Customer.

## 1.5 Responsibilities of the Parties

- 1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.
- 1.5.2 The Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, and in accordance with this Agreement, and with Good Utility Practice.
- 1.5.3 The Utility shall construct, operate, and maintain its System and Interconnection Facilities in accordance with this Agreement, and with Good Utility Practice.
- 1.5.4 The Interconnection Customer agrees to construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriters' Laboratories, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. The Interconnection Customer agrees to design, install, maintain, and operate its Generating Facility so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the System or equipment of the Utility and



any Affected Systems.

- 1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Appendices to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect the Utility's System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall be delineated in the Appendices to this Agreement.
- 1.5.6 The Utility shall coordinate with all Affected Systems to support the interconnection.
- 1.5.7 The Customer shall not operate the Generating Facility in such a way that the Generating Facility would exceed the Maximum Generating Capacity.

#### 1.6 Parallel Operation Obligations

Once the Generating Facility has been authorized to commence parallel operation, the Interconnection Customer shall abide by all rules and procedures pertaining to the parallel operation of the Generating Facility in the applicable control area, including, but not limited to: 1) any rules and procedures concerning the operation of generation set forth in Commission-approved tariffs or by the applicable system operator(s) for the Utility's System and; 2) the Operating Requirements set forth in Appendix 5 of this Agreement.

#### 1.7 Metering

The Interconnection Customer shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 2 and 3 of this Agreement. The Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and Operating Requirements.

#### 1.8 Reactive Power

- 1.8.1 The Interconnection Customer shall design its Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the Utility has established different

requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

- 1.8.2 The Utility is required to pay the Interconnection Customer for reactive power that the Interconnection Customer provides or absorbs from the Generating Facility when the Utility requests the Interconnection Customer to operate its Generating Facility outside the range specified in Article 1.8.1 or outside the range established by the Utility that applies to all similarly situated generators in the control area. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must also pay the Interconnection Customer.
- 1.8.3 Payments shall be in accordance with the Utility's applicable rate schedule then in effect unless the provision of such service(s) is subject to a regional transmission organization or independent system operator FERC-approved rate schedule. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the Parties agree to expeditiously file such rate schedule and agree to support any request for waiver of any prior notice requirement in order to compensate the Interconnection Customer from the time service commenced.

## 1.9 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 of the North Carolina Interconnection Procedures or the body of this Agreement.

## **Article 2. Inspection, Testing, Authorization, and Right of Access**

### 2.1 Equipment Testing and Inspection

- 2.1.1 The Interconnection Customer shall test and inspect its Generating Facility and Interconnection Facilities prior to interconnection. The Interconnection Customer shall notify the Utility of such activities no fewer than ten (10) Business Days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a Business Day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the Generating Facility site to inspect the interconnection and observe the testing. The Interconnection Customer shall provide the Utility a written test report when such testing and inspection is completed.
- 2.1.2 The Utility shall provide the Interconnection Customer written acknowledgment that it has received the Interconnection Customer's

written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by the Interconnection Customer or the quality of power produced by the Generating Facility.

- 2.1.3 In addition to the Utility's observation of the Interconnection Customer's testing and inspection of its Generating Facility and Interconnection Facilities pursuant to this Section, the Utility may also require inspection and testing of Interconnection Facilities that can impact the integrity or safety of the Utility's System or otherwise cause adverse operating effects, as described in Section 3.4.4. Such inspection and testing activities will be performed by the Utility or a third-party independent contractor approved by the Utility and at a time mutually agreed to by the Interconnection Customer and will be performed at the Interconnection Customer's expense. The scope of required inspection and testing will be consistent across similar types of generating facilities.

## 2.2 Authorization Required Prior to Parallel Operation

- 2.2.1 The Utility shall use Reasonable Efforts to list applicable parallel operation requirements in Appendix 5 of this Agreement. Additionally, the Utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The Utility shall make Reasonable Efforts to cooperate with the Interconnection Customer in meeting requirements necessary for the Interconnection Customer to commence parallel operations by the in-service date.
- 2.2.2 The Interconnection Customer shall not operate its Generating Facility in parallel with the Utility's System without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the Interconnection Customer has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

## 2.3 Right of Access

- 2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the Interconnection Customer at or before the time the Generating Facility first produces energy to inspect the interconnection and those Interconnection Customer facilities which can impact the integrity or safety of the Utility's System or otherwise cause adverse operating effects, as described in Section 3.4.4, and observe the commissioning of the Generating Facility (including any required testing), startup, and operation for a period of up to three (3) Business Days after

initial start-up of the unit. In addition, the Interconnection Customer shall notify the Utility at least five (5) Business Days prior to conducting any on-site verification testing of the Generating Facility.

- 2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.
- 2.3.3 Each Party shall be responsible for its own costs associated with following this Article, with the exception of Utility-required inspection and testing described in Section 2.1.3, the costs for which shall be the responsibility of the Interconnection Customer.

### **Article 3. Effective Date, Term, Termination, and Disconnection**

#### **3.1 Effective Date**

This Agreement shall become effective upon execution by the Parties.

#### **3.2 Term of Agreement**

This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 3.3 of this Agreement.

#### **3.3 Termination**

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

- 3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the Utility 20 Business Days written notice and physically and permanently disconnecting the Generating Facility from the Utility's System.
- 3.3.2 The Utility may terminate this Agreement upon the Interconnection Customer's failure to timely make the payment(s) required by Article 6.1.1 pursuant to the milestones specified in Appendix 4, or to comply with the requirements of Article 7.1.2 or Article 7.1.3.

- 3.3.3 Either Party may terminate this Agreement after Default pursuant to Article 7.6.
- 3.3.4 Upon termination of this Agreement, the Generating Facility will be disconnected from the Utility's System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.
- 3.3.5 The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination, including any remaining term requirements for payment of Charges that are billed under a monthly payment option as prescribed in Article 6.
- 3.3.6 The provisions of this article shall survive termination or expiration of this Agreement.

#### 3.4 Temporary Disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

##### 3.4.1 Emergency Conditions

"Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Utility's System, the Utility's Interconnection Facilities or the systems of others to which the Utility's System is directly connected; or (3) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or the Interconnection Customer's Interconnection Facilities.

Under Emergency Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facility. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Generating Facility. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility's System or any Affected Systems. To the extent information is known, the notification shall

describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine Maintenance, Construction, and Repair

The Utility may interrupt interconnection service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from the Utility's System when necessary for routine maintenance, construction, and repairs on the Utility's System. The Utility shall provide the Interconnection Customer with two (2) Business Days' notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages

During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects

The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facility may cause disruption or deterioration of service to other customers served from the same electric System, or if operating the Generating Facility could cause damage to the Utility's System or Affected Systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon request. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facility. The Utility shall provide the Interconnection Customer with five (5) Business Day notice of such disconnection, unless the provisions of Article 3.4.1 apply.

3.4.5 Modification of the Generating Facility

The Interconnection Customer must receive written authorization from the Utility before making a Material Modification or any other change to the Generating Facility that may have a material impact on the safety or reliability of the Utility's System. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance

with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and the Utility's System to their normal operating state as soon as reasonably practicable following a temporary or emergency disconnection.

**Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades**

4.1 Interconnection Facilities

- 4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Appendix 2 of this Agreement. The Utility shall provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer, such other entities, and the Utility.
- 4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

4.2 Distribution Upgrades

The Utility shall design, procure, construct, install, and own the Distribution Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Distribution Upgrades that are located on land owned by the Interconnection Customer. The actual cost of the Distribution Upgrades, including overheads, ongoing operations, maintenance, repair, and replacement, shall be directly assigned to the Interconnection Customer.

**Article 5. Cost Responsibility for Network Upgrades**

5.1 Applicability

No portion of this Article 5 shall apply unless the interconnection of the Generating



Facility requires Network Upgrades.

## 5.2 Network Upgrades

The Utility shall design, procure, construct, install, and own the Network Upgrades described in Appendix 6 of this Agreement. If the Utility and the Interconnection Customer agree, the Interconnection Customer may construct Network Upgrades that are located on land owned by the Interconnection Customer. Unless the Utility elects to pay for Network Upgrades, the actual cost of the Network Upgrades, including overheads, on-going operations, maintenance, repair, and replacement shall be borne by the Interconnection Customer.

## **Article 6. Billing, Payment, Milestones, and Financial Security**

### 6.1 Billing and Payment Procedures and Final Accounting

- 6.1.1 The Interconnection Customer shall pay 100% of required Interconnection Facilities and any other charges as required in Appendix 2 pursuant to the milestones specified in Appendix 4.

The Interconnection Customer shall pay 100% of required Upgrades and any other charges as required in Appendix 6 pursuant to the milestones specified in Appendix 4.

Upon receipt of 100% of the foregoing pre-payment charges for Upgrades, the payment is not refundable due to cancellation of the Interconnection Request for any reason. However, if an Interconnection Customer terminates its Interconnection Agreement and cancels its facility, it shall be entitled to a refund of any unspent amounts that had been collected by the Utility for the Interconnection Customer's Interconnection Facilities.

- 6.1.2 If implemented by the Utility or requested by the Interconnection Customer in writing within 15 Business Days of the Interconnection Facilities Delivery Date, the Utility shall provide the Interconnection Customer a final accounting report within 120 Business Days addressing any difference between (1) the Interconnection Customer's cost responsibility for the actual cost of such facilities or Upgrades, and (2) the Interconnection Customer's previous aggregate payments to the Utility for such facilities or Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the Utility within 20 Business Days. If the Interconnection Customer's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the Interconnection Customer an amount equal to the difference within 20 Business Days of

the final accounting report. If necessary and appropriate as a result of the final accounting, the Utility may also adjust the monthly charges set forth in Appendix 2 of the Interconnection Agreement.

- 6.1.3 The Utility shall also bill the Interconnection Customer for the costs associated with operating, maintaining, repairing and replacing the Utility's System Upgrades, as set forth in Appendix 6 of this Agreement. The Utility shall bill the Interconnection Customer for the costs of providing the Utility's Interconnection Facilities including the costs for on-going operations, maintenance, repair and replacement of the Utility's Interconnection Facilities under a Utility rate schedule, tariff, rider or service regulation providing for extra facilities or additional facilities charges, as set forth in Appendix 2 of this Agreement, such monthly charges to continue throughout the entire life of the interconnection.

## 6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and list them in Appendix 4 of this Agreement. A Party's obligations under this provision may be extended by agreement, except for timing for Payment or Financial Security-related requirements set forth in the milestones, which shall adhere to Section 5.2.4 of the Standards. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (2) request appropriate amendments to Appendix 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless (1) it will suffer significant uncompensated economic or operational harm from the delay, (2) the delay will materially affect the schedule of another Interconnection Customer with subordinate Queue Position, (3) attainment of the same milestone has previously been delayed, or (4) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

## 6.3 Financial Security Arrangements

Pursuant to the Interconnection Agreement Milestones Appendix 4, the Interconnection Customer shall provide the Utility a letter of credit or other financial security arrangement that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of North Carolina. Such security for payment shall be in an amount sufficient to cover the costs for constructing, designing, procuring, and installing the applicable portion of the Utility's Interconnection Facilities and shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term. In addition:

- 6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility, and contain terms and conditions that

guarantee payment of any amount that may be due from the Interconnection Customer, up to an agreed-to maximum amount.

- 6.3.2 The letter of credit must be issued by a financial institution or insurer reasonably acceptable to the Utility and must specify a reasonable expiration date.
- 6.3.3 The Utility may waive the security requirements if its credit policies show that the financial risks involved are de minimus, or if the Utility's policies allow the acceptance of an alternative showing of credit-worthiness from the Interconnection Customer.

## **Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default**

### **7.1 Assignment**

- 7.1.1 The Interconnection Customer shall notify the Utility of the pending sale of an existing Generating Facility in writing. The Interconnection Customer shall provide the Utility with information regarding whether the sale is a change of ownership of the Generating Facility to a new legal entity or a change of control of the existing legal entity.
- 7.1.2 The Interconnection Customer shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the Generating Facility shall confirm to the Utility the final date of sale and transfer date of ownership in writing.
- 7.1.3 This Agreement shall not survive the transfer of ownership of the Generating Facility to a new legal entity owner. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the transfer of ownership or the Utility's Interconnection Facilities shall be removed or disabled and the Generating Facility disconnected from the Utility's System. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.
- 7.1.4 This Agreement shall survive a change of control of the Generating Facility' legal entity owner, where only the contact information in the Interconnection Agreement must be modified. The new owner must complete a new Interconnection Request and submit it to the Utility within 20 Business Days of the change of control and provide the new contact information. The Utility shall not study or inspect the Generating Facility unless the new owner's Interconnection Request indicates that a Material Modification has occurred or is proposed.

7.1.5 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the Generating Facility, provided that the Interconnection Customer will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

## 7.2 Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

## 7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified Party shall be the amount of such indemnified Party's actual loss, net of

any insurance or other recovery.

- 7.3.5 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

#### 7.4 Consequential Damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

#### 7.5 Force Majeure

- 7.5.1 As used in this article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.
- 7.5.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its

performance as soon as possible.

## 7.6 Default

- 7.6.1 No Default shall exist where such failure to discharge an obligation (other than the payment of money or provision of Financial Security) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 7.6.2, the defaulting Party shall have five (5) Business Days from receipt of the Default notice within which to cure such Default.
- 7.6.2 If a Default is not cured as provided in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

## **Article 8. Insurance**

- 8.1 The Interconnection Customer shall obtain and retain, for as long as the Generating Facility is interconnected with the Utility's System, liability insurance which protects the Interconnection Customer from claims for bodily injury and/or property damage. The amount of such insurance shall be sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made. This insurance shall be primary for all purposes. The Interconnection Customer shall provide certificates evidencing this coverage as required by the Utility. Such insurance shall be obtained from an insurance provider authorized to do business in North Carolina. The Utility reserves the right to refuse to establish or continue the interconnection of the Generating Facility with the Utility's System, if such insurance is not in effect.
- 8.1.1 For an Interconnection Customer that is a residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be a standard homeowner's insurance policy with liability coverage in the amount of at least \$100,000 per occurrence.
- 8.1.2 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility no larger than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$300,000 per

occurrence.

- 8.1.3 For an Interconnection Customer that is a non-residential customer of the Utility proposing to interconnect a Generating Facility greater than 250 kW, the required coverage shall be comprehensive general liability insurance with coverage in the amount of at least \$1,000,000 per occurrence.
- 8.1.4 An Interconnection Customer of sufficient credit-worthiness may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be unreasonably rejected.
- 8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.
- 8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

## **Article 9. Confidentiality**

- 9.1 Confidential Information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed Confidential Information regardless of whether it is clearly marked or otherwise designated as such.
- 9.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.
  - 9.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.
  - 9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to



enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.2.3 All information pertaining to a project will be provided to the new owner in the case of a change of control of the existing legal entity or a change of ownership to a new legal entity.

9.3 If information is requested by the Commission from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to the Commission within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and non-public in accordance with North Carolina law and that the information be withheld from public disclosure.

## **Article 10. Disputes**

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article.

10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute.

10.3 If the dispute has not been resolved within 20 Business Days after receipt of the notice, either Party may contact the Public Staff for assistance in informally resolving the dispute, or the Parties may mutually agree to continue negotiations for up to an additional 20 Business Days. In the alternative, the Parties may, upon mutual agreement, seek the assistance of a dispute resolution service to resolve the dispute within 20 Business Days, with the opportunity to extend this timeline upon mutual agreement. If the Parties are unable to informally resolve the dispute, either Party may then file a formal complaint with the Commission.

10.4 Each Party agrees to conduct all negotiations in good faith.

## **Article 11. Taxes**

11.1 The Parties agree to follow all applicable tax laws and regulations, consistent with North Carolina and federal policy and revenue requirements.

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

## **Article 12. Miscellaneous**



### 12.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of North Carolina, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

### 12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties, or under Article 12.12 of this Agreement.

### 12.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

### 12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right or duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

### 12.5 Entire Agreement

This Agreement, including all Appendices, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

### 12.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

#### 12.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

#### 12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

#### 12.9 Security Arrangements

Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. All Utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

#### 12.10 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

#### 12.11 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this

Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.11.2 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.11.3 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

#### 12.12 Reservation of Rights

The Utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided herein.

### **Article 13. Notices**

#### 13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement (Notice) shall be deemed properly given if delivered in person, delivered by recognized national courier service, sent by first class mail, postage prepaid, or sent electronically to the person specified below:

If to the Interconnection Customer:

Interconnection Customer: Blackburn Solar, LLC

Attention: Winston Kutte

Address: 700 Universe Blvd. / E-5497

City: Juno Beach                      State: FL              Zip: 33408

E-Mail Address: winston.kutte@nexteraenergy.com

Phone: (561) 304-5881                      Fax: N/A

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-26

Address: 400 S. Tryon Street

City: Charlotte              State: NC              Zip: 28202

E-Mail Address: DERContracts@duke-energy.com

Phone: (866) 233-2290              Fax: (980) 373-5244

### 13.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below: If to the Interconnection Customer:

Interconnection Customer: Blackburn Solar, LLC

Attention: Winston Kutte

Address: 700 Universe Blvd. / E-5497

City: Juno Beach              State: FL              Zip: 33408

E-Mail Address: winston.kutte@nexteraenergy.com

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Refer to invoice(s) for payment remittance instructions

E-Mail Address: DERContracts@duke-energy.com

### 13.3 Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

If to the Interconnection Customer:

Interconnection Customer: Blackburn Solar, LLC

Attention: Winston Kutte

Address: 700 Universe Blvd. / E-5497

City: Juno Beach      State: FL      Zip: 33408

Phone: (561) 304-5881      Fax: N/A

E-Mail Address: [winston.kutte@nexteraenergy.com](mailto:winston.kutte@nexteraenergy.com)

If to the Utility:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-26

Address: 400 S. Tryon Street

City: Charlotte      State: NC      Zip: 28202

Phone: (866) 233-2290      Fax: (980) 373-5244

E-Mail Address: [DERContracts@duke-energy.com](mailto:DERContracts@duke-energy.com)

### 13.4 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: Blackburn Solar, LLC

Attention: Matt Pawlowski – Nextera Energy Resources

Address: 700 Universe Blvd.

City: Juno Beach      State: FL      Zip: 33408

Phone: (561) 691-7564      Fax: N/A

E-Mail Address: matt.pawlowski@nexteraenergy.com

Utility's Operating Representative:

Utility: Duke Energy Carolinas, LLC

Attention: Customer Owned Generation - Mail Code ST-26

Address: 400 S. Tryon Street

City: Charlotte      State: NC      Zip: 28202

Phone: (866) 233-2290      Fax: (980) 373-5244

E-Mail Address: DERContracts@duke-energy.com

13.5 Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

**For Duke Energy Carolinas, LLC**

Name: Jeffrey W. Riggins

Print Name: Jeffrey W. Riggins

(signed based on approval from George Hamrick, SVP and Chief Transmission Officer)

Title: Director, DET Interconnections

Date: August 2, 2020

**For Blackburn Solar, LLC**

Name: 

Print Name: Matthew S. Handel

Title: Vice President

Date: 7/21/2020

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India	Spain
Indonesia	Switzerland
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Japan	Thailand
Kazakhstan	UAE
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