



E. Merrick Parrott
Associate
Telephone: 919.835.4504
Direct Fax: 919.834.4564
merrickparrott@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

May 21, 2018

Via Electronic Filing

Martha Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Docket No. EMP 93, Sub 0
Wilkinson Solar LLC

Dear Clerk Jarvis:

Enclosed for filing in the above-referenced docket is the Applicant's Proposed Order Granting Amended Certificate. By copy of this letter, I am forwarding a copy to all parties of record.

Please contact me if you have any questions.

Sincerely,

/s/ E. Merrick Parrott

Enclosure

cc: briefs@ncuc.net
Dianna Downey (via email dianna.downey@psncuc.nc.gov)
Brady Allen (via email brady.allen@theallenlawoffices.com)

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-93, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of)
Wilkinson Solar LLC for a Certificate)
of Public Convenience and Necessity)
to Construct a 74-MW Solar Facility)
in Beaufort County, North Carolina)

PROPOSED ORDER
GRANTING AMENDED
CERTIFICATE

HEARD: Monday, March 19, 2018 at 7:00 p.m. in the Beaufort County
Courthouse, 112 W. Second St., Washington, NC

Wednesday, April 11, 2018 at 10:00 a.m. in Room 2115, Dobbs
Building, 430 North Salisbury Street, Raleigh, NC

BEFORE: Commissioners ToNola D. Brown-Bland, presiding, James G.
Patterson, and Lyons Gray

APPEARANCES:

For Wilkinson Solar LLC

Henry C. Campen, Jr.
E. Merrick Parrott
Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601

For Marshall and Joann Lilley and Deb Van Staalduinen, Invervenors

Brady W. Allen
Britton Allen
The Allen Law Offices, PLLC
1514 Glenwood Ave. Suite 200
Raleigh, NC 27608

For the Using and Consuming Public:

Dianna Downey, Staff Attorney
Public Staff – North Carolina Utilities Commission
4326 Mail Service Center
Raleigh, NC 27699

BY THE COMMISSION: On October 11, 2017, the Commission issued Wilkinson Solar LLC (“Wilkinson” or “Applicant”), a Certificate of Public Convenience and Necessity (“CPCN”) pursuant to G.S. 62-110.1(a) and Commission Rule R8-63 for construction of a solar photovoltaic electric generation facility up to 74-MW_{AC} (the “Facility”) to be located in Beaufort County, on the south side of Terra Ceia Road, between Vreugdenhil Road and Christian School Road, and the north side of Terra Ceia Road, east of Christian School Road (the “CPCN Order”). The CPCN was subject to three conditions, including that “Wilkinson Solar LLC will construct and operate the generating facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements”

On November 29, 2017, Wilkinson filed an amended site layout which incorporated additional land south of Terra Ceia Road (the “Layout Amendment”).

On December 6, 2017, the Commission issued an amended Order Requiring Publication of Notice and Further Review by the State Clearinghouse.

Beginning on December 12, 2017, members of the public filed consumer statements of position.

On January 16, 2018 and January 26, 2018, the North Carolina Department of Administration filed comments through the State Clearinghouse stating that it had determined that no further State Clearinghouse review action

on Wilkinson's part was needed for compliance with the North Carolina Environmental Policy Act.

On February 1, 2018, Wilkinson filed an affidavit of publication as required by the Commission in its December 6, 2017 Order.

On February 7, 2018, the Commission issued an Order setting the Layout Amendment for further hearing, requiring Wilkinson to prefile direct expert witness testimony and to provide public notice, and establishing deadlines for the filing of petitions to intervene, intervenor testimony, and rebuttal testimony. The Order also set a public witness hearing on March 19, 2018, and an evidentiary hearing on March 21, 2018.

On February 16, 2018, Wilkinson prefiled the direct testimony of April Montgomery in support of the Layout Amendment.

On March 8, 2018, Public Staff prefiled the supplemental testimony of Evan D. Lawrence, an Engineer with the Public Staff Electric Division. In the testimony, Public Staff recommended that the Layout Amendment be granted.

On March 9, 2018, Wilkinson filed an affidavit of publication as required by the Commission in its February 7, 2018 Order.

Also, on March 9, 2018, three petitions to intervene were filed by: (1) Marshall and Joann Lilley; (2) Kristina Beasley; and (3) Deb Van Staaldunen.

On March 15, 2018, the Commission denied the petitions to intervene of Marshall and Joann Lilley and Kristina Beasley for failure to demonstrate a sufficient interest in the proceeding. The Commission granted the petition to

intervene of Deb Van Staalduin on the condition that she file a verification as a supplement to her petition to intervene on or before March 19, 2018.

On March 16, 2018, the Commission issued an Order Rescheduling Hearing, which rescheduled the evidentiary hearing to April 11, 2018.

On March 19, 2018, the Commission conducted a hearing in Washington, North Carolina for the purpose of receiving public witness testimony. The following public witnesses appeared and gave testimony at this hearing: William Wescott, Herbert Eckerlin, Bradley Van Staalduin, Myra Beasley, Kristina Beasley, Carl Van Staalduin, Jeanne Van Staalduin, and Brenda Forrest. Deb Van Staalduin also testified as a public witness, having confirmed on the record at the public witness hearing that she did not file the verification required by the Commission as a condition of approval of her intervention, and that she wished to withdraw her petition to intervene.

On March 26, 2018, a second petition to intervene was filed by Deb Van Staalduin. In addition, a motion for reconsideration of the denial of their petition to intervene was filed by Marshall and Joann Lilley. No prefiled direct testimony from Ms. Van Staalduin or the Lilleys (together, the "Intervenors") was filed.

On April 5, 2018, Wilkinson prefiled supplemental testimony of Joe Von Wahde, Paul Thienpont, and John Barefoot in support of the Layout Amendment and to address certain issues that were raised at the public witness hearing.

On April 2, 2018, the Commission entered an Order granting the petitions to intervene of the Intervenors.

On April 11, 2018, the matter came on for an evidentiary hearing as ordered. The Applicant presented the supplemental testimony and exhibits of Joe Von Wahlde, the supplemental testimony and exhibit of Paul Thienpont, the supplemental testimony and exhibit of John Barefoot, and the direct testimony and exhibit of April Montgomery. Neither the Public Staff nor the Intervenors presented testimony.

FINDINGS OF FACT

1. The Applicant has previously made a sufficient showing of need for the Facility in this docket. The need for the Facility was not at issue in the Layout Amendment proceedings.

2. The Layout Amendment was reviewed through the State Clearinghouse, which determined that no further State Clearinghouse review action on Wilkinson's part was needed for compliance with the North Carolina Environmental Policy Act.

3. The Facility is subject to federal, State, and local laws and regulations related to the construction and operation of the Facility as altered by the Layout Amendment.

4. No competent, substantial or material evidence was presented regarding potential adverse health or safety effects that would result from the siting of the Facility as altered by the Layout Amendment.

5. It is reasonable and appropriate to issue the amended CPCN subject to the same three conditions on the existing CPCN: (a) the Facility being constructed and operated in strict accordance with applicable laws and

regulations, including any local zoning and environmental permitting requirements; (b) Wilkinson abstaining from attempting to exercise any power of eminent domain under North Carolina law as it relates to the Facility, nor asserting that it has this authority; and (3) the CPCN shall be subject to Commission Rule R8-63(e) and all orders, rules, and regulations as are now or may hereafter be lawfully made by the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT 1

The parties stipulated that the question of need was not at issue in these Layout Amendment proceedings. As found in the Commission's CPCN Order, the Applicant sufficiently demonstrated the need for the Facility.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 2 – 3

The evidence supporting these findings of fact is found in the Layout Amendment filing, the testimony and exhibits of Wilkinson witnesses Montgomery, von Wahlde, Thienpont, and Barefoot, the agency letters submitted as a result of the State Clearinghouse review process, the supplemental testimony of Public Staff witness Lawrence, and the CPCN Order.

Wilkinson witness Montgomery testified that any environmental impacts will be addressed through environmental permitting, and that Wilkinson has obtained or will obtain all required local, state, and federal approvals, such as stormwater permits and soil erosion and control approvals. She testified that Beaufort County had issued a letter on November 9, 2017, which confirms that the amended site layout as shown in the Layout Amendment remains in general compliance with the Beaufort County Solar Farm Ordinance.

Wilkinson witness Joe von Wahlde testified regarding the wetlands delineations performed on the Facility, including the Layout Amendment area. He testified that a delineation methodology specific to the Facility was agreed to by the United States Army Corps of Engineers, and the wetlands delineations were performed in accordance with that methodology. The delineations showed minimal jurisdictional areas within the Facility boundary. He also testified that the Facility is sited in compliance with the Tar-Pamlico Buffer Rules.

Wilkinson witness Paul Thienpont testified that Wilkinson took the results of the wetlands delineations into consideration during the engineering and design phase of development and that the Facility had been designed to avoid impacts to wetlands.

Wilkinson witness John Barefoot testified that his firm, Kimley-Horn, prepared a preliminary review of stormwater requirements and anticipated stormwater management design for the Facility as approved in the CPCN Order. He testified that the report concluded that the Facility's impact to existing drainage patterns and flows would be negligible, or more likely, would result in a reduction in runoff from the site. He testified that this conclusion was equally applicable to the additional land added to the Facility in the Layout Amendment.

As shown in the State Clearinghouse cover letters on the Layout Amendment filed in the docket and as stated in Public Staff witness Lawrence's prefiled testimony, the Clearinghouse determined that no further State Clearinghouse review action was needed from Wilkinson in order to comply with the North Carolina Environmental Policy Act.

The existing CPCN Order issued to Wilkinson for the Facility is conditioned on compliance with all applicable environmental laws: “Wilkinson Solar LLC will construct and operate the generating facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements”

The Commission has received a number of public comments in the Layout Amendment proceedings from members of the general public regarding environmental concerns about the construction and operation of the Facility. The Commission notes that many of the concerns filed in response to the Layout Amendment were also filed in response to the initial application in this docket. In the CPCN Order, the Commission discussed the various environmental concerns discussed by public witnesses and confirmed that it had “carefully considered the remaining concerns raised by the Public witnesses who appeared at the public hearing and by the consumer statements of position filed in this docket” in making its determination and issuing the CPCN Order. CPCN Order 11-12. The Commission then found that “the Applicant has adequately responded to the concerns raised by the public witnesses in this proceeding and further agrees with the Applicant and the Public Staff that these issues are better addressed by agencies with expertise and regulatory authority in the areas of environmental and natural resource protection” CPCN Order 12-13. The Commission appreciates the public participation in this matter; however, the Commission concludes that the concerns filed in response to the Layout Amendment have already been addressed by the CPCN Order condition requiring the Applicant to

construct and operate the generating facility in strict compliance with applicable laws and regulations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT 4

The evidence supporting this finding of fact is found in the testimony of Wilkinson witness Thienpont.

Wilkinson witness Thienpont testified that the panels planned for use for the Facility pass the EPA's toxic leaching characteristic procedure test, which classifies them as non-hazardous waste and that panels are safe for disposal in landfills. He also testified that the panels are compliant with the Restriction of Hazardous Substances ("ROHS") test, which is an international standard used to categorize the existence of heavy metals within various types of equipment. He testified that the ROHS test is designed to mimic what would happen in a landfill were a solar panel to be left there for a long period of time and subjected to extreme conditions. The results of the ROHS test applied to the panels intended for use by Wilkinson complies with all federal and state regulations regarding heavy metals.

Wilkinson witness Thienpont also sponsored an exhibit from Jinko Solar, the manufacturer of the panels intended for use for the Facility. In the letter, Jinko Solar confirmed that "neither the Gen X or PFAS chemical compounds are used in any of the materials used to manufacturer (sic) Jinko Solar photovoltaic modules."

Wilkinson witness Thienpont testified that a geotechnical engineering study was done to determine soil composition of the site of the Facility.

Wilkinson witness Thienpont testified that, for soils to be considered combustible, they typically are comprised of organic compounds, and that the study concluded that none of the soils sampled were organic.

Wilkinson witness Thienpont also testified that it is Invenergy's standard practice to coordinate with local Emergency Management Services following the final engineering design and prior to construction of their facilities.

In their Petitions to Intervene, Intervenors raised concerns about surface and groundwater contamination, electrical hazards, flying panels, and the combustibility of soil. Intervenors did not offer any competent, material, and substantial testimony to support these concerns. Moreover, all of these concerns were addressed by Wilkinson, either in expert testimony during the proceedings on the Layout Amendment or in the hearings on the CPCN Order (See CPCN Order, pp. 10-12). The only concern raised on the Layout Amendment which was not specifically raised during the original CPCN proceedings was the concern related to the presence of Gen-X and PFAS in the panels. As discussed above, Wilkinson witness Thienpont's expert testimony and supporting exhibit from Jinko Solar, the panel manufacturer, established that neither of these substances is present in the panels intended for use by Wilkinson at the Facility.

Based on the foregoing, the Commission concludes that there is not sufficient credible, uncontroverted evidence to deny the requested amendment to the CPCN based on public health and safety or environmental issues. The weight of the evidence is that the Facility does not pose a risk to public health or safety. As applied in previous solar PV cases, and as applied in the CPCN Order

in this docket, the Commission is persuaded that restrictions on land use, where they do not otherwise frustrate State policy, are best left to local zoning and a determination by local elected officials. As ordered in the Commission's April 24, 2008 Order in Docket No SP-231 Sub 0 regarding local authority over facility siting, the Hearing Examiner found:

[S]uch decisions are, in most instances, best left to the local community through the exercise of its zoning authority rather than made by the Commission. Local governing bodies are, generally speaking, in a better position than the Commission to make local land use planning decisions (so long as those decisions do not operate to thwart controlling State policy).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 5

The evidence supporting this finding of fact is found in the testimony of Wilkinson witness Montgomery and Public Staff witness Lawrence.

Both Wilkinson witness Montgomery and Public Staff witness Lawrence testified that the Layout Amendment was necessary in order to incorporate additional land into the Facility. Wilkinson witness Montgomery testified that all aspects of the Facility, including its generating capacity, panel technology, and construction, remain the same, and that the only change proposed in the Layout Amendment is the inclusion of the additional acreage.

Based on the foregoing, the Commission concludes that it is reasonable to condition the amended CPCN on the same three conditions currently in place on the existing CPCN for the Facility.

For all of the reasons explained in this Order and subject to the conditions imposed herein, the Commission finds that the construction of the Facility as

described in the Layout Amendment remains in the public interest and justified by the public convenience and necessity as required by G.S. 62-110.1.

IT IS THEREFORE, ORDERED as follows:

1. That the Certificate of Public Convenience and Necessity issued to Wilkinson on October 11, 2017, for the construction of a solar photovoltaic electric generation facility up to 74-MW_{AC} to be located in Beaufort County, North Carolina should be, and is hereby, amended as requested in the Layout Amendment. The amended Order shall constitute the Certificate. This Certificate is subject to the following conditions:

(a) Wilkinson Solar LLC will construct and operate the generating facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements;

(b) Wilkinson Solar LLC will not assert that the issuance of the certificate in any way constitutes authority to exercise any power of eminent domain, and it will abstain from attempting to exercise such power; and

(c) this certificate is subject to Commission Rule R8-63 and all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2018.

NORTH CAROLINA UTILITIES COMMISSION

Paige Morris, Deputy Clerk