

1 PLACE: Dobbs Building, Raleigh, North Carolina
 2 DATE: Wednesday, April 11, 2018
 3 TIME: 10:00 a.m. - 12:15 p.m.
 4 DOCKET NO: EMP-93, Sub 0
 5 BEFORE: Commissioner ToNola D. Brown-Bland, Presiding
 6 Commissioner James G. Patterson
 7 Commissioner Lyons Gray

8
 9 IN THE MATTER OF:
 10 Wilkinson Solar, LLC
 11 Application for a Certificate of Public
 12 Convenience and Necessity to Construct
 13 a 74-MW Solar Facility in
 14 Beaufort County, North Carolina

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 16 VOLUME: 5
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1 A P P E A R A N C E S:

2 FOR WILKINSON SOLAR, LLC:

3 Henry Campen, Esq.

4 Merrick Parrott, Esq.

5 Parker Poe Adams & Bernstein LLP

6 301 Fayetteville Street, Suite 1400

7 Raleigh, North Carolina 27601

8

9 FOR MARSHALL AND JOANN LILLEY AND

10 DEB VAN STAALDUINEN, THE INTERVENORS:

11 Brady Allen, Esq.

12 Britton Allen, Esq.

13 Allen Law Offices, PLLC

14 1514 Glenwood Avenue, Suite 200

15 Raleigh, North Carolina 27608

16

17 FOR THE USING AND CONSUMING PUBLIC:

18 Dianna W. Downey, Esq.

19 Public Staff - North Carolina Utilities Commission

20 4326 Mail Service Center

21 Raleigh, North Carolina 27699-4300

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T A B L E O F C O N T E N T S
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IDENTIFIED / ADMITTED

Wilkinson von Wahlde Confidential

Hearing Exhibit 1.....	30/31
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P R O C E E D I N G S

COMMISSIONER BROWN-BLAND: Good morning.

COUNSEL AND AUDIENCE MEMBERS: Good morning.

(Simultaneously)

COMMISSIONER BROWN-BLAND: We'll come to order and go on the record. I'm Commissioner ToNola D. Brown-Bland of the North Carolina Utilities Commission and with me this morning are Commissioners James G. Patterson and Lyons Gray.

I now call for hearing Docket Number EMP-93, Sub 0, which is 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.

On October 11, 2017, the Commission issued an Order issuing a Certificate of Public Convenience and Necessity, also known as a CPCN, to Wilkinson Solar, LLC, hereafter Wilkinson or the Applicant, for the construction of a 74-MW solar photovoltaic merchant plant electric generating facility to be located in Beaufort County, North Carolina, 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, subject to

1 various conditions set forth in the Commission's Order
2 and the Certificate that was attached thereto.

3 On November 29, 2017, Wilkinson filed a
4 letter with the Commission stating that the proposed
5 solar panels on the Respass property north of Terra
6 Ceia Road had been removed from the initial planned
7 footprint of the facility and the footprint was now
8 planned to expand south and incorporate additional
9 land south of Terra Ceia Road. The Applicant further
10 stated that it had site control over these additional
11 parcels of land enabling the proposed southern
12 expansion. In addition, the Applicant filed a revised
13 site plan map showing the additional acreage and
14 including a revised location description for the
15 facility.

16 On December 6, 2017, based upon the amended
17 Application, the Commission issued an Order requiring
18 the Applicant to publish notice of the amended
19 Application in the manner required by G.S. 62-82(a)
20 and file an Affidavit of Publication with the
21 Commission. In addition, the Commission directed the
22 notice be delivered to the State Clearinghouse
23 Coordinator of the Office of Policy and Planning of
24 the North Carolina Department of Administration for

1 distribution to state agencies having an interest in
2 the Application. The State Clearinghouse filed
3 comments on January 16, 2018 and January 26, 2018.

4 On February 1, 2018, and on March 9, 2018,
5 the Applicant filed Affidavits of Publication, as
6 required by the Commission's December 6th Order.

7 Since the Commission issued its December 6th
8 Order, in light of the southern expansion of the
9 planned site footprint, numerous consumer statements
10 of position were filed in this docket expressing
11 opposition to the siting of the facility as revised in
12 the amended Application. There was also a consumer
13 statement of position filed expressing support for the
14 siting of the facility as it was revised.

15 Deborah K. Van Staalduinen and Joann and
16 Marshall Lilley filed consumer statements opposing the
17 amended site in December 2017.

18 On February 7, 2018, the Commission issued
19 an Order Scheduling Further Hearings, Requiring Filing
20 of Testimony, Establishing Procedural Guidelines, and
21 Requiring Public Notice. This Order scheduled this
22 matter for hearing on Monday, March 19, 2018, in
23 Washington, North Carolina, for the purpose of
24 receiving public witness testimony, and a subsequent

1 hearing on Wednesday, March 21, 2018, in Raleigh,
2 North Carolina, for the purpose of receiving expert
3 witness testimony. The March 21st hearing was
4 subsequently rescheduled by Order of the Commission.

5 On February 16, 2018, Wilkinson filed the
6 prefiled direct testimony and exhibit of April
7 Montgomery.

8 On March 8, 2018, the Public Staff filed the
9 supplemental testimony of Evan D. Lawrence.

10 On March 9, 2018, Deb Van Staalduinen,
11 Kristina Beasley, Marshall and Joann Lilley filed
12 Petitions to Intervene.

13 On March 12, 2018, Wilkinson filed a
14 response to the Petitions to Intervene requesting that
15 the Commission deny the Petitions.

16 On March 14, 2018, Kristina Beasley,
17 Marshall and Joann Lilley filed replies to Wilkinson's
18 response to the Petitions.

19 On March 15, 2018, the Commission issued an
20 Order granting Ms. Van Staalduinen's Petition to
21 Intervene on the condition that she filed a complete
22 executed and notarized verification form as a
23 supplement to her Petition to Intervene on or before
24 March 19, 2017 (sic), and denying the Beasley and

1 Lilley Petitions to Intervene.

2 On March 16, 2018, the Commission issued an
3 Order Rescheduling the Hearing, which was originally
4 set for Wednesday, March 21st in Raleigh. That Order
5 rescheduled the hearing for this date and time and
6 place for the purpose of receiving testimony from the
7 parties' witnesses, expert witnesses.

8 On March 26, 2018, Deb Van Staalduinen filed
9 a Petition to Intervene, and Marshall and Joann
10 Lilley, hereafter the Lilley's, filed a Motion for
11 Reconsideration of the denial of their Petition to
12 Intervene.

13 On April 2, 2018, Wilkinson filed a Response
14 to the Van Staalduinen Petition to Intervene.

15 On April 3, 2018, Van Staalduinen filed a
16 Reply to Wilkinson's Response.

17 On April 5, 2018, Wilkinson filed prefiled
18 supplemental testimonies of Paul Thienpont and John
19 Barefoot responding to matters raised at the public
20 hearing held on March 19, 2018, in the
21 above-referenced docket.

22 And on April 6, 2018, Van Staalduinen and
23 the Lilley's filed a motion requesting that the
24 Commission enter a ruling on the pending Petitions to

1 Intervene and requesting that the Commission continue
2 the hearing.

3 On the same date, Wilkinson filed a Response
4 to the Van Staalduinen and Lilley motions and
5 requested that the Commission deny the request to
6 continue to the hearing.

7 In addition, on April 16th, I mean, on April
8 6, 2018, the Commission issued a Second Order on
9 Petitions to Intervene allowing Van Staalduinen and
10 the Lilley's requested interventions, however, further
11 providing that in light of Van Staalduinen having
12 testified at the hearing in Washington on March 19th,
13 when she was not a party to this proceeding, she would
14 not be permitted an opportunity to testify a second
15 time at today's hearing. Also, on April 6, 2018, the
16 Commission issued an Order denying Van Staalduinen and
17 the Lilley's motion to continue the hearing.

18 That brings us up to date to today's
19 hearing. But I believe, that's why I paused for a
20 moment, that I did not reference that the Applicant
21 also on April 5, 2018, filed the testimony of Joe von
22 Wahlde. That was along with the testimony of
23 Thienpont and Barefoot.

24 So in compliance with the requirements of

1 Chapter 138A of the State Government Ethics Act, I
2 remind all members of this panel of our responsibility
3 to avoid conflicts of interest, and inquire whether
4 any member of the panel has any known conflict of
5 interest with respect to this matter before us this
6 morning?

7 (No response.)

8 Let the record reflect that no conflicts
9 were identified.

10 I now call for appearances of counsel,
11 beginning with the Applicant, Wilkinson.

12 MR. CAMPEN: Madam Chair, if it pleases the
13 Commission, my name is Henry Campen with the Firm of
14 Parker Poe Adams & Bernstein, along with my colleague
15 Merrick Parrott, we represent the Applicant, Wilkinson
16 Solar.

17 COMMISSIONER BROWN-BLAND: Good morning.

18 MR. BRADY ALLEN: Good morning, Commissioner
19 Brown-Bland and Commissioner Patterson and
20 Commissioner Gray. My name is Brady Allen and with me
21 is my co-counsel, Britton Allen. We represent three
22 intervenors in this proceeding. One is David Butcher
23 who was involved in what I'll refer to as phase one of
24 the proceeding, in which he settled his case and he's

1 effectively withdrawn from this case at this point.
2 We also represent Mr. Marshall Lilley and Ms. Joann
3 Lilley, as well as Ms. Deb Van Staalduinen.

4 COMMISSIONER BROWN-BLAND: Thank you.

5 MS. DOWNEY: Good morning, Madam Chair and
6 Commissioners. My name is Dianna Downey with the
7 Legal Division of the Public Staff representing the
8 Using and Consuming Public.

9 COMMISSIONER BROWN-BLAND: Good morning.
10 Now, I understand there are a few preliminary items
11 and I think just for ease I'll start with Ms. Downey.

12 MS. DOWNEY: Madam Chair, it's my
13 understanding that none of the parties have any
14 questions for Public Staff Witness Evan Lawrence. In
15 that case, I would move that his supplemental
16 testimony dated March 8, 2018, consisting of three
17 pages and an appendix be entered into the record as if
18 given orally from the stand.

19 COMMISSIONER BROWN-BLAND: There being no
20 objection --

21 MR. CAMPEN: No objection.

22 MR. BRADY ALLEN: No objection.

23 COMMISSIONER BROWN-BLAND: -- and no
24 questions from the Commission for Mr. Lawrence, that

1 motion will be granted and Mr. Lawrence's prefiled
2 supplemental testimony that was filed on March 8th
3 will be received and treated as if given orally from
4 the witness stand, and his appendix will also be
5 received.

6 MS. DOWNEY: Thank you.

7 (WHEREUPON, the prefiled
8 supplemental testimony of EVAN
9 LAWRENCE is copied into the record
10 as if given orally from the
11 stand.)
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WILKINSON SOLAR, LLC
DOCKET NO. EMP-93, SUB 0

SUPPLEMENTAL TESTIMONY OF EVAN D. LAWRENCE
ON BEHALF OF THE PUBLIC STAFF
NORTH CAROLINA UTILITIES COMMISSION

March 8, 2018

OFFICIAL COPY

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1 Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE
2 RECORD.

3 A. My name is Evan D. Lawrence. My business address is 430 North
4 Salisbury Street, Raleigh, North Carolina.

5 Q. WHAT IS YOUR POSITION WITH THE PUBLIC STAFF?

6 A. I am an engineer in the Electric Division of the Public Staff
7 representing the using and consuming public.

8 Q. WOULD YOU BRIEFLY DISCUSS YOUR EDUCATION AND
9 EXPERIENCE?

10 A. Yes. My education and experience are outlined in Appendix A of my
11 testimony.

12 Q. DID YOU PREVIOUSLY PROVIDE TESTIMONY IN THIS
13 DOCKET?

14 A. Yes. I previously filed testimony in this docket on May 4, 2017. I
15 recommended the Commission issue the requested CPCN and
16 accept Wilkinson Solar, LLC's (the Applicant) Registration
17 Statement, subject to conditions.

1 Q. WHY ARE YOU FILING SUPPLEMENTAL TESTIMONY IN THIS
2 PROCEEDING?

3 A. The purpose of my supplemental testimony is to respond to the filing
4 by the Applicant in this docket on November 29, 2017, requesting
5 that the CPCN be amended to incorporate additional land for the
6 project, and to the pre-filed direct testimony and exhibit of Applicant
7 witness April Montgomery filed on February 16, 2018.

8 Q. PLEASE BRIEFLY DESCRIBE THE AMENDED APPLICATION.

9 A. The purpose of the filing is to request that the Commission amend
10 the CPCN to allow Applicant to incorporate additional land to the
11 south of Terra Ceia Road into the footprint of the facility. This
12 additional land was not included in the original Application that was
13 the basis for the CPCN issued on October 11, 2017. The additional
14 land area will be used for a portion of the facility's solar panels
15 instead of the land to the north of Terra Ceia Road that was in the
16 original Application and approved in the CPCN. As a result, the
17 capacity of the facility will remain at 74-MW_{AC}.

18 Q. HAS THE STATE CLEARINGHOUSE COMPLETED ITS
19 AMENDED APPLICATION REVIEW?

20 A. Yes. On January 16, 2018, and on January 26, 2018, the State
21 Clearinghouse filed letters responding to the amended Application
22 with attached comments. The letters stated the following: "Because
23 of the nature of the comments, it has been determined that no further

1 State Clearinghouse review action on your part is needed for
2 compliance with the North Carolina Environmental Policy Act.”

3 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE**
4 **COMPANY’S REQUEST TO AMEND THE CPCN?**

5 A. Based on my review of the amendment and testimony, the
6 Clearinghouse comments, and responses to additional discovery, I
7 recommend the Commission grant the Applicant’s request to amend
8 the CPCN.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes, it does.

Appendix A

Evan D. Lawrence

I graduated from East Carolina University in Greenville, North Carolina in May of 2016 earning a Bachelor of Science degree in Engineering with a concentration in Electrical Engineering. I started in my current position with the Public Staff in September of 2016. Since that time, I have been involved in the review of applications for renewable energy projects, as well as interconnection standards.

1 COMMISSIONER BROWN-BLAND: I think,
2 Mr. Campen --

3 MR. CAMPEN: One more preliminary matter,
4 Madam Chair. As we discussed with you before the
5 hearing, the parties have entered into an agreement
6 with respect to a discovered dispute that was
7 discussed on the conference call with you yesterday.
8 And we have provided to counsel for the opposing
9 parties an agreement, a non-disclosure agreement. And
10 the document in question, I sent it them by email this
11 morning. They've just been given a hard copy of it,
12 and so they may want to take a moment to look at that.

13 MR. BRADY ALLEN: Commissioner Brown-Bland,
14 we have not yet been given the map. We do have a
15 non-disclosure agreement in front of us that is three
16 full pages with a little four page as well as an
17 additional exhibit.

18 COMMISSIONER BROWN-BLAND: Mr. Campen, does
19 this affect, as we discussed earlier, the order you
20 prefer to go?

21 MR. CAMPEN: That's correct. It came a
22 little sooner than I expected -- a little later than I
23 expected.

24 COMMISSIONER BROWN-BLAND: So you'd still

1 prefer to lead with Mr. von Wahlde?

2 MR. CAMPEN: Well, we'd prefer to do that
3 if --

4 COMMISSIONER BROWN-BLAND: I'll tell you
5 what I'm going to do. I'm going to take a little five
6 minute standstill and give you time to read that
7 non-disclosure, after which time I presume you'll
8 receive the document.

9 MR. CAMPEN: That's fine.

10 COMMISSIONER BROWN-BLAND: So we'll stand at
11 ease for five minutes.

12 MR. BRADY ALLEN: Thank you.

13 MR. BRITTON ALLEN: Thank you.

14 (OFF THE RECORD)

15 COMMISSIONER BROWN-BLAND: Mr. Campen.

16 MR. CAMPEN: I apologize to delay this
17 occasion but I think in the end we've saved time by
18 not having to argue the discovered dispute that we
19 discussed yesterday. So I appreciate your --

20 COMMISSIONER BROWN-BLAND: I totally agree
21 and I appreciate the cooperation. So is that matter
22 satisfied for the moment?

23 MR. BRADY ALLEN: Yes, Commissioner
24 Brown-Bland, we are satisfied.

1 COMMISSIONER BROWN-BLAND: Any other
2 preliminary matters?

3 MR. CAMPEN: I'd like to make a very, very
4 brief opening statement, two minutes.

5 COMMISSIONER BROWN-BLAND: Anything else
6 before we hear the opening statement from the
7 Applicant?

8 MR. BRADY ALLEN: Nothing further from us.

9 COMMISSIONER BROWN-BLAND: Mr. Campen.

10 MR. CAMPEN: Okay. Members of the panel, as
11 you've heard the presiding Commissioner recite
12 Wilkinson Solar has a CPCN to build a 74-MW solar
13 facility in Beaufort County consistent with the layout
14 that was the subject to that CPCN issued in November.

15 COMMISSIONER GRAY: Thank you for moving it
16 closer to you, sir. Some of us are a little hard of
17 hearing.

18 MR. CAMPEN: Thank you. And the Company can
19 build that facility on the layout that was approved by
20 the Commission in October. After that CPCN was
21 issued, as you recited, a second map amendment was
22 filed by Wilkinson to the layout that had been
23 previously approved by the Commission. And this map
24 amendment adds approximately 200 acres to the project

1 south of Terra Ceia Road, well away from the Terra
2 Ceia Christian School was which the subject of so much
3 discussion in our -- in the first phase of this
4 proceeding. But the only question in this proceeding
5 is whether to amend the existing CPCN to add those
6 200 acres to the project.

7 The Application and the testimony that you
8 will hear today demonstrate that the amendment meets
9 all the same standards that were applied to the first
10 phase of the proceeding in the CPCN that this
11 Commission issued. And Wilkinson welcomes the
12 application of the same conditions to the amended
13 CPN -- CPCN that were applied to the October CPCN. I
14 just wanted to make that clear and, with that, we're
15 ready to proceed.

16 COMMISSIONER BROWN-BLAND: And so,
17 Mr. Campen, if you know, and we can wait and get
18 testimony on this if need be, but you referenced 200
19 additional acres, and I thought I saw in the record
20 there's an additional 165?

21 MR. CAMPEN: I think I said approximately or
22 I meant to say approximately. The witnesses will
23 clarify that precise number. I'm sure it's in the
24 materials, I just didn't recall precisely.

1 COMMISSIONER BROWN-BLAND: And then the
2 purpose of the hearing today is to hear new issues
3 that are raised by that additional -- those additional
4 parcels and how they affect --

5 MR. BRADY ALLEN: That is correct,
6 Commissioner Brown-Bland. And we, too, would like to
7 have the opportunity to give an opening statement when
8 the appropriate time is.

9 COMMISSIONER BROWN-BLAND: All right. If
10 you wish to go ahead now you may do so.

11 MR. BRADY ALLEN: Thank you. The
12 Commission -- the Applicant argues that this
13 Commission has already granted it a CPCN. And now the
14 Applicant is attempting to amend that CPCN by adding
15 land to their project in Terra Ceia in order to
16 compensate for the land that the Applicant voluntarily
17 agreed to remove from its original layout. They also
18 say that all the issues have previously been decided.
19 But each piece of land is in and of itself unique, and
20 the courts have long said that each piece of land is
21 special and unique. That's why when you have a real
22 estate transaction go along -- go awry, you may have
23 specific performance because the court's always
24 recognize that land is, in fact, unique.

1 Wilkinson Solar has the burden of proof in
2 this. And they must show that their plan, the first
3 CPCN, meets the public convenience and necessity, and
4 that includes the amended site now.

5 Now, what is the Public Convenience and
6 Necessity? We know it is a relative or elastic
7 standard, and the facts of each case must be decided
8 individually. So what facts must be considered? In
9 Utilities Commission versus the High Rock Lake
10 Association, the High Rock Lake Association argued
11 that there were flaws in the design and in the
12 placement of the facility. The association in that
13 case also argued that the facility would pollute the
14 Yadkin River. And the court held that the Commission
15 adequately considered those environmental issues as
16 well as the benefits of siting that facility near a
17 load center.

18 Now, the instruction of that case for this
19 Commission is that the Commission must make a finding
20 of the appropriateness of the site, includes the
21 amended site, the amended footprint that Wilkinson is
22 proposing. Whether this is a suitable siting is at
23 the heart of whether this is in the public
24 convenience. And we understand that Wilkinson must

1 get environmental permits before they can proceed with
2 construction. However, the Commission must make a
3 finding that the siting of Wilkinson's amended area is
4 suitable, and that requires the Commission to receive
5 evidence in terms of the pollution that could be
6 caused when this facility, as well as the
7 environmental risks, and certainly the need of it as
8 well. Thank you.

9 COMMISSIONER BROWN-BLAND: And, just to be
10 clear, I believe we were all in agreement in the
11 pretrial discussion that the need is not an issue for
12 today.

13 MR. BRADY ALLEN: Yes. That is not an issue
14 in terms of today, especially in regards that they've
15 said that all aspects of the facility are the same as
16 they were in the previous case. In terms of the
17 specific land there is an issue there.

18 COMMISSIONER BROWN-BLAND: Okay.
19 Mr. Campen, the case is with you.

20 MR. CAMPEN: Thank you very much.

21 We'd call -- our first witness is Joe von
22 Wahlde.

23 JOE VON WAHLDE; having been duly sworn,
24 testified as follows:

1 COMMISSIONER BROWN-BLAND: You may be
2 seated.

3 MR. CAMPEN: One more preliminary matter,
4 Madam Chair, with respect to the exhibit that we just
5 provided to the Allens.

6 I think it -- since I believe you will be --
7 I suspect you're going to cross examine Mr. von Wahlde
8 on that exhibit. Is that a fair assumption or no?

9 MR. BRADY ALLEN: We understand that it's a
10 confidential exhibit and it would involve emptying the
11 room if we were to go into that exhibit; therefore,
12 if -- I will try to avoid presenting that exhibit in
13 front of the witness.

14 COMMISSIONER BROWN-BLAND: If you need to do
15 that we have no trouble clearing the courtroom. We,
16 of course, will bring every one back as soon as the
17 confidential matter is no longer being discussed.

18 MR. BRADY ALLEN: Thank you.

19 MR. CAMPEN: Well, I think we'd like to have
20 that exhibit in the record as a confidential exhibit
21 for the benefit of the Commission. You may examine on
22 it or you may not, you may argue about it, but I think
23 it would be wise to have that in the record.

24 MR. BRITTON ALLEN: We agree.

1 MR. BRADY ALLEN: Yes.

2 MR. CAMPEN: Yeah. So we would offer that
3 and we'll go ahead and start --

4 COMMISSIONER BROWN-BLAND: Do you want to
5 offer it through this witness?

6 MR. CAMPEN: Yes, ma'am.

7 COMMISSIONER BROWN-BLAND: So you're going
8 to pass it out at this time so we can get it marked?

9 MR. CAMPEN: All right. I'll go ahead and
10 start with preliminaries with Mr. von Wahlde.

11 DIRECT EXAMINATION BY MR. CAMPEN:

12 Q Would you state your name and business address
13 for the record, sir?

14 A My name is Joe von Wahlde and my business address
15 is 11181 Marwill Avenue, West Olive, Michigan
16 49460.

17 Q And, Mr. von Wahlde, did you cause to be filed in
18 this docket prefiled testimony consisting of four
19 pages and one exhibit?

20 A Yes, I did.

21 Q Do you have any changes or corrections to your
22 testimony?

23 A Yes, I do. In the prefiled testimony, the city
24 for my business address was Grand Haven, the

1 actual city is West Olive.

2 (WHEREUPON, the Court Reporter
3 requested clarification.)

4 THE WITNESS: West Olive. West and then
5 Olive. Two words.

6 BY MR. CAMPEN:

7 Q So, Mr. von Wahlde, if I were to ask you the same
8 questions this morning as they appear in your
9 prefiled testimony, would your answers be the
10 same?

11 A Yes, they would.

12 Q Have you prepared a summary of your testimony for
13 the Commission?

14 A I have.

15 Q Would you read that summary for the Commission?

16 (WHEREUPON, the summary of JOE VON
17 WAHLDE is copied into the record.)

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**Summary of April 5, 2018 Prefiled Supplemental Testimony of Joe von Wahlde
On Behalf of Wilkinson Solar LLC
NCUC Docket No. EMP-93, SUB 0**

My name is Joe von Wahlde. My business address is 11181 Marwill Avenue, West Olive, Michigan 49460. I am a Senior Consultant with Cardno, Inc., and have been in this role for more than twenty five years. I am responsible for state and federal surface resource regulatory permitting assistance to developers. I have conducted regulatory wetland delineations under the Northeast-northcentral, Midwest, and Atlantic Gulf Coastal Plain Regional Supplements under the 1987 United States Corps of Engineers Wetland Determination Manual. I am the Cardno Project Manager for the Wilkinson project and I have conducted a regulatory wetland delineation on the project.

The purpose of my testimony is to provide the Commission with information in response to allegations raised at the public hearing that Wilkinson had not coordinated with the United States Army Corps of Engineers regarding wetland delineations of the project.

Cardno was engaged by Invenergy in April of 2017 to perform a jurisdictional wetlands delineation for the project. On April 10, 2017, my colleague John Lowenthal sent a letter, on which I was copied, requesting a pre-jurisdictional determination meeting with Bill Biddlecome, then Washington Field Office Regulatory Chief with the Corps, to discuss the methodology we proposed for the delineation for lands converted to agriculture over 50 years ago. The letter is attached to my testimony and includes a copy of the site boundary.

Cardno prepared a wetland delineation methodology specific to the project which utilized methods presented in the Corps of Engineers 1987 Wetland Delineation Manual as well as the 2010 Atlantic and Gulf Coastal Plain Regional Supplement, which was

agreed to by the Corps. A wetlands delineation, in accordance with the agreed upon methodology, was performed on the approximately 700 acre project on May 16 and 17, 2017. On August 18, 2017, Invenergy requested that a second wetlands delineation be performed on approximately 200 acres south of Terra Ceia Road and provided a boundary for the delineation. On December 6-8, 2017, this second wetlands delineation was performed on this additional acreage.

I am familiar with the site layout amendment filed in this docket. The boundary for the second delineation covers the entire amendment area.

The wetlands delineations of the approximately 900 acres identified minimal jurisdictional areas within the project boundary. The wetlands delineation report was provided to Invenergy.

Broad Creek Canal was the only natural waterway identified during the wetlands delineations. The canal is located offsite to the southeast. The project is sited to be in compliance with the Tar-Pamlico Buffer Rules.

1 MR. CAMPEN: Just one more preliminary
2 matter with respect to the exhibit.

3 BY MR. CAMPEN:

4 Q Mr. von Wahlde, you have there on your -- a table
5 next to you, a confidential -- an exhibit marked
6 confidential. Do you recognize that? It's to
7 your left.

8 A Yes, I do.

9 Q Yes. What is that?

10 A That is the wetland delineation that was
11 conducted on the amended parcel.

12 MR. CAMPEN: Madam Chair, we would offer
13 this exhibit as Wilkinson von Wahlde Confidential
14 Exhibit Number 1.

15 COMMISSIONER BROWN-BLAND: It will be so
16 identified as Wilkinson von Wahlde Confidential, I'm
17 going to say, Hearing Exhibit --

18 MR. CAMPEN: Yes.

19 COMMISSIONER BROWN-BLAND: -- Number 1. It
20 will be so identified.

21 MR. CAMPEN: Thank you.

22 (WHEREUPON, Wilkinson von Wahlde
23 Confidential Hearing Exhibit 1 is
24 marked for identification.)

1 COMMISSIONER BROWN-BLAND: Are you going to
2 move his testimony?

3 MR. CAMPEN: Yes. If we could move his
4 testimony into the record as if given orally.

5 COMMISSIONER BROWN-BLAND: The testimony of
6 Witness von Wahlde will be received into evidence as
7 if given orally from the witness stand. That
8 testimony is the supplemental testimony that was
9 prefiled April 5, 2018, consisting of four pages,
10 including two exhibits. The confidential Hearing
11 Exhibit Number 1 is at this time being received into
12 evidence, without objection.

13 MR. BRITTON ALLEN: No objection.

14 COMMISSIONER BROWN-BLAND: It will be
15 received at this time. And, without objection, if
16 it's your motion, we will also receive the two
17 exhibits into evidence.

18 MR. BRITTON ALLEN: No objection.

19 (WHEREUPON, von Wahlde
20 Supplemental Exhibits 1 and 2 are
21 marked for identification as
22 prefiled and admitted into
23 evidence.)

24 (WHEREUPON, Wilkinson von Wahlde

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Confidential Hearing Exhibit 1 is
admitted into evidence.)
(WHEREUPON, the prefiled
supplemental testimony of JOE VON
WAHLDE is copied into the record
as if given orally from the
stand.)

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Apr 30 2018

PREFILED SUPPLEMENTAL TESTIMONY OF
JOE VON WAHLDE
ON BEHALF OF WILKINSON SOLAR LLC

NCUC DOCKET NO. EMP-93, SUB 0

1

INTRODUCTION

2

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS
3 ADDRESS.

4

A. My name is Joe von Wahlde. I am a Senior Consultant with
5 Cardno, Inc. My business address is 11181 Marwill Avenue, ^{West Olive} ~~Grand Haven~~,
6 Michigan 49460.

7

Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL
8 BACKGROUND.

9

A. I hold a Bachelors of Science in Environmental Science, Biology,
10 and Entomology from St. Norbert College and a Master of Science in Wildlife
11 Management from Northern Michigan University. I am a Professional Wetlands
12 Scientist with a PWS designation, which is a national certification from the
13 Society of Wetland Scientists, and have 29 years of experience in this field.

14

Q. PLEASE SUMMARIZE YOUR CURRENT EMPLOYMENT
15 RESPONSIBILITIES.

16

A. I have been a Senior Consultant with Cardno for more than twenty
17 five years. In my role, I am responsible for state and federal surface resource
18 regulatory permitting assistance to developers. I have conducted regulatory
19 wetland delineations under the Northeast-northcentral, Midwest, and Atlantic Gulf
20 Coastal Plain Regional Supplements under the 1987 United States Corps of
21 Engineers Wetland Determination Manual. I am the Cardno Project Manager for

Kim
Vol. 5

22 the Wilkinson Solar Project (the "Project") and I have conducted a regulatory
23 wetland delineation on the Project.

24 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS
25 COMMISSION?

26 A. No.

27 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

28 A. The purpose of my testimony is to provide the Commission with
29 information in response to allegations raised at the public hearing that Wilkinson
30 had not coordinated with the United States Army Corps of Engineers (the
31 "Corps") regarding wetland delineations of the Project.

32 Q. PLEASE DESCRIBE YOUR INVOLVEMENT WITH THE
33 PROJECT.

34 A. Cardno was engaged by Invenergy in April of 2017 to perform a
35 jurisdictional wetlands delineation for the Project. On April 10, 2017, my
36 colleague John Lowenthal sent a letter, on which I was copied, requesting a pre-
37 jurisdictional determination meeting with Bill Biddlecome, then Washington Field
38 Office Regulatory Chief with the Corps, to discuss the methodology we proposed
39 for the Project delineation for lands converted to agriculture over 50 years ago.
40 Supplemental Exhibit 1. The letter is attached with a copy of the Project site
41 boundary.

42 Q. WAS A METHODOLOGY AGREED TO AND A DELINEATION
43 PERFORMED?

44 A. Yes. Cardno prepared a wetland delineation methodology specific
45 to the Project which utilized methods presented in the Corps of Engineers 1987

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46 Wetland Delineation Manual as well as the 2010 Atlantic and Gulf Coastal Plain
47 Regional Supplement, which was agreed to by the Corps. A wetlands
48 delineation, in accordance with the agreed upon methodology, was performed on
49 the approximately 700 acre Project on May 16 and 17, 2017. On August 18,
50 2017, Invenergy requested that a second wetlands delineation be performed on
51 approximately 200 acres south of Terra Ceia Road and provided a boundary for
52 the delineation. Supplemental Exhibit 2. On December 6-8, 2017, this second
53 wetlands delineation was performed on this additional acreage.

54 Q. ARE YOU FAMILIAR WITH THE SITE LAYOUT AMENDMENT
55 FILED IN THE ABOVE-REFERENCED DOCKET ON NOVEMBER 29, 2017
56 (THE "AMENDMENT")?

57 A. Yes.

58 Q. DOES THE AREA COVERED IN THE SECOND WETLANDS
59 DELINEATION COVER THE ACREAGE ADDED TO THE PROJECT IN THE
60 AMENDMENT?

61 A. Yes.

62 Q. WHAT WERE THE RESULTS OF THE FIRST AND SECOND
63 WETLANDS DELINEATIONS?

64 A. The wetlands delineations of the approximately 900 acres identified
65 minimal jurisdictional areas within the Project.

66 Q. WHAT ADDITIONAL STEPS WERE TAKEN AFTER
67 DETERMINING THE RESULTS OF THE WETLANDS DELINEATIONS?

68 A. The wetlands delineation report was provided to Invenergy.

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69 Q. DID YOU IDENTIFY ANY NATURAL WATERCOURSES THAT
70 WOULD BE SUBJECT TO THE TAR-PAMLICO BUFFER RULES?

71 A. Broad Creek Canal was the only natural waterway identified during
72 the wetlands delineations. The canal is located offsite to the southeast. The
73 Project is sited to be in compliance with the Tar-Pamlico Buffer Rules.

74 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

75 A. Yes.

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1 COMMISSIONER BROWN-BLAND: That will take
2 care of that housekeeping.

3 MR. CAMPEN: Thank you. The witness is
4 available for cross examination.

5 MR. BRADY ALLEN: Thank you, Mr. Campen.

6 Good morning, Mr. von Wahlde. My name is
7 Brady Allen. I'm an attorney for three of the
8 intervenors in this proceeding.

9 CROSS EXAMINATION BY MR. BRADY ALLEN:

10 Q You prepared testimony for Wilkinson Solar that
11 was filed on April 5, 2018; is that correct?

12 A That's correct.

13 Q And you prepared a -- or your company prepared a
14 preliminary wetland delineation for Wilkinson
15 Solar twice, I believe; is that correct?

16 A We did conduct wetland -- my company conducted a
17 wetland delineation twice on the property, yes.

18 Q And on page 3, line 64 of your prefiled direct
19 (sic), you state that of the approximately 900
20 acres identified, that there was minimal
21 jurisdictional areas; is that correct?

22 A That's correct.

23 Q What do you mean by minimal?

24 A Minimal meaning -- I mean, they were small.

1 depressional wetlands. There is two, maybe it
2 was a couple of linear wetlands. They're under a
3 half an acre.

4 MR. CAMPEN: Pardon me. If I might just
5 interject one point. I understand the question -- the
6 questions with respect to the delineation performed on
7 the property that is subject to the CPCN already
8 issued we would argue is not relevant to this
9 proceeding. The delineations reflected on the
10 confidential exhibit are pertinent under the agreement
11 we've reached. But beyond that, we would object to
12 questioning about other parts of the project
13 delineations that are on other parts of the project.

14 COMMISSIONER BROWN-BLAND: Do you wish to be
15 heard?

16 MR. BRADY ALLEN: Yes, ma'am. We would
17 argue that it is relevant. I mean, the witness says
18 that he has made delineations but his testimony
19 doesn't specify as to where or which. The witness
20 hasn't necessarily delineated in his testimony which
21 report he's focusing on; therefore, it's going to be
22 extremely difficult to question as to just one
23 specific area when his testimony is not related to
24 necessarily one specific area.

1 COMMISSIONER BROWN-BLAND: The Applicant's
2 motion is sustained but you -- I will give you the
3 leeway to be able to distinguish the relevant portion
4 which pertains to the confidential exhibit.

5 MR. BRADY ALLEN: Thank you.

6 BY MR. BRADY ALLEN:

7 Q Mr. von Wahlde, are you familiar with the term
8 "Carolina bay"?

9 A Yes, I am.

10 Q What is a Carolina bay?

11 A I'm familiar with the term but I'm not sure what
12 the term means.

13 Q Is the amended area in a Carolina bay?

14 A I am not sure.

15 Q Before this land was foreseen as being used for a
16 solar facility it was largely agricultural; is
17 that correct?

18 A That's correct.

19 Q And how was the land -- and what was the land
20 probably before it was used for agriculture?
21 What would have been the characteristics of the
22 land?

23 A We have looked at aerial photographs back to 1959
24 that shows it in agricultural production at that

1 time in 1959. Prior to that I don't have
2 anything specific that shows what it was before
3 1959.

4 Q Are there drainage ditches on the land?

5 A There are.

6 Q What is the purpose of those drainage ditches?

7 A I would assume that the drainage ditches were
8 created to help with crop production.

9 Q Perhaps to drain the water from the land?

10 A Perhaps.

11 Q Were these ditches manmade?

12 A They appear to be. They are straight channelized
13 ditches.

14 Q You were asked in your testimony did you identify
15 any natural water courses that would be subject
16 to the Tar-Pamlico Buffer Rules; is that correct?

17 A That's correct.

18 Q Did you only identify natural water courses?

19 A Under the Tar-Pamlico Buffer Rules, there is a
20 natural water course. There are no other natural
21 water courses within the amended parcel. We
22 did -- actually did a data base or a GIS desktop
23 analysis on USGS topo and natural hydrography map
24 that identified that there are no natural water

1 courses within the amended parcel. There is only
2 one that's southeast outside of the limits.

3 Q Isn't it true that Riparian buffers can also
4 apply to what might not be natural water courses
5 but manmade water courses?

6 A I believe in the Tar-Pamlico Buffer Rules manmade
7 ditches are exempt from those rules.

8 Q What about canals, are they manmade?

9 A Canals would be manmade.

10 Q Has any state or federal agency been provided any
11 reports regarding the areas?

12 A They have not.

13 Q And are you aware that the North Carolina
14 Department of Water Resources filed comments in
15 this case as part of the State Clearinghouse
16 that's routine in CPCN proceedings at the
17 Commission?

18 A I'm not aware of that.

19 Q Are you aware that the Department of Water
20 Resources stated in their clearinghouse report
21 that *according to the review of the most recent*
22 *public version of the topographical map prepared*
23 *by the United States Geological Service, blue*
24 *line features are mapped on the subject project*

1 that maybe subject to Tar-Pamlico Riparian Buffer
2 Rules. Are you aware of that?

3 A I am aware of that.

4 Q Have you had or have you or Wilkinson Solar had
5 your jurisdictional delineation verified by the
6 appropriate North Carolina department?

7 A We have not.

8 Q Have you had it verified by the Army Corps of
9 Engineers?

10 A We have not.

11 MR. BRADY ALLEN: No further questions.

12 COMMISSIONER BROWN-BLAND: Any redirect?

13 MR. CAMPEN: Yes.

14 REDIRECT EXAMINATION BY MR. CAMPEN:

15 Q Mr. von Wahlde, do you know whether or not there
16 have been or have you participated in discussions
17 with the U.S. Fish and Wildlife Services with
18 respect to this project?

19 A There have been, yes.

20 Q And what was the subject of those discussions,
21 generally?

22 A The subject of those discussions were the
23 wildlife that were identified or habitat that was
24 identified on the property in respect to

1 wildlife.

2 Q Do you recall Mr. Allen's question regarding
3 whether or not any state or federal agency has
4 been provided with the report that you prepared,
5 the delineations?

6 A Yes.

7 Q Is -- at this stage in the project is there
8 anything unusual about the fact that these have
9 not been provided to an agency?

10 A No, because we're not -- the report is actually
11 in a draft form at this point and time, and it's
12 not a mandatory -- it's not mandatory by the
13 Corps of Engineers or the State to send in your
14 report to them. It's encouraged but it's not
15 mandatory.

16 Q Is the fact that it has not been provided, does
17 it have anything to do with the amount of
18 wetlands that were discovered, in this case
19 jurisdictional features on the amendment area?

20 A Yes, it does.

21 Q Is there a threshold with --

22 A Yeah. Under the Corps of Engineers Nationwide
23 Permit 12, which is for utilities, there is a
24 threshold of a tenth of an acre. If you're under

1 a tenth of an acre of wetland impact, there's no
2 requirement to send in any communication to the
3 Corps of Engineers.

4 Q What is the amount of jurisdictional features on
5 the amendment area? Is it under a tenth of an
6 acre?

7 A I believe so, yes.

8 Q So there would be no requirement to report
9 anything to the Corps given the minimal amount of
10 jurisdictional features identified?

11 A That's correct.

12 Q With respect -- do you recall the questions from
13 Mr. Allen about whether the delineations have
14 been verified by the Corps?

15 A Yes, I do.

16 Q And is that -- is verification of the
17 delineations required given the minimal amount of
18 jurisdictional features that you've identified?

19 A No, they're not required.

20 COMMISSIONER BROWN-BLAND: Mr. Campen and
21 Mr. von Wahlde, you tend to speak in a low voice and
22 low tone so --

23 THE WITNESS: Sorry.

24 COMMISSIONER BROWN-BLAND: -- I think if

1 you speak up it might help the court reporter a little
2 bit.

3 THE WITNESS: Sure. Yep. Sorry about that.

4 COMMISSIONER GRAY: Me, too.

5 THE WITNESS: I'll move closer.

6 MR. CAMPEN: I'm on notice about that.

7 BY MR. CAMPEN:

8 Q So you've spoken about the duty to notify the
9 Corps, what about impacts on wetlands? Or from
10 the design of this project that you're aware of,
11 and I know another witness will talk about that
12 in more detail, are there any impacts to these
13 jurisdiction features, in this case the ditches,
14 under the proposed layout as you understand it?

15 A From my understanding the impacts would be
16 minimal or none at all. It'll be boring
17 underneath the waters of the U.S. so there would
18 be no impact.

19 Q And so, therefore, no need to have a verified
20 delineation; is that correct?

21 A That's correct.

22 MR. CAMPEN: That's all we have.

23 COMMISSIONER BROWN-BLAND: Are there
24 questions from the Commission? Commissioner

1 Patterson.

2 EXAMINATION BY COMMISSIONER PATTERSON:

3 Q Other than the row crops that are in the area, is
4 there any other kind of agricultural endeavor
5 going on in that general community?

6 A There is pasture and -- or actually that's not
7 part of the amended parcel, but in the amended
8 parcel there's just the row crops to my
9 understanding.

10 Q I mean just in the -- sort of in the
11 neighborhood?

12 A In the neighborhood there are -- I know there is
13 pasture that occupies some of the land.

14 COMMISSIONER PATTERSON: Thank you.

15 EXAMINATION BY COMMISSIONER BROWN-BLAND:

16 Q Mr. von Wahlde, and I expect from my earlier
17 question it must be coming from another witness,
18 but in your testimony you do indicate that
19 your -- Invenergy requested a second wetlands
20 delineation be performed on 200 acres and then
21 the amended area that's being added I believe is
22 165 acres. Do you know? Or is that related to
23 the delineations report? Is that a reason why
24 there is a difference?

1 A I am not sure I understand the question.

2 Q Has the 200 acres been carved down because of the
3 results of your report or affected by your
4 report?

5 A My wetland delineation was on 200 acres. I'm not
6 really sure if it's being carved down from there
7 or not.

8 COMMISSIONER BROWN-BLAND: All right. Thank
9 you. Any questions on the Commission's questions?

10 MR. CAMPEN: None.

11 MR. BRADY ALLEN: No questions.

12 COMMISSIONER BROWN-BLAND: Mr. von Wahlde,
13 thank you for coming and you maybe excused.

14 (The witness is excused.)

15 MR. CAMPEN: Our next witness is Paul
16 Thienpont (pronounced Thienpoint) or pont.

17 PAUL THIENPONT; having been duly sworn,
18 testified as follows:

19 COMMISSIONER BROWN-BLAND: You may be
20 seated.

21 DIRECT EXAMINATION BY MR. CAMPEN:

22 Q Mr. Thienpont, would you state your name and
23 business address for the record, please?

24 A Paul Thienpont. My business address is One South

1 Wacker Drive, Suite 1800, Chicago, Illinois
2 60606.

3 Q And by whom are you employed?

4 A Invenergy LLC.

5 Q In what capacity?

6 A I am the Manager of Renewable Engineering.

7 Q And you've testified in this docket before, have
8 you not?

9 A I have.

10 Q Did you cause to be filed in this proceeding
11 prefiled testimony consisting of four pages and
12 one exhibit?

13 A Yes.

14 Q Do you have any changes or corrections to that
15 testimony?

16 A No, I do not.

17 Q If I were to ask you the same questions this
18 morning as they appear in your prefiled
19 testimony, would your answers be the same?

20 A Yes.

21 Q Have you prepared a summary of your testimony?

22 A I have.

23 Q Would you please read it for the Commission at
24 this point?

1 A Yes.

2 (WHEREUPON, the summary of PAUL
3 THIENPONT is copied into the
4 record.)
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**Summary of April 5, 2018 Prefiled Supplemental Testimony of Paul Thienpont
On Behalf of Wilkinson Solar LLC
NCUC Docket No. EMP-93, SUB 0**

My name is Paul Thienpont. My business address is One South Wacker Drive, Suite 1800, Chicago, Illinois 60606. I am a Manager, Renewable Engineering with Invenergy LLC.

I provided prefiled supplemental testimony in support of the Application on May 12, 2017. I also provided oral testimony on the Application during the evidentiary hearing before the Commission on May 22 and 23, 2017.

The purpose of my testimony is to provide the Commission with information in response to allegations raised at the public hearing on March 19, 2018, regarding health and safety concerns. However, it is my understanding that the North Carolina Department of Environmental Quality is the state environmental agency and that the State Clearinghouse has already reviewed and passed on the amendment area. My testimony also provides information regarding the design of the project to avoid wetlands, soil composition, and outreach to local Emergency Management Services.

A few members of the public testified about their concerns over whether the solar panels contain Gen-X, PFAS, and heavy metals. Gen-X and PFAS are man-made chemicals that are used in certain manufacturing processes. Neither Gen-X nor PFAS are used in the production of any of the components that make up the solar panels planned for use for the project. Attached to my prefiled testimony is a memorandum from JinkoSolar, the manufacturer of the solar panels, confirming that these chemicals are not present in the panels. As to heavy metals, I testified at the CPCN application evidentiary hearing on May 22, 2017 that the solar panels planned for use pass the EPA's Toxicity Characteristic Leaching Procedure test, which classifies them as non-

hazardous waste and allows for disposal in landfills. The TCLP report was admitted into evidence as Applicant Thienpont Exhibit Number 2.

As to coordination with the US Army Corps, Cardno performed a jurisdictional wetlands delineation on the original site layout and a second delineation on the amendment area. Invenergy then took the results of the delineations into consideration during the engineering and design phase of development to help determine the project layout. The project has been designed to avoid impacts.

A geotechnical engineering study was done to determine soil composition. The geotechnical engineering firm has classified the soils at the site as Clayey Sand, Lean Clay with Sand, Silty Sand, and Poorly-graded Sand. For soils to be considered "combustible" they typically are comprised of organic compounds. The geotechnical engineering study has concluded that none of the soils sampled across the site are categorized as "organic".

As I testified at the CPCN application evidentiary hearing on May 22, 2017, it is Invenergy's standard practice to coordinate with local EMS personnel, which typically consists of outreach to local law enforcement and local fire departments to inform them about the project. Invenergy's standard procedure is to start this coordination late in the development process, just prior to commencement of physical construction on the site.

1 BY MR. CAMPEN:

2 Q Does that conclude your summary?

3 A Yes, it does.

4 MR. CAMPEN: Madam Chair, we would move
5 Mr. Thienpont's prefiled testimony into the record.

6 COMMISSIONER BROWN-BLAND: That motion will
7 be allowed. The prefiled supplemental testimony of
8 Witness Paul Thienpont will be received into evidence
9 as if given orally from the witness stand. That
10 testimony was prefiled April 5, 2018, consisting of
11 four pages, and the exhibits will be identified as
12 they were premarked, and there are two exhibits,
13 Thienpont Supplemental Exhibit 1 and 2. Although I'm
14 not clear if -- let me see.

15 MR. CAMPEN: Madam Chair, one exhibit is
16 already in the record from the earlier proceeding. I
17 believe that's the TCLP Report. I think that's
18 correct.

19 COMMISSIONER BROWN-BLAND: Correct. And
20 filed with the prefiled testimony labeled as Thienpont
21 Supplemental Exhibit 1. So supplemental is the
22 distinction. However, my question is his testimony
23 speaks to two. Okay. I see. He made reference to
24 the first --

1 MR. CAMPEN: Yes.

2 MS. PARROTT: Correct.

3 COMMISSIONER BROWN-BLAND: -- to the first
4 exhibit. So the two -- the Exhibit 1, Supplemental
5 Exhibit 1 consists of two pages?

6 MR. CAMPEN: Correct.

7 COMMISSIONER BROWN-BLAND: So that should be
8 clear for the record. So those have not yet been
9 received but they are marked as identified.

10 (WHEREUPON, Thienpont Supplemental
11 Exhibit 1 is marked for
12 identification as prefiled.)

13 (WHEREUPON, the prefiled
14 supplemental testimony of PAUL
15 THIENPONT is copied into the
16 record as if given orally from the
17 stand.)

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PREFILED SUPPLEMENTAL TESTIMONY OF
PAUL THIENPONT
ON BEHALF OF WILKINSON SOLAR LLC

NCUC DOCKET NO. EMP-93, SUB 0

INTRODUCTION

1
2 Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS
3 ADDRESS.

4 A. My name is Paul Thienpont. I am a Manager, Renewable
5 Engineering with Invenergy LLC. My business address is One South Wacker
6 Drive, Suite 1800, Chicago, Illinois 60606.

7 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS
8 COMMISSION?

9 A. Yes. I testified at the evidentiary hearing for the Wilkinson solar
10 project (the "Project") CPCN application on May 22-23, 2017.

11 Q. HAS YOUR EDUCATIONAL AND PROFESSIONAL
12 BACKGROUND CHANGED SINCE YOUR 2017 TESTIMONY?

13 A. They have not.

14 Q. HAVE YOUR RESPONSIBILITIES WITH INVENERGY OR WITH
15 RESPECT TO THE PROJECT CHANGED SINCE YOUR 2017 TESTIMONY?

16 A. They have not.

17 Q. ARE YOU FAMILIAR WITH THE SITE LAYOUT AMENDMENT
18 FILED IN THE ABOVE-REFERENCED DOCKET ON NOVEMBER 29, 2017
19 (THE "AMENDMENT")?

20 A. Yes.

21 Q. HAVE YOU INSPECTED THE PROJECT SITE, INCLUDING THE
22 AMENDMENT AREA?

23 A. Yes, I have been to Beaufort County and walked the site. I am well
24 acquainted with the Amendment and how it fits on the site.

25 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

26 A. The purpose of my testimony is to provide the Commission with
27 information in response to allegations raised at the public hearing on March 19,
28 2018, regarding health and safety concerns. However, it is my understanding
29 that the North Carolina Department of Environmental Quality is the state
30 environmental agency and that the State Clearinghouse has already reviewed
31 and passed on the Amendment area. My testimony also provides information
32 regarding the design of the Project to avoid wetlands, soil composition, and
33 outreach to local Emergency Management Services ("EMS").

34 HAZARDOUS SUBSTANCES

35 Q. WHAT CONCERNS WERE RAISED AT THE PUBLIC HEARING
36 ABOUT HAZARDOUS SUBSTANCES?

37 A. A few members of the public testified about their concerns over
38 whether the solar panels contain Gen-X, perfluorinated alkylated substances
39 ("PFAS"), and heavy metals.

40 Q. WHAT ARE GEN-X AND PFAS?

41 A. They are man-made chemicals that are used in certain
42 manufacturing processes. Neither Gen-X nor PFAS are used in the production of
43 any of the components that make up the solar panels planned for use for the
44 Project. Attached as Supplemental Exhibit 1 is a memorandum from

45 JinkoSolar, the manufacturer of the solar panels planned for use for the Project,
46 confirming that these chemicals are not present in the solar panels.

47 **Q. WHAT ABOUT HEAVY METALS?**

48 A. As I testified at the CPCN application evidentiary hearing on May
49 22, 2017, the solar panels planned for use for the Project pass the EPA's Toxicity
50 Characteristic Leaching Procedure ("TCLP") test, which classifies them as non-
51 hazardous waste and allows for disposal in landfills.¹ The TCLP test report was
52 admitted into evidence as Applicant Thienpont Exhibit Number 2.

53 **FACILITY DESIGN**

54 **Q. HAVE JURISDICTIONAL WETLANDS DELINEATIONS BEEN**
55 **DONE FOR THE PROJECT?**

56 A. Yes. Cardno performed a jurisdictional wetlands delineation on the
57 original Project site layout and a second delineation on the Amendment area.

58 **Q. WHAT WAS DONE IN RESPONSE TO THE DELINEATIONS?**

59 A. Invenergy took the results of the delineations into consideration
60 during the engineering and design phase of development to help determine the
61 Project layout. The Project has been designed to avoid impacts.

62 **SOIL COMPOSITION**

63 **Q. MEMBERS OF THE PUBLIC EXPRESSED CONCERNS AT THE**
64 **PUBLIC HEARING ABOUT THE AREA CONTAINING ORGANIC SOILS AND**
65 **ABOUT COMBUSTIBILITY OF THOSE SOILS. HAS GEOTECHNICAL**
66 **ENGINEERING FOR SOIL COMPOSITION BEEN DONE FOR THE PROJECT?**

¹ See Transcript Vol. II at 75-76, 82, 204-06.

67 A. Yes, a geotechnical engineering study was done to determine soil
 68 composition. The geotechnical engineering firm has classified the soils at the
 69 site as Clayey Sand, Lean Clay with Sand, Silty Sand, and Poorly-graded Sand.
 70 For soils to be considered "combustible" they typically are comprised of organic
 71 compounds. The geotechnical engineering study has concluded that none of the
 72 soils sampled across the site are categorized as "organic".

EMS OUTREACH

74 **Q. WILL WILKINSON COORDINATE WITH LOCAL EMS?**

75 A. Yes. As I testified at the CPCN application evidentiary hearing on
 76 May 22, 2017, it is Invenergy's standard practice to coordinate with local EMS
 77 personnel, which typically consists of outreach to local law enforcement and local
 78 fire departments to inform them about the project. Invenergy's standard
 79 procedure is to start this coordination late in the development process, just prior
 80 to commencement of physical construction on the site.

81 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

82 A. Yes.

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1 COMMISSIONER BROWN-BLAND: Is he available
2 now for cross?

3 MR. CAMPEN: Yes, ma'am.

4 MR. BRITTON ALLEN: I want to make sure I
5 get your name right. Mr. Thienpont, is that right?

6 THE WITNESS: Yes, that's correct.

7 MR. BRITTON ALLEN: I think I was going to
8 say Thienpont (pronounced Thinepont) before so I'm
9 glad I asked. My name is Britton Allen. I represent
10 several of the Intervenors. I was not here at what my
11 colleague referred to as phase one of the case so
12 that's why you haven't seen me before.

13 CROSS EXAMINATION BY MR. BRITTON ALLEN:

14 Q In your prefiled supplemental testimony filed
15 April 5, 2018, you state that solar panels are
16 classified as nonhazardous waste and are allowed
17 to be disposed of at landfills; is that correct?

18 A That is correct.

19 Q But you don't deny that solar panels may contain
20 heavy metals?

21 A In very limited quantities that are compliant
22 with the RoHS standard as well as the TLC -- TCLP
23 procedures.

24 Q Do the people in Terra Ceia, do you know if they

1 get their water from public sources or from
2 wells?

3 A I can't speak to that.

4 Q Would you say a landfill would be a safe place to
5 get drinking water from?

6 A I would not think so.

7 Q So, in your opinion, how far away from a landfill
8 containing a disposal of those solar panels would
9 be safe to drill for drinking water?

10 A I would not be able to comment on that.

11 Q You reference in your testimony the EPA's
12 Toxicity Characteristic Leaching Procedure Test
13 or the TCLP test.

14 A Correct.

15 Q And that's the rule where solar panels are
16 classified as a nonhazardous waste; is that
17 right?

18 A That's correct.

19 Q Are you aware that coal ash also passes the TCLP
20 test?

21 A Could you repeat that?

22 Q Are you aware that coal ash also passes the TCLP
23 test?

24 A I am not aware of that.

1 Q Would you accept, subject to check, that it does?

2 A I am not an expert in that so I couldn't comment
3 on coal ash.

4 Q Gen-X has been in the news lately in North
5 Carolina. You testified that Gen-X is not used
6 in any of the project components in these solar
7 panels?

8 A That is correct.

9 Q And you based -- if you'll turn to your Exhibit
10 1, it's the letter. You refer to it I think as a
11 memorandum from Jinko Solar.

12 A Correct.

13 Q And this letter was signed by David Chang; is
14 that correct?

15 A Incorrect. Daniel Chang.

16 Q I apologize. I had David in my notes. You're
17 correct. So do you know Daniel Chang?

18 A I do.

19 Q You do? Do you know his educational background?

20 A I am not familiar with his education.

21 Q So you've met Daniel Chang?

22 A I have met him before, yes.

23 Q What due diligence did Inver-, Invenergy - I have
24 trouble saying that - Invenergy performed when

1 selecting Jinko as their solar panel supplier?

2 A We have a very rigorous selection criteria that
3 is done both from a quality of the project, or
4 product, the technology, their bankability, and
5 Jinko is -- Jinko Solar is a leading company
6 globally. They are the global leader in module
7 manufacturing. They also recently announced that
8 they are building a facility within the U.S.,
9 outside of Jacksonville.

10 Q Where is Jinko located currently?

11 A They have many manufacturing facilities
12 throughout the world.

13 Q Do you know where -- necessarily where the --
14 those solar panels manufactured for this project
15 will come from? Or it could be any of them?

16 A It could not be any of them. But since the order
17 has not been placed yet we could not confirm
18 where they would be coming from. However, it
19 would likely be out of either their Jacksonville
20 facility or a facility outside of China.

21 Q Okay. On this letter from Daniel Chang, on the
22 second paragraph, just the -- I guess the first
23 sentence there, can you please read that?

24 A *We at Jinko Solar are committed to the highest*

1 A I have read the document now, yes.

2 Q I would submit to you this is a Reuters news
3 article from July 31, 2014, headlined *China's*
4 *Jinko Solar must face U.S. lawsuit over*
5 *pollution, protests*; is that correct?

6 A Yes, that's what I read here.

7 Q And reading this you would agree that this
8 lawsuit dealt with a shareholder -- misleading
9 shareholders and potential investors over
10 pollution problems that the company had?

11 A That's what this document says.

12 Q So are you aware that Jinko Solar settled that
13 lawsuit?

14 A I am not aware.

15 Q So, if the company is being accused of lying to
16 investors, would you say that that is consistent
17 with always conducting business in accordance
18 with applicable laws, rules and regulations?

19 A I couldn't comment on that.

20 Q It says "always". I mean, it clearly is not
21 always. So your position is that a company that
22 can be sued for misleading its investors can
23 still always conduct business in accordance with
24 applicable laws, rules and regulations?

1 A That -- it's their statement not mine. I'm not
2 sure what you're looking for me to say here.

3 Q I'm not looking for you to say anything, I'm just
4 looking for you to answer.

5 COMMISSIONER BROWN-BLAND: I believe he
6 answered the question.

7 MR. BRITTON ALLEN: Okay.

8 BY MR. BRITTON ALLEN:

9 Q So how can you assure this Commission and the
10 people of Terra Ceia, based on a letter from
11 Jinko, that there is no hazardous materials in
12 their solar panels when Jinko was willing to lie
13 to its own investors?

14 A The answer there is through the technical tests
15 and the RoHS compliance as well as the toxicity
16 leaching characteristic protocols. All of those
17 are tests that classify all of the materials
18 within the panel. As well as, also, going
19 through the bill of materials of the equipment
20 you can see that there is nothing to hide there,
21 and those are done by third party testing
22 laboratories, not from Jinko.

23 MR. BRITTON ALLEN: I have nothing further.

24 COMMISSIONER BROWN-BLAND: Any redirect?

1 MR. CAMPEN: Yes, ma'am.

2 REDIRECT EXAMINATION BY MR. CAMPEN:

3 Q You referenced to a RoHS standard, can you
4 explain what that is?

5 A That is the international standard that is used
6 to categorize different heavy metals within any
7 type of equipment. That's going to be
8 electronics, this microphone, your telephone,
9 your TV, and it is a procedure that is done to
10 categorize how much of these materials are
11 present in them.

12 Q Was a RoHS test conducted with respect to these
13 panels?

14 A They have been.

15 Q Pardon me.

16 A Yes.

17 Q And what were the results of the study?

18 A They have passed.

19 Q You referenced the TCLP study earlier. It was in
20 your testimony last time and again today. Who
21 promulgates that standard? Is that a --

22 A I believe it's an EPA standard.

23 Q Environmental Protection Agency --

24 A Correct.

1 Q -- promulgates this standard? Now, with respect
2 to Mr. Chang, you were asked if you knew his
3 background. His title is Technical Director of
4 North America, correct?

5 A Correct.

6 Q So is that the basis of your belief that he is
7 qualified to offer this opinion?

8 A That is correct.

9 Q Now, the press release that was passed out, the
10 accusation in the third paragraph is that they
11 are alleged to have made misleading statements
12 about their efforts to comply with Chinese
13 environmental laws; do you see that?

14 A I do.

15 Q There's no allegation here is there or nothing in
16 this report about compliance with North American
17 or American environmental laws is there?

18 A That's correct.

19 Q And, again, this is a large international
20 company; is that correct?

21 A That is correct.

22 MR. CAMPEN: That's all.

23 COMMISSIONER BROWN-BLAND: Questions from
24 the Commission? Commissioner Patterson.

1 EXAMINATION BY COMMISSIONER PATTERSON:

2 Q The solar panels that are used, do they have any
3 heavy metals in them?

4 A Could you clarify what "any" is?

5 Q Any. You --

6 A They pass --

7 Q -- speak english.

8 A They pass the RoHS Compliance Test that sets
9 the --

10 Q That's not the question. Do they have any of
11 those elements in them? Any rare earth or heavy
12 metals in them? I don't know anything about how
13 much or -- I just want to know if they are in
14 there at all.

15 A I would have to look at the bill of materials for
16 the latest specification. But my understanding
17 is that the primary components of the cell would
18 be aluminum, glass, silicon, as well as trace
19 amounts of soldering, which I cannot confirm at
20 this point if the solders are lead free. I
21 believe they are but I couldn't testify under
22 oath saying that they are.

23 Q Does the -- your company have any kind of life
24 cycle assessment policy?

1 A For the panels themselves?

2 Q Right.

3 A Yes. It's part of that, the procedure for
4 looking at them. That's why we look at the RoHS
5 compliance and the Toxicity Characteristic
6 Leaching protocols which, if you're familiar with
7 those --

8 Q That wouldn't be a life cycle.

9 A It is because it's looking at what happens when
10 material decomposes or is crushed and is
11 pulverized.

12 Q A life cycle assessment process looks at it from
13 the beginning to the end to the disposal, not
14 just --

15 A So you're talking about the manufacturing process
16 itself?

17 Q I'm talking about the whole thing.

18 A I couldn't say we do that. We look at the
19 finished product.

20 Q So you don't know what the life cycle is. You
21 don't have any way of knowing what's in them --

22 A We do -- we do know what's in the materials.
23 There's a bill of materials that lists all of the
24 materials consistent within the product.

1 Q But you just said you didn't know.

2 A I don't have the bill of materials in front of me
3 and they're not --

4 Q Thank you.

5 A -- procured at this point. So that list is
6 subject to the final product.

7 Q So you wouldn't know whether or not any of these
8 materials that are used in these panels are mined
9 by children?

10 A I could not comment on that.

11 COMMISSIONER PATTERSON: I'm sure you
12 couldn't. Thank you so much.

13 EXAMINATION BY COMMISSIONER BROWN-BLAND:

14 Q Mr. Thienpont, I don't recall from the first
15 hearing, was a material sheet provided as an
16 exhibit or is it in evidence? Do you recall?

17 A I am not positive what was admitted into evidence
18 in this case.

19 MR. CAMPEN: Madam Chair, the TCLP report
20 that he's mentioned, the EPA report, was admitted into
21 evidence and is referenced in his testimony.

22 BY COMMISSIONER BROWN-BLAND:

23 Q And do you recall, Mr. Thienpont, if that report
24 includes the list of materials?

1 A It tests for the heavy metals and other regulated
2 hazardous materials. It does not list the full
3 bill of materials on it.

4 Q And it listed or purported to list as I recall
5 those that were hazardous?

6 A Correct.

7 Q Or that exceeded the limits; is that correct?

8 A That's correct.

9 Q With regard to the press release, I believe
10 counsel asked you a question that assumed that
11 Jinko Solar had lied. Did you intend to accept
12 that assumption that they had lied?

13 A I couldn't speak to that.

14 Q In fact, this report, does it not, discusses an
15 accusation, and then counsel asked if you were
16 aware that the matter had been settled; is that
17 correct?

18 A That is correct. That was the question.

19 Q And so there has been no establishment in a court
20 of law that Jinko Solar, to your knowledge, in
21 a -- from looking over this press release there's
22 no indication that there's been a determination
23 that Jinko Solar lied or did anything incorrect;
24 is that true?

1 A Not that I'm aware of.

2 Q Mr. Thienpont, on page 3 of your testimony,
3 lines 59 through 61, a question there was, *What*
4 *was done in response to the delineations?* And
5 the answer is, *Invenergy took the results of the*
6 *delineations into consideration during the*
7 *engineering and design phase of development to*
8 *help determine the Project layout. The Project*
9 *has been designed to avoid impacts. Are you able*
10 *to speak to that and discuss what you mean by*
11 *that testimony and what -- how was it designed to*
12 *avoid impacts and what was taken into*
13 *consideration?*

14 A Yes, I am.

15 Q Would you do that, please?

16 A Sure. So with these linear features that were
17 identified by Cardno, they line the property
18 boundaries. So essentially when a delineation
19 happens, either a wetland or a jurisdictional
20 water, there is a setback that's required. And
21 my understanding of that is that at maximum, I
22 shouldn't say maximum, is at 50 feet; however,
23 given the circumstances that buffer could
24 actually be reduced from there. As part of our

1 standard practice within accounting we already
2 adhere to a 50-foot setback from the parcel
3 boundaries. So the quick and easy way to adhere
4 to those wetland delineations is to apply
5 setbacks which have been done and have minimal
6 impacts as Joe previously testified.

7 As far as other potential impacts
8 to those wetlands outside of the array itself
9 would be collections. And I believe what's under
10 question here is connecting of the previously
11 approved CPCN parcels to this new parcel across
12 the road and potentially up through or under
13 other jurisdictional waters that were identified.
14 So in order to do that, it's just common practice
15 with utilities in other aspects of this, is to
16 bore under those features. It's a widely
17 accepted approach to minimize and avoid impacting
18 wetlands. And it's Invenergy's preferred
19 approach rather than attempt to build through
20 wetlands or disturb jurisdictional waters is to
21 avoid them at all cost. So this is how we would
22 propose to do this. And I think in further
23 detail looking at the northern parcel you have
24 the railroad there, that waterway channel and the

1 road, so there would already be a bore occurring
2 at that location. So ultimately there's minimal
3 or no impacts to our site design.

4 Q I guess I'll take a second or a third swing at
5 the question of the delineation study being for
6 200 acres and then the ultimate amended area
7 being 165 acres. Do you -- are you the witness
8 who can provide any background as to that -- why
9 there's a discrepancy?

10 A I could not speak to why there is a discrepancy
11 there. I don't have the detailed map in front of
12 me. I think there's some areas that may be
13 accounted for that are for collections only and
14 not part of the solar array, is my assumption.

15 Q Could it be -- and if you still can't answer
16 please feel free to say so if you're not able to
17 say. But could it be that you have the study for
18 a larger area just -- and then you whittle down
19 to either what you need or what is appropriate?
20 You try to cover a larger area with your study in
21 the beginning?

22 A I couldn't confirm that but that is a reasonable
23 assumption.

24 COMMISSIONER BROWN-BLAND: Mr. Campen will

1 help me finally hit the ball on that, I'm sure.

2 Are there questions on the Commission's
3 questions?

4 MR. CAMPEN: Yes, ma'am, if I may.

5 COMMISSIONER BROWN-BLAND: Is there any on
6 this side of the room first?

7 MR. BRITTON ALLEN: I have none. I would
8 just ask for the exhibit to be admitted into evidence.

9 COMMISSIONER BROWN-BLAND: All right.

10 Mr. Campen.

11 EXAMINATION BY MR. CAMPEN:

12 Q My question is do you recall the questions from
13 Commissioner Patterson on the TCLP Report, the
14 heavy metals?

15 A Correct.

16 MR. CAMPEN: And that report has been
17 admitted into the record to the proceeding? May I
18 approach the witness and show this to him?

19 COMMISSIONER BROWN-BLAND: You may.

20 MR. BRITTON ALLEN: Mr. Campen, is this in
21 his testimony, what you're showing him?

22 MR. CAMPEN: No, no, no, the report that's
23 in evidence, the exhibit.

24 MR. BRITTON ALLEN: Okay.

1 BY MR. CAMPEN:

2 Q So you're familiar with that?

3 A I am familiar with this report.

4 Q And does it not reflect the heavy metals that are
5 tested for?

6 A It does.

7 Q Expressly?

8 A Expressly.

9 Q Would you read the names of at least some of
10 those, not all -- not too long?

11 A Sure. Arsenic, Barium, Cadmium, Chromium, Lead,
12 Mercury, Selenium, and Silver.

13 Q Okay. You also mention in your testimony the
14 RoHS Report, does it test for something different
15 or is there a different kind of test?

16 Distinguish between the RoHS test and the TCLP
17 test, if you would.

18 A. The RoHS test is for an amount of material within
19 the substance. Whereas, the TCLP test is
20 designed to essentially a worst-case scenario.

21 If this product were to be landfilled and
22 pulverized and subject to intense chemical baths,
23 it essentially is a process used to extract any
24 potential hazardous material from this undergoing

1 much more rigorous environments or strenuous
2 environments than would be typically encountered
3 naturally.

4 Q Would it be fair to say, Mr. Thienpont, that the
5 test you just described is really designed to
6 mimic, if you will, what would happen in a
7 landfill where a solar panel to be left there for
8 a long period of time and decompose, so to speak?

9 A That would be correct.

10 Q And the RoHS Report, just to make sure I
11 understand, the RoHS Report looks at what's in
12 the -- the content, the materials that make up
13 the panels when you receive them?

14 A That is correct.

15 Q And that report also, I believe you testified,
16 indicates no heavy metals?

17 A That is correct.

18 Q You were asked questions about avoiding impacts I
19 believe by the presiding Commissioner. Mr. von
20 Wahlde has testified that there were -- the only
21 jurisdictional features on the amendment area
22 were the ditches; do you recall that testimony?

23 A To confirm, the ditches lining the parcel
24 boundaries.

1 Q Right. So you testified that the purpose is to
2 avoid impacts. There are really no impacts
3 that -- whatsoever with respect to the amendment
4 area; is that your testimony?

5 A That is my testimony.

6 MR. CAMPEN: Okay, that's all.

7 COMMISSIONER BROWN-BLAND: All right. I'll
8 entertain -- I believe I already have a motion to
9 receive the cross examination exhibit. Without
10 objection, Thienpont Intervenor Cross Examination
11 Exhibit 1 will be received into evidence. And the
12 exhibit that was prefiled with Mr. Thienpont's
13 supplemental testimony will also be received into
14 evidence and will remain marked as it was when
15 prefiled.

16 (WHEREUPON, Thienpont Intervenor
17 Cross Examination Exhibit 1 and
18 Thienpont Supplemental Exhibit 1
19 are admitted into evidence.)

20 COMMISSIONER BROWN-BLAND: You maybe
21 excused. Thank you.

22 (The witness is excused.)

23 THE WITNESS: Thank you.

24 MR. CAMPEN: Our next witness is John

1 Barefoot.

2 JOHN BAREFOOT; having been duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION BY MR. CAMPEN:

5 Q Would you state your name and business address
6 for the record, please, sir?

7 A My name is John Barefoot and my business address
8 is 421 Fayetteville Street, Suite 600, Raleigh,
9 North Carolina 27601.

10 Q By whom are you employed and in what capacity?

11 A I'm a Project Manager with Kimley Horn and
12 Associates and I'm a professional engineer there
13 with eight years of experience.

14 Q You're a professional engineer licensed by the
15 State of North Carolina?

16 A Yes, sir.

17 Q Did you cause to be filed in this -- prefiled in
18 this docket supplemental testimony consisting
19 of four pages and one exhibit?

20 A I did.

21 Q If I were to ask you the same questions this
22 morning as they appear in your prefiled
23 testimony, would your answers be as they appear
24 in that prefiled testimony?

1 A Yes, they would.

2 Q Have you prepared a summary of your testimony?

3 A I have.

4 Q Would you please read it for the Commission?

5 (WHEREUPON, the summary of JOHN
6 BAREFOOT is copied into the
7 record.)
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**Summary of April 5, 2018 Prefiled Supplemental Testimony of John Barefoot
On Behalf of Wilkinson Solar LLC
NCUC Docket No. EMP-93, SUB 0**

My name is John Barefoot. My business address is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601. I am a Project Manager with Kimley Horn and Associates, Inc. I am a licensed North Carolina professional engineer with 8 years of experience. My areas of specialty are in land development, water resources, and hydrology.

The purpose of my testimony is to provide the Commission with information in response to some of the stormwater runoff concerns that were raised by witnesses who testified at the public hearing.

I am familiar with the site layout amendment filed in this docket. I have been to Beaufort County and walked the site, including the amendment area.

Kimley-Horn was engaged by Invenergy in 2017 to prepare a preliminary review of stormwater requirements and anticipated stormwater management design for the Project. On June 19, 2017, I conducted a site visit on the original site layout, which included the Respass property and did not include the amendment area. On June 20, 2017, I prepared a memorandum detailing my review. This memorandum was included as an attachment to an affidavit filed by April Montgomery on June 22, 2017.

The memorandum concluded that: "Based on the site visit, NCDEQ's stormwater permitting requirements, and the anticipated stormwater design approach, Kimley Horn believes the proposed development's impact to existing drainage patterns and flows will be negligible, or more likely, the proposed solar use will provide a reduction in runoff from the site. In the event that the final design results in a different conclusion,

additional measures can be implemented on the subject site to address stormwater concerns.”

These conclusions are relevant to the amendment area. The acreage added as part of the Amendment is identical in all material respects to the Respass acreage that was reviewed as part of the memorandum referenced above. The conclusion that the project’s impact to existing drainage patterns will be negligible, or even reduce runoff, is equally applicable to the amended site layout.

I have reviewed the State Clearinghouse comments on the amendment area. None of the responses were at odds with the memorandum conclusions about stormwater management and runoff. In fact, the Clearinghouse concluded that the agency comments did not warrant any further review.

1 MR. CAMPEN: Madam Chair, I would, just to
2 spare you of asking the question, Ms. Montgomery, our
3 final witness, will be able to be clarify the issue
4 about the acreage, not Mr. Barefoot.

5 COMMISSIONER BROWN-BLAND: All right. Thank
6 you. (Laughing) Do you move his testimony?

7 MR. CAMPEN: Yes, ma'am, we will move his
8 testimony into the record with the exhibit.

9 COMMISSIONER BROWN-BLAND: The supplemental
10 testimony of Witness John Barefoot will be received
11 into evidence as if given orally from the witness
12 stand. It was prefiled on April 5, 2018, consisting
13 of four pages.

14 (WHEREUPON, Barefoot Supplemental
15 Exhibit 1 is marked for
16 identification as prefiled.)

17 (WHEREUPON, the prefiled
18 supplemental testimony of JOHN
19 BAREFOOT is copied into the record
20 as if given orally from the
21 stand.)

22

23

24

21 A. The purpose of my testimony is to provide the Commission with
22 information in response to some of the stormwater runoff concerns that were
23 raised by witnesses who testified at the public hearing.

24 Q. ARE YOU FAMILIAR WITH THE SITE LAYOUT AMENDMENT
25 FILED IN THE ABOVE-REFERENCED DOCKET ON NOVEMBER 29, 2017
26 (THE "AMENDMENT")?

27 A. Yes, I am.

28 Q. HAVE YOU INSPECTED THE WILKINSON SOLAR PROJECT
29 (THE "PROJECT") SITE?

30 A. Yes, I have been to Beaufort County and walked the Project site. I
31 am well acquainted with the layout, including the amendment area.

32 Q. PLEASE DESCRIBE YOUR INVOLVEMENT WITH THE
33 PROJECT.

34 A. Kimley-Horn was engaged by Invenergy in 2017 to prepare a
35 preliminary review of stormwater requirements and anticipated stormwater
36 management design for the Project. On June 19, 2017, I conducted a site visit
37 on the original site layout, which included the Respass property and did not
38 include the amendment area. On June 20, 2017, I prepared a memorandum
39 detailing my review. Supplemental Exhibit 1.

40 Q. WAS YOUR MEMORANDUM LATER FILED WITH THE
41 COMMISSION?

42 A. Yes, I understand that it was included as an attachment to an
43 affidavit filed by April Montgomery in this docket on June 22, 2017.

44 Q. WHAT DID THE MEMORANDUM CONCLUDE?

45 A. The report concluded that: "Based on the site visit, NCDEQ's
46 stormwater permitting requirements, and the anticipated stormwater design
47 approach, Kimley Horn believes the proposed development's impact to existing
48 drainage patterns and flows will be negligible, or more likely, the proposed solar
49 use will provide a reduction in runoff from the site. In the event that the final
50 design results in a different conclusion, additional measures can be implemented
51 on the subject site to address stormwater concerns." Supplemental Exhibit 1, p.
52 4.

53 Q. ARE THE CONCLUSIONS REACHED IN YOUR JUNE
54 MEMORANDUM RELEVANT TO THE AMENDMENT AREA?

55 A. Yes. The acreage added as part of the Amendment is identical in
56 all material respects to the Respass acreage that was reviewed as part of the
57 memorandum referenced above. The conclusion that the Project's impact to
58 existing drainage patterns will be negligible, or even reduce runoff, is equally
59 applicable to the amended site layout.

60 Q. HAVE YOU REVIEWED THE STATE CLEARINGHOUSE
61 COMMENTS ON THE AMENDMENT AREA?

62 A. Yes, I have.

63 Q. DID THE AGENCIES RESPONDING TO THE CLEARINGHOUSE
64 HAVE ANY COMMENTS WHICH WERE AT ODDS WITH YOUR
65 CONCLUSIONS ABOUT STORMWATER MANAGEMENT AND RUNOFF
66 POTENTIAL FROM THE AMENDMENT AREA?

67 A. No, and, in fact, the Clearinghouse concluded that the agency
68 comments did not warrant any further review.

69 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

70 A. Yes.

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1 COMMISSIONER BROWN-BLAND: Is the witness
2 available for cross examination? Mr. Campen, is he
3 available?

4 MR. CAMPEN: Oh, yes, I'm sorry.

5 COMMISSIONER BROWN-BLAND: All right.

6 MR. BRADY ALLEN: Thank you, Mr. Campen.

7 Good morning, Mr. Barefoot. My name is
8 Brady Allen. I'm an attorney for three of the
9 intervenors in this case.

10 CROSS EXAMINATION BY MR. BRADY ALLEN:

11 Q Just turning quickly to your summary, you state
12 that the acreage added as part of the amendment
13 is identical in all material respects to the
14 Respass acreage. What's the Respass acreage?

15 A The acreage near -- the acreage near the Terra
16 Ceia School.

17 Q Right. And are you aware that that acreage was
18 not part of the CPCN that was granted by this
19 Commission? That was the land that Wilkinson
20 agreed they wouldn't build the solar facilities
21 on.

22 A I am aware of that.

23 COMMISSIONER BROWN-BLAND: Mr. Barefoot, you
24 can pull that right on up to you so you don't -- you

1 can move around.

2 THE WITNESS: Thank you.

3 BY MR. BRADY ALLEN:

4 Q Now, Mr. Barefoot, if I may turn your attention
5 to the exhibit, the memorandum that was produced
6 for Wilkinson Solar, and you wrote that
7 memorandum for Wilkinson Solar on June 20, 2017,
8 or that's when you sent it to them?

9 A I believe so.

10 Q And a representative from Kimley Horn conducted a
11 site visit in Terra Ceia on June 19, 2017,
12 subject to check?

13 A Correct --

14 Q That --

15 (Unreportable cross talk.)

16 A It was myself.

17 Q And that's a one-day turn around from the period
18 of the site visit to the document being published
19 to your client?

20 A Correct.

21 Q Now a lot of the contents of this memorandum are
22 just standard design protocols and not specific
23 to the facility site; is that correct?

24 A Correct.

1 Q I mean, if necessary, for example, you state
2 Invenergy could acquire topographical data from a
3 field survey to include all culvert and site size
4 ditching; is that correct?

5 A That's correct.

6 Q And if Invenergy or Wilkinson Solar had wanted to
7 take a closer look at the site before you went
8 out there they could have; is that correct?

9 A Can you rephrase that? What --

10 Q I mean, if Wilkinson Solar could have gone out to
11 the site at any time before you went out there
12 and done --

13 A Yes, they could --

14 Q -- more determinations, correct?

15 A Yes.

16 Q But you did make some specific determinations
17 about the site in Terra Ceia in your memorandum;
18 is that correct?

19 A Yes.

20 Q And is it not true that on page 3 of your
21 memorandum that you say, *Due to the alignment of*
22 *solar panel rows not matching the alignment of*
23 *existing ditches, panels will need to cross over*
24 *existing ditches?*

1 A Yes. Typically the posts that hold up the
2 racking stagger those ditches and they remain in
3 place.

4 Q And you also state in this memorandum that the
5 ditches will need to be maintained; is that
6 correct?

7 A That's correct.

8 Q And what type of machinery is used to maintain
9 ditches, these type of ditches, I should add?

10 A Typically a side mower of some sort.

11 Q Does that machinery fit under rows of solar
12 panels?

13 A It fits between the rows.

14 Q And if the rows are going over the ditches, would
15 the machinery fit under the solar panels?

16 A You would need to mow up until you hit a ditch
17 and then back out or turn around. A lot of times
18 between the rows you would just be mowing with a
19 smaller commercial mower whereas, if you were
20 maintaining a ditch, you would use some kind of
21 side arm attachment.

22 Q Now, you're speaking to mowers but is that what
23 you use to maintain a ditch, a mower?

24 A Maintenance would just be keeping the grass from

1 becoming too high in the ditch. As long as it's
2 stabilized that should be all that's necessary.

3 Q Do the people of Terra Ceia maintain their
4 ditches or prevent them from filling in overtime?

5 A I can't -- the ditches looked like they had been
6 mowed on the site visit and they were maintained.

7 Q Have you ever seen a ditch over time fill with
8 silt?

9 A If it is exposed to sediment, yes, or sediment
10 runoff, yes.

11 Q Is there soil in Terra Ceia?

12 A There is.

13 Q Is that sediment?

14 A If it is unvegetated it has the potential to
15 runoff.

16 Q So you believe that the people of Terra Ceia
17 simply mow the grass and those ditches remain in
18 place year after year?

19 A Correct. From aerial photography they look like
20 they have been there a very long time.

21 Q Right. And just aerial photography, that's just
22 a single picture of one moment in time, correct?

23 A I've seen several pictures that go back I think
24 to the 1970's.

1 Q Several pictures would be a few moments in time,
2 several moments in time?

3 A Yes.

4 Q So you wouldn't notice from aerial photography
5 that the people of Terra Ceia use heavy machinery
6 to maintain these ditches year by year?

7 A I wouldn't know that.

8 Q As an expert in hydrology -- but you would -- you
9 don't believe that those -- the people of Terra
10 Ceia have to move in heavy machinery to maintain
11 those ditches?

12 A Most of the time through my experience, as long
13 as the ditches are vegetated and stabilized, the
14 filling with sediment over time is low.

15 Q What causes a ditch to become unstabilized?

16 A The removal of vegetation.

17 Q Is that the only thing?

18 A That's probably the most common.

19 Q Does rain cause erosion?

20 A In some cases it can.

21 Q Could it in Terra Ceia?

22 A Yes, it could.

23 Q So vegetation is not necessarily the only thing
24 needed to maintain it, that you just said on the

1 stand that rain could cause erosion as well, and
2 we know that it rains in Terra Ceia, correct?

3 A Correct.

4 Q Do you know how much it rains in Terra Ceia?

5 A I do not.

6 Q So hypothetically, if these ditches aren't
7 maintained and there is erosion and the ditches
8 are filled with silt, what would happen to the
9 water, rain water that would fall on that site?

10 A Say that -- repeat the question, please.

11 Q If the ditches aren't maintained, hypothetically,
12 and the ditches essentially eroded in, filled
13 with sediment, what would happen to the water
14 that fell on the site from rain?

15 A You would likely have localized ponding.

16 Q It would sit there?

17 A Correct. If the ditch was blocked and the water
18 couldn't leave the site.

19 Q What would you have to do to remove the water
20 from the site?

21 A You would have to clear an obstruction.

22 Q If the ditches weren't maintained and
23 hypothetically sediment did fill the ditches, at
24 the end of the useful life of this facility it

1 would be difficult to return the land to
2 agricultural use; is that correct?

3 A I wouldn't say it would be difficult.

4 Q It would cost money?

5 A Some, yes.

6 Q It would take manpower?

7 A Yes.

8 Q It would take machinery?

9 A Possibly.

10 Q Who would be responsible for that cost?

11 A I would assume that in the decommissioning plan
12 it would cover that, and it would be Invenergy.

13 Q Are you aware that there is no bond in place
14 under Wilkinson's contract for the clean up of
15 the facility?

16 A I am not aware of the structure of the bonds or
17 the decommissioning.

18 Q Are you aware that Wilkinson Solar stated in a
19 previous evidentiary hearing that they could sell
20 the facility to another solar provider on a
21 non-recourse basis?

22 A I am not aware of that.

23 Q So, if the ditches aren't maintained and if they
24 need to be it will be expensive to clean up, and

1 no one in this room knows who will be responsible
2 for maintaining the ditches and to clean it; is
3 that correct?

4 A Say that one more time.

5 Q Sure. If the ditches aren't maintained and it
6 will be expensive to clean up, it will cost
7 something. No one knows in this room who will be
8 responsible to clean that up?

9 A I can't answer that. I wouldn't know what
10 everybody knows in the room.

11 MR. BRADY ALLEN: That's okay. No further
12 questions.

13 COMMISSIONER BROWN-BLAND: Is there
14 redirect?

15 MR. CAMPEN: Yes, just briefly.

16 REDIRECT EXAMINATION BY MR. CAMPEN:

17 Q Mr. Barefoot, are you aware that there are
18 drainage districts in this county and that land
19 owners pay in to a drainage district board to
20 manage those ditches and ensure they're cleared?

21 A I was not aware of that.

22 MR. CAMPEN: Thank you. That's all.

23 EXAMINATION BY COMMISSIONER BROWN-BLAND:

24 Q Mr. Barefoot, you indicated -- I'm sorry, I'm

1 looking at the wrong thing. You indicated that
2 you had walked out, I mean, that you had walked
3 the site as well as the amended area?

4 A The original intent on the site visit was to take
5 a look at the original plan. And the site visit
6 consisted of parking along the right-of-way and
7 taking pictures and documenting the land use.
8 And while the amendment area wasn't a specific
9 target of that investigation, I did see the
10 amendment area and am familiar with the land use
11 and the location.

12 Q So the amended area was included in your original
13 report?

14 A It was not a part of the original report.

15 Q But you didn't -- once the amended area came into
16 question, you didn't need to go back because you
17 had actually seen it on the 19th? Is that what
18 your testimony is?

19 A Correct.

20 Q And that it was similar in nature.

21 A Yes. The agricultural use, similar in nature.

22 Q I guess following up a little bit on what
23 Mr. Campen was asking you, if for some reason
24 Invenergy was under orders to maintain the

1 ditches, are you familiar with how silt and that
2 sort of thing would be managed?

3 A Most storm events would not, I guess, degrade or
4 have enough shear stress to break the integrity
5 of the vegetation. So in most rain events the,
6 you know, the ditch is going to be stabilized.
7 It would take a significant, you know, event. I
8 think even the 100-year storm would not be enough
9 shear stress to remove the vegetation in the
10 ditches so they shouldn't fill with sediment.
11 During construction there'll be standard erosion
12 control measures to prevent sediment from leaving
13 the site, so I don't see the ditches filling up
14 as a major concern.

15 Q Now, this property that's part of the amended
16 area, it is only being leased by Wilkinson; is
17 that correct? It's not being -- Wilkinson
18 doesn't own it but has a leasehold interest, is
19 that correct, or do you know?

20 A I don't know the answer to that.

21 COMMISSIONER BROWN-BLAND: Other questions
22 from the Commission? Commissioner Patterson.

23 EXAMINATION BY COMMISSIONER PATTERSON:

24 Q You went to the site?

1 A I did.

2 Q Is there anything else agricultural other than
3 row crops in that area?

4 A So not row crops, but there was soybeans and what
5 looked to be like coastal hay maybe, and then
6 there were some sections that looked like they
7 had plants or some type of flowers, things like
8 that.

9 Q Did you by any chance notice any catfish farms?

10 A I did not. Actually, there is two ponds that
11 could be maybe catfish ponds, but I'm not aware
12 of their use.

13 Q Okay. But that is water, right?

14 A That's correct.

15 Q Is it possible for that area to flood? That's a
16 yes or no answer.

17 A Yes, it's possible.

18 COMMISSIONER PATTERSON: Thank you.

19 COMMISSIONER BROWN-BLAND: Questions on
20 Commission's questions?

21 MR. CAMPEN: Yes, just briefly.

22 EXAMINATION BY MR. CAMPEN:

23 Q You recall Commissioner Patterson's question
24 about whether there's flooding in the area. Do

1 you recall that question?

2 A Yes.

3 Q And did your report not deal with flooding and
4 runoff? The report that's attached to your
5 testimony.

6 A It dealt with the increase -- or would the
7 development increase the peak runoff or the
8 runoff altogether.

9 Q And remind us again the conclusion you reached
10 with respect to that concern.

11 A That the development of the project, whether in
12 the original condition or with the amendment
13 area, would not increase the runoff on the site
14 or the peak discharge.

15 Q And, in fact, didn't your conclusion -- well,
16 didn't you conclude that it might indeed reduce
17 it to some degree?

18 A Correct.

19 MR. CAMPEN: Thank you. That's all.

20 MR. BRADY ALLEN: Just a few questions,
21 Commissioner Brown-Bland, if I may.

22 COMMISSIONER BROWN-BLAND: Okay.

23 EXAMINATION BY MR. BRADY ALLEN:

24 Q Would you characterize the land in Terra Ceia as

1 flat?

2 A Yes.

3 Q And runoff typically decides -- means water
4 that's moving fast and downstream, correct?

5 A It can be.

6 Q And flat land really doesn't have a lot of
7 runoff. It sits there and the water percolates
8 into the ground or, if it can't go anywhere, it
9 just sits there, correct?

10 A Once the water stages up and it creates a head
11 condition where it will push water out of the
12 ditches just due to the hydraulics. So the small
13 ditches would drain into the larger ditches and
14 so forth.

15 Q Assuming that there was gravity to lead the water
16 somewhere. If it's flat there wouldn't be any
17 gravity that would move the ditch -- the water;
18 is that correct?

19 A Even if it was flat it would take a lot longer,
20 but the water would draw down eventually.

21 MR. BRADY ALLEN: Thank you. Nothing
22 further.

23 COMMISSIONER BROWN-BLAND: There being no
24 questions, no further questions, Mr. Barefoot, you're

1 excused.

2 MR. CAMPEN: Madam Chair, may I have one
3 more question on your questions that I failed to ask
4 when I was questioning him? Just one question.

5 COMMISSIONER BROWN-BLAND: I'm going to
6 allow it. Go ahead. As long as it's on the
7 Commission's questions and not on --

8 MR. CAMPEN: Yes, it's on your questions;
9 your question about how he examined the property.

10 EXAMINATION BY MR. CAMPEN:

11 Q And my question to you is, was -- did you do any
12 desktop analysis to reach your conclusions as
13 related to this property?

14 A I did. We looked at the land use and the
15 hydraulic soil class to make determinations and
16 the conclusions that we discovered in the report.

17 MR. CAMPEN: That's all. Thank you.

18 COMMISSIONER BROWN-BLAND: All right.
19 Mr. Barefoot, thank you, and your testimony has
20 already been received and you had no exhibits (sic),
21 so you may be excused.

22 (The witness is excused.)

23 COMMISSIONER BROWN-BLAND: I guess I should
24 ask this side of the room, how long do you think you

1 will need with Ms. Montgomery? I'm trying to
2 determine if it's time for a short break.

3 MR. BRADY ALLEN: I'm -- it's up to the
4 Commission. You know, we can take a short break if
5 the court reporter needs it but I anticipate that we
6 can finish before lunch if it's a short break.

7 COMMISSIONER BROWN-BLAND: All right. We'll
8 continue on.

9 MR. CAMPEN: Okay. Our next and final
10 witness is April Montgomery. If you would please take
11 the stand.

12 APRIL MONTGOMERY; having been duly sworn,
13 testified as follows:

14 COMMISSIONER BROWN-BLAND: You may be
15 seated.

16 DIRECT EXAMINATION BY MR. CAMPEN:

17 Q Would you please state your name and business
18 address for the record, please?

19 A April Montgomery, 151 Chatham Street, Sanford,
20 North Carolina.

21 Q Would you please state the nature of your
22 employment?

23 A I'm the President of REAP.

24 Q And what is REAP?

1 A We're a development services firm.

2 Q Did -- Ms. Montgomery, you caused to be filed in
3 this docket prefiled direct testimony consisting
4 of five pages and one exhibit?

5 A Yes, sir.

6 Q Do you have any changes or corrections to that?

7 A I do not.

8 Q If -- were I to ask you the same questions this
9 morning as appear in the prefiled testimony,
10 would your answers be the same as they appear
11 there?

12 A They would.

13 Q Would you please read -- do you have a summary
14 for the Commission?

15 A I do.

16 Q Would you please read it now?

17 A Sure.

18 (WHEREUPON, the summary of APRIL
19 MONTGOMERY is copied into the
20 record.)
21
22
23
24

**Summary of February 16, 2018 Prefiled Testimony of April Montgomery
On Behalf of Wilkinson Solar LLC
NCUC Docket No. EMP-93, SUB 0**

My name is April Montgomery. My business address is 151 Chatham Street, Sanford, North Carolina. I am the principal of REAP, a development services firm based in Sanford, North Carolina, and my firm is under contract with Wilkinson Solar LLC and its parent, Invenergy LLC, to help direct the development of the Wilkinson Solar facility described in the application filed in this docket on March 13, 2017

I provided prefiled direct testimony in support of the Application on March 13, 2017, and prefiled supplemental testimony on May 12, 2017. I also provided oral testimony on the Application during the evidentiary hearing before the Commission on May 22 and 23, 2017.

The purpose of my testimony is to provide support for the site layout amendment filed on November 29, 2017 and to address the consumer statements of position that were filed in response to the amendment.

On October 9, 2017, Wilkinson filed an updated site layout as part of the agreement with Intervenor David Butcher and individuals the Terra Ceia Christian School, Gertrude Respass, Harlene Van Staaldunen, and Stuart Ricks. This updated site layout removed solar panels from approximately 200 acres of property located behind the school and the residence of Mr. Butcher. Subsequently, the school and Mr. Butcher withdrew their objections to the project. The Commission issued an Order Issuing Certificate of Public Convenience and Necessity on October 11, 2017.

After the CPCN Order, Wilkinson secured approximately 165 additional acres on which it intends to install panels to substitute for the panels removed pursuant to the above-referenced agreement. On November 29, 2017, the layout amendment was filed

reflecting the additional acreage. As reflected on the amendment, the additional acreage is south of Terra Ceia Road and does not abut the school or Butcher properties, both of which are north of Terra Ceia Road.

Other than substitution of the new acreage as proposed, the layout amendment does not in any way alter what the Commission approved in the CPCN Order. All aspects of the project, including its generating capacity, panel technology, and construction, remain the same. The Applicant's financial and operational abilities have not changed. The amendment does not impact the demonstrated need for the project. The only change proposed in the amendment is the addition of the new acreage south of Terra Ceia Road.

None of the consumer statements filed in response to the layout amendment raise issues unique to the amendment. All of the questions raised in these statements are issues that were raised in statements filed with respect to the original application, expressed at the public hearing on the application held on May 17, 2017, and/or expressed at the evidentiary hearing on the application held on May 22 and 23, 2017.

Any potential environmental impacts will be addressed through environmental permitting, and the siting of the project is a local land use matter.

With respect to environmental permitting, Wilkinson will obtain all required local, state, and federal approvals, such as stormwater permits and soil erosion and control approvals.

As described in the amendment, Beaufort County issued a letter on November 9, 2017, which confirms that the amended site layout shown in the amendment remains in general compliance with the Beaufort County Solar Farm Ordinance. Wilkinson will obtain all other permits required to construct the project from Beaufort County.

With respect to such environmental and local land use issues, the Commission concluded in the CPCN Order that "these issues are better addressed by agencies with expertise and regulatory authority in the areas of environmental and natural resource protection, and public health and safety, and through the local zoning process."

No support has been offered for the generalized concerns raised in the consumer statements filed in response to the amendment. Instead, the docket contains letters from the State Clearinghouse dated January 16, 2018 and January 26, 2018, stating that no further State Clearinghouse review action on the Applicant's part was needed.

As described on page 7 of my prefiled direct testimony filed in support of the application on March 13, 2017, Wilkinson will be required to obtain various local, state, and federal permits and approvals to commence construction and operate the project. As noted above and as filed with the amendment, Wilkinson has received confirmation from Beaufort County that the amended site layout shown in the amendment remains in general compliance with the Beaufort County Solar Farm Ordinance. Wilkinson also received Street and Driveway Access Permits for both proposed driveways from NCDOT on October 4, 2017, which were attached to my prefiled testimony.

1 BY MR. CAMPEN:

2 Q Does that conclude your summary?

3 A That does.

4 MR. CAMPEN: We would move Ms. Montgomery's
5 prefiled testimony into the record, Madam Chair.

6 COMMISSIONER BROWN-BLAND: Ms. Montgomery's
7 prefiled testimony filed on February 16, 2018, will be
8 received into evidence and treated as if given orally
9 from the witness stand. Her exhibit which the
10 testimony indicates is marked Amendment Exhibit 1 will
11 be identified as such. I wasn't sure that it was
12 actually marked but it will be -- let's mark it and
13 identify it as Amendment Exhibit 1.

14 (WHEREUPON, Amendment Exhibit 1 is
15 marked for identification as
16 prefiled.)

17 (WHEREUPON, the prefiled direct
18 testimony of APRIL MONTGOMERY is
19 copied into the record as if given
20 orally from the stand.)

21

22

23

24

21 Amendment") and to address the consumer statements of position that were filed
22 in response to the Layout Amendment.

23 **Q. PLEASE DESCRIBE THE LAYOUT AMENDMENT.**

24 A. On October 9, 2017, the Applicant filed an updated site layout as
25 part of the agreement with Intervener David Butcher and individuals the Terra
26 Ceia Christian School ("TCCS"), Gertrude Respass, Harlene Van Staalduinen,
27 and Stuart Ricks. This updated site layout removed solar panels from
28 approximately 200 acres of property located behind TCCS and the residence of
29 Mr. Butcher. Subsequently, TCCS and Mr. Butcher withdrew their objections to
30 the Facility. The Commission issued an Order Issuing Certificate of Public
31 Convenience and Necessity on October 11, 2017 (the "CPCN Order").

32 After the CPCN Order, Wilkinson secured approximately 165 additional
33 acres on which it intends to install panels to substitute for the panels removed
34 pursuant to the above-referenced agreement. On November 29, 2017, the
35 Layout Amendment was filed reflecting the additional acreage. As reflected on
36 the Layout Amendment, the additional acreage is south of Terra Ceia Road and
37 does not abut the TCCS or Butcher properties, both of which are north of Terra
38 Ceia Road.

39 **Q. OTHER THAN SUBSTITUTION OF THE NEW ACREAGE, DOES**
40 **THE LAYOUT AMENDMENT IN ANY WAY ALTER WHAT THE COMMISSION**
41 **APPROVED IN THE CPCN ORDER?**

42 A. No. All aspects of the Facility, including its generating capacity,
43 panel technology, and construction, remain the same. The Applicant's financial
44 and operational abilities have not changed. The Layout Amendment does not

45 impact the demonstrated need for the Facility. The only change proposed in the
46 Layout Amendment is the addition of the new acreage south of Terra Ceia Road.

47 **Q. DO ANY OF THE STATEMENTS FILED IN RESPONSE TO THE**
48 **LAYOUT AMENDMENT RAISE ISSUES UNIQUE TO THE LAYOUT**
49 **AMENDMENT?**

50 A. No. All of the questions raised in the statements filed with respect
51 to the Layout Amendment are issues that were raised in statements filed with
52 respect to the Application, expressed at the public hearing on the Application
53 held on May 17, 2017, and/or expressed at the evidentiary hearing on the
54 Application held on May 22 and 23, 2017.

55 **Q. WHAT IS YOUR RESPONSE TO THE QUESTIONS RAISED IN**
56 **THE STATEMENTS?**

57 A. Any potential environmental impacts will be addressed through
58 environmental permitting, and the siting of the Facility is a local land use matter.

59 With respect to environmental permitting, Wilkinson will obtain all required
60 local, state, and federal approvals, such as stormwater permits and soil erosion
61 and control approvals.

62 As described in the Layout Amendment, Beaufort County issued a letter
63 on November 9, 2017, which confirms that the amended site layout shown in the
64 Layout Amendment remains in general compliance with the Beaufort County
65 Solar Farm Ordinance. Wilkinson will obtain all other permits required to
66 construct the Facility from Beaufort County.

67

68 With respect to such environmental and local land use issues, the
69 Commission concluded in the CPCN Order that “these issues are better
70 addressed by agencies with expertise and regulatory authority in the areas of
71 environmental and natural resource protection, and public health and safety, and
72 through the local zoning process.” CPCN Order pp. 12-13.

73 **Q. DID THE STATEMENTS OFFER ANY SUPPORT FOR THE**
74 **ENVIRONMENTAL CONCERNS RAISED?**

75 A. No support has been offered for these generalized concerns. As
76 required by the Commission, the Layout Amendment was forwarded to the State
77 Clearinghouse for review by all interested state agencies. In letters from the
78 Clearinghouse dated January 16, 2018 and January 26, 2018, the Clearinghouse
79 staff stated that no further State Clearinghouse review action on the Applicant’s
80 part was needed. Further, Wilkinson has designed the Facility to avoid any
81 anticipated impacts to wetlands and jurisdictional waters on the site and will
82 perform no mass grading.

83 **Q. WILL WILKINSON OBTAIN OTHER PERMITS TO OPERATE**
84 **THE FACILITY?**

85 A. Yes. As described on page 7 of my prefiled direct testimony filed in
86 support of the Application on March 13, 2017, Wilkinson will be required to obtain
87 various local, state, and federal permits and approvals to commence construction
88 and operate the Facility. As noted above and as filed with the Layout
89 Amendment, Wilkinson has received confirmation from Beaufort County that the
90 amended site layout shown in the Layout Amendment remains in general
91 compliance with the Beaufort County Solar Farm Ordinance. Wilkinson also

Prefiled Direct Testimony of April Montgomery
Wilkinson Solar LLC

92 received Street and Driveway Access Permits for both proposed driveways from
93 NCDOT on October 4, 2017, which are attached as Amendment Exhibit 1.
94 Wilkinson will obtain all other such required permits and approvals.

95 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

96 **A. Yes.**

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Feb 16 2018

Apr 30 2018

1 MR. CAMPEN: The witness is available for
2 cross examination.

3 MR. BRADY ALLEN: Thank you, Mr. Campen.

4 CROSS EXAMINATION BY MR. BRADY ALLEN:

5 Q Good morning, Ms. Montgomery.

6 A Good morning.

7 Q My name is Brady Allen. I represent the three
8 intervenors in this case.

9 COMMISSIONER GRAY: Mr. Allen, how about
10 moving that microphone up, please.

11 MR. BRADY ALLEN: There. Is that better?

12 COMMISSIONER GRAY: I'm trying.

13 MR. BRADY ALLEN: Not yet. Okay.

14 BY MR. BRADY ALLEN:

15 Q Ms. Montgomery, on page 2, line 32 of your
16 prefiled direct that was filed in February --
17 that was filed in February of this year, you
18 state that after the CPCN Order of October 11,
19 2017, you secured an additional 165 areas on
20 which to install solar panels; do you not?

21 A Yes.

22 Q And when was that acreage secured?

23 A I would have to look at the date on the contract,
24 but it was October or November.

1 Q And on what basis was that acreage secured?

2 A It was secured in the interest of putting solar
3 panels on that property.

4 Q I guess what I'm getting at is did you purchase
5 it, get an option with a lease?

6 A It's a lease.

7 Q And has Wilkinson Solar filed any document
8 evidencing that transaction with this Commission?

9 A I'm not sure if we filed any documents. We
10 record the memorandums associated with the lease
11 at the county Register of Deeds.

12 Q And in your original testimony, going back to
13 phase one, what I refer to as, that would have
14 been in the fall, and this is now phase two, you
15 stated your -- the responsibility of your firm
16 with REAP is to do community outreach; is that
17 correct?

18 A It's part of our -- part of what we do.

19 Q And at the last evidentiary hearing, you say that
20 you encourage your clients to become good
21 neighbors especially where you locate facilities?

22 A Correct.

23 Q And in the last hearing you said that you follow
24 the Commission's rules in terms of outreach. Can

1 you tell which specific rule of the Commission
2 that you follow in terms of your outreach?

3 A I cannot cite the specific rule.

4 Q Notifications --

5 A Right. I mean there's -- right.

6 Q Specifically with regard to the 165 acres that
7 were added, can you describe what outreach
8 Wilkinson Solar performed?

9 A Well, we were working with -- that was a
10 landowner that was part of the project as a
11 transmission agreement previously so it was a
12 portion of their parcel and so we expanded that
13 parcel with them. They're a member of that
14 community.

15 Q Would you agree with me that Wilkinson Solar
16 filed two motions opposing the intervention of
17 property owners in this proceeding?

18 A We did.

19 Q Who made the decision to oppose that
20 intervention?

21 A It was a group decision between company and
22 counsel.

23 Q As a consultant that promotes outreach to people
24 in the area and encourages your clients to be

1 good neighbors, is this an example of what you
2 believe is an effective outreach?

3 A Well, there's other opportunities for the
4 community to be engaged in the process outside of
5 being an intervenor in this docket.

6 Q Now, returning to your, what I call the phase two
7 direct testimony that was filed in February, you
8 stated that the only thing that has changed is
9 the substitution of the new acreage; is that
10 correct?

11 A Correct.

12 Q And based on that I would like to review some of
13 the facts that were discussed in phase one so we
14 can be sure that they maintain the same in all
15 aspects.

16 A Okay.

17 Q Is it true that all of the management employees
18 for Wilkinson Solar will be located in Chicago or
19 at the very least outside of North Carolina?

20 A Management -- well, are you talking about like
21 site management employees, like when the project
22 is constructed or are you talking about up until
23 that point?

24 Q I'm talking about the managers for Wilkinson

1 Solar.

2 A To date, they are located in Chicago. Where they
3 will be when the project goes into operation I
4 couldn't speak to.

5 (WHEREUPON, the Court Reporter
6 requested the witness to speak up
7 and repeat her answer for the
8 record.)

9 THE WITNESS: To date, they are located in
10 Chicago but I can't speak to where a project manager
11 would be during construction or operation of the
12 project.

13 BY MR. BRADY ALLEN:

14 Q Is it still true that the facility of this size
15 will employ only two to three technicians on
16 site?

17 A After construction --

18 Q After construction --

19 A -- during operations.

20 Q Will Wilkinson Solar still be entitled to a
21 significant discount in property taxes to local
22 governments?

23 A Unless the state law changes, yes, that's my
24 understanding.

1 Q And approximately how much will Wilkinson Solar
2 pay assuming the facilities are completed?

3 A So are you talking about just about the
4 equipment?

5 Q The local property taxes.

6 A So the local property taxes are a combination,
7 right, of the underlying land and the equipment.
8 So the 80 percent that you're referring to
9 applies to the equipment. Beaufort County will
10 reassess the property underneath and assign a new
11 value to that that we will then pay full tax on.
12 So until they do that reassignment I couldn't
13 give you a complete answer.

14 Q I didn't say 80 percent. What do you mean by 80
15 percent?

16 A You're talking about the property tax --

17 Q Right.

18 A -- deferral for the equipment.

19 Q And what is -- where does the 80 percent come in?
20 Can you explain that?

21 A That's a state legislative action.

22 Q Eighty percent of what?

23 A Of the value of the equipment.

24 Q And that's the discount.

1 A That's the dis- -- right.

2 Q Have you made any comparisons on how much in
3 local taxes Wilkinson will pay compared to how
4 much is paid to local government now on the
5 current evaluation and land use?

6 A Not that I could speak to in the record. I know
7 we've looked at that.

8 Q At the last hearing Wilkinson Solar had not yet
9 reached an agreement with the utility to purchase
10 the output of the proposed facility. Is that
11 still correct?

12 A That's still correct.

13 Q And in the last phase you've stated that there
14 were 12 states other than North Carolina that you
15 were looking at to provide power needs to those
16 states potentially as well. Is that still
17 correct?

18 A So the PJM network of which this line is a part
19 of serves 12 states. Whether -- I don't do any
20 of the power marketing so whether folks are
21 talking to all 12 states or not, I couldn't speak
22 to that.

23 MR. CAMPEN: Madam Chair, I have to object
24 to this line of questioning. It gets to need and you

1 said at the outset that was not an issue in this
2 proceeding with respect to the amendment.

3 COMMISSIONER BROWN-BLAND: I'm aware. To
4 the extent you're asking has there been a change I'm
5 allowing that.

6 MR. BRADY ALLEN: Thank you, Commissioner
7 Brown-Bland. That's what all of these questions
8 intend to get at is whether or not all aspects --

9 COMMISSIONER BROWN-BLAND: The testimony
10 should be the same.

11 MR. BRADY ALLEN: -- should be the same.
12 Yes, thank you.

13 BY MR. BRADY ALLEN:

14 Q So at the last hearing you also stated that
15 60 million people live in the PJM, but you did
16 not know how many people lived in the North
17 Carolina region served by Dominion North Carolina
18 Power. Have you had the opportunity to determine
19 how many such people actually live in North
20 Carolina in the area served by Dominion?

21 A I have not.

22 Q And you acknowledged in phase one of this hearing
23 that the area is rural?

24 A Correct.

1 Q And it would be a small percentage of the 12
2 million from PJM?

3 A I think that's fair.

4 Q And isn't it true that your evaluation of the
5 capacity gap for Dominion North Carolina Power
6 was based on a 2016 IRP for Dominion?

7 A Yes.

8 Q And that IRP had a planning horizon through 2031?

9 A Correct.

10 Q And since you've made no other changes other than
11 the acquisition of new acreage, is it fair to
12 assume that your evaluation would still be based
13 on that 2016 IRP?

14 A That's correct.

15 Q And you also stated in your earlier testimony
16 that you had no reason to disagree with the
17 statement made by Dominion Witness Gaskill in the
18 most recent avoided cost case that said that
19 Dominion North Carolina has no need for
20 additional solar generation other than what is
21 under contract because it would not defer future
22 capacity needs. Do you have any reason to
23 disagree with that statement now?

24 A I'm trying to recall that conversation in the

1 last hearing. Because wasn't there also some
2 confusion about whether the avoided cost docket
3 was appropriate for a transmission interconnect,
4 which is what this project is? So I'm not sure
5 if that would directly relate to what we're
6 providing in terms of service.

7 Q Do you -- you didn't have a reason to disagree
8 with Dominion's witness last year? Do you have
9 a --

10 A Correct.

11 Q -- reason to disagree with them now?

12 A No.

13 Q You also said you -- in the last phase one
14 hearing that you had no reason to disagree with
15 Mr. Gaskill's conclusion that the most recent PJM
16 load forecast would not have a -- showed that
17 there would not be --

18 COMMISSIONER BROWN-BLAND: Mr. Allen, I'm --
19 we're going a little too far on this area. These
20 questions do go to need. I mean, if you want to know
21 if her testimony --

22 MR. BRADY ALLEN: They are --

23 COMMISSIONER BROWN-BLAND: -- changed --

24 MR. BRADY ALLEN: This is the last one so I

1 would ask to be able to finish this line of
2 questioning since I began it.

3 COMMISSIONER BROWN-BLAND: I'll let you
4 finish to the extent it determines whether her
5 testimony changes.

6 MR. BRADY ALLEN: Thank you.

7 BY MR. BRADY ALLEN:

8 Q So, in your previous testimony you said you had
9 no reason to disagree with Mr. Gaskill's
10 conclusion that the most recent PJM load forecast
11 would not have a capacity need until 2026. Do
12 you have any reason to disagree with that
13 testimony today?

14 A No.

15 Q And, as I understand it, your plans are that
16 construction will not commence until you have
17 reached an agreement with someone for the
18 purchase of the output of the proposed facility?

19 A Correct.

20 Q And, if such an agreement is not reached, then
21 isn't it a possibility that this facility will
22 not be constructed?

23 A That is a possibility.

24 Q And, Ms. Montgomery, did you -- you attended the

1 public witness hearing in Washington, North
2 Carolina, on April 19, 2018; is that correct?

3 A March 19, 2018.

4 Q You're right, March 19th.

5 A Time travels --

6 Q Yeah --

7 A -- but I don't.

8 Q I would like to see that if you could. Do you
9 remember at the public hearing the Wilkinson
10 Solar attorney, Mr. Campen, asked Ms. Deb Van
11 Staalduinen whether she was a real estate
12 appraiser?

13 A Yes.

14 Q Are you a real estate appraiser?

15 A I am not.

16 Q Are you an electrical engineer?

17 A No.

18 Q Are you an environmental engineer?

19 A No.

20 Q Are you an expert in the manufacturing process of
21 solar panels?

22 A I am not.

23 Q As a developer are you familiar with Riparian
24 buffers?

1 A A little bit.

2 Q And on March 13, 2017, in the original
3 application for a CPCN, Wilkinson stated in
4 Exhibit 2 that the project is designed to
5 minimize environmental impacts; is that correct?

6 A That's correct.

7 Q And that is still -- that -- similar sentiments
8 were also added to your testimony from February;
9 is that correct?

10 A Correct.

11 Q And do you remember the testimony of Mr. William
12 Wescott? He testified as a public witness.

13 A I do.

14 Q And he testified that there are potentially
15 23,800 linear feet or four and a half miles of
16 blue line ditches on the site as amended; is that
17 correct?

18 A He did say that.

19 Q And, if these ditches were subject to Riparian
20 buffers, Mr. Wescott testified that this project
21 could lose approximately 39 acres; is that
22 correct?

23 A That's what he said.

24 Q Thirty-nine acres would be a fairly significant

1 amount of the project, would you agree?

2 A Yeah.

3 Q Now, Ms. Montgomery, I would like to refer you to
4 the Wilkinson Amended Application Exhibit A.

5 It's the map that was provided by Wilkinson.

6 A Okay.

7 Q This map highlights three different sets of land.

8 There is the Respass property which was behind

9 Mr. Butcher's home and the school --

10 A Right.

11 Q -- which was removed by the settlement; is that
12 correct?

13 A Panels are removed from that property by the
14 settlement.

15 Q Right. The panels were removed from that site,
16 correct?

17 A Correct.

18 Q And then there is a yellow area on this site
19 which is the amended area; is that correct?

20 A That's correct.

21 Q And there was -- the third set of land is land
22 that is in green that is south of Terra Ceia Road
23 and east of Christian School Road -- west of
24 Christian School Road. And then there's another

1 smaller section that is north of Terra Ceia Road
2 and east of Christian School Road; is that
3 correct?

4 A Correct.

5 Q Now, in the event that this Commission was to
6 rule that the land in yellow behind Ms. Van
7 Staalduinen's home was not suitable or in the
8 public need of convenience, it is our
9 understanding that Wilkinson Solar believes it
10 can move forward with the construction of its
11 project under its original CPCN; is that correct?

12 A That's correct.

13 MR. BRADY ALLEN: Thank you. No further
14 questions.

15 COMMISSIONER BROWN-BLAND: Redirect?

16 MR. CAMPEN: Yes, a couple of questions.

17 REDIRECT EXAMINATION BY MR. CAMPEN:

18 Q Do you recall questions from Mr. Allen regarding
19 property tax, local property tax on the project?

20 A Yes.

21 Q And you testified that there were two elements of
22 local tax.

23 A Correct.

24 Q And those were the land and then the equipment;

1 is that correct?

2 A That's correct.

3 Q And you also in your answer indicated that the
4 land underneath the panels would move to a
5 different classification. Would you elaborate on
6 that?

7 A Sure. So in Beaufort County as in a lot of
8 counties in North Carolina, agricultural land
9 gets a certain tax classification as a
10 residential or industrial or commercial would,
11 and so the land is all classified as agricultural
12 now. It is our understanding that the property
13 would no longer be classified agricultural once
14 we went into construction or operation, that it
15 would get reclassified and then the tax valuation
16 on that would change. And I understand that the
17 North Carolina Department of Revenue provides
18 some guidance for local taxing authorities on
19 what those rates should be.

20 Q So is it your understanding that agricultural
21 land is in a present use value classification?

22 A Correct.

23 Q Therefore, it's a much reduced taxation; is that
24 correct?

- 1 A Correct.
- 2 Q And if it went to commercial or industrial --
- 3 A Right.
- 4 Q -- would you think it would be classified as
5 either one of those? You don't know for
6 certainty perhaps, but --
- 7 A Yes. Our -- I think our anticipation is that it
8 will be classified as commercial but we won't
9 know, you know, we're still having those
10 conversations.
- 11 Q And so the rate of tax that would be paid to
12 Beaufort County under either of those
13 classifications would be, would you say,
14 significantly higher than the agricultural
15 classification?
- 16 A Yes. Our anticipation is that it could be almost
17 triple.
- 18 Q And with respect to the -- you said there was a
19 state law that provides for an 80 percent
20 reduction with respect to business personal
21 property; is that correct?
- 22 A That's correct.
- 23 Q And that's a state law.
- 24 A That's a state law.

1 MR. CAMPEN: That's all we have. Now we're
2 back to the Commission.

3 COMMISSIONER BROWN-BLAND: Questions by the
4 Commission? Commissioner Gray.

5 EXAMINATION BY COMMISSIONER GRAY:

6 Q Ms. Montgomery, on the Wilkinson Amended
7 Application Exhibit A --

8 A Yes, sir.

9 Q -- where the yellow is the 165 acres --

10 A Right.

11 Q -- is it anticipated that that will be leased or
12 purchased?

13 A Leased.

14 Q Leased. And to refresh my memory, west of that
15 which would be west of Christian School Road a
16 large portion would be leased as well?

17 A West of Christian School Road and south of Terra
18 Ceia Road we have a combination of leases and
19 purchase options on that land.

20 Q So if the property right now is classified for
21 property tax purposes as agricultural and we
22 install a solar farm --

23 A Yep.

24 Q -- and if the useful life is say 20 years, and

1 after decommissioning how is that property
2 treated by the property tax people? Is it then
3 reclassified as agricultural or does it retain
4 that higher value, as whatever the classification
5 is, but it's a higher value?

6 A So that's a perfect question for the local tax
7 assessor because I don't believe that they have a
8 number of solar projects in Beaufort County. I
9 don't know that they have worked through taking
10 one out. I do know that in agriculture that a
11 property tax deferral is something that a
12 landowner can apply for when they illustrate that
13 it is in ag use. So under that understanding it
14 would seem that when the solar project is removed
15 that the landowner could then go back and request
16 that it be replaced or reclassified into ag use
17 and present use valuation.

18 Q So in this case of the property south and west,
19 south of Terra Ceia and west of Christian School,
20 portions of which you purchased, portions of
21 which you're leasing, so what we're saying is
22 that the property owners have got to go -- at the
23 end of the process gotta go back to the Beaufort
24 County tax office and say, 'wait a minute, it's

1 really ag land' to get the benefit of the
2 reduction because of the agricultural exclusion?

3 A I can't speak in -- I can't give you the exact
4 answer on that because that would fall to the
5 Beaufort County tax assessor on how that --

6 Q I see.

7 A -- works.

8 Q Because after the --

9 COMMISSIONER GRAY: Thank you.

10 THE WITNESS: Sure.

11 EXAMINATION BY COMMISSIONER BROWN-BLAND:

12 Q Ms. Montgomery, I guess I was told you will tell
13 me about the 200 acre/165 acre discrepancy so
14 I'll just let you have at it.

15 A Okay. I will do that. So it is 165 acres where
16 the project will be placed. There are mult- --
17 there are two parcels that were added in the
18 amendment - a Van Staalduinen brothers ownership
19 and a Harlene Van Staalduinen ownership. On
20 Ms. Van Staalduinen's property, we will only be
21 placing a transmission easement that will be
22 buried. And so of the 160 acres that is the Van
23 Staalduinen brothers we -- and then her parcel is
24 40 so we gave the whole study area to the

1 consultants, but we anticipate that we will use
2 only five acres or less once the project
3 eventually gets installed. But we do want them
4 to look at -- because if you look at how that
5 parcel addresses the road, if we only did say a
6 200-foot corridor and then they found something
7 out there, then we would have to reissue another
8 field study so we asked them to look at a larger
9 footprint.

10 Q Thank you.

11 A You're welcome.

12 Q So you testified earlier that the amended area
13 has been leased and, if I'm understanding you
14 correctly now, it's leased from the Van
15 Staalduinen's. Would that be Casey, Carley and
16 Mark?

17 A Casey, Carl and Mark, yes.

18 Q Casey, Carl -- well I wrote Carley -- Casey, Carl
19 and Mark. And Carl testified at the public
20 hearing, correct?

21 A He did. He did.

22 Q And is one of the parties to the lease the Terra
23 Ceia Farms, LLC?

24 A No.

1 Q So the lease is with the individuals, the
2 individual Van Staalduinens.

3 A Actually, one is the Van Staalduinen brothers,
4 that the three brothers are owners of so that's
5 who owns that piece of land. Terra Ceia Farms,
6 my understanding is their business operation so
7 all their greenhouses and offices are on that
8 parcel but we're not going to that parcel, and
9 that's sort of within Harlene Van Staalduinen's
10 footprint I think.

11 Q All right.

12 A I don't have the map in front of me.

13 Q Do you know whether within the lease terms the
14 owners maintained any rights to use the property
15 while the solar panels or facility -- after the
16 solar facility is installed?

17 A So under Ms. Van Staalduinen's it's an easement
18 agreement with her so it's just for a designated
19 corridor. I believe we have some leeway on where
20 that actually gets located after we complete our
21 environmental study so we can site that best, and
22 then that property will continue to be farmed as
23 it is today. On the Van Staalduinen brothers,
24 the areas we do not occupy with solar panels I

1 imagine they will continue to use for farming or
2 other purposes. And I do believe that there is
3 some water access, maybe a well there that they
4 wanted to maintain access to, that our contract
5 allows them to access.

6 Q So you don't know or don't believe they would
7 continue to use it say for, you know, to keep
8 animals or any kind of grazing, or anything like
9 that?

10 A I don't think that without further discussion
11 with us that the contract would automatically
12 allow that.

13 Q Are you aware of solar facilities that do allow
14 that?

15 A I am.

16 Q Do you have -- Carl Van Staalduinen testified
17 that he'd worked with Invenergy in the past on
18 other projects. Are you familiar or aware of
19 that?

20 A Yes.

21 Q In any of those projects did he, he as the owner
22 or any other owners that you're aware, continue
23 to use the property for any farm purposes?

24 A Yes. So in the previous conversations we had

1 with the Van Staalduinen brothers, we had
2 approached them about a wind project, and a
3 footprint of a wind project is very different
4 from solar so in that way they would be permitted
5 to farm the entirety of the parcel with the
6 exception of the footprint of the turbine. So
7 that was a different style of agreement.

8 Q Do you have any -- beyond the operation of the
9 solar facility, do you have any reason to know
10 what the Van Staalduinen lessors, what future
11 plans they may have for their property?

12 A I do not.

13 COMMISSIONER BROWN-BLAND: All right.
14 Questions on Commission questions?

15 MR. BRADY ALLEN: No questions.

16 MR. CAMPEN: Just one, one question.

17 EXAMINATION BY MR. CAMPEN:

18 Q Ms. Montgomery, you recall Commissioner
19 Brown-Bland's questions to you about the
20 landowner's use of the property during the course
21 of the lease and how the lease was arranged. Are
22 there obligations -- is the landowner obligated
23 to keep the drainage ditches clear or is that
24 the -- Invenergy's responsibility?

1 A It's our understanding that that's our
2 responsibility. You spoke earlier to a point
3 about drainage districts. There are drainage
4 districts in this area. My understanding is that
5 we are definitely under the purview of one,
6 possibly two, and that we will be required as
7 tenants or owners to pay into those drainage
8 districts, and I have seen them out there
9 cleaning those, some of the major canals. And so
10 it's our understanding that we would have to
11 participate in that and that we would have to
12 design our project in such a way that their
13 equipment could still get in to clean those major
14 ditches.

15 Q Is that by use of a lawn mower or some special
16 equipment?

17 A No. What I've seen out there -- I'm not a --
18 construction equipment -- but it's something with
19 a big claw on the front, right, and so that's how
20 you see some of these mounds, if you've been out
21 to the project area, is that they sort of clean
22 out and drop and then things mound and run off,
23 and so that's where they're pulling sediment out
24 of those canals.

1 MR. CAMPEN: Thank you. That's all.

2 COMMISSIONER BROWN-BLAND: All right. Does
3 that conclude --

4 MR. CAMPEN: It does.

5 COMMISSIONER BROWN-BLAND: -- the
6 Applicant's case?

7 MR. CAMPEN: It concludes the Applicant's
8 case. Yes, ma'am.

9 COMMISSIONER BROWN-BLAND: And we will
10 receive into evidence the Amendment Exhibit 1 that was
11 filed -- prefiled with Ms. Montgomery's prefiled
12 testimony.

13 (WHEREUPON, Amendment Exhibit 1 is
14 admitted into evidence.)

15 COMMISSIONER BROWN-BLAND: Just a moment.

16 (Pause) Ms. Montgomery, you will be excused.

17 THE WITNESS: Thank you.

18 COMMISSIONER BROWN-BLAND: And thank you for
19 your testimony.

20 (The witness is excused.)

21 COMMISSIONER BROWN-BLAND: Mr. Campen, the
22 Commission is interested in the Wetlands Delineation
23 Report.

24 COMMISSIONER PATTERSON: No, it's the lab

1 report on the panels.

2 COMMISSIONER BROWN-BLAND: The lab report
3 from the materials in the panels.

4 COMMISSIONER PATTERSON: Right.

5 COMMISSIONER BROWN-BLAND: I believe, wasn't
6 that admitted already or not?

7 MR. CAMPEN: The TCLP Report was admitted at
8 the first hearing; yes, ma'am. That's in evidence
9 now.

10 COMMISSIONER BROWN-BLAND: All right.

11 MR. CAMPEN: It's what I showed him at the
12 stand earlier.

13 COMMISSIONER BROWN-BLAND: Correct. So
14 we've completed the Applicant's case and it's time to
15 begin the intervenors' case but we will take a break.
16 Is that --

17 MR. BRADY ALLEN: That's fine. Thank you.

18 COMMISSIONER BROWN-BLAND: All right. We'll
19 take a 15-minute break.

20 MR. BRITTON ALLEN: We don't have any
21 witnesses.

22 MR. BRADY ALLEN: Yeah, we won't have any
23 witnesses. There are members from the public here
24 that might wish to testify, but it's our understanding

1 that will be the prerogative of the Public Staff.

2 COMMISSIONER BROWN-BLAND: No. This hearing
3 was not noticed as a public witness hearing and the
4 Commission will not receive public witness testimony
5 today. I appreciate that the members -- I see the
6 members of the public and from the area came. I
7 recognize some of the witnesses from the hearing, and
8 I certainly -- and I invited them to come up here and
9 I'm glad to see that they came to see how this process
10 works, but the moment for the public witness portion
11 of the hearing has passed.

12 Is there anything further by way of evidence
13 this morning?

14 MR. BRADY ALLEN: No, Commissioner
15 Brown-Bland.

16 MR. CAMPEN: No.

17 COMMISSIONER BROWN-BLAND: Well that will
18 conclude the evidentiary portion of the case.

19 Mr. Campen, I see you raising your hand.

20 MR. CAMPEN: I have very brief closing
21 remarks, if I may.

22 COMMISSIONER BROWN-BLAND: We will hear from
23 you on closing.

24 MR. CAMPEN: All right. Members of the

1 Commission, of all the issues raised on this layout
2 amendment by consumer statements, by testimony at the
3 public hearing only two of those are arguably new to
4 this case. The first is the allegation that
5 Wilkinson --

6 COMMISSIONER BROWN-BLAND: Mr. Campen, make
7 use of that mic.

8 MR. CAMPEN: Okay. The first of those is
9 that Wilkinson had not coordinated with the Army Corps
10 of Engineers. And that allegation was totally refuted
11 by Mr. Wahlde's testimony that there was
12 correspondence with the Corps which is in the record,
13 and there was trouble finding that communication and
14 agreement on a methodology to conduct the
15 delineations.

16 Further, Wilkinson's existing CPCN is
17 already conditioned on compliance with applicable and
18 environmental laws which would include, of course, the
19 Army Corps of Engineers wetlands permitting.

20 The second, and only the second, new issue
21 that's been raised is whether a hazardous chemical by
22 the name of Gen-X or PFAS may be present in the solar
23 panels to be used by Wilkinson on the project. And
24 that's really not a new issue because there was

1 testimony in the first hearing as there was today that
2 there is no hazardous substance included; the TCLP
3 Report, heavy metals, all of that's in evidence. It
4 contradicts the notion that there's any hazardous
5 substance involved in these panels. Moreover, the
6 claim is completely unsupported by any evidence, the
7 claim that there's Gen-X or PFAS. Witnesses at the
8 public hearing cited Google searches and newspaper
9 articles, hardly competent material and substantial
10 evidence. Further, the exhibit from Jinko Solar
11 confirms that there's no Gen-X or PFAS in these
12 panels.

13 The other issues raised in the consumer
14 claims -- statements of position and at the public
15 hearing, and I won't name them all, were property
16 value, removal of land from agricultural production,
17 environmental impacts, flooding, and so on. All these
18 issues were thoroughly litigated in the first hearing
19 by which the CPCN was granted. No new evidence has
20 been presented by the intervenors. And there's
21 nothing unique about the amendment acreage that
22 warrants reconsideration of these issues as they
23 relate to this amendment acreage.

24 In the October 17 Order issuing the CPCN,

1 the Commission stated and I quote that, *it's carefully*
2 *considered the remaining concerns raised by the public*
3 *witnesses who appeared at that public hearing and by*
4 *the consumer statement of positions filed in that*
5 *docket,* closed quote. And the Commission found after
6 a, quote, *after a thorough review of all the evidence*
7 *in the record, the Applicant's adequately responded to*
8 *the concerns raised by those public witnesses.*

9 The Clearinghouse has filed comments in the
10 docket setting no further review of the amendment area
11 is warranted. The Amendment Application wouldn't be
12 before the Commission today had the Clearinghouse had
13 some reason not to provide a letter to you that no
14 further review was necessary. Also, the Public Staff
15 has entered testimony and testified that the
16 Application meets the Commission's standards and they
17 recommended approval.

18 Now, I'm sure that the concerns of the
19 Lilley's and Ms. Van Staaldunen and others who filed
20 comments and testified are genuinely held concerns,
21 but there's no competent, substantial material
22 evidence offered to support those concerns. They're
23 just that, concerns. And this Commission has to make
24 its decision on the basis of evidence, not supported

1 concerns or speculation about what might or might not
2 happen. The only evidence before the Commission in
3 this phase of the proceeding is to the effect of
4 contradicting these, this speculation and the concerns
5 that have been raised that are unsupported. So, with
6 that, we conclude our case and we appreciate your
7 attention and patience.

8 COMMISSIONER BROWN-BLAND: Thank you,
9 Mr. Campen. Mr. Allen.

10 MR. BRADY ALLEN: Yes, if I may briefly
11 respond.

12 COMMISSIONER BROWN-BLAND: Go ahead.

13 MR. BRADY ALLEN: First, I would like to
14 express gratitude for the Commission to allow the
15 intervenors in this case. We understand that the
16 Commission allowed some leniency in order to allow the
17 intervenors to proceed, and that we think it's
18 important for North Carolinians to be able to
19 participate in these hearings.

20 Mr. Campen just stated that the intervenors
21 have not provided evidence in this case. It is not
22 our burden to provide evidence in this case. It is
23 the burden of Wilkinson Solar to prove their case.
24 Wilkinson Solar has not been able to show that the

1 solar panels do not contain heavy metals. Quite the
2 opposite, they have not been able to show that there
3 are issues with the land returning to agricultural use
4 after the facilities have been -- had their lifeful
5 use. You know they've shown that the solar panels are
6 safe for a landfill, but the people of Terra Ceia rely
7 on the ground water drinking water as well as for
8 growing crops.

9 Ultimately, this is not an issue for a
10 reconsideration. This is a new test for public
11 convenience and necessity. And Wilkinson needs to
12 acknowledge that -- Wilkinson's duty is to have the
13 burden of proof for this public convenience and
14 necessity. They're -- what they provided in the last
15 case, to the extent it shows that they have produced
16 that evidence, that is not necessarily clear. So,
17 thank you.

18 COMMISSIONER BROWN-BLAND: Well, I'll look
19 forward to your proposed orders and briefs. And is
20 there any reason in this case that you couldn't be in
21 a position to file those within 20 days from the
22 posting of the transcript on the Commission's website?

23 MR. CAMPEN: Not for the Applicant.

24 MR. BRADY ALLEN: We can agree to that.

1 COMMISSIONER BROWN-BLAND: It's good with
2 the Public Staff, I take it.

3 MS. DOWNEY: (Nods head affirmatively).

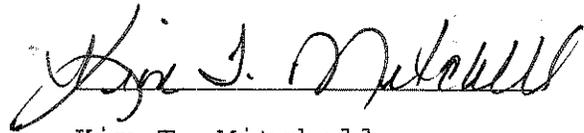
4 COMMISSIONER BROWN-BLAND: Well, that brings
5 this matter to a close. I appreciate your cooperation
6 and full participation. Thank you. We stand
7 adjourned.

8 (WHEREUPON, the proceedings were adjourned.)
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C E R T I F I C A T E

I, KIM T. MITCHELL, DO HEREBY CERTIFY that
the Proceedings in the above-captioned matter were
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription
to the best of my ability.



Kim T. Mitchell
Court Reporter II