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November 15, 2018

VIA HAND DELIVERY

FILED
NOV 15 REC'D
Clerk's Office
N.C. Utilities Commission

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

Re: Wilkinson Solar LLC's Exceptions
Docket No. EMP-93, Sub 0

Dear Clerk Jarvis:

Enclosed for filing in the above-referenced docket is the original and four (4) copies of Wilkinson Solar LLC's Exceptions to the Recommended Order Denying the Application for an Amended Certificate of Public Convenience and Necessity. Please return a file-stamped copy via our courier.

Thank you for your assistance with this matter. Please let me know if you have any questions.

Sincerely,

Katherine E. Ross

Katherine E. Ross

Enclosure

cc: Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EMP-93, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Wilkinson Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 74-MW Solar Facility in Beaufort County, North Carolina	WILKINSON SOLAR LLC'S EXCEPTIONS TO RECOMMENDED ORDER DENYING APPLICATION FOR AMENDED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY .

NOW COMES WILKINSON SOLAR LLC ("Wilkinson" or the "Applicant") by and through its counsel, pursuant to N.C. Gen. Stat. § 62-78 and Rule R1-26(c) of the Commission's Rules, and files its exceptions to the *Recommended Order Denying Application for Amended Certificate of Public Convenience and Necessity* dated November 1, 2018 (the "Recommended Order"), and requests that the Commission set oral argument on these Exceptions.

EXCEPTION NO. 1

Wilkinson takes exception to Finding of Fact 3, that "[t]he Applicant failed to demonstrate that its requested amendment to the CPCN previously issued is consistent with the public convenience where the Applicant failed to demonstrate by competent, material, and substantial evidence that the applicable environmental and public health regulations or the local zoning ordinance require measures that mitigate or eliminate the concerns expressed by the public witnesses regarding the potential for increased storm water runoff from the facility site, and the uncertainties related to contamination to surface or ground

waters from the limited quantities of heavy metals contained in the solar PV panels that are components of the proposed facility." Recommended Order, p. 5.

GROUNDS FOR EXCEPTION NO. 1:

The Commission unanimously granted Wilkinson a Certificate of Public Convenience and Necessity ("CPCN") on October 11, 2017, which remains valid and binding (the "CPCN Order"). The process that led to the CPCN Order addressed virtually identical public concerns that have now led to the inconsistent recommendation that the amendment to the CPCN filed on November 29, 2017 (the "Amendment") be denied. As in the proceedings on the CPCN application filed on March 13, 2017 (the "Application"), Wilkinson met its burden of providing competent, material, and substantial evidence that the Amendment is consistent with the public convenience. In addition, and although not required by statute or Commission Rules, Wilkinson addressed the public concerns regarding water runoff, heavy metals, and all matters raised in the Amendment proceedings, which were nearly identical to the public concerns raised in the Application proceedings.

Material evidence is defined as "evidence having some logical connection with the facts of consequence or the issues." *Dellinger v. Lincoln Cty.*, ___ N.C. App. ___, 789 S.E.2d 21, 27 (2016). Substantial evidence is defined as "more than a scintilla or a permissible inference. It means such relevant evidence a reasonable mind might accept as adequate to support a conclusion." *State ex rel. Utils. Comm'n v. Cooper*, 367 N.C. 644, 648, 766 S.E.2d 827, 829 (2014) (citing *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n*, 348 N.C. 452, 460, 500 S.E.2d 693, 700 (1998)). Wilkinson presented the testimony of

multiple professionals, each of whom was accepted as an expert witness without challenge, to satisfy its burden of providing competent, material, and substantial evidence. The parties intervening in this matter presented no expert witnesses,[1] and thus there is no competent or material evidence of any kind to support either the public concerns raised or the findings and conclusions in the Recommended Order.

A. The Recommended Order does not give due consideration to Wilkinson's competent evidence, which is an error at law.

It is well settled that an order "which indicates that the Commission accorded only minimal consideration to competent evidence constitutes an error at law . . . ." *State ex rel. Utils. Comm'n v. Thornburg*, 314 N.C. 509, 511, 334 S.E.2d 772, 773 (1985) (citing *State ex rel. Utils. Comm'n v. Edminsten*, 299 N.C. 432, 437, 263 S.E.2d 583, 588 (1980)).

When an applicant for a quasi-judicial permit meets its burden of providing competent, material, and substantial evidence on the required findings, the applicant is *prima facie* entitled to the permit. *See PHG Asheville, LLC v. City of Asheville*, 2018 WL 5795846, at *4 (N.C. Ct. App., Nov. 6, 2018); *see also Humble Oil & Refining Co. v. Board of Aldermen of Town of Chapel Hill*, 284 N.C. 458, 468, 202 S.E.2d 129, 136 (1974). An applicant *prima facie* entitled to a permit must be granted the permit unless a denial is based on findings of fact that are supported by competent, material, and substantial evidence. *See, e.g., Innovative 55, LLC v. Robeson Cty.*, ___ N.C. App. ___, 801 S.E.2d 671, 677 (2017).

[1] Wilkinson notes that intervenor Deb VanStaalduinen testified as a public witness at the public witness hearing on March 19, 2018, prior to the Commission's order granting her second petition to intervene issued on April 6, 2018.

In this matter, contrary to the above established principles, the Recommended Order effectively ignores Wilkinson's competent and wholly uncontradicted evidence, and improperly gives weight to speculative and unsupported concerns raised by public witnesses. The intervening parties did not present any testimony at the evidentiary hearing on the Amendment, and thus there was no competent or material evidence on which the Commission could base a denial of the Amendment. The public witness statements provided only "speculative assertions or mere expression of opinion about the possible effects of granting a permit," and thus "are insufficient to support the findings of a quasi-judicial body . . ." *Sun Suites Holdings, LLC v. Bd. of Aldermen of Town of Garner,* 139 N.C. App. 269, 276, 533 S.E.2d 525, 530 (2000) (finding the expression of "generalized fears" does not constitute a competent basis for denial of a permit).[2]

Furthermore, an applicant "need not negate every possible objection to the proposed use." *Woodhouse v. Bd. of Comm'rs of Town of Nags Head*, 299 N.C. 211, 219–20, 261 S.E.2d 882, 888 (1980). After showing regulatory compliance, the burden of establishing that the facility is not consistent with public convenience falls upon a party who opposes the project; to hold otherwise "would impose an intolerable, if not impossible, burden on an applicant." *Id.*

[2] For example, (1) Bradley VanStaalduinen stated that "my concern tonight was water contamination from solar facilities"; when asked the source of such concern, he indicated it was from articles found on Google (Tr. Vol. 4, pp. 28-30); (2) Myra Beasley expressed concerns about Gen-X, PFAS, and heavy metals; when asked the source of such concerns, she indicated they were based on internet research (Tr. Vol. 4, pp. 31, 34); (3) Kristina Beasley expressed concerns about whether they would "experience the effects as those in Puerto Rico after the last hurricane" (Tr. Vol. 4, p. 41); and (4) Deb VanStaalduinen stated her concerns were property value, prime farmland, and health and safety; when asked if her concerns were the same as those she raised in the Application proceedings, she indicated they were (Tr. Vol. 4, pp. 54, 58-59, 65-66).

B. The record includes competent evidence that the facility is for the public convenience.

Wilkinson's evidence supporting the fact that the facility is for the public convenience is provided through the following: (1) the Application filed on March 13, 2017; (2) the pre-filed direct testimony in support of the Application from April Montgomery filed on March 13, 2017; (3) the pre-filed supplemental testimony, including exhibits, of April Montgomery and Paul Thienpont filed on May 12, 2017; (4) the NC Clean Tech fact sheet regarding health and safety impacts of Solar PV filed on May 19, 2017; (5) the testimony and official exhibits entered into the record at the Application hearing on May 22-23, 2017; (6) the affidavit and attachments of April Montgomery filed on June 22, 2017; (7) the Amendment filed on November 29, 2017; (8) the pre-filed direct testimony in support of the Amendment from April Montgomery filed on February 16, 2018; (9) the pre-filed supplemental testimony, including exhibits, of Joe von Wahlde, Paul Thienpont, and John Barefoot filed on April 5, 2018; and (10) the testimony and official exhibits entered into the record at the Amendment hearing on April 11, 2018.

Such evidence is also found in the Public Staff's pre-filed testimony filed on May 4, 2017 supporting the Application and on March 8, 2018 supporting the Amendment, and in the State Environmental Review Clearinghouse's filings, which state that no further review action is needed by the Commission to determine compliance with the North Carolina Environmental Policy Act, filed on May 2, 2017 for the Application and on January 16, 2018 and January 26, 2018 for the Amendment. Finally, the CPCN Order sets forth, in detail, the evidence

addressing the public witness concerns and the rationale for issuing the CPCN. The CPCN Order likewise provides the rationale for issuing the Amendment.

With regard to public witness concerns over storm water runoff and the potential for contamination to surface or ground waters from heavy metals, Wilkinson filed supplemental pre-filed testimony after the public hearings for both the Application and the Amendment to address these concerns. The whole record thus reflects substantial competent and material evidence by Wilkinson that the Amendment is for the public convenience.

i. Wilkinson's expert Joe von Wahlde presented substantial competent and material evidence that the project is designed to have minimal impacts on waters of the United States.

Wilkinson presented the testimony of Joe von Wahlde, a Professional Wetlands Scientist with a PWS designation, a national certification from the Society of Wetlands Scientists, who has over twenty-nine years of experience in this field. Mr. von Wahlde testified regarding the wetlands delineations performed on the site, including the Amendment area. Tr. Vol. 5, p. 28. Mr. von Wahlde testified that the delineations, totaling approximately 900 acres, identified minimal jurisdictional areas within the footprint of the proposed facility. Tr. Vol. 5, p. 29. Mr. von Wahlde sponsored the two delineation footprints as exhibits and sponsored the wetlands delineation showing the minimal jurisdictional features as a confidential exhibit. Tr. Vol. 5, p. 30. Mr. Von Wahlde confirmed that "the impacts would be minimal or none at all. It'll be boring underneath the waters of the U.S. so there would be no impact." Tr. Vol. 5, p. 45. The intervening parties produced no competent evidence questioning or contradicting Mr. von Wahlde's testimony.

ii. Wilkinson's expert Paul Thienpont presented substantial competent and material evidence that the project poses no public health or safety risk in response to the unsubstantiated public concerns.

Wilkinson presented the testimony of Paul Thienpont, who has a degree in atmospheric science and over seven years of experience working in the renewable energy field. Mr. Thienpont testified that the panels planned for use for the facility pass the EPA's Toxic Characteristic Leaching Procedure ("TCLP") test, which classifies the panels as non-hazardous and confirms that the panels are allowed for disposal as non-hazardous waste in landfills. Tr. Vol. 5, p. 56. The TCLP test was admitted into evidence during the Application proceedings as Applicant Thienpont Hearing Exhibit 2. Tr. Vol. 5, p. 56; Applicant Thienpont Hearing Exhibit 2. Mr. Thienpont testified that the TCLP test is designed to test the worst-case scenario, testing what would happen if the panels were landfilled and pulverized and subject to intense chemical baths. Tr. Vol. 5, p. 75. This test is used to analyze what hazardous materials, if any, would be extracted under worst-case conditions in environments that are much more rigorous than encountered naturally. Tr. Vol. 5, pp. 75-76. The TCLP test analyzed the panels for arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, and found that "no analyte concentrations exceeded the maximums allowed." Applicant Thienpont Hearing Exhibit 2.

Mr. Thienpont also testified that the panels are compliant with the Restriction of Hazardous Substances ("RoHS") test, which is an international standard used to categorize the existence of heavy metals within various types of equipment. Tr. Vol. 5, p. 65. The results of the RoHS test applied to the panels intended for use by Wilkinson confirm compliance with all federal and state

regulations regarding heavy metals. Tr. Vol. 5, p. 65. The intervening parties provided no evidence to rebut or question Mr. Thienpont's testimony, or the RoHS or TCLP conclusions.

iii. Wilkinson's expert John Barefoot presented substantial competent and material evidence on storm water runoff and permitting.

Wilkinson presented the testimony of John Barefoot, a North Carolina licensed professional engineer with over eight years of experience specializing in land development, water resources, and hydrology. Mr. Barefoot testified that his firm, Kimley-Horn, prepared a preliminary review of storm water requirements and anticipated storm water management design for the facility as approved in the CPCN Order. Tr. Vol. 5, p. 84; Barefoot Supplemental Exhibit 1. The report concluded that, based on the site visit, North Carolina Department of Environmental Quality's ("NCDEQ") storm water permitting requirements, and the anticipated storm water design, the facility's "impact to existing drainage patterns and flows would be negligible, or more likely, the proposed solar use will provide a reduction in runoff from the site." Tr. Vol. 5, p. 85, Barefoot Supplemental Exhibit 1.[3] Mr. Barefoot testified that this conclusion was equally applicable to the additional land added to the facility in the Amendment because the additional land was "identical in all material respects" to the land included in the report. Tr. Vol. 5, p. 85. Further, Mr. Barefoot testified that the State Clearinghouse Comments on the Amendment did not warrant any further review related to storm

[3] Further on the issue of storm water design and runoff, in its Application Wilkinson states that a Stormwater Management Permit from NCDEQ and Erosion and Sedimentation and Control Plan and Stormwater General Permit Coverage for Construction-Related Activities will be obtained. NCDEQ is the agency with the expertise to ensure compliance with applicable laws and regulations related to storm water management and water runoff.

water or any other environmental issues. Tr. Vol. 5, p. 85. The intervenors entered no competent evidence that the Amendment would have impacts on wetlands or have negative impacts to runoff from the site.

iv. Wilkinson's expert April Montgomery presented substantial competent, material, and substantial evidence on storm water runoff and permitting.

Wilkinson presented the testimony of April Montgomery, who has over nine years of experience in the renewable energy field, having worked since 2010 on the development of multiple wind and solar energy projects throughout North Carolina and the Southeast, including assisting clients with local, state, and federal land use and environmental permitting protocols. Ms. Montgomery testified that, other than the addition of the new acreage, all aspects of the proposed facility remain the same as what was approved in the CPCN Order. Tr. Vol. 5, p. 105.

Ms. Montgomery further testified as follows:

1. That Wilkinson has obtained, or will obtain, all required local, state, and federal approvals, including environmental permits such as storm water permits and soil erosion and control approvals. Tr. Vol. 5, p. 110;
2. That Beaufort County, by letter dated November 9, 2017, confirmed the amended site layout as shown in the Amendment remains in general compliance with the Beaufort County Solar Farm Ordinance. Tr. Vol. 5, p. 110;

3. That Wilkinson "designed the facility to avoid any anticipated impacts to wetlands and jurisdictional waters on the site and will perform no mass grading." Tr. Vol. 5, p. 111; and
4. That Wilkinson is responsible for keeping the drainage ditches clear, and would pay into the local drainage district responsible for maintaining the ditches and that the project is designed to allow the drainage districts access to the ditches with their major equipment. Tr. Vol. 5, pp. 136-37.

As has been discussed, the intervenors provided no competent evidence that the Amendment would impact wetlands, that the facility would negatively impact storm water runoff, or that Wilkinson would not maintain the ditches. The "lay notion" that the testimony and analysis of an expert witness is based on inadequate methodology does not constitute competent evidence under the statute to rebut Wilkinson's expert testimony and reports. *PHG Asheville*, 2018 WL 5795846, at *10 (citing *Innovative 55*, ___ N.C. App. at ___, 801 S.E.2d at 678). The record contains no competent or material evidence on which the Amendment may be denied, and therefore the Commission must issue the Amendment.

As to the Recommended Order's questioning of the persuasiveness of Wilkinson's experts, it is well established that governmental bodies do not have unguided discretion to disagree with expert testimony. "A city council may not deny a conditional use permit in their unguided discretion or because, in their view, it would adversely affect the public interest." *Id.* at *4 (quoting *Howard v. City of Kinston*, 148 N.C. App. 238, 246, 558 S.E.2d 221, 227 (2002)). "[T]he

denial of a conditional use permit may not be based on conclusions which are speculative, sentimental, personal, vague or merely an excuse to prohibit the requested use." *Id.* (quoting *Howard*, 148 N.C. App. at 246, 558 S.E.2d at 227).

When an expert witness demonstrates that his or her analysis is based on standard methodologies, as was the case with the testimonies of Mr. Barefoot regarding runoff and Mr. Thienpont regarding the toxicity of the solar panels, the soundness of the analysis can only be rebutted by "competent, material, and substantial expert evidence." *Id.* at *9. No such evidence was introduced to question Wilkinson's expert witness testimony and reports.

Finally, generic concerns that would exist regardless of the developmental use of the land, such as the maintenance of the drainage ditches, cannot be relied on to deny a permit, because doing so would bar any development, thereby improperly depriving the owner of its property rights. *Woodhouse*, 299 N.C. at 219-20, 261 S.E.2d at 888; *see also Ecoplexus, Inc. v. Currituck Cty.*, ____ N.C. App. ____, 809 S.E.2d 148, 156 (2017) (board inappropriately ignored applicant's expert testimony regarding storm water management and solely relied on lay witness concerns on flooding where flooding was based on current conditions and not due to the condition or use proposed by applicant).

For all the above reasons, Wilkinson's expert witnesses provided evidence which met its burden, and such evidence was not rebutted.

C. The weight of the evidence does not support the Recommended Order's denial of the Amendment.

Pursuant to N.C. Gen. Stat. § 62-78(d), when exceptions are filed, the Commission reviews the whole record to decide the matter in controversy. As

such, the Commission should consider the entire docket, including the testimony and evidence provided throughout the Application and Amendment proceedings.

The record includes substantial competent and material evidence presented by Wilkinson on issues related to the public convenience. This includes evidence related to (1) the public benefits of solar-powered electric generation; (2) the investment in the local economy; (3) decommissioning; (4) the commitment to construct and operate the facility in compliance with federal, State, and local laws and all required permits, including environmental permits; (5) responses over concerns related to public health and safety, including water contamination, PFAS, Gen-X, heavy metals, flying debris, combustible soils; (6) local economic concerns such as the potential impact from removing farmland from agricultural use, loss of tax revenue, loss of seasonal farm jobs, and loss of farm revenue; (7) the potential impact to wildlife; and (8) aesthetic concerns. Wilkinson carried its burden on each of these issues.

The intervenors presented no expert testimony at the evidentiary hearing. Tr. Vol. 5, p. 139. While appropriately part of the record, the public witness testimony, which merely speculates about potential health and storm water impacts, is not competent evidence upon which the Commission can base a denial of a permit. The lay public witnesses provided no competent evidence, and certainly no expert testimony, to show that the Amendment is inconsistent with the public convenience or that there should be any deviation from the findings of the CPCN Order. As shown above, Wilkinson fully addressed the public concerns which were the bases of the Recommend Order's denial of the Amendment.

D. The Recommended Order is in contravention of Commission rules and longstanding practice.

The relevant statute, N.C. Gen. Stat. § 110.1, and implementing Rule R8-63, require a showing of need for a merchant plant, not compliance with environmental laws and regulations or local zoning ordinances. All parties agreed that the issue of need for the Amendment was not in question because the Amendment did not impact the Commission's finding of need in the CPCN Order.

In considering CPCN applications, the Commission should defer to agencies with expertise and regulatory authority on issues such as environmental and natural resource protection, public health, and local zoning. As with other merchant plants, the facility is subject to federal, State, and local laws and regulations related to the construction and operation of the facility pursuant to Rule R8-63(e)(2). As the Commission found when issuing the CPCN Order, Wilkinson provided substantial evidence concerning the federal, state, and local regulatory and permitting agencies that will be involved during the development of the facility, including the US Fish and Wildlife Service, the United States Army Corps of Engineers (the "Corps"), NCDEQ, the North Carolina Department of Transportation, and Beaufort County.

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

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

Wilkinson attached to its Amendment filing the November 9, 2017 letter from Beaufort County confirming that the Amendment remains in general compliance with the Beaufort County Solar Farm Ordinance. Wilkinson Amended Application Exhibit B (November 29, 2017). Beaufort County's decision does not frustrate controlling State policy and should not be upended by the Recommended Order.

While the Commission often is presented with environmental issues, such matters are "generally left to other regulatory agencies," and are "not at the heart of the regulatory process as the Utilities Commission decides on the application for a certificate of public convenience and necessity . . . ." *State ex rel. Utils. Comm'n v. High Rock Lake Ass'n, Inc.*, 37 N.C. App. 138, 140-41, 245 S.E.2d 787, 790 (1978). The State Environmental Clearinghouse reviewed the Amendment and filed comments on January 16, 2018 and January 26, 2018, stating that it had determined that no further State Clearinghouse review action on Wilkinson's part was needed for compliance with the North Carolina Environmental Policy Act. The Commission complied with longstanding Commission practice and conditioned the CPCN Order on compliance with all applicable environmental laws: "Wilkinson Solar LLC will construct and operate the generating facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements . . . ." Issuing the Amendment subject to the same condition fully addresses the public

concerns related to environmental issues, including storm water runoff and heavy metals.

E. The Commission issued the CPCN Order on almost identical evidence in response to virtually identical public concerns, and denial of the Amendment is inconsistent with the CPCN Order.

The evidence at issue here is evidence of the identical character and quality, and is largely from the same expert witnesses, that the Commission found to be competent, material, and substantial for the issuance of the CPCN Order. For the Recommended Order to now find that such evidence is not competent, material, and substantial is inconsistent and incorrect.

As stated at the Amendment evidentiary hearing, the only two "new" concerns raised by the public that were not raised during the Application proceedings were whether Gen-X and/or PFAS were present in the solar panels and an allegation that Wilkinson had not coordinated with the Corps regarding wetlands. Mr. Thienpont's testimony, supported by an exhibit from the panel manufacturer stating that "neither the Gen X or PFAS chemical compounds are used in any of the materials used to manufacturer (sic)" the solar photovoltaic modules responded to the first "new" concern. Tr. Vol. 5, pp. 55-56; Thienpont Supplemental Exhibit 1. Mr. von Wahlde's testimony regarding coordination with the Corps on the wetlands delineations responded to the second "new" concern. Tr. Vol. 5, p. 34; von Wahlde Supplemental Exhibit 1. Every other public concern raised in response to the Amendment had been raised in response to the Application, in response to which the Commission unanimously issued the CPCN Order.

F. The Recommended Order is contrary to public policy and will unnecessarily create regulatory uncertainty.

The Recommended Order fails to give due weight to North Carolina public policy favoring energy generated within this State. *See* N.C. Gen. Stat. § 62-2(a)(10); *see also* N.C. Exec. Order No. 80 (October 29, 2018).[4] For a number of reasons related to economics, the environment, and landowners' rights, North Carolina public policy favors solar power and other renewable energy which can be created here. Instead of implementing this policy, the Recommended Order relies on concerns not based on competent evidence and, as a result, denies a landowner the right to the reasonable use and enjoyment of his or her property.[5] Such an approach is inconsistent with North Carolina public policy.

The Recommended Order, if adopted, will also create regulatory uncertainty. If a CPCN amendment can be denied on the basis of unsubstantiated lay witness concerns in the face of uncontroverted expert witness testimony when no contrary competent evidence is provided, then future applicants will face an ever-changing and elusive burden of proof. Such uncertainty would be inconsistent with N.C. Gen. Stat. § 62-110.1.

EXCEPTION NO. 2

Wilkinson takes exception to the Recommended Order's discussion of the evidence and conclusions for Finding of Fact 3 that Wilkinson's expert witnesses did not provide competent, material, and substantial evidence related to the

[4] https://files.nc.gov/governor/documents/files/EO80-%20NC%27s%20Commitment%20to%20Address%20Climate%20Change%20%26%20Transition%20to%20a%20Clean%20Energy%20Economy.pdf

[5] The Amendment landowners filed a request that the Commission issue the Amendment, stating that "the amendment will provide certainty for [their] family and [their] business while protecting [their] real property rights." *See* Consumer Statement of Position, Docket EMP-93, Sub 0 (October 8, 2018).

public convenience, and to the ultimate finding that "the Applicant failed to demonstrate that its requested amendment to the CPCN previously issued is consistent with, or required by, the public convenience where the Applicant failed to demonstrate by competent, substantial, and material evidence that it had sufficiently addressed the public witnesses' concerns regarding the potential for water runoff from the proposed site of the facility, or the cumulative effect of the potential for contamination to surface or ground waters from heavy metals used in the construction of the solar PV panels." Recommended Order, pp. 7-14.

GROUNDS FOR EXCEPTION NO. 2:

See grounds for Exception No. 1.

EXCEPTION NO. 3

Wilkinson takes exception to the Recommended Order's conclusion that the amendment to the CPCN be denied and that the CPCN amendment not be issued. Recommended Order, p. 14.

GROUNDS FOR EXCEPTION NO. 3:

See grounds for Exception No. 1.

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For the foregoing reasons, the Recommended Order should be rejected and an Order Issuing the Amended CPCN to Wilkinson Solar LLC should be entered. Wilkinson requests that the Commission schedule an oral argument on the Exceptions outlined herein. As described in Wilkinson's annual progress report filed on September 21, 2018, the delay in action on the Amendment has impacted Wilkinson's ability to move forward and fulfill contractual commercial

deadlines, and has caused a significant impact on the cost for the final design and construction of the facility.

Respectfully submitted, this the 15th day of November, 2018.

WILKINSON SOLAR LLC

Katherine E. Ross

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Attorneys for Wilkinson Solar LLC

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Wilkinson Solar LLC's Exceptions to Recommended Order Denying Application for Amended Certificate of Public Convenience and Necessity in NCUC Docket No. EMP-93, Sub 0 on the below parties of record in this proceeding or their attorneys of record by causing a copy to be deposited in the United States Mail, postage prepaid, properly addressed to each or by electronic delivery upon agreement from the parties:

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This the 15th day of November, 2018.

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