

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-93, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	ORDER ACCEPTING SETTLEMENT
Application of Wilkinson Solar LLC for a)	AND ISSUING AMENDED
Certificate of Public Convenience and)	CERTIFICATE OF PUBLIC
Necessity to Construct a 74-MW Solar)	CONVENIENCE AND NECESSITY
Facility in Beaufort County, North Carolina)	

BY THE COMMISSION: On October 11, 2017, the Commission issued an Order granting Wilkinson Solar LLC (Applicant), a Certificate of Public Convenience and Necessity (CPCN) pursuant to N.C.G.S. § 62-110.1(a) and Commission Rule R8-63 for construction of a 74-MW_{AC} merchant plant solar photovoltaic (PV) electric generating facility to be located 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 in Beaufort County, North Carolina.

On November 29, 2017, the Applicant filed a letter with the Commission stating that the footprint of the facility had been expanded to the south and would incorporate additional land south of Terra Ceia Road, as shown on the revised site plan map attached thereto. Considering the Applicant's letter and revised site plan as an application to amend the CPCN previously granted in this docket, on December 6, 2017, the Commission issued an Amended Order Requiring Publication of Notice and Further Review by State Clearinghouse requiring the Applicant to publish notice of the application and requesting further review by the State Clearinghouse. In that Order, the Commission stated that if a complaint were received within ten days after the last date of the publication of the notice, the Commission would schedule a public hearing to determine whether a certificate should be awarded, would give reasonable notice of the time and place of the hearing to the Applicant and to each complainant, and would require the Applicant to publish notice of the hearing in the newspaper in which the notice of the application was published.

On or after December 12, 2017, approximately 55 members of the public filed consumer statements of position in this docket. On February 7, 2018, based upon the complaints contained in the consumer statements of position, the Commission issued an Order setting the application to amend the CPCN for a public witness hearing and a separate expert witness hearing, requiring the Applicant to prefile direct expert witness testimony and to provide public notice, and establishing deadlines for the filing of petitions to intervene, intervenor testimony, and rebuttal testimony.

On March 9, 2018, three petitions to intervene were filed by: (1) Marshall and Joann Lilley; (2) Kristina Beasley; and (3) Deb Van Staalduinen. After further filings and motions, on April 2, 2018, the Commission issued an Order granting the petitions to intervene of Marshall and Joann Lilley, and of Deb Van Staalduinen (together, Intervenors), and denying the petition to intervene of Kristina Beasley.

On March 19, 2018, the public hearing was held before the assigned panel of three Commissioners as scheduled in Washington, North Carolina, for the purpose of receiving public witness testimony. The following public witnesses appeared and gave testimony at this hearing: William Wescott, Herbert Eckerlin, Bradley Van Staalduinen, Myra Beasley, Kristina Beasley, Carl Van Staalduinen, Jeanne Van Staalduinen, and Brenda Forrest.

On April 11, 2018, the hearing resumed before the panel for the purpose of receiving testimony from the parties' witnesses. The Applicant presented the supplemental testimony and exhibits of Joe Von Wahlde, the supplemental testimony and exhibit of Paul Thienpont, the supplemental testimony and exhibit of John Barefoot, and the direct testimony and exhibit of April Montgomery. The Public Staff presented the supplemental testimony of Evan D. Lawrence.

On November 1, 2018, the panel of three Commissioners issued a Recommended Order denying the Applicant's requested amendment to the CPCN previously issued (Recommended Order). In the Recommended Order, the panel found as follows:

The 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 Denying Application for Amended Certificate of Public Convenience and Necessity, at 5, Docket No. EMP-93, Sub 0 (N.C.U.C. 2018). The panel decision was not unanimous.

On November 15, 2018, the Applicant filed exceptions to the Recommended Order. Through its exceptions, the Applicant argues that the panel of the Commission erred in making the above-excerpted finding of fact.

On November 16, 2018, the Commission issued an Order scheduling this matter for oral argument on December 17, 2018, for the purpose of considering the Applicant's exceptions. Because the exceptions were filed within the time period prescribed by the

Order dated November 1, 2018, the Recommended Order never became effective, consistent with N.C.G.S. § 62-78.

On December 13, 2018, the Intervenors filed a notice of withdrawal as parties to this proceeding. The Intervenors request that the Commission accept their filing as notice of their withdrawal as parties to this proceeding, including the withdrawal of “any and all objections and complaints” related to the Applicant’s requested amendment to the CPCN, as modified pursuant to a settlement agreement reached between the Applicant and the Intervenors.

On December 14, 2018, the Applicant filed the settlement agreement referenced in the Intervenors’ notice of withdrawal (Settlement Agreement). The Applicant designated the Settlement Agreement as confidential on the basis that the Settlement Agreement contains information that is confidential pursuant to N.C.G.S. § 132-1.2.

Also on December 14, 2018, the Commission issued an Order cancelling the oral argument scheduled for December 17, 2018.

On December 17, 2018, the Applicant filed a site layout amendment, reflecting the removal of solar PV panels from a 26-acre portion of the site of the proposed facility that is adjacent to property owned by the Intervenors.

Based upon a careful review of the provisions of the Settlement Agreement, the Commission finds that the Settlement Agreement demonstrates that its provisions are the product of the “give-and-take” of settlement negotiations between the Applicant and the Intervenors, and that the Settlement Agreement resolves all disputed issues between the Applicant and the Intervenors. Therefore, the Commission concludes that the Settlement Agreement should be accepted in its entirety.

In the Commission's October 11, 2017 Order, the Commission issued a CPCN to the Applicant, subject to the following conditions: (1) that the Applicant construct and operate the facility in strict accordance with applicable laws and regulations, including any local zoning and environmental permitting requirements, (2) that the Applicant or any successor certificate holder will not assert that issuance of the CPCN in any way constitutes authority to exercise a power of eminent domain, and it will abstain from attempting to exercise such power, and (3) that the CPCN shall be subject to Commission Rule R8-63(e) and all orders, rules and regulations as are now or may hereafter be lawfully made by the Commission. The Applicant, by its proposed order, agreed that it would be appropriate to apply the same three conditions to the amended CPCN.

The Commission agrees with the Applicant, and finds it appropriate to issue the amended CPCN subject to the same conditions as were imposed upon the Applicant in the issuance of the original CPCN. The Applicant’s ongoing duty to comply with the conditions related to protection of the environment and public health and safety sufficiently address the concerns expressed by the public witnesses. These conditions ensure that the facility is operated in a manner that protects the environment and natural

resources, and mitigates or eliminates potential harm to the public health and safety – at least to the extent that federal, state, and local policymakers have determined is appropriate.

Pursuant to N.C.G.S. § 62-78(d), when, as in this case, exceptions to a Commission Panel’s recommended order have been filed, it is the duty of the (full) Commission to consider the same and, if sufficient reason appears therefor, to grant such review or to make such order or hold or authorize such further hearing or proceedings as may be necessary or proper to carry out the purposes of Chapter 62 of the General Statutes and, after such review, to decide the matter. After careful consideration, the Commission concludes that the Commission’s acceptance of the Settlement Agreement and the new evidence provided through the Settlement Agreement, have materially altered the record evidence in this proceeding since the panel of Commissioners issued its Recommended Order.

Finally, in the Applicant’s updated site plan filed on December 17, 2018, the Applicant states that the project boundary of the site of the proposed facility has not changed and the revised site plan reduces the footprint of the facility. In addition, the Applicant states that the Public Staff authorized the Applicant to represent to the Commission that the Public Staff agrees with the Applicant that no further review by the State Clearinghouse is required. The Commission agrees with the Applicant and the Public Staff.

Therefore, based upon the foregoing and the entire record herein, and subject to the conditions imposed herein, the Commission finds that the Applicant’s requested amendment to the CPCN, as further modified pursuant to the Settlement Agreement, is reasonable, appropriate, and serves the public interest. The Commission concludes and hereby decides that issuing the amended CPCN is justified by the public convenience and necessity as required by N.C.G.S. § 62-110.1, and, therefore, the Applicant’s requested amendment to the CPCN, as further modified pursuant to the Settlement Agreement, should be granted. Thus, in accordance with N.C.G.S. § 62-78(d), the Commission’s decision herein is based upon the whole record and constitutes the final decision of the Commission. Further, because the Recommended Order never became effective, it shall have no precedential value.

IT IS THEREFORE, ORDERED as follows:

1. That the Settlement Agreement between Wilkinson Solar LLC and the Intervenor filed in this proceeding on December 14, 2018, shall be, and the same is hereby, accepted;
2. That the Recommended Order issued in this proceeding on November 1, 2018, never became effective, and, therefore, the Recommended Order shall be, and the same is hereby, declared to be without precedential value;

3. That the Certificate of Public Convenience and Necessity issued to Wilkinson Solar LLC on October 11, 2017, for the construction of a solar photovoltaic electric generation facility up to 74-MW_{AC} to be located in Beaufort County, North Carolina, shall be, and the same is hereby, amended as requested and detailed in Wilkinson Solar LLC's filing of November 29, 2017, and as further provided in the Settlement Agreement. This Certificate is subject to the following conditions:

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

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

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

4. That Appendix A of this Order shall constitute the amended Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 2018.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in blue ink, appearing to read "Janice H. Fulmore".

Janice H. Fulmore, Deputy Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. EMP-93, SUB 0

Wilkinson Solar, LLC
One South Wacker Dr., Suite 1800
Chicago, IL 60606

is hereby issued this amended

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

for construction of a 74-MW solar photovoltaic
merchant plant electric generating facility
to be commenced within three years of this Certificate

located

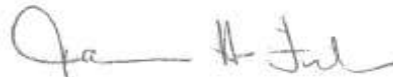
in Beaufort County, south of Terra Ceia Road, east and west of Christian School Road,
and south of Vreugdenhil Road, with a portion on the north side of Terra Ceia Road, on
the west side of Gaylord Road,

subject to the following conditions: (a) until Wilkinson Solar LLC has obtained all necessary easement(s) to connect the arrays, the CPCN should be effective only with respect to the portion of the facility proposed to be located north of Terra Ceia Road, and that Wilkinson Solar LLC shall file a letter with the Commission verifying that legal control has been obtained before beginning construction on the portion of the proposed facility south of Terra Ceia Road; (b) 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; (c) Wilkinson Solar LLC will not assert that the issuance of the certificate in any way constitutes authority to exercise any power of eminent domain, and it will abstain from attempting to exercise such power; (d) this certificate is subject to Commission Rule R8-63 and all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the Commission.

ISSUED BY ORDER OF THE COMMISSION

This the 21st day of December, 2018.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk