

**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) ORDER ON PETITIONS
Necessity to Construct a 74-MW Solar) TO INTERVENE
Facility in Beaufort County, North Carolina)

BY THE PRESIDING COMMISSIONER: On October 11, 2017, the Commission issued an Order granting Wilkinson Solar, LLC (Applicant), a certificate of public convenience and necessity (CPCN) for the construction of a 74-MW solar photovoltaic (PV) electric generating merchant plant facility to be located in Beaufort County, North Carolina.

On November 29, 2017, the Applicant filed a letter with the Commission stating that the footprint of the facility has been expanded to the south and will incorporate additional land south of Terra Ceia Road, as shown on the revised site plan map attached thereto. The Applicant further states that, consistent with the Applicant's letter filed in this proceeding on October 9, 2017, the solar PV panels proposed to be located on the Respress property north of Terra Ceia Road have been removed from the site plan.

Considering the Applicant's November 29, 2017 letter and revised site plan as an application to amend the CPCN previously granted in this docket, the Commission issued an Amended Order Requiring Publication of Notice and Further Review by State Clearinghouse on December 6, 2017, requiring the Applicant to publish notice of the application and requesting further review by the State Clearinghouse. In its Order, the Commission stated that if a complaint is 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, give reasonable notice of the time and place of the hearing to the Applicant and to each complainant, and require the Applicant to publish notice of the hearing in the newspaper in which the notice of the application was published.

On February 1, 2018, the Applicant filed its affidavit of publication stating that it had published notice of the application in The Washington (N.C.) Daily News on December 8, 15, 22, and 29, 2017, as required by the Commission's December 6, 2017 Order.

On February 7, 2018, based upon numerous letters of complaint that were filed in this docket in response to the proposed amendment subsequent to the initial newspaper publication, the Commission issued an Order Scheduling Further Hearings, Requiring Filing of Testimony, Establishing Procedural Guidelines, and Requiring Public Notice, allowing

any person having an interest in this proceeding to file a petition to intervene on or before March 9, 2018.

On March 9, 2018, the following individuals filed petitions to intervene in this proceeding, pro se: Deb VanStaalduinen, Kristina Beasley, and, Marshall and Joann Lilley (together, Mr. and Mrs. Lilley). None of these petitions to intervene included the verification required by Commission Rule R1-19.

In her petition, Ms. VanStaalduinen alleges that her property is adjacent to the site included in the amended application filed by the Applicant on November 29, 2017. In her petition, Ms. Beasley states that she is a “concerned citizen of Beaufort County” and that she attended the Terra Ceia Christian School and the Terra Ceia Christian Reformed Church. Ms. Beasley does not allege that her property is adjacent to the site included in the amended application. In their petition, Mr. and Mrs. Lilley allege that they are “the willed home owner and landowner in the Terra Ceia Community,” and that their “property is adjacent to the amended plans [for the layout of the Applicant’s proposed facility].”

On March 12, 2018, the Applicant filed a response to the petitions to intervene, requesting that each of the three requested interventions be denied. In support of its position, the Applicant argues that none of the petitioners have shown a sufficient interest in the proceeding to warrant intervention. Further, the Applicant cites the provisions of Commission Rule R1-19(a)(3), requiring that the petition contain a clear, concise statement of the nature of the petitioner’s interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding. In addition, the Applicant cites past Commission orders for support of the proposition that the ability to intervene is “generous,” but “not unlimited,” and that the party seeking to intervene must have more than an incidental or casual interest in the proceeding.

The Applicant then addresses the assertions made in each of the three petitions. The Applicant states that Ms. VanStaalduinen’s listed service address abuts Terra Ceia Road, but that the part of the facility site adjacent to Ms. VanStaalduinen’s property was included in the original application and is not part of the amendment to the application. Therefore, the Applicant argues that Ms. VanStaalduinen’s interests are not sufficiently affected by the issues involved in the Commission’s consideration of the amended application and her petition should be denied. As to the petitions of Ms. Beasley and Mr. and Mrs. Lilley, the Applicant states that neither Ms. Beasley’s listed service address, nor Mr. and Mrs. Lilley’s listed service address is adjacent to the part of the facility site that is the subject of the amended application. In support of its position, the Applicant included three maps showing the site of the facility, as proposed in the amended application, and the listed service addresses of each of the petitioners seeking intervention. The Applicant, therefore, argues that the petitioners’ interests are not sufficiently affected by the amended application to warrant intervention, as they are not adjacent landowners and, thus, do not have more than an incidental or casual interest in the proceeding on the amended application. Finally, the Commission notes that the Applicant has appropriately described these three petitions as “unverified petitions,” without directly raising the issue of

compliance with the requirement of Commission Rule R1-19(a) that a petition to intervene be verified.

On March 14, 2018, Ms. VanStaalduinen and Mrs. Lilley jointly filed a verified response to the Applicant's opposition to their petitions to intervene. Ms. VanStaalduinen alleges that her property is adjacent to the amended site plan, and Ms. Lilley alleges that she has been willed the property adjacent to the amended site plan and, as shown on the map attached to their filing, is next door to Ms. VanStaalduinen's property on Terra Ceia Road.

Also on March 14, 2018, Ms. Beasley filed a verified response to the Applicant's opposition to her petition to intervene, alleging that her interest in this proceeding is based upon her "lifelong interest in the protection of the environment and the natural resources of the Pamlico Albemarle Peninsula."

Based upon the foregoing and the entire record in this proceeding, the Presiding Commission finds that good cause exists to conditionally grant Ms. VanStaalduinen's petition to intervene. Ms. VanStaalduinen alleges that she is an adjacent landowner, and the Applicant does not dispute that allegation. The Applicant argues that Ms. VanStaalduinen's interests are not sufficiently affected by the issues involved in the amended application because her property was adjacent to the facility site as proposed in the original application and as included in the certificate issued by the Commission. As demonstrated by the filings in this proceeding, the original application did not include the siting of solar PV panels on the part of the facility site closest to Ms. VanStaalduinen's property. In contrast, the amended application proposes to site solar PV panels on this part of the facility site, which appears to be directly adjacent to Ms. VanStaalduinen's property. The Presiding Commissioner concludes that this change in the proposed use of the facility site that is closest to Ms. VanStaalduinen's property is material, and it demonstrates that Ms. VanStaalduinen has a real interest in the subject matter of this proceeding that is more than incidental or casual. Therefore, Ms. VanStaalduinen's petition to intervene should be granted, subject to the following condition: Ms. VanStaalduinen shall file, on or before March 19, 2017, a complete, executed, and notarized verification form as a supplement to her petition to intervene. If so supplemented, Ms. VanStaalduinen would cure any technical defect in her petition and meet the verification requirement of Commission Rule R1-19. With the status of a party to this proceeding, which is conditionally granted herein, Ms. VanStaalduinen will be allowed to participate in the hearing scheduled for 7:00 p.m. on Monday, March 19, 2017, including the cross-examination of public witnesses, but she will not be allowed to testify as a public witness. Ms. VanStaalduinen will be allowed to testify on her own behalf as a non-expert witness at the hearing in Raleigh, to cross-examine the Applicant's witnesses, and to exercise all other rights of a party to this proceeding. If Ms. VanStaalduinen fails to file the required verification before 5:00 p.m. on March 19, 2018, then she will not have met the requirements of Commission Rule R1-19 and her petition will be deemed denied. Such denial by failure to file the required verification would mean that Ms. VanStaalduinen would be eligible to provide testimony as a public

witness at the public hearing in Washington on March 19, but would not have the right to cross-examine witnesses or otherwise participate as a party.¹

Based upon the foregoing and the entire record in this proceeding, the Presiding Commission further finds that good cause exists to deny the petitions to intervene filed by Ms. Beasley and Mr. and Mrs. Lilley. Based upon the service addresses included in their petitions and the arguments and maps included in the Applicant's response, it appears that Ms. Beasley is not an adjacent landowner to the site of the proposed facility. Her verified reply to the Applicant's response describes her interest and concern related to protection of groundwater from potential poison resulting from the siting of the facility. This does not demonstrate a real interest in this proceeding, instead, it demonstrates that Ms. Beasley's interest in this proceeding is the same as any other member of the Terra Ceia community and that her interest is not more than an incidental or casual.

The Presiding Commissioner acknowledges that Mrs. Lilley, through her verified reply to the Applicant's response, has alleged that she has "been willed the property located at 3352 Terra Ceia RD Pantego, NC 27860, which is adjacent to amended solar facility and shown on the map below," and that the map attached to her reply identifies the referenced property as a parcel adjacent to the site of the facility and next to Ms. VanStaalduinen's property. However, the Presiding Commissioner is not persuaded that the mere expectation of inheriting this property is a sufficient interest to justify allowing Mr. and Mrs. Lilley to intervene in this proceeding. A will takes effect as if it had been executed immediately before the death of the testator, and is not effective to pass title to real property unless properly probated. G.S. 31-39 and 31-41. Further, an instrument of testamentary character, such as a will, is wholly ineffectual until the death of the person executing it and the probate of the instrument. Vandiford v. Vandiford, 241 N.C. 42, 46, 84 S.E.2d 278, 282 (1954). Similar to Vandiford, the question of whether Mrs. Lilly will take title to this property is unknown and unforeseeable: the person making the will (whose identity is unknown to the Commission and who is not a party to this proceeding) could revise the will and the property be devised to someone other than Mrs. Lilly, the person making the will could revoke the will entirely and die intestate, the validity of the will cannot be determined until probated and it may fail to meet the formal requirements for probate, or Mrs. Lilly could predecease the person making the will. These examples of future events and open legal questions demonstrate that Mrs. Lilly's alleged interest in this proceeding is simply too attenuated to justify granting her petition to intervene.

Therefore, the Presiding Commissioner concludes that neither Ms. Beasley nor Mr. and Mrs. Lilley have demonstrated a sufficient interest in this proceeding, and, accordingly, each of these petitions to intervene should be denied. Ms. Beasley, Mr. Lilley, and Mrs. Lilley will be allowed to testify as public witnesses at the hearing in

¹ Affording Ms. VanStaalduinen the opportunity to correct the technical shortcoming of her petition to allow her to meet the requirements of Commission Rule R1-19(a) is based on her status as a pro se litigant. As discussed above, Ms. VanStaalduinen has met the substantive requirement of demonstrating an interest in this proceeding, while failing to meet the technical filing requirements of Commission Rule R1-19. This leniency in the enforcement of these requirements is consistent with the Commission's traditional approach that grants considerable leeway to a pro se litigant in presentations before and filings with the Commission.

Washington scheduled for Monday, March 19, 2017, but will not be afforded the opportunity to cross-examine witnesses or otherwise participate as a party in this proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the petition to intervene filed by Deb VanStaalduinen shall be, and is hereby, granted on the condition that Ms. VanStaalduinen files, a complete, executed, and notarized verification form as a supplement to her petition to intervene on or before March 19, 2017; and

2. That the petitions to intervene filed by Kristina Beasley and by Marshall and Joann Lilley shall be, and hereby are, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of March, 2018.

NORTH CAROLINA UTILITIES COMMISSION



Linnetta Threatt, Deputy Clerk