

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2024-203-E - ORDER NO. 2025-232

APRIL 17, 2025

RECEIVED

May 15 2025

SC Court of Appeals

Application of Kingstree East 230 LLC for)
 a Certificate of Environmental)
 Compatibility and Public Convenience and)
 Necessity for the Construction and)
 Operation of a 249 MWac Solar Facility in)
 Williamsburg County, South Carolina)
 Pursuant to S.C. Code Ann. § 58-33-10 et.)
 seq., and Request to Proceed with Initial)
 Construction Work, S.C. Code Ann. § 58-)
 33-110(7))

ORDER DENYING PETITION FOR REHEARING

This matter comes before the Public Service Commission of South Carolina (Commission) upon the Petition for Rehearing (Petition) filed by Dr. Cheryl Lane, an Intervenor in the Application of Kingstree East 230, LLC (Kingstree East, the Company or Applicant) for a Certificate of Environmental Compatibility and Public Convenience and Necessity (Certificate) for the construction and operation of a 249 megawatt alternating current (MWac) photovoltaic (PV) generating facility (Solar Project) on an undeveloped site in Williamsburg County near the unincorporated area of Nesmith, South Carolina. In her Petition, Dr. Lane asks the Commission to grant rehearing of its decision in Order No. 2025-124 (Order), which was previously entered in this matter on February 20, 2025. For the reasons set forth below, the Commission denies the Petition of Dr. Lane.

I. PROCEDURAL HISTORY

The procedural history leading up to the Petition is set forth in detail in the Order.

See Order, pp. 2-6. In sum, on July 5, 2024, Kingstree East filed an Application requesting a Certificate to construct and operate the Solar Project pursuant to the Utility Facility Siting and Environmental Protection Act (Siting Act), as set forth in S.C. Code Ann. sections 58-33-10 through -430 (Supp. 2024) and S.C. Code Ann. Regs. 103-304 (2012). *Id.* pp. 1-2. Dr. Lane filed a Petition to Intervene on August 9, 2024, which was granted on August 22, 2024, by Order No. 2024-64-H. *Id.* at 3. ORS is automatically a party in this docket pursuant to S.C. Code Ann. sections 58-4-10(B) (Supp. 2024) and 58-33-140(1)(b). The South Carolina Department of Environmental Services (DES), South Carolina Department of Natural Resources (DNR), and South Carolina Department of Parks, Recreation and Tourism (PRT) (collectively, Other Parties of Record) are parties to the proceeding by operation of law and were advised of the Application in accordance with S.C. Code Ann. section 58-33-140(1)(b) (2015). *Id.* The Commission conducted a hearing on October 8, 2024. *Id.* p. 5. On February 20, 2025, the Commission issued the Order, which granted the Certificate to Kingstree East. On March 3, 2025, Dr. Lane filed her Petition and on March 11, 2025, Kingstree East filed its Response.

A. Petition

The Petition, as filed by Dr. Lane, includes the Order as Exhibit A, along with five other Exhibits. Except for Exhibit A, all other Exhibits relate to information beyond the scope of the Kingstree East solar facility.

The Petition first seeks to discuss “Factual and Legal Issues” with the Order, before asserting ten irregularities in the October 8, 2024, hearing as well as listing fifty-three “failures” in the Order. Petition, p. 4; pp. 5-13. In addition to a rehearing, Dr. Lane requests a “moratorium on applications and final orders/decisions for all solar utility sites in

Williamsburg County on land owned or controlled via lease by Ingka Forest Investments[,] LLC...or any of its affiliates or sub entities...for a period of 180 days” and then sets forth six things to be accomplished by the 180-day moratorium. *Id.* p. 13.

B. Response

Kingtree East’s Response asserts that the Petition does not “set forth clearly and concisely” the grounds for the Petition and that the Petition fails to demonstrate any error in the Commission’s findings. Response, p. 1. The Response asserts that the Petition “repeats arguments that have already been adjudicated, makes arguments not timely raised during the hearing, and attempts to rely on evidence outside of the record.” *Id.* p. 2.

Kingtree East asserts that the Petition’s request for a moratorium is inappropriate in that it requests that the Commission take action against unregulated entities not parties to the case as well as on projects not considered “major utility facilities” under the Siting Act. Response, p. 25. Kingtree East argues that no issue has been raised in Dr. Lane’s Petition that justifies rehearing and the Petition should be denied. Response, p. 26.

II. APPLICABLE LAW

A party may seek a rehearing pursuant to South Carolina Code Ann. section 58-27-2150, which provides in relevant part:

After an order or decision has been made by the Commission any party to the proceedings may within ten days after service of notice of the entry of the order or decision apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the Commission may, in case it appears to be proper, grant and hold such rehearing.

S.C. Code Ann. § 58-27-2150 (2015).

"A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:

(a) The factual and legal issues forming the basis for the petition; (b) The alleged error or

errors in the Commission order; (c) The statutory provision or other authority upon which the petition is based." S.C. Code Ann. Regs. 103-825(A)(4) (2012). "A Petition for Reconsideration shall be subject to the same statutory parameters as a Petition for Rehearing." S.C. Code Ann. Regs. 103-854(B) (2012).

The purpose of a Petition for Rehearing or Reconsideration is to allow the Commission to identify and correct specific errors and/or omissions in its orders. *In Re: Dominion Energy S.C., Inc's Ann. Update on Nat. Gas Energy Efficiency Programs & Petition to Update Gas DSM Rider*, Order No. 2024-138, p. 6, Docket No. 2023-243-G (Feb. 22, 2024) (citations omitted). Petitions for Rehearing or Reconsideration are not mechanisms for parties dissatisfied with the outcome to simply relitigate the case absent error by the Commission. *See Id.* (citations omitted).

III. FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Kingstree East filed an Application seeking a Certificate to construct and operate a 249 MWac solar PV generating facility on an undeveloped site in Williamsburg County, near the unincorporated area of Nesmith, South Carolina.
2. Dr. Lane filed a Petition to Intervene, which was subsequently granted.
3. The Commission conducted a hearing on the Application at which time Kingstree East, Dr. Lane, and ORS presented evidence in support of their respective positions.
4. The Commission issued the Order on February 20, 2025, in which it carefully considered the Application, the testimony and exhibits received into evidence at the hearing, as well as the entire record in the matter.

5. The Commission’s findings as set forth in the Order are incorporated by reference herein.

6. The Petition asserts “numerous irregularities” in the October 8, 2024 hearing but fails to connect any of the asserted irregularities to any errors in the Commission’s findings. Further, Dr. Lane failed to make any contemporaneous objections with regards to the asserted irregularities during the hearing and, as such, may not raise the asserted irregularities in the Petition.

7. The Petition repeats arguments previously made and adjudicated, makes arguments not timely raised during the hearing, and relies on evidence that was either not presented at the time of the hearing or outside of the record.

8. The Petition fails to set forth any factual or legal issues forming the basis for the Petition, any alleged error by the Commission in the Order, or any statutory provisions or other authority upon which it is based.

9. The Petition attempts to relitigate issues presented at the hearing, which were addressed by the Commission in the Order, and the Petition fails to identify any specific alleged legal or factual errors in the Order.

10. The Commission thoroughly addressed the requirements of the Siting Act, specifically those regarding the contents of the Application set forth in S.C. Code Ann. section 58-33-120, the required findings as set forth in S.C. Code Ann. section 58-33-160(1), as well as the comparison to other generation options as required by S.C. Code Ann. section 58-33-180(8)(a) in the Order.

11. The Petition for Rehearing does not identify any error contained in the

Commission's Order or any other grounds that would warrant a rehearing and/or reconsideration of the Commission's Order in this matter.

IV. DISCUSSION AND APPLICATION OF LAW

Pursuant to the Siting Act, Kingtree East filed an Application seeking a Certificate to construct and operate the Solar Project. *See* Order, pp. 1-2. Dr. Lane filed a Petition to Intervene on August 9, 2024, which was granted on August 22, 2024, by Order No. 2024-64-H. *Id.* p. 3. The Commission conducted a hearing on October 8, 2024, to receive testimony and evidence concerning the Application. *Id.* p. 5. On February 20, 2025, the Commission entered the Order, which granted the Certificate to Kingtree East. On March 3, 2025, Dr. Lane filed her Petition and on March 11, 2025, Kingtree East filed its Response. Findings of Fact Nos. 1-4 are procedural and are not contested by any party. The Commission's Findings of Fact, Conclusions of Law, and Ordering Provisions, as set forth in the Order, are incorporated by reference herein.

The Petition, as filed by Dr. Lane, includes the Order as Exhibit A, along with five other Exhibits (Exhibits B-F). Except for Exhibit A, Exhibits B-F relate to information beyond the scope of the Kingtree East solar facility. Exhibits B-F were not included with any prefiled testimony submitted to the Commission by Dr. Lane and were not introduced or offered during the course of the October 8, 2024, hearing. Dr. Lane attempts to raise the issues included in Exhibits B-F for the first time in her Petition. Case law does not allow a party to raise issues for the first time in a petition for reconsideration or rehearing. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 597 S.E.2d 145 (2004); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E. 2d 481 (Ct. App.1990); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995); *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340,

468 S.E.2d 633 (1996). As such, the Commission cannot and will not consider Petition Exhibits B-F.

The Petition sets forth “Factual and Legal Issues,” which relies on evidence not contained in the record of the case and not raised during the course of the hearing. In the Petition, Dr. Lane references demographic information regarding Williamsburg County, a land purchase in two other counties as well as Williamsburg County and related contractual matters, information regarding a separate company and its involvement with a different project as well as a power purchase agreement (PPA) between the separate company and an electric utility. Petition, pp. 1-2. The demographic information regarding Williamsburg County was available at the time of the hearing but was not introduced by Dr. Lane at the hearing. In addition, information related to land purchases in other counties as well as information pertaining to other Kingstree entities’ involvement with other projects and related PPA’s along with the terms of the Special Source Revenue Credit Agreement was available to be introduced or offered at the hearing. Dr. Lane did not seek to introduce or place any such evidence in the record at the time of the hearing. *Id.* pp. 3-4.

The Petition asserts ten irregularities in the October 8, 2024 hearing before the Commission. Petition, p. 4. The irregularities are mostly characterized as the Commission failing to take certain matters into account; however, during the course of the hearing, evidence was not produced in support of certain contentions asserted by Dr. Lane. Moreover, Dr. Lane did not make any objections regarding the matters now referenced as irregularities. *Id.* She also references a number of letters of protest and public comments in the Docket; however, none of the letters and comments are in the record, as they were submitted more than a month after the conclusion of the October 8, 2024, hearing. *Id.* p. 5.

South Carolina case law does not allow a party to raise issues for the first time in a petition for reconsideration or rehearing, which is what the Petition attempts to do with the assertions of the ten irregularities. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 597 S.E.2d 145 (2004); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E. 2d 481 (Ct. App.1990); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995); *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996).

Dr. Lane then alleges fifty-three “Errors and Citations of Authority” contained in the Order, many of which are irrelevant to the Siting Act requirements. *See* Petition, pp. 5-13. As with the “Factual and Legal Issues” set forth above, other errors listed by Dr. Lane rely on evidence not in the record or include matters already addressed by the Commission. *See* Petition, p. 5, #1A, #1B, #1D; *Id.* p. 7-8, #15; *Id.* p. 8, #18; *Id.* p. 9, #24-25; *Id.* p. 10, #33; *Id.* p. 11, #36. Dr. Lane alleges Kingstree East erred by failing to provide certain evidence she deems relevant for Commission consideration; however, Kingstree East was either not obligated to provide certain evidence or documentation as proof under the requirements of the Siting Act or there was no such requirement under the Siting Act. *See* Petition, p. 6, #2-3, #6; *Id.* p. 7, #13-14; *Id.* p. 7-8, #15; *Id.* p. 9, #24, #26; *Id.* p. 11, #37; *Id.* p. 13, #50; Order, p. 10, ¶¶ 9-10. As to other alleged errors or failures, there is simply no evidence in the record that can support the assertions. *See* Petition, p. 6, #5, *Id.* #8; *Id.* p. 7-8, #15; *Id.* p. 10, #28. Finally, there are alleged errors or failures for which Dr. Lane introduced no evidence at the hearing or were irrelevant to the proceedings. *See* Petition, p. 5, #1E; *Id.* p. 6, #5; *Id.* p. 8, #15; *Id.* p. 12, #42, #45; *Id.* p. 13, #52.

Dr. Lane asserts two failures by the Applicant to provide proper notice to private citizens or the head of the environmental agency or the planning commission. Petition, p.

7, #9, #11. First and foremost, Dr. Lane did not challenge the sufficiency of service or notice either in prefiled testimony or during the hearing and did not seek to elicit testimony from any witness regarding service or notice. She first raised the issue that service should have been on the Planning Commission in her proposed order submitted December 2, 2024, which was untimely and not properly before the Commission. Further, as discussed above, such a challenge cannot be raised now in a Petition for Rehearing or Reconsideration. The Commission addressed notice and service in Findings of Fact Nos. 5 through 8 and thoroughly discussed in the Evidence and Conclusions for Findings of Fact Nos. 5-8. Order, pp. 9-10, ¶¶ 5-8; *Id.* pp. 17-21. S.C. Code Ann. section 58-33-120(3), provides that:

[e]ach application also must be accompanied by proof that public notice under subsection (2) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in newspaper of general circulation as well serve substantially to inform such persons of the application.

S.C. Code Ann. § 58-33-120(3).

Kingstree East provided public notice to people living in and around the area of the county where the facility would be located via publication in three newspapers of general circulation. The Public Notice was published in *The News* and *The Georgetown Times* on June 26, 2024, and in *The Post and Courier* on June 21, 2024. The public notice stated that Kingstree East would file an Application with the Commission on or about July 1, 2024, for a Certificate for the construction and operation of the Solar Project. Order, p. 19; Hearing Exhibit No. 2, Part 1 of 2, p. 4-5, ¶ 13. Kingstree East then published updated notices in the same three newspapers on July 24, 2024, for which Revised Affidavits of Publication were filed with the Commission on July 29, 2024. Order, p. 19-20. S.C. Code Ann. section 38-33-120(2), requires, in part, that the Application be served on “the head of

each state and local government agency, charged with the duty of protecting the environment or of planning land use” (emphasis added). The Application was served on the interim director and general counsel for DES, the director and general counsel for DNR as well as the regional forester and state forester for the S.C. Forestry Commission. *See* Hearing Exhibit No. 2, Part 1 of 2, p. 4, ¶ 12;¹ Certificate of Service, pp. 1-2. In addition, the Solar Facility’s proposed site is in Williamsburg County, which is the local government agency in question. Kelvin Washington, County Supervisor and Chairman of Williamsburg County Council, is the head of the “local government agency” and was served with a copy of the Application. *Id.* In addition, Kelvin Washington appeared at the October 8, 2024, hearing on behalf of Williamsburg County. Tr. 14:5-7. There is no merit to these allegations as enumerated in the Petition.

The Petition alleges a “[f]ailure of the Applicant to conduct a year-long study required by US [United States] Fish and Wildlife” and a “[f]ailure to prove that a year-long study plan will be followed by the US Fish and Wildlife regulations to capture plants and animals most accurately.” Petition, p. 7, #10; *Id.* p. 10, #32. Dr. Lane did not offer any evidence at the time of the hearing that the US Fish and Wildlife Service (USFWS) has a requirement for a study to be for a specific period of time. She also alleged that Kingstree East failed to conduct environmental studies during certain conditions Petition, p. 10, #31. Dr. Lane offered no evidence at the hearing to demonstrate that environmental studies were not conducted correctly and Applicant Witness Meares gave lengthy testimony on the studies which were performed. *See* Tr. 50:15-71:1. In addition, no objections to the Solar

¹ The page numbers referenced for Hearing Exhibit No. 2, Part I of 2 throughout this Order reflect the chronological numbering of the pages and may not correspond with the Commission’s watermark when the Application was originally filed in the Docket Management System (DMS) on July 5, 2024.

Project were entered by the USFWS or DNR. To the contrary, the evidence in the record supports the Commission’s finding that Kingstree East “demonstrated that the environmental impacts of the Solar Project have been appropriately evaluated, and the Solar Project is not likely to have significant adverse impacts on the environment as required by S.C. Code Ann. section 58-33-160(1)(b).” Order, p. 10-11, ¶ 12. There is no merit to these allegations as enumerated in the Petition.

The Petition alleges a “[f]ailure of the Applicant to prove that Carolina Bays will be noted and protected” and then references Gapway Bay on the maps provided by Applicant. Petition, p. 8, #21. Applicant presented testimony and exhibits regarding the area identified as “Gapway Bay” as a wetland and that Applicant will avoid disturbing it and other wetlands. Tr. 160:10-25; Hearing Exhibit No. 2, Part 1 of 2, p. 11. The Order referenced testimony from Applicant Witness Meares confirming that Solar Project construction would only move forward with the appropriate permit from the U.S. Army Corps of Engineers. *See* Order, p. 32. In the Discussion and Application of Law to Facts, supporting Finding of Facts Nos. 12 and 13, the Commission referenced that the “testimony presented by the Applicant demonstrates that the Solar Project is designed to avoid impacts to wetlands.” Order, p. 39; Order, pp. 10-11, ¶¶ 12-13. There is no merit to this allegation as enumerated in the Petition.

Dr. Lane points to information outside of the record in this matter in support of allegations of errors as to unrelated projects by other entities. *See* Petition, p. 5, #1F; p. 9, #23; p.13, #49. The Commission found that, pursuant to the Siting Act, Kingstree East “offered reasonable assurance that the Solar Project will conform to applicable state and local laws and regulations.” Order, p. 11, ¶ 14; pp. 28, 31; p. 41, ¶ 10. The Commission

granted the Certificate “subject to the Applicant obtaining all required federal, state and local permits, consultations and certifications.” *Id.* p. 42, ¶ 1. There is no merit to these allegations as enumerated in the Petition.

The Petition asserts a “[f]ailure to prove that considering the tremendously fast growth of the State of S.C. in terms of solar projects that S.C. will not become like the State of California which is currently experiencing a glut of solar generated power which is causing electricity costs to rise for all residents...” Petition, p. 6, #4. A review of the record in this case shows that no evidence of California’s solar market or a potential “glut” of solar generated power in South Carolina was offered at the hearing. Further, Dr. Lane did not offer any such evidence at the hearing. There is no requirement in the Siting Act for Applicant to offer any evidence comparing South Carolina’s solar projects to solar power generation in other states. However, Applicant Witness Glick did provide testimony as to the need for more solar energy in South Carolina and this was set forth in the Order. Order, pp. 22-24, 28-29. There is no merit to this allegation as enumerated in the Petition.

Dr. Lane references a “[f]ailure to prove that the Northern long eared bat and any other bat species on the US threatened or endangered species is not residing in any abandoned structure, or adjacent properties located on any tracts owned and/or controlled by Ingka Investments, and/or any tracts listed in application. Roosting and foraging habitat should be addressed before any initial or pre-construction activities begin.” Petition, p. 10, #34. The record is void of evidence of any “abandoned structure” at the site. Applicant Witness Thomas testified that on behalf of the Timmons Group, he performed a Threatened and Endangered Species Analysis. Tr. 55:14-16; Tr. 59.2:21-59.3:5. He testified that the Solar Project consulted with DNR regarding threatened or endangered species potentially

present at the Solar Project site. Tr. 59.3:20-22. Further, the study filed with the Application indicates that the Northern Long-eared Bat was considered with the study. Hearing Exhibit No. 2, Part 2 of 2, p. 17.² Dr. Lane offered no evidence to the contrary during the hearing and made no objection to the admission of the Application and its Exhibits as Hearing Exhibit No. 2. There is no merit to this allegation as enumerated in the Petition.

In the Petition, Dr. Lane alleges that Applicant Witness Tyrer might not be qualified to conduct certain studies. Petition, p. 9, #22. At the time that Witness Tyrer appeared and testified at the hearing on behalf of Kingstree East, the Commission qualified her an expert in cultural resource management. *See* Tr. 75:1-10. The Petition is the first time that Dr. Lane asserts a challenge to Witness Tyrer’s qualifications, as she did not seek to challenge her qualifications at the hearing, nor did she offer any evidence in support of such a challenge. Dr. Lane also alleges in the Petition, for the first time, that the Applicant failed to “address ‘Indian Lands’ or Native American lands, history, culture, and artifacts as part of the permitting process...” Petition, p. 10, #29. Dr. Lane offered no evidence at the hearing to support that the Applicant, through Witness Tyrer, overlooked any cultural resources when conducting her evaluation of the Solar Project site. There is no evidence in the record to support any of the allegations that Dr. Lane raised for the first time in her Petition. There is no merit to these allegations as enumerated in the Petition.

Dr. Lane asserts an objection, not raised at the time of the hearing, to the updated permit matrix that was admitted at the October 8, 2024, hearing as Hearing Exhibit No. 3. Petition, p. 12, #43; Tr. 54:3-12. She also alleges a “[f]ailure to provide accurate

² The page numbers referenced for Hearing Exhibit No. 2, Part 2 of 2 throughout this Order reflect the chronological numbering of the pages and may not correspond with the Commission’s watermark when the Application was originally filed in the Docket Management System (DMS) on July 5, 2024.

information” with respect to technical issues with hyperlinks in the updated permit matrix. Petition, p. 12, #44. However, in explaining her reasoning of the failure to provide accurate information, Dr. Lane acknowledges that she was able to access the hyperlinks in a specific format (Microsoft Word), just that it wasn’t available in a different format (PDF). Because she was able to access the hyperlinks, there is no prejudice with respect to this allegation. There is no merit to this allegation as enumerated in the Petition.

The Petition lists four allegations of error with respect to the Commission’s finding that the Solar Project was compared to other generation options as required by S.C. Code Ann. section 58-33-110(8)(a). *See* Petition, p. 5, #1B, #1C; *Id.* p. 6, #7; *Id.* p. 10, #27. In the Order, the Commission found that Kingstree East “demonstrated the Solar Project was compared to other generation options in terms of cost, reliability, and any other regulatory implications deemed legally or reasonably necessary for consideration by the commission as required by S.C. Code Ann. section 58-33-110(8)(a).” Order, p. 11, ¶ 15. At the hearing, Dr. Lane did not offer any evidence in support of the contention that the Solar Project was not compared to other generation options. In the Petition, she fails to point to any evidence in the record from the hearing in support of this contention. There is no merit to these allegations as enumerated in the Petition.

Dr. Lane also alleges a “[f]ailure of Applicant to provide data that shows wind resistance of the solar panels to be able to sustain hurricane force winds with the increasing possibilities of Category 4 and 5 storms in South Carolina.” Petition, p. 8, #17. The Siting Act does not require Kingstree East to provide weather event data. Further, this allegation is another attempt by Dr. Lane to introduce evidence which is outside of the record after the conclusion of the hearing. However, Applicant Witness Meares did provide testimony

at the time of the hearing regarding the capability of the Solar Project hold up during weather events. Tr. 124:18-125:11. The Commission found that Kingtree East “demonstrated that the probable environmental impact from the construction, operation and maintenance of the Solar Project is justified, considering the state of the available technology and the nature and economics of various alternatives as required by S.C. Code Ann. section 58-33-160(1)(c).” Order, p. 11, ¶ 13. There is no merit to this allegation as enumerated in the Petition.

In the Petition, Dr. Lane also alleges a “[f]ailure of the Applicant to use local experts and sources in flora and fauna who could have assisted in addressing local, state, and regional specific knowledge.” Petition, p. 11, #35. A review of the record demonstrates that there is no evidence in the record to support this contention and Dr. Lane did not seek to introduce any such evidence at the hearing. Further, there is no requirement for a local expert or locally certified expert to perform any of the studies pursuant to the requirements of the Siting Act. Neither DNR nor the USFWS objected to the Solar Project. There is no merit to this allegation as enumerated in the Petition.

Dr. Lane also asserts that the Applicant failed to provide “proof of plans for disposal or recycling of broken, inactive, or weather damaged solar panels in terms of transport of panels that would need to be replaced” as well as “proof that broken and discarded panels during unloading of preconstruction, during construction, or post-construction will be properly handled and recycled and whose physical and financial responsibility that would become.” Petition, p. 8, #19-20. Dr. Lane did not offer any evidence on these issues and there is no evidence in the record that there are any state or local requirements for proof of any such plans. Applicant Witness Meares testified at the hearing that he “looked up

recycling facilities in this area” in response to cross examination by Dr. Lane. Tr. 152:18-24. He also testified that there is “a decommissioning performance guarantee that we have to post upfront, and that goes along with the decommissioning plan that we also have to provide to the County, and the County has to approve all these things.” Tr. 104:7-11; *See* Order, p. 31-32. Further, he testified that he knew of “no solar panels that have hazardous materials.” Tr. 151:17. The record is void of any evidence that Kingtree East would abandon discarded solar panels at the site or otherwise mismanage them as waste. There is no merit to these allegations as enumerated in the Petition.

Dr. Lane asserts that the Applicant failed to demonstrate that dredging would not be a part of the request for permission to initiate initial construction activities S.C. Code Ann. section 58-33-120(7). Petition, p. 13, #51. She also asserts a “[f]ailure to fully address the actual newspaper Public Notice (revised) which contains the wording that Kingtree East 230, LLC requests permission to proceed with “initial clearing, excavation, dredging, and construction.” *Id.*, p. 11, #39. As set forth in the Order, the Applicant filed a letter with the Commission on August 13, 2024, to clarify its request in the Application to proceed with site clearing and initial construction work. Order, p. 3. The letter explained that the purpose of the request in the Application was to make it clear to the public that Applicant may request to begin site clearing and initial construction work if circumstances deemed it necessary, and to preserve its right to do so. *Id.* The letter set forth that a separate motion would be made in the event the Applicant needed to proceed with site clearing and initial construction arises. *Id.*; *See also* Letter Providing Clarification of Request to Proceed with Site Clearing and Initial Construction Work (Aug. 13, 2024). The Applicant did not seek to proceed with site clearing and initial construction work but merely explained that it may

request such permission and that any such request would be made via a separate motion. Dr. Lane did not question the sufficiency of the Application or Notice prior to or during the hearing and failed to raise any objection regarding these issues at the time of the hearing, making any objection now untimely. *See* Order, pp. 14, 20. Further, the Siting Act does not require that the Applicant show that dredging would not be part of the request for permission to proceed with initial construction. *See* S.C. Code Ann. § 58-33-120(7). There is no merit to these allegations as enumerated in the Petition.

In the Petition, Dr. Lane also asserts that the Application is not clear and concise due to a reference to “and Battery” included in the caption and published in the original and revised versions of the Notices published in the three newspapers. Petition, p. 11, #40. She further asserts that the Applicant failed to provide the public with notice of the change in the Application when “and Battery” was struck from the caption. *Id.* Again, Dr. Lane did not question the sufficiency of the Application in prefiled testimony or during the hearing, rendering this objection untimely. Order, p. 14. She also did not challenge the sufficiency of service or notice. Order, p. 20. The Commission did address the inclusion of the reference “and Battery” in the caption, noting that Directive Order No. 2024-598, which granted Applicant’s Motion to Amend the Caption of the Application to delete a reference to battery storage was issued on August 22, 2024. Order, p. 3. There is no merit to this allegation as set forth in the Petition.

The Petition alleges a “[f]ailure of the Applicant to reference the original public notice in the revised public notice in the newspaper publication of the Docket information.” Petition, pp. 11-12, #41. She argues “[i]f the explicit instructions by the Clerk’s Office of the PSC are the date to meet the legal requirements, the PSC needs to consider the

substance of the two public notices to meet the requirements of substantial notification.” *Id.* Finally, she states “[i]n addition, the terminology of Public Hearing with the added verbiage of “with only attorneys present” is obfuscating to the public.” *Id.* Dr. Lane also asserts a “[f]ailure to meet the requirements as set forth in the PSC Clerk’s letter to Mr. Charles Terreni that the Revised Public Notice–[]Publish at your own expense, on or before July 19, 2024, the enclosed Notice of Filing and Public Hearing . . . in newspapers of general circulation one time, and provide the undersigned Proof of Publication on or before August 9, 2024[,] or risk denial of the application.” Petition, p. 12, #46. It is noted that the Applicant published both the original and revised notices provided by the Commission’s Clerk’s Office. Order, pp. 2-3; *Id.* pp. 18-19. Dr. Lane references the July 19, 2024, deadline for publication of the original notice set by the Commission Clerk’s Office, however, fails to note that the Clerk issued a revised Notice of Filing and Hearing, with a notation of “Notice for Newspaper” in the upper right-hand corner, on July 18, 2024 which contained no deadline for publication. Dr. Lane did not challenge the sufficiency of notice at the time of the hearing and as such, any objections are untimely. Order, p. 20. There is no merit to these allegations as enumerated in the Petition.

Dr. Lane makes a final allegation with respect to notice of “[f]ailure to provide substantial notification of the application: ‘in newspapers of general circulation as will serve substantially to inform such persons of the application’ because of 1) low readership and home delivery of the Kingstree NEWS, 2) few places to purchase the Kingstree NEWS considering the size and rural nature of Williamsburg County, 3) zero places to buy a News and Courier newspaper or a Georgetown Times in the County Seat of Kingstree and presumably the entire county. SC 58–33-120 (3).” Petition, p. 12, #47. There is no evidence

in the record to support the allegation about any of newspaper's readership or availability. Further, as with other similar allegations above, Dr. Lane did not challenge the sufficiency of notice at the time of the hearing and as such, any objections are untimely. Order, p. 20. There is no merit to this allegation as set forth in the Petition.

The Petition asserts other "failures" on the part of Kingstree East in her Petition, which are contradicted by the evidence in the record. *See* Petition, p. 8, #16; *Id.* p. 9, #25-26; *Id.* p. 10, #30, #33; *Id.* p. 11, #38; *Id.* p. 13, #48; Order p. 42, ¶ 4; Tr. 16:5-9, 13:5-19; Hearing Exhibit No. 1. There is no merit to these allegations as enumerated in the Petition.

As the final assertion in the Petition, Dr. Lane states "[o]verall failure to provide a clear and concise application to the SCPSC and to the public." Petition, p. 13, #53. There is no basis for this alleged error in the record. The Commission found that the "Application, as submitted by Kingstree East, contains the information as set forth in and required by S.C. Code Ann. section 58-33-120(1)(a)-(d)." Order, p. 9, ¶ 4. In the Order, the Commission set forth the Applicant's Position, the position of ORS, and Dr. Lane's position, as well as a discussion of these positions in support of Finding of Fact No. 4. *Id.* pp. 11-14; pp. 15-17. As to the public, Dr. Lane intervened in this matter as an individual, not on behalf of anyone else, much less the public in general. Prior to the hearing, she had the opportunity to prefile Direct Testimony and Exhibits to support her personal opposition to the Application filed by Kingstree East. Dr. Lane did not prefile any testimony or exhibits prior to the hearing. She appeared at the hearing and was able to cross-examine any of the witnesses offered by the Applicant or ORS. She did not question the sufficiency of the Application at the hearing. Order, p. 14. This allegation in the Petition is without merit.

The Petition requests a moratorium on applications and decisions for all solar utility sites in Williamsburg County on land owned, leased, or controlled by various entities. This is an improper request and something that the Commission lacks authority to order as nothing in the enabling legislation for the Commission allows it to issue “moratoria” in regard to any project. *See* Petition, p. 13. She asks the Commission to take action against entities that are not parties to the present case, against entities that are potentially not regulated by the Commission as well as on projects that are not “major utility facilities” under the Siting Act. S.C. Code Ann. § 58-33-120(a). Dr. Lane presented no evidence supporting such an action, did not argue this issue at the hearing, and did not present it in her proposed order. While she did attempt to argue that she had requested that Williamsburg County issue some sort of moratorium, Chairman Powers disallowed this argument as there was nothing in the record on the issue. Tr. 231:17-25.

A Petition for Rehearing and/or Reconsideration is not a mechanism for a party dissatisfied with the outcome to simply relitigate the case. *See* Order No. 2024-138, p. 6. Instead, it is an opportunity to allow the Commission to identify and correct specific errors and/or omissions in its orders. *Id.* The elements required to be included in such a Petition reflect this purpose: "A Petition for Rehearing or Reconsideration shall set forth clearly and concisely: (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; (c) The statutory provision or other authority upon which the petition is based." S.C. Code Ann. Regs. 103-825(A)(4) (2012). In the present case, the Petition does not include all of the required elements, particularly as to each alleged error in the Order as well as the statutory provision or other authority which forms the basis for the Petition’s alleged errors.

The majority of the alleged errors in Dr. Lane's Petition represent an attempt by Dr. Lane to raise specific enumerated issues for the first time in her Petition. As previously stated, Dr. Lane did not prefile any testimony or exhibits prior to the hearing. She appeared at the hearing and participated in cross-examination. She did not attempt to offer any documents or make any objections as to issues she now attempts to lodge objections to or assert as errors by the Commission. Dr. Lane alleges error and then relies on evidence that is neither contained in the record of the case nor raised during the course of the hearing. Dr. Lane alleges errors with Kingstree East's failure to provide certain evidence she deems relevant for Commission consideration; however, Kingstree East was either not obligated to provide certain evidence or documentation as proof under the requirements of the Siting Act or there was no such requirement under the Siting Act. As to other alleged errors or failures listed by Dr. Lane in the Petition, there is simply no evidence in the record that can support the assertions. Dr. Lane alleges errors or failures for which she introduced no evidence at the hearing or were irrelevant to the proceedings under the Siting Act. There are other allegations of error which are contradicted by the only evidence in the record.

The Petition does not offer or identify any issues for the Commission to reconsider and correct specific errors or omissions in the Order. The Petition also does not identify any basis for a rehearing. Dr. Lane did not take advantage of the opportunity to prefile testimony or other evidence. She attempted to introduce or improperly admit evidence and testimony at the hearing, in her proposed order and other post-hearing filings, including her Petition.

The Petition raises no issue, error or omission that justifies or supports a rehearing or reconsideration in this matter. For the reasons set forth above, the Petition is denied.

V. CONCLUSIONS OF LAW

Based upon the discussion set forth herein and the record of the instant proceeding, the Commission makes the following Conclusions of Law:

1. The Petition was timely filed pursuant to S.C. Code Ann. section 58-27-2150 (2015) and S.C. Code Ann. Regs. 103-854 (2012).
2. The Petition does not meet the requirements of S.C. Code Ann. Regs. 103-825(A)(4) in that it does not set forth clearly and concisely: (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; or (c) The statutory provision or other authority upon which the petition is based.
3. The Petition asserted “numerous irregularities” in the October 8, 2024, hearing but failed to connect any of the irregularities to any errors in the Commission’s findings. Dr. Lane failed to make any contemporaneous objections regarding the asserted irregularities during the hearing and, as such, may not raise the asserted regularities in the Petition.
4. The Petition for Rehearing does not identify any error contained in the Commission's Order or any other grounds that would warrant a rehearing and/or reconsideration of the Commission's Order in this matter.

VI. ORDERING PROVISIONS

IT IS THEREFORE ORDERED THAT:

1. The Petition for Rehearing is denied.
2. Any party of record may appeal a Commission Order to the appropriate judicial forum pursuant to applicable provisions of law. S.C. Code Ann. Regs. 103-856

(2012); *see* S.C. Code Ann. § 58-27-2310 (2015).

3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



A handwritten signature in black ink, reading "Delton W. Powers, Jr.", is written over a horizontal line.

Delton W. Powers, Jr., Chairman
Public Service Commission of
South Carolina

NOTICE TO ALL PARTIES: Any party of record may appeal a Commission Order to the appropriate judicial forum pursuant to applicable provisions of law. S.C. Code Ann. Regs. 103-856 (2012); *see* S.C. Code Ann. § 58-27-2310 (2015).