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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE
COMMISSION OF SOUTH CAROLINA

Appellate Case No.
2025-000933

Application of Kingtree 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)

Dr. Cheryl O. Lane, Appellant,

v.

Kingtree East 230 LLC, Respondent.

RETURN IN OPPOSITION TO APPELLANT'S
MOTION TO HOLD APPEAL IN ABEYANCE

Respondent Kingtree East 230 LLC, by and through its undersigned counsel, requests that the Supreme Court deny Appellant's October 13, 2025, motion requesting that the Court hold her appeal in "abeyance" indefinitely pending the outcome of her other litigation.

Appellant has already requested and obtained two thirty day extensions; the first on August 13, 2025, and the second on September 8, 2025. In her second request Appellant made vague reference to her FOIA litigation pending in Williamsburg County circuit court, but the primary reason for the second extension was so "...that she can continue to streamline and bolster her legal arguments." (*Appellant's Second Motion for Extension* at 2.) Now Appellant

requests what amounts to an indefinite extension; one that will undoubtedly take months to resolve¹ and one taken for an improper purpose.

The appellant's motion indicates that the purpose of her requested delay is not to submit a more persuasive brief, but rather to disregard Rule 210(c), SCACR. Under Rule 210(c), SCACR, the record on appeal shall not include matter which was not presented to the lower court. *See Fountain v. Fred's, Inc.*, 429 S.C. 533, 839 S.E.2d 475 (Ct. App. 2020) at fn 18. (*superseded on other grounds*) (Court issued order striking settlement agreement that was included in Record on Appeal as it was never presented to circuit court).

In the instant appeal, the order of the Public Service Commission denying Appellant's motion for reconsideration states in pertinent part, "Dr. Lane did not prefile any testimony or exhibits prior to the hearing." *Order Denying Petition for Rehearing* at 19². Further, the Commission found:

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.

Id. at 21.

In her motion requesting abeyance, Appellant states,

All FOIA records requested by Cheryl O. Lane have not been fully provided and need full disclosure by Williamsburg County. **These records to be provided by Williamsburg County could materially affect the Intervenor/Appellant's (*sic*) development and accuracy of the briefs and arguments to be presented to this Court.**

¹ See June 26, 2025, Amended Consent Scheduling Order in *Lane v. Williamsburg County*, 2025-CP-45-00074, whereby case will be eligible to be placed on a trial roster after December 9, 2025.

² In this Return, references to the record below have been filed with the Court, but as no Record on Appeal has been filed, Respondent can only reference them by title and date.

Appellant's Motion for Abeyance at 2. (emphasis added)

Appellant requests that the Court delay her appeal indefinitely so that Williamsburg County can presumably come up with documents relating to public financing matters for Respondent's project. These documents were not considered by the PSC in making its decision. The only way these documents could possibly "...affect the Intervenor/Appellant's (*sic*) development and accuracy of the briefs and arguments to be presented to this Court" is if Appellant designates them in her Record on Appeal. This is something she cannot do. The PSC's transcriptionist delivered the transcript and exhibits to Appellant on July 14, 2025. *See Appellant's notice of receipt* dated July 15, 2025. The transcript includes all exhibits that were admitted into evidence before the PSC. By requesting abeyance, Appellant intends to impermissibly introduce matters that were not considered by the PSC³. If Appellant attempts to do this, Respondent will have no choice but to file a motion to strike.

Appellant's deadline for filing her initial brief and designation is October 14, 2025. Appellant's filing of this motion does not by itself stay any time limit imposed by the Rules of Court. Rule 240, SCACR. The Court should deny this motion as it is not filed for a proper reason. If Appellant is not prepared to proceed with her appeal, it should be dismissed with prejudice.

³ This is not the first time Appellant has attempted to improperly introduce evidence into the record. *See Order Denying Petition for Rehearing* at 6, discussing Appellant's attempts to introduce new Exhibits B-F for the first time in her Petition for Rehearing.

Respectfully Submitted,

/s/ Alexander G. Shissias

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