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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.

**RESPONDENT KINGSTREE EAST 230 LLC'S
MOTION TO STRIKE, AND REQUEST TO
HOLD DEADLINES IN ABEYANCE**

Pursuant to Rules 209, 240 and 210, SCACR, Respondent Kingtree East 230, LLC, (“KE230 or Respondent”) hereby moves for an order to strike improper references in Appellant’s Initial Brief, as well as improper documents in Appellant’s Designation of Matter to be included in the Record on Appeal (“Designation”), filed with this Court by the Appellant on December 12, 2025. Respondent also moves that the Court require Appellant to correct her Designation to include documents she has referenced in her Initial Brief, and to remove document references found in Appellant’s Designation but not in her Initial Brief.

Currently, Respondent’s deadline for filing its Initial Brief and Designation is January 12, 2026. Under Rule 240 (b), SCACR, the filing of this motion does not by itself stay any time

limits. If Respondent is granted the relief it requests, it will affect the content of Appellant’s Initial Brief, which will also require Respondent to conform its own Initial Brief accordingly. For that reason, Respondent respectfully requests that the Court hold all deadlines in abeyance while this motion is pending and issue a revised schedule with its ruling.

FACTUAL BACKGROUND

In this case, Appellant appeals from an order of the Public Service Commission (“PSC”) granting Respondent’s request for a Certificate of Environmental Compatibility and Public Convenience and Necessity (“CECPCN”) for the Construction and Operation of a 249 MWac Solar Facility in Williamsburg County, South Carolina. Appellant intervened in the case below and opposed the issuance of the CECPCN. After a hearing held on October 8, 2024, on February 20, 2025, the PSC issued its order granting the Certificate to KE 230.¹ In this decision the PSC noted that the Appellant, acting *pro se*, did not present any witnesses, and only cross examined the Respondent’s witnesses.² During the hearing, the PSC denied Appellant’s attempt to introduce evidence that had not been prefiled as required by the PSC’s regulations.³

On March 3, 2025, Appellant filed a Petition for Rehearing. With that Petition she included six exhibits, five of which were neither introduced nor offered during the October 8, 2024, hearing. On March 11, 2025, KE 230 filed its response. In its response KE 230 objected to this attempt to improperly introduce these exhibits and otherwise opposed the Petition for

¹ Public Service Comm. of S.C., Order No. 2025-124, Docket No. 2024-203-E (February 20, 2025) (dms.psc.sc.gov).

² *Id.* at 5.

³ S.C. Code Ann. Regs. 103-845 (C) (requiring all testimony and exhibits to be prefiled), see also S.C. Code Ann. § 58-3-140 (D) (requiring the PSC to promulgate regulations for prefiled testimony and exhibits).

Rehearing. On April 17, 2025, the PSC denied the Petition for Rehearing.⁴ In its Order the PSC noted that the attempts to include these five exhibits in the record were improper and rejected them.⁵ This appeal followed.

DISCUSSION

Pursuant to S.C. Code Section 1-23-610(B), this Court’s review on appeal “must be confined to the record.” See also *Argabright v. Argabright*, 398 S.C. 176, 179, n.3, 727 S.E.2d 748, 750, n.3 (2012) (“We are, of course, bound by the record established at trial.”). Rule 210(c) of the South Carolina Appellate Court Rules delineates the allowable scope of the Record on Appeal. While this Rule provides that “all matter designated to be included by any party under Rule 209” shall generally be included in the Record on Appeal, it caveats that “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. Rule 209(b), SCACR, directs the parties not to include matter that is not relevant to the appeal.

Respondent requests that the Court issue an order requiring Appellant to revise her Initial Brief to eliminate citations to improper matter, and requiring Appellant to revise her Designation appropriately in accordance with Rules 209, 210(c) and 209(b), SCACR.

1. Improper citations in Appellant’s Initial Brief to matters not included in her Designation of Matter.

In her December 11, 2025, Initial Brief, Appellant has cited in brackets several documents which are neither in the record below nor included in her Designation. They are:

- A. “[31 page purchase/deed dated June 14, 2019, recorded July 1, 2019 [Deeds and records of the Williamsburg County Courthouse].” Appellant’s Initial Brief, p. 4.

⁴ Public Service Comm. of S.C., Order No. 2025-232, Docket No. 2024-203-E (April 17, 2025) (www.dms.psc.sc.gov).

⁵ *Id.* at p. 7 (“the Commission cannot and will not consider Petition Exhibits B-F.”)

- B. [Krister Mattsson, ABC Press Release]. *Id.*
- C. SC Secretary of State records.⁶
- D. Application for a SCDHEC/SCDES Storm Water Pollution Plan. *Id.* at pp. 5, 21.
- E. a Purchase Power Agreement.⁷

None of these materials, which are listed using the same descriptions as appear in Appellant’s Initial Brief, were admitted as exhibits below nor were they were ever considered by the Commission. Nor do they appear in Appellant’s Designation. For these reasons, Respondent requests that the Court issue an order requiring Appellant to revise her Initial Brief to eliminate these improper references.⁸

2. Matters improperly included in Appellant’s Designation of Matter.

Appellant included her petition for rehearing in her Designation. While Respondent does not object to the petition itself being included in the Designation, Respondent *does* object to the inclusion of her exhibits to her petition for rehearing, other than the Commission’s Order of February 20, 2025. In Appellant’s Designation, Item 5 is identified as “Petition for Rehearing.” While it may be proper for the Petition for Rehearing itself to be designated, it was filed at the Commission with six exhibits, five of which were not admitted in evidence at the hearing and which were therefore improperly submitted. The Commission recognized as much in its April 17, 2025, Order denying rehearing, a copy of which has been filed with the Court along with Appellant’s Notice of Appeal.

Exhibit F to the Petition for Rehearing, which is also separately mentioned as Item 7 in

⁶ *Id.* at pp. 4, 5, 6, 7, 20 Appellant also improperly attempted to append these documents to her Petition for Rehearing as Exhibits B and C as discussed in Section 2.

⁷ *Id.* at pp. 5, 21. Appellant also improperly attempted to append this document to her Petition for Rehearing as Exhibit D as discussed in Section 2.

⁸ If Appellant attempts to include them in a revised Designation or includes the documents in the Record on Appeal when it is filed, Respondent will file another Motion to Strike.

Appellant's Designation, is an "SSRC Agreement" which is not in evidence.

On rehearing, the Commission refused to consider all five of the exhibits to Appellant's Petition for Rehearing, including the SSRC Agreement, because they were not in evidence. The Commission ruled:

The Petition, as filed by Dr. Lane, includes the [February 20, 2025 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 Kingstree 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.**

Id at 6-7. (emphasis added)

The PSC properly rejected these exhibits and Appellant now cannot be permitted to "backdoor" them into the Record on Appeal here.

Respondent requests that the Court issue an order requiring Appellant to revise her Designation to clarify that she is not seeking designation of the exhibits to her petition for rehearing (Item 5) and to eliminate the improper reference to Designation Item 7, the SSRC.

3. Items in Appellant's Brief but missing from Appellant's Designation of Matter.

Appellant has cited two documents in her Initial Brief that she has not included in her Designation. They are referred to as "Docket No. 324845" and "Docket No. 324898."⁹ These are apparently references to "Matter ID" numbers in the Commission's Docket Management System. These are the numbers assigned to the various "matters" (e.g. filings) in a Commission

⁹ Appellant's Initial Brief at p. 9.

Docket.¹⁰ Respondent requests that the Court issue an order requiring Appellant to revise her Designation to include and correctly identify these and any other references to Matter Id numbers.

4. Items in Appellant’s Designation of Matter Not referenced in Appellant’s Brief

Appellant also designated three documents referred to as “Docket No. 342596” (Item 11), “Docket No. 324846” (Item 13), and “Docket No. 324896” (Item 14) that are not cited to in her Initial Brief. Respondent is also unable to locate any corresponding Matter Id. numbers in the record below. Respondent requests that the Court issue an order requiring Appellant to revise her Designation to eliminate these improper matters.

REQUEST TO HOLD DEADLINES IN ABEYANCE

Respondent must file an Initial Brief and Designation by January 12, 2026. If Respondent is granted the relief it requests, Appellant will be required to file an amended Initial Brief, and this will in turn affect the citations and references that will be in Respondent’s Initial Brief. For that reason, Respondent respectfully requests that the Court hold all deadlines in abeyance while this motion is pending and issue a revised schedule with its ruling.

CONCLUSION

For the reasons discussed herein, Respondent respectfully requests that the Court issue an Order:

1. Striking the documents discussed in Sections 2 and 4 from Appellant’s Designation of Matter in accordance with Rules 209, 210(c) and 209(b), SCACR, and requiring

¹⁰ Item no. 324845 is a “Request for Approval of a Modified Procedural Schedule” dated 7/16/2024, and Item No. 324898 is “Correspondence Regarding Revised Notices and Revised Prefile Testimony Letter Prepared by the Clerk's Office of the Commission” dated July 17, 2024. These were filed in Commission Docket Number 2024-203-E assigned to this case. The Commission’s Docket Management System can be accessed at www.dms.psc.sc.gov, and the docket of this case is found at <https://dms.psc.sc.gov/Web/Dockets/Detail/119059>.

Appellant to file a revised Designation.

2. Requiring Appellant to refile her initial brief to eliminate the improper references discussed in Sections 1 and 2 above.
3. Requiring Appellant to revise her Designation to include the missing references discussed in Section 3 above, remove the errant references discussed in Section 4 above, and adopt the proper nomenclature, “Matter Id” instead of “Docket No.”
4. Holding Respondent’s deadlines in abeyance while the Court considers this Motion, and issue a revised briefing schedule with its ruling.

Respectfully Submitted,

/s/ Alexander G. Shissias

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