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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

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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.

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**INITIAL BRIEF OF RESPONDENT KINGSTREE  
EAST 230 LLC**

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Charles L.A. Terreni  
Terreni Law Firm, LLC  
1508 Lady Street  
Columbia, S.C. 29201  
Tel. (803) 771 7228  
S.C. Bar No. 15235  
[Charles.Terreni@Terrenilaw.com](mailto:Charles.Terreni@Terrenilaw.com)

Alexander G. Shissias  
The Shissias Law Firm, LLC  
1727 Hampton Street  
Columbia, SC 29201  
803-540-3090  
SC Bar No. 11610  
[Alex@Shissiaslawfirm.com](mailto:Alex@Shissiaslawfirm.com)  
Attorneys For Kingtree East 230 LLC

**TABLE OF CONTENTS**

**TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES .....iii**

**COUNTERSTATEMENT OF ISSUES ON APPEAL .....1**

**STATEMENT OF THE CASE.....2**

**STATEMENT OF THE FACTS.....6**

**STANDARD OF REVIEW.....7**

**ARGUMENT .....7**

**I. THE COMMISSION’S PREFILED TESTIMONY REQUIREMENTS AND DEADLINES, WHICH LANE NEVER CONTESTED, DID NOT VIOLATE HER DUE PROCESS RIGHTS.**

**II. APPELLANT IS BARRED FROM CHALLENGING THE COMMISSION’S FINDINGS ON THE PROJECT’S COST AND RELIABILITY AS SHE RAISED THIS ARGUMENT FOR THE FIRST TIME IN HER PETITION FOR REHEARING, AND THE COMMISSION’S FINDINGS ARE ALSO SUPPORTED BY THE RECORD.**

**III. APPELLANT IS BARRED FROM RAISING HER “PIECE AND PARCEL” ARGUMENT WHEN SHE RAISED IT FOR THE FIRST TIME IN HER PETITION FOR REHEARING, AND THE RECORD IS DEVOID OF EVIDENCE THAT SUPPORTS HER ARGUMENT.**

**CONCLUSION .....19**

**TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES**

**CASES**

*Duke Energy Carolinas, LLC v. South Carolina Office of Regulatory Staff*, 434 S.C. 392, 864 S.E.2d 873 (2021)..... 7

*S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587(2010)..... 7

*Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 307 (1981)..... 7

*Consolo v. Federal Maritime Commission*, 383 U.S. 607 (1966)..... 7

*Palmetto Alliance, Inc. v. South Carolina Public Service Com'n*, 282 S.C. 430, 319 S.E.2d 695, (1984)..... 8, 9, 10

*Seabrook v. Knox*, 369 S.C. 191, 198, 631 S.E.2d 907, 911 (2006)..... 8

*Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004) 8

*Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). .... 8

*Marroquin-Manriquez v. I.N.S.*, 699 F.2d 129 (3<sup>rd</sup> Cir 1983) 9

*Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 408 S.E.2d 213, (1991)..... 12

*State v. Burton*, 356 S.C. 259, 589 S.E.2d 6 (2003)..... 14

*Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 597 S.E.2d 145 (2004)..... 15, 17,

*Summit Petroleum Corp. v. U.S. Env'tl. Prot. Agency*, 690 F.3d 733 (6th Cir. 2012)..... 18

**STATUTES AND REGULATIONS**

S.C. Code Ann. §58-33-120(1)..... 2

S.C. Code Ann. §58-33-120(2)..... 2

S.C. Code Ann. §58-33-120(3)..... 2, 11

S.C. Code Ann. §58-4-10..... 3 n.3

S. C. Code Ann. §1-23-380..... 7

S.C. Code Ann. §58-3-140(D)..... 9

S.C. Code Ann. Regs 103-845.C .....	9
S.C. Code Ann. § 1-23-320(A),(B).....	10
S.C. Code Ann. § 58-33-20.....	18
40 C.F.R. § 122.26(b)(14)(x).....	18, n.9 14, 15,
S.C. Code Ann. § 58-33-110(8)(a).....	16 19 9, n5,
Act 41, 2025 S.C. Acts 197.....	16 n8
Act 62, 2019 S.C. Acts 368.....	16, n8

**ADMINISTRATIVE ORDERS**

S.C. Pub. Serv. Comm’n Order No. 2024-64-H, Dkt. No. 2024-203-E (August 22, 2024) .....	4
S.C. Pub. Serv. Comm’n Order No. 2025-124. Dkt. No. 2024-203-E (February 20, 2025) .....	6, 16
S.C. Pub. Serv. Comm’n Order No. 2025-173, Dkt. No. 2024-203-E (April 17, 2025).....	6
S.C. Pub. Serv. Comm’n Order No. 2024-171, Dkt. 2023-154-E (March 8, 2024).	16

## **COUNTER STATEMENT OF ISSUES ON APPEAL**

1. Whether Appellant waived her right to argue to challenge the Commission's procedural schedule for prefiled testimony and its findings regarding the cost, reliability, size, and scope of the project when she did not timely raise these issues below.
2. Whether there is substantial evidence in the record to support the Commission's findings.

## STATEMENT OF THE CASE

On July 5<sup>th</sup>, 2024, Kingtree East 230, LLC (“Kingtree East” or “Respondent”) filed an Application 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 on an undeveloped site in Williamsburg County (“the Project”). Tr. H’rg. Ex. 2 (R. ).

The Application was filed with proof of service showing that on July 1<sup>st</sup>, 2024, pursuant to S.C. Code Ann. §58-33-120 (2), via U.S. Mail on the South Carolina Office of Regulatory Staff (“ORS”) and the heads of each state and local governmental agency charged with the duty of protecting the environment or planning land use in the area of the county in which any part of the facility will be located. Respondent also filed a Certificate of Service showing that the Application was served on various government officials as required by S.C. Code Ann. § 58-3-120(1). Cert. of Serv. (334561) (R. ).<sup>1</sup>

As required by S.C. Code Ann. §58-33-120(3),<sup>2</sup> on July 9<sup>th</sup>, 2024, Respondent also filed Affidavits of Publication with the Commission, which provided proof that notice of a summary of the imminent Application was published in newspapers of general circulation on June 21<sup>st</sup> and June 26<sup>th</sup>, 2024. Aff. of Pub. *The News of Kingtree, Post and Courier, Georgetown Times* (324627) (R. ).

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<sup>1</sup> This initial brief references the Commission’s matter entry numbers where the documents may be found on the Commission’s Docket Management System. It should be noted that matter entries sometimes include more than one document.

<sup>2</sup> Section 58-33-120(3) requires that “[e]ach application . . . must be accompanied by proof that public notice was given to persons residing in the municipalities entitled to receive 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 newspapers of general circulation as will serve substantially to inform such persons of the application.” While the Project is located in an unincorporated area, Respondent nonetheless published notices in local newspapers.

On July 5<sup>th</sup>, 2024, the Clerk’s Office of the Commission issued its Notice of Initial Testimony Letter directing Kingstree East to prefile its Direct Testimony by July 19<sup>th</sup>, 2024. (324574) (R. ) On July 10<sup>th</sup>, 2024, the Clerk’s Office issued a Transmittal Letter, Notice of Filing and Public Hearing, a Newspaper Notice of Filing and Public Hearing (“Newspaper Notice”) for publication, and a Notice of Prefile Testimony Deadlines. (324662) (R. ). The Notice of Filing and Public Hearing and the Newspaper Notice notified the public that interested parties or entities could timely file petitions to intervene or present their views in writing to the Commission on or before August 9<sup>th</sup>, 2024, and that a public hearing would be held on September 12<sup>th</sup>, 2024. The Notice of Prefile Testimony Deadlines gave ORS and Intervenors a deadline of August 15<sup>th</sup>, 2024, to prefile direct testimony.<sup>3</sup>

On July 18<sup>th</sup>, 2024, at the parties’ request, the Clerk’s Office issued a Revised Notice of Filing and Public Hearing, Revised Newspaper Notice, and a Revised Notice of Prefile Testimony Deadlines. Terreni Ltr. to PSC, July 16<sup>th</sup>, 2024(R. \_\_\_), E-Mail—Terreni to PSC, July 16<sup>th</sup>, 2024 (324845) (R. \_\_\_) E-Mail-1—Terreni to PSC; July 17<sup>th</sup>, 2024; E-Mail 2—Terreni to PSC, July 17<sup>th</sup>, 2024 (324903) (R. \_\_\_), E-Mail—Terreni to PSC, July 17<sup>th</sup>, 2024 (324898)(R. \_\_\_) Rev. Not. of Filing and Pub. H’rg., Rev. Newsp. Not., Rev. Not. of Prefile Test. Deadlines.(324908) (R. \_\_\_).

The Revised Notice of Filing and Public Hearing kept August 9<sup>th</sup>, 2024, as the deadline for interested parties to file a petition to intervene, and set a hearing date of September 12<sup>th</sup>, 2024, to be reconvened on October 8<sup>th</sup>, 2024.<sup>4</sup> However, the Revised Notice of Prefiled

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<sup>3</sup> ORS is automatically a party of record in all actions at the Commission under S.C. Code Ann. § 58-4-10.

<sup>4</sup> The September 12<sup>th</sup>, 2024, hearing was noticed as “with only attorneys present and no witnesses” and would reconvene on October 8<sup>th</sup>, 2024 “to receive evidence and hear from witnesses.”

Testimony Deadlines, extended the deadline for Kingtree East’s Direct Testimony to September 5<sup>th</sup>, 2024 and moved the deadline for ORS and Intervenors to file Direct Testimony to September 12<sup>th</sup>, 2024. The revised notices were not accompanied by a Transmittal Letter with a publication deadline, but Kingtree East published the Revised Notice of Hearing in newspapers of general circulation in the affected areas the next week on July 24<sup>th</sup>, 2024, and filed Affidavits of Publication on July 29<sup>th</sup>, 2024. Aff. of Pub. *Georgetown Times, Post and Courier* (325212), (R. ), *The News (Kingtree)* (325206) (R. ).

On August 9<sup>th</sup>, 2024, Cheryl O. Lane, Ph.D. (“Lane” or “Appellant”), filed a Petition to Intervene, which was granted on August 22<sup>nd</sup>, 2024, without the objection of any party. S.C. Pub. Serv. Comm’n Order No.2024-64-H. (R. ).

Kingtree East prefiled its direct testimony on August 9<sup>th</sup>, 2024., and ORS prefiled its direct testimony on September 5<sup>th</sup>, 2024. Lane did not prefile any testimony or exhibits. On September 17<sup>th</sup>, 2024, Lane sent an e-mail to the Commission’s General Counsel “...checking to see if you have a possible group meeting date to talk about deadlines, etc.” E-mail—Lane to Wessinger Hill, Sept. 17<sup>th</sup>, 2024 (326384) (R. ). Lane did not request relief from the Commission’s deadlines or additional time to file testimony or exhibits.

The September 12, 2024 “attorneys only” hearing addressed preliminary issues. Lane was asked if she had any to raise and replied she did not. Tr. p. 5:1-5 (R. ). The Commission reconvened the hearing on October 8<sup>th</sup>, 2024, when it heard testimony and admitted the exhibits filed by Kingtree East and ORS, and a letter filed by DES which was admitted without objection. Tr. Vol. 2, Ex. 1 (R. ). Kingtree East called five witnesses to support its application. Kristen Resar, Acquisition Manager of Ingka, and Matthew Meares, Managing Director of Sunworks NC, LLC testified about the Project. Tr. Vol 2. (R. ) Kingtree East also presented

the testimony of three expert witnesses. Rick Thomas, of the Timmons Company, testified about an environmental review of the Project (“Timmons Report”). Carol Tyrer, of Circa, testified about a cultural resource analysis report (“Circa Report”) she prepared. Devi Glick, of Synapse Energy Economics, testified to the need for the project. *Id.* ORS called Jeffrey A. Gordon, Regulatory Analyst in the Energy Planning and Emerging Technology Division, and Brandon Bickley, Regulatory Manager in the Energy Operations Division, to testify about the agency’s review of the Project. Tr. pp. 209-231 (R. ). Each witness had prefiled testimony, which was admitted into the record at the hearing. They also gave summaries of their testimony, answered questions from the Commissioners, and were subject to cross-examination by Lane.

Lane repeatedly attempted to refer to documents that were not in the record and attempted to introduce evidence during the hearing on October 8<sup>th</sup>, 2024. Tr. pp 37: 17-25, 38:1-3, 41:15- 24. (R. ) She also sought to answer her own questions in an attempt to testify. Tr. pp. 62:1-9, 65 25- 66:18. (R. \_\_\_\_). At the end of the hearing, Lane attempted to raise matters relating to a request she had made for a county moratorium on solar facilities, but Commission Chairman Powers did not permit her to present this argument. Tr. p. 231:17-25 (R. ). When Lane asked if she could discuss this issue in the form of a closing statement, Chairman Powers stated:

The only thing is the testimony you’ve heard. You do not have any witnesses to present. You did not file any testimony.... What happened with your County Council has nothing to do with this case. We are not allowed to consider that. It’s not in this record. Tr. p. 232:1-16 (R. ).

Following the hearing, Kingtree East and Lane filed proposed orders. Prop. Order of Lane, December 2<sup>nd</sup>, 2024 (327643) (R. ), Prop. Order of Kingtree East, December 2<sup>nd</sup>, 2024) (327630) (R. ). Lane filed a Memorandum in Response to Kingtree’s Proposed Order

on December 12<sup>th</sup>, 2024, and Kingtree East also filed a Memorandum in Opposition to Lane's Proposed Order on December 12<sup>th</sup>, 2024, in which it objected, *inter alia*, to Lane's references to matters not in evidence. Memo in Resp. to Prop. Order of Kingtree East (327982) (R. ); Memo. in Opp'n to Prop. Order of Lane, Dec. 12<sup>th</sup>, 2024, (327908) (R. ) Lane filed a reply to Kingtree East's memorandum on December 19<sup>th</sup>, 2024. Memo in Resp. Dec. 19<sup>th</sup>, 2024 (327988). On December 23<sup>rd</sup>, 2024, Kingtree East objected to Lane's references to matters not in evidence in Lane's responsive memorandum. Terreni Ltr. To PSC, Dec. 23<sup>rd</sup>, 2024 (328104) (R. )

The Commission granted Kingtree East a Certificate by Order dated February 20<sup>th</sup>, 2025. S.C. Pub. Serv. Comm'n Order No. 2025-124. Lane filed a Petition for Rehearing on March 3<sup>rd</sup>, 2025, which Kingtree East responded to on March 11<sup>th</sup>, 2025. Pet. for Rehearing (32970) (R. ), Response to Pet. for Reh. (329439) (R. ) On April 17<sup>th</sup>, 2025, the Commission issued an order denying Lane's Petition for Rehearing. S.C. Pub. Serv. Comm'n Order No. 2025-173. Lane filed her Notice of Appeal on May 15<sup>th</sup>, 2025. This appeal followed.

### **STATEMENT OF FACTS**

The Project is a proposed 240 MWAC solar photovoltaic generating facility to be located in Williamsburg County. The Project is owned by Kingtree East 230, LLC, a Delaware limited liability company which is a wholly owned subsidiary of Ingka Investments US, Inc. ("Ingka"). Tr. p. 23.2:4-6 (R. ) Because the Project's generating capacity exceeds 75 MW, it was required to obtain a Certificate from the Commission. S.C. Code Ann. § 58-33-10(2)(a). Ingka is also the indirect owner of Kingtree West 115, LLC, the developer of an eponymous project on a separate parcel of land in Williamsburg County. Tr. pp. 23.3:1-2; 23.4:4-9 (R. ). Kingtree East developed the Project with the primary intention of selling its output to the South

Carolina Public Service Authority (“Santee Cooper”) and Central Electric Power Cooperative, Inc. (“Central”). Tr. pp. 110.10:8-110.11:19. Santee Cooper identified the need for solar capacity in its Integrated Resource Plan previously approved by the Commission. Tr. pp. 21:22-23; 110.11:2-3. (R. )

### **STANDARD OF REVIEW**

The Administrative Procedures Act governs this appeal, S.C. Code Ann. § 1-23-380. The Commission’s findings on appeal are treated as “...presumptively correct, [and] the party challenging the [Commission's] order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole.” *Duke Energy Carolinas, LLC v. South Carolina Office of Regulatory Staff*, 434 S.C. 392, 407, 864 S.E.2d 873, 881 (2021), *citing S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010). Substantial evidence is “something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981), *citing Consolo v. Federal Maritime Commission*, 383 U.S. 607 (1966). The decision of an administrative agency may be reversed if its ruling is controlled by error of law. *Id.*, 276 S.C. at 133, 276 S.E.2d at 305.

### **ARGUMENT**

#### **I. THE COMMISSION’S PREFILED TESTIMONY REQUIREMENTS AND DEADLINES, WHICH LANE NEVER CONTESTED, DID NOT VIOLATE HER DUE PROCESS RIGHTS.**

Lane argues that the Commission prefiled testimony requirements violated her due process rights, but the record shows otherwise. To the contrary, the Commission went to

extraordinary lengths to afford Lane due process, and she cannot demonstrate the “substantial prejudice” required to establish a due process claim. *Palmetto Alliance., Inc. v. S.C. Pub. Serv. Com.*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

To the extent that Lane claims a violation of *substantive* due process, she has failed to show that she has been “deprived of life, liberty, or property for arbitrary reasons.” *Seabrook v. Knox*, 369 S.C. 191, 198, 631 S.E.2d 907, 911 (2006). To support her claim, Lane must show that she “possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency.” *Id.* “The standard for reviewing all substantive due process challenges to state statutes or municipal ordinances, including economic and social welfare legislation, is whether the ordinance bears a reasonable relationship to any legitimate interest of government.” *Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004).

Lane has failed to identify her “life, liberty, or property” interest in these proceedings, let alone show one has been denied. Nor does she identify a specific statute or regulation that has substantially prejudiced her protected interest. Additionally, she has not argued that the Siting Act’s provisions or the Commission’s prefiling requirements are not reasonably related to legitimate state interests. *Id.* She therefore has not met the burden of showing that she has suffered substantial prejudice as a result of a statute or the Commission’s regulations. *Palmetto Alliance., Inc., supra.*

Lane is also unable to demonstrate that her right to *procedural* due process was violated. App. Initial Brief, p. 13. “The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.” *Kurschner v. City of Camden*

*Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Id.*

The conduct of proceedings before the Commission, including deadlines and discovery, are left to the discretion of the Commission. In *Palmetto Alliance*, the Court said:

It is well-settled that ‘the scope and conduct of discovery are within the sound discretion of the trial court ..., and that after final judgment of the district court or final agency order, [the Court's] review is confined to determining if that discretion has been abused....’ *Marroquin-Manriquez v. I.N.S.*, 699 F.2d 129 (3<sup>rd</sup> Cir. 1983). Based upon the record herein, this Court finds no abuse of the Commission's discretion in the conduct of prehearing discovery.

*Palmetto Alliance*, 282 S.C. at 436, 319 S.E. 2d at 698.

The Commission’s conduct in setting procedural deadlines is similarly left to its discretion.

The statute and regulations governing Commission hearings are clear regarding the requirement to prefile evidence and testimony. S.C. Code Ann. § 58-3-140(D) states in pertinent part:

The commission must promulgate regulations to require the direct testimony of witnesses appearing on behalf of utilities and of witnesses appearing on behalf of persons having formal intervenor status, **such testimony to be reduced to writing and prefiled with the commission in advance of any hearing.**<sup>5</sup>

And S.C. Code Ann. Regs 103-845.C states:

Prepared Statements and Exhibits. **Copies of witness testimony and exhibits shall be prefiled with the Commission as prescribed.** A witness may read into the record, as his or her direct testimony, statements of fact or expressions of his or her opinion prepared by him or her, or written answers to interrogatories of counsel. A prepared statement of a witness may also be received as an exhibit. All parties of record, insofar as it is practicable, should prefile with all other parties of record

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<sup>5</sup> S.C. Code Ann. § 58-3-140(D)(emphasis added) *n.b.* this subsection was amended by Act 41 of 2025, but the quoted language remains unchanged. Act No. 41, 2025 S.C. Acts 197.

copies of prepared testimony and exhibits that the party of record proposes to use during a hearing. In proceedings involving utilities, the Commission shall require any party and the Office of Regulatory Staff to file copies of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing. (emphasis added).

The Commission also afforded Lane ample opportunity to be heard. In this case, Lane received notice of the Application, relevant deadlines, and the hearing. (R. ) The Revised Notice of Filing and Hearing issued by the Clerk on July 18<sup>th</sup>, 2026, fully complied with the requirements of the Administrative Procedures Act, S.C. Code Ann. §1-23-320(A),(B), and notified her of the deadline for intervention. The Revised Notice of Prefile Testimony Deadlines also alerted her to the deadline to prefile her testimony. Lane could have prefiled testimony but did not do so. She cannot now object to situations she has brought upon herself. *Palmetto Alliance*, 282 S.C. at 439 (“Palmetto failed to present such evidence when allowed the opportunity by the Commission”).

Lane also participated in the hearing and cross-examined witnesses. She filed a proposed order, a post-hearing memorandum, and a motion for rehearing. (“The Commission ... permitted Palmetto the opportunity to contest the validity of PMPA's rebuttal evidence by way of a brief or proposed findings and conclusions”). *Id.* Lane was afforded the same opportunity to participate in the Commission’s proceedings as any other party, and there was no abuse of discretion on the part of the Commission.

Disingenuously, Lane claims her due process rights were violated because she was not given sufficient time to prepare her prefiled testimony and exhibits. App. Brief at 14. Specifically, Lane claims she only had thirteen days to prepare her case between the date she was granted intervention, August 23<sup>rd</sup>, 2024, and September 5<sup>th</sup>, 2024, the deadline to file her prefiled testimony. That is not the case.

As early as June 21<sup>st</sup>. 2024, Kingstree East published notice that it would file this application as required by S.C. Code Ann. § 58-33-120(3). (R. ) The final (revised) timelines were established by the Commission on July 18<sup>th</sup>, 2024. On that day the Clerk also issued the Revised Notice of Prefiling Deadlines, which was posted to the Commission’s online Docket Management System. (R. ) The Revised Notice of Prefile Testimony established Kingstree East’s deadline to file direct testimony as August 9<sup>th</sup>, 2024, and the deadline for Intervenors such as Lane to file direct testimony as September 5<sup>th</sup>, 2024. ( R. ) As Lane acknowledges in her Initial Brief at 13-14, the prefiling deadlines were revised at the parties’ request to allow additional time for all parties to prepare and prefile testimony.<sup>6</sup>

The Commission’s Revised Notice of Filing and Public Hearing was published as early as July 24<sup>th</sup>, 2024, 43 days before Respondent’s prefiled testimony deadline.<sup>7</sup> (R. ) Lane also had access to Respondent’s prefiled Direct Testimony on this matter on August 9<sup>th</sup>, 2024, the day she moved to intervene, 27 days before her testimony would be due. She had ample notice of this application, and she did not have to wait for the Commission to grant her petition to intervene to begin preparing her case.

Lane was on notice of these deadlines when she filed her Petition to Intervene on August 9<sup>th</sup>, 2024. The Clerk’s Notice of Revised Prefiled Testimony Deadlines of July 18<sup>th</sup>, 2024, contained stern warnings about the prefiling deadlines. It states:

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<sup>6</sup> “These changes to the procedural schedule are intended to allow all interested parties more time to review the application, conduct discovery, accommodate witnesses’ schedules, and better inform the Commission with their testimony.” Terreni Ltr. to PSC, July 16<sup>th</sup>, 2024 (R. \_\_\_),

<sup>7</sup> Appellant claims the publication of this *revised* notice was untimely because it did not meet the Commission’s July 19<sup>th</sup>, 2024, deadline for the *initial* notice. App. Initial Brief, at p. 9. The Commission did not provide a deadline for publishing the revised notice, but it was published within six days after the day it was issued on July 18<sup>th</sup>, 2024. In any event, the issue is not timely raised.

**NOTE:** Failure to comply with the instructions contained herein could result in your proposed Witnesses' testimony and exhibits being excluded in the subject proceeding. Additionally, please note failure to comply with the above on or before the dates indicated may result in the **DISMISSAL** of your pleading.

(R. \_\_\_\_ ) (emphasis in original)

Lane could also have requested additional time to "...marshal her witnesses, submit testimony or exhibits" (App. Brief at 14) but she never did. "One cannot complain of a due process violation if he has recourse to a constitutionally sufficient administrative procedure but merely declines or fails to take advantage of it." *Zaman v. S.C. State Bd. of Medical Examiners*, 408 S.E.2d 213, 215, 305 S.C. 281, 285 (1991).

In an apparent attempt to justify her failure to prefile testimony, Lane claims that "[t]he PSC ignored Appellant's multiple pretrial motions and requests..." App. Initial Brief, p. 16. In fact, Lane never filed any motions and made no requests for an extension or change to the prefiling schedule. She also attended the procedural hearing on September 12<sup>th</sup>, 2024, but did not raise any concerns about the Commission's prefiling deadlines. Tr. p. 5:2-5.

Lane sent only one e-mail to the Commission before the October 8<sup>th</sup>, 2024, evidentiary hearing—on September 17<sup>th</sup>, 2024. E-mail—Lane to Wessinger Hill, Sept. 17<sup>th</sup>, 2024 (326384) (R. \_\_\_\_ ). That e-mail was sent twelve days *after* Lane's prefiling deadline. In the e-mail she merely said: "Good Afternoon, Ms. Hill. I am checking in to see if you have a possible group meeting date to talk about deadlines, etc." *Id.* After learning of the parties' availability, the Commission's General Counsel scheduled a virtual status conference which was held on September 25<sup>th</sup>, 2024, at 2:30 p.m. E-Mail—PSC to Lane, September 24<sup>th</sup>, 2024 (326515) (R. \_\_\_\_ ).

Lane then attended the evidentiary hearing on October 8<sup>th</sup>, 2024, but did not complain of the prefiling testimony schedule or the Commission's regulations. Tr. p. 5:1-5 (R. \_\_\_\_ ). Instead,

she tried to introduce exhibits in violation of the statutes and the Commission’s regulations. Tr. p. 232.1:1:16 (R. ).

Lane’s subsequent e-mails requesting a status conference were sent *after* the October 8<sup>th</sup>, 2024, hearing and they did not involve prefiled testimony deadlines either. On October 21<sup>st</sup>, 2024, Lane e-mailed the Commission requesting a status conference “...so that clarification can be provided on the remaining dates and possible submissions needed.” E-Mail—Lane to PSC, October 21<sup>st</sup>, 2024 (326920) (R. ). At that point, the only remaining deadlines and possible submissions would have been for proposed orders or post-hearing briefs; the opportunity for Lane to introduce evidence had long since passed.

Lane renewed her request for a status conference in e-mails on November 18<sup>th</sup>, 2024, and offered, as an alternative, to send written questions to the Commission. E-Mail 1—Lane to PSC, Nov. 18<sup>th</sup>, 2024 (327502) (R. ) She reiterated her request for a status conference by e-mail on November 20<sup>th</sup>, 2024. E-Mail 2—Lane to PSC, Nov. 20<sup>th</sup>, 2024 (327502).(R. ) On November 25<sup>th</sup>, 2024, Lane e-mailed her questions to the Commission. E-Mail—Lane to PSC, Nov. 25<sup>th</sup>, 2024 (327596) (R. ).

In her email of November 25<sup>th</sup>, 2024, Lane explicitly stated: “I am okay with someone responding via e-mail from the SCPSC with the answers to these procedural questions.” *Id.* The Commission’s Chief Counsel replied that Lane’s questions could be addressed by e-mail, and a status conference would not be needed. E-Mail—Wessinger Hill to Lane, Nov. 26<sup>th</sup>, 2024 (327609) (R. ). Lane’s questions involved the Commission’s *Pro Se* Litigant Guide, the deadline and procedure for delivering proposed orders, and whether a hard copy was required. *Id.* These are the questions that Lane complains were “apparently ‘lost’ in the Thanksgiving 2024 shuffle.” App. Brief p. 16. The questions have nothing to do with the prefiled testimony

deadlines and therefore have absolutely no bearing on Lane’s due process arguments. In any event, Lane suffered no prejudice if her questions went unanswered, as the record shows that she filed a proposed order on December 2<sup>nd</sup>, 2024, which was accepted by the Commission. Lane Prop. Order, Dec. 2<sup>nd</sup>, 2024 (327643)(R. ).

Lane cites her *pro se* status in her defense; however, as she admits, South Carolina requires *pro se* litigants to adhere to the same standards as attorneys. *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”). In *Burton*, a case cited by the Lane, the Court found that a *pro se* litigant could not appeal his criminal conviction on the basis of evidence resulting from an illegal search and seizure because he failed to object to its admission at trial. The Court explained: “[t]he search and seizure of Burton was illegal and we look with disapproval on the officers' conduct leading up to the seizure. However, Burton's argument was not properly preserved as to any of the counts.” *Id.* The same principle applies in this case.

Lane’s claim that she “...could not raise the pre-filing issue to the PSC because it was already decided before she ever intervened” is disingenuous. App. Brief at 15. She could have requested a change in the schedule, but did not, despite having many opportunities to do so. Lane cannot raise a claim of a violation of due process based on her own ignorance of the law, her disregard of the instructions of the Clerk, and her own failure to exercise available remedies.

**II. APPELLANT IS BARRED FROM CHALLENGING THE COMMISSION’S FINDINGS ON THE PROJECT’S COST AND RELIABILITY AS SHE RAISED THIS ARGUMENT FOR THE FIRST TIME IN HER PETITION FOR REHEARING. THE COMMISSION’S FINDINGS ARE ALSO SUPPORTED BY THE RECORD.**

Lane challenges the sufficiency of the Commission’s findings on the project’s cost and reliability under S.C. Code Ann. § 58-33-110(8)(a). However, she is procedurally barred from

making this argument as she raised it for the first time in her Petition for Rehearing. A party cannot raise issues in a motion to reconsider that could have been presented prior to the decision on the merits or that are raised for the first time in a petition for rehearing. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (“Since KPOG first broached the transfer line issue in its petition for rehearing to the PSC, the issue is not preserved.”)

The transcript of the hearing shows that Lane did not offer any evidence or cross examine any witness on the cost and reliability requirement and did not raise it in her Proposed Order. App. Proposed Order, Dec. 2, 2024 (R. ). The first time Lane raised this claim was in her Petition for Rehearing and she only did so in a cursory fashion. Pet. for Rehearing at p. 4 (R. ). The argument was untimely. In any case, there is ample evidence in the record to support the Commission’s finding that the project was compared to other generation options for cost and reliability.

At the time of the hearing S.C. Code Ann. § 58-33-110(8)(a) stated in pertinent part:

[A] person may not commence construction of a major utility facility for generation in the State of South Carolina without first having made a demonstration that the facility to be built has been 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.

S.C. Code Ann. § 58-33-110(8)(a)<sup>8</sup>

Kingstree East’s witnesses Resar and Meares testified that Kingstree East’s primary goal was to sell the Project’s output to Santee Cooper or another utility in an upcoming RFP. Tr. pp. 21:19-23, 23.6:8-12; 48:15-49:1(R. ). The Commission-approved RFP was implemented to

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<sup>8</sup> The section was amended by Act 41 of 2025 which took effect on May 12<sup>th</sup>, 2025. The version in effect at the time of the application was enacted in Act 62 of 2019.

procure necessary generation resources identified in Santee Cooper and Central Electric Power Cooperative's Integrated Resource Plans, the latter which was approved by the Commission. S.C. Pub. Serv. Comm'n Order No. 2024-171, Dkt. 2023-154-E (March 8, 2024).

Resar, a Manager at Ingka in charge of the project, testified that Ingka chose the Kingstree East site for several reasons: (1) its size and secluded location make it well suited to solar development; (2) South Carolina has above average solar irradiance; (3) the site is close to a transmission line; and (4) Williamsburg County supports the project. Tr. p. 21: 3-8 (R. ). In response to a question from Commissioner Caston, Resar testified that the Project would be solely funded by Ingka and would pose no risk to the ratepayers. Tr. p. 46:22-25 (R. ). Due to this fact, Commissioners Carolee Williams and Caston also found the requirements of Section 58-33-110(8)(a) are ultimately evaluated by the utilities that will purchase the project's output in a competitive marketplace. Order 2025-124, at p. 45. (R.....)

Matthew Meares, the Project's Consulting Developer, was qualified as an expert in the field of solar project development. Tr. pp. 92:11-.94:21 (R. ). Meares testified that the project had signed two interconnection agreements with Santee Cooper and submitted a bid in the utility's renewable energy RPP for the year 2024. Tr. pp. 110.5:21-110.6:19.

Kingstree East's expert witness on power plant economics and resource planning, Devi Glick, explained: "Santee Cooper and Central's IRPs already evaluated solar PV relative to alternative resource options and found that solar PV was the lowest cost option to meet system need." Tr. pp. 189:12-18;192:10-17 (R. ). Glick stated that Santee Cooper and Central's IRP modeling shows that solar is cost-effective and reliable. Tr. p. 194.22:14-16 (R. ). The Commission cited to Glick's testimony that the IRP involves extensive, rigorous analysis in the evaluation of generation alternatives: "[t]he IRP, and the subsequent RFP supported by the IRP,

should be sufficient to demonstrate the value of the [Solar Project] compared to alternatives.” Tr. p. 194.15:1-7. Glick noted that “Santee Cooper found that it is cost-effective to add 2,200 MW of new solar generation by 2029 and 750 MW more between 2030 and 2040” after modeling three alternative generation portfolios Tr. p. 194:17-23 (R. \_\_\_\_). Glick also testified that solar energy has unique low-cost advantages compared to other sources of generation. Tr. pp. 194.15:8-194.16:10 (R. \_\_\_\_). She noted that Central opted not to participate in the construction of a new natural gas plant with Santee Cooper due to cost and reliability concerns and instead opted for a generation portfolio that adds 1,600 MW of utility-scale solar generation between 2028 and 2035. Tr. p. 194.8:2-7 (R. \_\_\_\_).

**III. APPELLANT IS BARRED FROM RAISING HER “PIECE AND PARCEL” ARGUMENT WHEN SHE RAISED IT FOR THE FIRST TIME IN HER PETITION FOR REHEARING, AND THE RECORD IS DEVOID OF EVIDENCE THAT SUPPORTS HER ARGUMENT.**

In Appellant’s Initial Brief at 20-22, she claims that the Commission erred in not requiring Respondent to combine two separate projects in its application. Lane raised her “piece and parcel” argument for the first time in her Petition for Rehearing where she alleges: “[o]bviously, this is a ‘piece and parcel’ approach of one major utility scale solar project.” (R. \_\_\_\_) (emphasis in original). At no point does she explain exactly what legal error the Commission committed in this regard, and in fact there is no error to be found. Again, Lane cannot raise this argument for the first time in a Petition for Rehearing. *Kiawah Prop. Owners Group, supra*.

The only allegation of error on the East/West issue that Lane raised at the hearing was that one of Respondent’s exhibits was mistakenly titled “Kingstree West 115” when it should have been titled, “Kingstree East 230.” Respondent’s witness Matthew Meares explained that errata at the hearing. Tr. pp. 116;11-117:7, 121:5-10. (R. \_\_\_\_)

Also, Lane’s argument is not supported by the record. Kingstree East 230, LLC is 100% owned by Ingka Investments US, Inc., which is in turn owned by Ingka Investments BV.(R. ) The Kingstree West 115 facility is not required to obtain a Certificate as it is below the 75 MW threshold in S.C. Code Ann. § 58-33-20. Kingstree West 115 is also indirectly owned by Ingka Investments BV, and it is developing a 74.9 MW solar project in another part of Williamsburg County. (R. ). The mere fact of common ownership does not mean the Projects are the same.

In her Proposed Order, Lane wrote there was a “[f]ailure to actually prove that *Kingstree East, LLC 230* is a part of the Special Source Revenue Credit agreement because the document dated April 18<sup>th</sup>, 2024, is entitled *Kingstree West, LLC, 115*.” App. Prop. Order, p. \_\_ (R. \_\_\_\_ ) (emphasis in original). This allegation, which refers to a document that was not introduced at the hearing, has no bearing on the application. More important for purposes of this appeal, it is not an allegation that the two projects should have been considered together.<sup>9</sup>

Finally, Lane’s arguments are not supported by the record. There is no evidence to indicate that the two projects are the same. There is simply nothing in the record Lane can point to except a mislabeled plan by a consultant and the fact that they are located in the same county. Lane’s argument is without merit.

### CONCLUSION

The Commission did not violate Lane’s due process rights; Lane’s inability to introduce testimony and exhibits was the result of her disregard of the statutes, regulations, warnings of

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<sup>9</sup> In other areas of regulatory law, there are specific (and highly complex and changing) rules to determine when separate projects must be considered together. *See, e.g. Summit Petroleum Corp. v. U.S. Env’tl. Prot. Agency*, 690 F.3d 733, 75 ERC 1129 (6th Cir. 2012) (former rule on stationary source aggregation under the Clean Air Act); 40 C.F.R. § 122.26(b)(14)(x) (“larger common plan of development” rule under stormwater regulations). The statutes and regulations for the Public Service Commission do not contain any such requirements. In any event, Appellant did not raise such an argument at the hearing or in her proposed order, nor does she raise such a ground before the Court.

the Clerk of the Commission, and her failure to request adjustments to the filing deadlines. Though Lane is *pro se*, she voluntarily chose to represent herself and is held to the same standard as an attorney. The Commission's conduct of its hearings is left to the sound discretion of the Commission. All the evidence upon the record supports the Commission's findings of fact and conclusions of law on the issue of cost and reliability as required by S.C. Code Ann. §58-33-110 (8)(a), and Lane is barred from raising this issue as she first raised it in her Petition for Rehearing. Lane also is barred from raising her "piece and parcel" argument as she first raised it in her Petition for Rehearing, and in addition her allegation does not state a cognizable ground of error. The decision of the Commission should be upheld.

Respectfully Submitted,

*/s/ Charles L.A. Terreni*

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Charles L.A. Terreni  
Terreni Law Firm, LLC  
1508 Lady Street  
Columbia, S.C. 29201  
Tel. (803) 771 7228  
S.C. Bar No. 15235  
[Charles.Terreni@Terrenilaw.com](mailto:Charles.Terreni@Terrenilaw.com)

Alexander G. Shissias  
The Shissias Law Firm, LLC  
1727 Hampton Street  
Columbia, SC 29201  
803-540-3090  
SC Bar No. 11610  
[Alex@Shissiaslawfirm.com](mailto:Alex@Shissiaslawfirm.com)  
Attorneys For Kingstree East 230 LLC

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