

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE PUBLIC SERVICE COMMISSION

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SC Court of Appeals

Docket No. 2013-392-E  
*South Carolina Court of Appeals*  
*Order Issued March 24, 2016*

In The Matter of Joint Application of Duke Energy Carolinas, LLC and North Carolina Electric Membership Corporation for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 750MW Combined Generating Plant Near Anderson, SC

**PETITION FOR WRIT OF CERTIORARI**

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## CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 10, 2016.

### QUESTIONS PRESENTED

1. In a question of first impression, did the Public Service Commission err in construing the Utility Facility Siting and Environmental Protection Act to require only a determination of whether a major utility facility is needed, and not whether the facility's environmental impacts are justified given cost-effective alternatives.
2. In a question of first impression, does the Utility Facility Siting and Environmental Protection Act empower the Public Service Commission to impose reasonable modifications or conditions on a proposed major utility facility in order to reduce its environmental impact.

### STATEMENT OF THE CASE

This matter concerns a decision by the Public Service Commission (the "Commission") to grant a Certificate of Environmental Compatibility and Public Convenience and Necessity ("Certificate") to Duke Energy Carolinas, LLC ("Duke") and the North Carolina Electric Membership Corporation ("NCEMC") for the construction and operation of a 750 megawatt combined cycle natural gas-fired generating facility at Duke's Lee Steam Station near Anderson, South Carolina (the "Lee Gas Plant"). Because the Lee Gas Plant – which would cost South Carolina ratepayers over \$600 million to build and even more to operate – would be a "major utility facility" under the Utility Facility Siting and Environmental Protection Act ("Siting Act"), S.C. Code Ann. § 58-33-10, *et seq.*, Duke must obtain a Certificate before it may legally construct or operate it.

The Siting Act prohibits the Commission from issuing a Certificate "unless" it first "finds and determines" that the impacts on the environment from the construction, operation, and maintenance of a major utility facility are "justified, considering the state of available technology

and the nature and economics of various alternatives.” *Id.* § 58-33-160(1)(c). The Siting Act further empowers the Commission to grant an application for a Certificate “upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the Commission may deem appropriate.” *Id.* § 58-33-160(1).

In this case, the Commission issued a Certificate for the Lee Gas Plant without considering a solar condition proposed by Petitioners that would substantially reduce the plant’s environmental impacts. The Commission’s decision turned on two legal principles. First, because the need for the proposed gas plant was shown, the Commission did not consider cost-effective options to reduce the plant’s impacts in determining if those impacts are justified. Second, the Commission held that its statutory power to impose conditions or modifications to reduce impacts as it “may deem appropriate” allows only minor conditions and modifications.

#### **1. The Application for a Certificate of Need and the Proposed Condition**

On October 24, 2013, Duke applied for a Certificate for the Lee Gas Plant. The Lee Gas Plant is only the first of four to five natural gas combined-cycle plants that Duke and fellow Duke Energy subsidiary Duke Energy Progress plan to construct over the next decade. (App., Vol. I at 312, lines 1-4.) Together, construction of these plants will cost South Carolina ratepayers billions of dollars.

The proposed Lee Gas Plant would emit multiple air pollutants including nitrogen oxides and carbon dioxide. (App., Vol. I at 158, lines 1-4.) The plant would also consume an estimated 10 cubic feet per second of water – or about 6.5 million gallons per day – from the Saluda River, a drinking water source. (App., Vol. I at 278, lines 11-13.)

The Lee Gas Plant is designed to operate in a flexible manner that would allow it to start quickly, run at low power with no loss of efficiency, and ramp power levels up and down to meet

electricity needs. (App., Vol. I at 273, lines 1-3; Vol. I at 282, lines 19-23.) Given this operational flexibility and ability to ramp up and down without losing efficiency, it is undisputed that the Lee Gas Plant would pair well with dependable but variable power sources like solar power. (App., Vol. I at 285, lines 5-8.)

To reduce environmental impacts and costs to ratepayers, Petitioners in this case recommended that the Commission place a condition on the Certificate for the Lee Gas Plant to require that Duke issue a request for proposals (“RFP”) for a quantity of solar power. Specifically, Petitioners’ proposed solar condition would allow Duke to ramp down the gas plant – whose main operating cost is fuel – and save ratepayers money during the many hours when the sun is producing electricity.<sup>1</sup> Petitioners did not propose to physically alter the facility for which Duke sought a Certificate – a 750 MW combined cycle natural gas plant. Instead, Duke would solicit bids from independent solar power producers for energy to complement the gas plant’s operations. (App., Vol. I at 299-301.) Duke would only accept bids for solar power if they were below or equal to the cost of generation at the gas plant. (App., Vol. I at 299, lines 20-24.) Because any solar power would offset gas power, the proposal would not require Duke to provide more power, or less power, than the stated need.

Petitioners’ proposal would substantially reduce the environmental impacts of the Lee Gas Plant. Combustion of natural gas produces harmful air pollutants including nitrogen oxides

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<sup>1</sup> The RFP would be developed using a benchmark price for the variable costs for the Lee Gas Plant, i.e., the price at which customers would be indifferent to whether power was generated by the Gas Plant or a solar component. (App., Vol. I at 318, lines 5-7.) Solar RFP bids up to 375 MW would only be accepted if they came in below the benchmark price; i.e., by definition, at a price lower than the long-term cost of operating the Lee Gas Plant to produce the same amount of power. (App., Vol. I at 299, lines 20-24.) By its terms, the solar condition proposed by Petitioners would not add costs for ratepayers.

("NOx"), carbon monoxide, and volatile organic compounds. (App. Vol. I at 276-77.) Using pollution-free solar to reduce gas plant operation levels would reduce natural gas combustion and thus reduce air pollution emissions. (App., Vol. I at 286.) Petitioners' proposal also would yield "direct emissions reduction benefits" of carbon dioxide emitted by the plant. (App., Vol. I at 321.) Finally, Petitioners' solar condition would conserve drinking water: while the plant would consume 10 cubic feet per second of water from the Saluda River, or 4,488 gallons per minute, it is undisputed that operating the plant at lower output would reduce water use from the River. (App., Vol. I at 278, 285.)

In addition to its environmental benefits, Petitioners' solar proposal is intended to save customers money on their electric bills by reducing the operating costs of the Lee Gas Plant. While Duke's proposed gas plant is estimated to cost ratepayers around \$673 million to build, it would be far more expensive to run. (App., Vol. I at 286-287.) Operating costs, mainly the cost of natural gas burned as fuel, will constitute 80-90% of the Lee Gas Plant's long-term cost, meaning that the total lifetime operating costs could approach nearly \$3 billion. (App., Vol. I at 316.) The solar proposal put forth by Petitioners offers substantial cost savings from reduced natural gas use, and hedging against the risk of gas price increases.<sup>2</sup> And under the solar RFP proposed by Petitioners, Duke would only have to accept a bid for solar power if the bidder could meet or beat the price that it would cost to produce that power by running the gas plant. (App., Vol. I at 299.) Any cost savings would be passed on to customers, reducing environmental impacts with no increased overall cost.

### **3. Procedural History**

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<sup>2</sup> See App., Vol. at 321, 317 (incremental capital costs of solar "more than compensated by the savings in operating costs" of NGCC); App, Vol. I at 300, 316, 320 ("offset the operating costs" of Lee); App., Vol. I at 305, 322 (hedge against higher gas prices), App., Vol. I at 301 (insulate ratepayers from the risk of increasing and volatile gas prices).

In January and February of 2014, the Commission conducted an evidentiary hearing on Duke's application for a Certificate, at which Petitioners presented testimony and exhibits supporting their solar proposal. The Commission issued its Order granting the Certificate on May 2, 2014. In addressing Petitioners' proposal, the Commission stated both that "[t]he reliability and operating capacity of the proposed solar facility is *below the required need*," and that "the *additional* 375 MW of solar capacity sought by [Petitioners] are *not needed* at this time," and ultimately agreed with Duke that the Lee Gas Plant "is best to meet [Duke's] future electricity generating needs." (App., Vol. I at 16-17) (emphases added). The Commission thus rejected the solar proposal as both providing too little and too much energy generating capacity to meet the stated need.

Although the text of the Commission's order contains the words "environmental impacts," the Commission's order does not weigh the environmental impacts of the Lee Gas Plant. The Commission's order does not discuss the air pollution and water usage impacts of the Lee Gas Plant shown in the record, or how those impacts might be reduced by Petitioners' proposal (or any other available technology or alternatives). Instead, this section of the order simply reiterates the discussed need for the facility, irrespective of any conditions or modifications that might reduce its impact.

Petitioners filed a petition for rehearing on May 15, 2014 pointing out the lack of consideration of Petitioners' proposal to reduce the Lee Gas Plant's environmental impacts. The Commission issued an Order Denying the Petition for Rehearing and Reconsideration on July 30, 2014 ("Reconsideration Order"). (App., Vol. I at 28-35.) The Reconsideration Order also does not discuss how the environmental impacts of the Duke Lee Gas Plant are justified in light of other available technology, including Petitioners' solar proposal, which would reduce the gas

facility's environmental impact and save ratepayers money. Instead, the Commission reiterates that Petitioners' solar condition would not meet the demonstrated need for energy capacity because it would provide both too little and too much power. (App., Vol. I at 31) (holding that "solar will not be capable of providing the intermediate to base load energy needs" and that "any solar capacity to be included with the Lee Project would have to be added to its 650 MWs").

Petitioners filed a Notice of Appeal with the South Carolina Court of Appeals on July 3, 2014. The Court of Appeals heard argument on January 14, 2016, and issued an unpublished *per curiam* opinion on February 10, 2016. The Court of Appeals adopted the Commission's reasoning, holding that the Commission properly "found that there was no need for an *additional* 375 megawatt solar facility" and reasoning that the Commission's "finding that the proposed plant was justified, without the solar plant, was supported by the evidence." *In the Matter of Joint Application of Duke Energy Carolinas, LLC*, 2016 WL 526516, \*3 (S.C. Ct. App. Feb. 10, 2016) (emphasis original). The Court also held, as the Commission had, that the Commission lacks statutory power to impose more than a *de minimis* modification to the facility proposed by Duke. *Id.* at \*2-\*3.

### ARGUMENT

This case presents novel and far reaching questions of law regarding the Siting Act, a fundamental environmental and ratepayer protection statute that prohibits the Public Service Commission from issuing a certificate to construct and operate a major utility facility – including the \$650 million Duke Lee Gas Plant – unless it shall find and determine that the facility's environmental impacts are justified given alternative technologies.

Despite the clear statutory requirement to find and determine whether the environmental impacts from a major utility facility are justified in light of available technology, the Court of Appeals and the Commission interpreted the Siting Act to require only consideration of whether

a facility is needed. Under their reasoning, if the facility meets a demonstrated need, its impacts are always justified, and alternatives to reduce those impacts need never be considered.

The Siting Act could not be more plain in requiring more. It precludes the Commission from issuing a Certificate unless it shall “find and determine” – separate from a facility’s need – that the impacts on the environment from the construction, operation, and maintenance of a major utility facility are “justified, considering the state of available technology and the nature and economics of various alternatives.” S.C. Code Ann. 58-33-160(1)(c). The Commission must thus “consider[]” the nature of a facility’s impacts as well as available technology and various alternatives to reduce those impacts before it can “find and determine” that a facility’s impacts are “justified.” This “justified” factor is separate and distinct from the “need” factor, and the Commission must make findings and determinations as to each of them separately to fulfill its duty to ensure that the environmental impacts of construction and operation of all major utility facilities in the State are justified considering all cost-effective available alternatives to reduce those impacts.

The Commission abandoned its duty here by never considering – or even purporting to consider – the solar condition’s ability to reduce impacts from the Lee Gas Plant. Instead, the Commission only considered the need for Duke’s facility – a separate and distinct factor under Section 58-33-160(1)(a) – and found that this need, once demonstrated, justified the plant’s environmental impacts, obviating the need to consider Petitioners’ proposal. This Court’s review is needed to restore the Commission’s distinct statutory duty to consider available impact-reducing alternatives in determining whether a major utility facility’s impact is “justified,” even where the need for the facility is shown.

Review is also needed to resolve and restore the Siting Act's grant of authority to the Commission to approve an application for a Certificate "upon such terms, conditions, or modifications of the construction, operation or maintenance of the major utility facility as the Commission may deem appropriate." S.C. Code Ann. 58-33-160(1) (2015). The Commission and the Court of Appeals read this authorizing provision to prevent the Commission from requiring anything more than a "small alteration, adjustment, or limitation." *In re Duke Energy*, 2016 WL 526516 at \*3. As with the first legal error, this interpretation contravenes clear legislative intent. The General Assembly granted the Commission authority to impose appropriate conditions on a Certificate for a major utility facility as necessary to satisfy the factors set out in the statute. Imposing new limits on this statutory grant – with no consideration of statute's structure or intent – was plain reversible error.

This Court should grant certiorari to review these important questions of law.

**I. This Case Presents a Question of First Impression regarding the Siting Act's Requirement for the Commission to Determine that a Major Utility's Impacts upon the Environment are "Justified" Before It May Approve a Certificate of Need.**

This case requires the Court to determine what the Commission must consider when determining that the impact of a major utility facility upon the environment is justified in light of available technology and alternatives – one of six findings required before the Commission may issue a Certificate of Environmental Compatibility and Public Convenience and Necessity. Pursuant to the Siting Act, the Commission "may not" grant a certificate for the construction or operation of a major utility facility "unless" it "shall find and determine":

- (a) The basis of the need for the facility.
- (b) The nature of the probable environmental impact.
- (c) That the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of various alternatives and other pertinent consideration.
- (d) That the facility will serve the interests of the system economy and reliability

- (e) That there is reasonable assurance that the proposed facility will conform to applicable State and local laws and regulations issued thereunder....
- (f) That public convenience and necessity require the construction of the facility.

S.C. Code Ann. § 58-33-160(1). The General Assembly's intent in enacting these requirements is evident in the statutory language itself: to ensure that major utility facilities are only constructed when necessary, and that environmental impacts of any such facility are minimized when an alternative technology is available to economically lessen them.

In approving the Commission's Certificate for the Lee Gas Plant, the Court of Appeals wrote out of the Siting Act the statutory requirement that the Commission consider alternative technologies in determining that the impacts of the facility on the environment are justified. Instead, the Court of Appeals allowed the Commission's decision to stand based only upon a finding of a need for the facility and a superficial description of the environmental impacts, without a determination of whether these impacts were justified given the ability of available technologies to cost-effectively reduce them.

In particular, the Court of Appeals found that (1) "Duke Energy's application and its witnesses described the proposed plant's projected impact on water quality, air quality, and cultural resources"; and (2) "the Commission accurately described the solar proposal both in its order issuing the Certificate and its order denying the petition for rehearing." *In re Duke Energy*, 2016 WL 526516 at \*3. This reasoning was the entire basis for the Court of Appeals' conclusion that the Commission properly found the facility's environmental impacts to be justified. But the Court of Appeals did not – and could not – point to any reference where the Commission actually performed the required analytical step of weighing (1) against (2) to determine whether the described environmental impacts were justified in light of available technologies, including the solar proposal.

The Siting Act is unambiguous on this requirement. Before it may issue a Certificate, the Commission must “find and determine” both (1) “the probable environmental impact” of the facility; *and* (2) “[t]hat the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of various alternatives . . . .” While the record contains evidence that the Commission described certain – but not all – environmental impacts, this is only the first part of the inquiry. The Commission was required to find and determine that those impacts were justified in light of other available technologies, including Petitioners’ solar proposal.

The Commission never conducted this inquiry. Instead, the Commission rejected Petitioners’ solar proposal because it would not meet the stated “need” for power, because it supposedly would provide too little power, or too much. *Compare* App., Vol. I at 16 (Commission rejecting proposal because capacity “of the proposed solar facility is *below the required need*; therefore it is not appropriate to meet the capacity needs of the proposed project;”) *and id.* (Commission reasoning that power “generated from solar would be *in addition* to the 650 MW capacity requirements” and is “not needed at this time.”) (emphases added). While none of these descriptions accurately described Petitioners’ solar proposal to complement the Lee Gas Plant’s operations and ramp down its operation (and its pollution) when cost-effective solar is available,<sup>3</sup> they demonstrate that the Commission rejected the solar proposal as failing to fit the stated need (§ 58-33-160(1)(a)), rather than considering it as a means to reduce pollution (as required by § 58-33-160(1)(c)).

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<sup>3</sup> The Commission’s order denying reconsideration repeats this error, stating that “since the capacity factor of solar is much less than the capacity factor that the combined cycle facility is designed to meet, solar will not be capable of providing the intermediate to base load energy *needs* of the Lee Facility.” App., Vol. I at 031 (emphasis added).

Collapsing the “need” and “justification” inquiries defies the language and clear intent of the Siting Act in multiple ways. First, it reduces the explicit multi-part determination to a consideration of only one factor – need – and writes out the requirement to consider whether environmental impacts are justified given alternatives (section (c)).<sup>4</sup> Under the Commission’s conception, any time there is a need for a major utility facility its environmental impacts will be justified – regardless of whether operational modifications could reduce those impacts. Second, by focusing only on the need for this facility, the Commission ignored its responsibility to require modifications to “operation ... of the major utility facility” when environmental impacts may be reduced by such a modification. The Siting Act unambiguously allows the Commission to grant a Certificate subject to “conditions or modifications of the construction, [or] operation” of the facility. S.C. Code Ann. § 58-33-160(1). And that is just what Petitioners proposed – an operational modification that would lessen environmental impacts. The Commission’s erroneously blinkered view of the Siting Act prevented it from considering that option, as it was required to do.

By focusing only on the fact that the Lee Gas Plant must be built – and not whether operational modifications could lessen environmental impacts such that they were “justified” – the Commission erroneously constrained the Siting Act in a way not intended by the General Assembly and refused to give meaning to all of the Act’s important terms. See *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S. *Statutes* § 346) (“A statute should be so construed that no word, clause, sentence, provision or part shall be rendered

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<sup>4</sup> While the Commission Order contains independent sections purporting to analyze the need for the facility and whether environmental impacts were justified, see App., Vol. I at 9 and 15, the sections are redundant in that each discusses Duke’s need for this facility. As explained above, the Commission’s entire analysis of whether environmental impacts are justified boils down to a discussion of Duke’s purported need for a 650MW capacity facility.

surplusage, or superfluous....”); *see also State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 812 (2005) (holding that the legislature is presumed to intend that its statutes accomplish something.). The Court should grant certiorari on this issue.

**II. This Case Presents Novel Questions of Law regarding the Siting Act’s Provisions Allowing the Commission to Place Conditions on or Make Modifications to Applications for a Certificates of Need.**

This case also presents novel questions of law regarding the Commission’s power to condition the grant of a Certificate on modifications to a proposed major facility’ construction or operation to reduce the environmental impacts of the facility. The Court of Appeals, citing a secondary dictionary entry but declining to consider the statute’s overall structure or intent, held that the Commission had no choice but to reject Petitioners’ solar condition because it “would constitute more than a ‘modification.’” *See In re Duke Energy*, 2016 WL 526516, at \*3. This issue warrants Supreme Court review for several reasons.

First, as the Supreme Court made clear in an earlier case involving this Commission, when a statutory term such as “modification” is undefined, a court may not “merely consider the language of the particular clause being construed,” but must examine “the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.” *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm’n*, 388 S.C. 486, 492-493, 697 S.E.2d 587, 590-591 (2010). That examination was not done here. Instead, the Court of Appeals resorted to citing a limited dictionary sub-definition of “modification”: a “small alteration, adjustment, or limitation.” Notably, the Court of Appeals ignored the primary definition of “modification” set forth in the same dictionary: “the act of modifying,” with the term “modify” defined to mean “to change in form or character: ALTER.” Webster’s II New College Dictionary (Houghton Mifflin Co. ed., 2001). This basic meaning of modification – to change or alter – is found in other

dictionaries as well<sup>5</sup> and better fits “the purpose of the whole statute and the policy of the law,” which the Court of Appeals did not consider in adopting a far more limited definition.

The Siting Act explicitly requires that the Commission may not issue a Certificate “unless” the Commission “find[s] and determine[s]” that “the impact of the facility upon the environment is justified, considering the state of available technology and the nature and economics of the various alternatives and other pertinent considerations.” S.C. Code Ann. § 58-33-160(1)(c). In carrying out this duty, the Commission can grant or deny the application “as filed,” or grant it upon “such terms, conditions or modifications” of “construction, operation or maintenance” as the Commission “deem[s] appropriate.” *Id.* § 58-33-160(1).

Taken together, these provisions charge and empower the Commission to actively review proposals for major new power plants in South Carolina; to approve them only if their environmental impacts are “justified” given available alternatives; and to impose terms, conditions, and modifications for such proposals to minimize environmental impacts as appropriate.

By authorizing the Commission to either (1) grant or deny the application “as filed,” or (2) grant it upon “such terms, conditions or modifications” of “construction, operation or maintenance” as the Commission “may deem appropriate” after a full public hearing, *id.* §§ 58-33-160(1); 58-33-130(1), the General Assembly explicitly gave the Commission something

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<sup>5</sup> See, e.g., THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (Fifth ed. 2015) (defining “modify” as “To change in form or character; alter.”) (*available at* <https://ahdictionary.com/word/search.html?q=modify>); MERRIAM-WEBSTER (defining “modification” as “the act or process of changing parts of something : the act or process of modifying something”) (*available at* <http://www.merriam-webster.com/dictionary/modification>).

beyond a thumbs-up or thumbs-down power: it gave it the power to condition the grant of a Certificate on such modifications the Commission deems appropriate to ensure that a project's environmental impacts are justified. This fits with the General Assembly's broad grant of authority to the Commission over public utilities:

The commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

S.C. Code Ann. § 58-3-140(A). Empowering the Commission to condition and modify an application adheres to the general principle that administrative commissions have the power to modify approvals to carry out the goals of the underlying statute, see *U.S. v. State Water Res. Control Bd.*, 182 Cal. App. 3d 82, 130, 227 Cal. Rptr. 161, 188 (Cal. Ct. App. 1986) (finding Commission had implied power to modify permits to include water quality conditions), and that such modifications should be upheld where reasonable and based on evidence, see *In re Narragansett Elec. Co.*, 544 A.2d 121, 127 (R.I. 1988). *Cf. Mueller v. Mo. Hazardous Waste Mgmt. Comm'n*, 904 S.W.2d 552, 559 (Mo. Ct. App. 1995) (refusing to imply power to modify where Commission only had power to resolve appeals of permit issuances or denials).

The power to issue certifications with something more than "small" adjustments also comports with the South Carolina Supreme Court's view that the Public Service Commission "possesses not merely the powers which in terms are conferred upon it, but also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it." *Carolina Water Serv., Inc. v. S.C. Pub. Serv. Comm'n*, 272 S.C. 81, 87, 248 S.E.2d 924, 927 (1978) (quoting *Beard-Laney, Inc. v. Darby*, 213 S.C. 380, 389, 49 S.E.2d 564, 567 (1948)). Here, the power to modify and condition certifications as to the

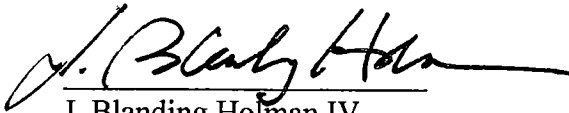
construction, operation, and maintenance of a proposed facility is made explicit, with no textual limitation except the Commission acting as it “deem[s] appropriate.” S.C. Code Ann. § 58-33-160(1). Engrafting judicially-created limitations on that power is inconsistent with the overall intent of the Certification review scheme and the power vested with the Commission. The proposed limitation is also at odds with, and improperly constrains, the Commission’s explicit power to impose after-the-fact modifications for temporarily authorized facilities where the Commission “finds such modification necessary in order to minimize the environmental impact,” *id.* § 58-33-110(6), and with its power to modify facilities to change their location and provide notice of such changes, *id.* § 58-33-160(2). *Cf. Saxony Lutheran High Sch., Inc. v. Mo. Dep’t of Natural Res.*, 404 S.W.3d 902, 911 (Mo. Ct. App. 2013) (finding that presence of a provision for public notice supported view that Commission had power to modify and correct a noncompliant application).

Because the General Assembly gave the Commission the power to condition approvals upon “such terms, conditions or modifications” of “construction, operation or maintenance” as the Commission “may deem appropriate” to minimize environmental impacts, S.C. Code Ann. § 58-33-160(1), that language must be followed, and the policy choice it reflects must be respected. The Commission erred by rejecting a proposed operational condition that would reduce environmental impacts and save ratepayers money on the ground that it lacked authority to do so. The Court should grant certiorari on this issue as well.

### **CONCLUSION**

For the reasons stated herein, Petitioners ask the Court to grant the petition for a writ of certiorari.

Respectfully submitted this 21<sup>st</sup> day of April, 2016,

A handwritten signature in black ink, appearing to read "J. Blanding Holman IV", with a horizontal line underneath.

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