THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2013-392-E

Ex Parte: South Carolina Coastal Conservation League, and Southern Alliance for Clean Energy, Petitioners

v.

Duke Energy Carolinas, LLC, South Carolina Office of Regulatory Staff, North Carolina Electric Membership Corporation, South Carolina Department of Health and Environmental Control, and Invenergy Thermal Development, LLC, Respondents.

In Re: 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 Cycle Generating Plant Near Anderson, SC.

RETURN OF DUKE ENERGY CAROLINAS, LLC, THE NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION AND THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF TO THE PETITION FOR WRIT OF CERTIORARI OF SOUTH CAROLINA COASTAL CONSERVATION LEAGUE AND SOUTHERN ALLIANCE FOR CLEAN ENERGY

Len S. Anthony, Esquire
1701 N. Ocean Blvd.
N. Myrtle Beach, SC 29582
Len.anthony1@gmail.com
(919) 601-7871

Representing North Carolina Electric Membership Corporation

Shannon B. Hudson, Esquire
Jeffrey M. Nelson, Esquire
Florence P. Belser, Esquire
Nanette S. Edwards, Esquire
South Carolina Office of Regulatory Staff
1401 Main Street
Columbia, SC 29201
shudson@regstaff.sc.gov
(803) 737-0889

Representing South Carolina Office of Regulatory Staff

Frank R. Ellerbe, III
Robinson McFadden & Moore, PC
Post Office Box 944
Columbia, SC 29202
Fellerbe@robinsonlaw.com
(803) 779-8900

Timika Shafeek-Horton, Esquire
Duke Energy Carolinas, LLC
P.O. Box 1321 (DEC 45A)
Charlotte, NC 28201

Representing Duke Energy Carolinas, LLC

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JUN 13 2016
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TABLE OF CONTENTS

QUESTIONS PRESENTED

1. Whether the decision of the South Carolina Public Service Commission ("Commission") to approve the Lee Combined Cycle Project was supported by substantial evidence as required by Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981) and subsequent cases applying the substantial evidence rule?

2. Whether the Commission's decision to reject the proposal made by Petitioners was supported by substantial evidence when Petitioners' proposal would have required the construction of an enormous solar energy facility in addition to the natural gas generating facility for which approval was sought in the application filed with the Commission?

STATEMENT OF THE CASE

This is an appeal from orders of the Commission granting a Certificate for the construction of the Lee Combined Cycle Project ("LCCP"), a natural gas-fired electricity generating plant in Anderson County. The proceeding before the Commission was initiated by the filing of an application by Duke Energy Carolinas, LLC ("DEC" or "the Company") and the North Carolina Electric Membership Corporation ("NCEMC") (collectively "Applicants"). (R. Vol. I, p. 40.) The application was filed on October 24, 2013, pursuant to the provisions of the Utility Facility Siting and Environmental Protection Act ("the Act" or "the Siting Act") (codified at S.C. Code §§58-33-10 et. seq.). The application sought approval for a 750 megawatt ("MW") natural gas-fired combined cycle electricity generating plant, the LCCP, to be located at the site of an existing generating facility operated by DEC in Anderson County, South Carolina. The Act requires notice of applications be provided to affected local governments and to agencies charged with protecting the environment. The Applicants certified that such notice was given. The Act also automatically makes the South Carolina Office of Regulatory Staff ("the ORS"), the South Carolina Department of Health and Environmental Control ("DHEC"), and others, parties to any proceeding brought under its provisions. *See* S.C. Code Ann. (Supp. 2014) §58-33-140(1)(b).

The South Carolina Coastal Conservation League ("SCCCL") and the Southern Alliance for Clean Energy ("SACE") (collectively "Petitioners") petitioned for and were granted leave to participate in the proceedings before the Commission. Also participating in the proceeding before the Commission was the ORS. The ORS is a state agency

created by Act 175 of 2004 and charged with the responsibility of representing the public interest in matters before the Commission. *See* S.C. Code Ann. § 58-4-10. On January 3, 2014, DEC, NCEMC and the ORS filed a settlement agreement with the Commission. (R. Vol. I, p. 20.) In the settlement agreement the ORS endorsed and supported the issuance of the Certificate as requested in the application.

The Commission conducted hearings on the application on January 7, 2014 and February 4, 2014. Testimony and exhibits were submitted by Applicants, the ORS and Petitioners. The other statutory parties did not make appearances. In their testimony Petitioners did not ask the Commission to deny the application but instead made several different arguments that the Certificate be delayed or issued only with conditions attached. (R. Vol. I, p. 305.) On May 2, 2014, the Commission issued Order No. 2014-408 approving the application and issuing the Certificate. (R. Vol. I, p. 4.) Petitioners filed a petition for rehearing on May 15, 2014. (R. Vol. I, p. 88.) In their petition for rehearing Petitioners focused solely on an argument that the Commission should condition the issuance of the Certificate on a requirement that DEC solicit proposals for a 375 MW solar facility to be operated in conjunction with the LCCP. Petitioners did not specify where the facility would be located or provide reliable testimony about how much it would cost. The Commission voted to deny the petition on June 4, 2014, and Petitioners filed a notice of appeal with the Court of Appeals on July 3, 2014. (R. Vol. I, p. 111.) The Commission issued Order No. 2014-546 denying the petition for rehearing on July 30, 2014. (R. Vol. I, p. 28.)

The Court of Appeals issued Unpublished Opinion No. 2016-UP-054 on February 10, 2016, affirming the Commission's decision. Petitioners filed a petition for a writ of

certiorari on April 21, 2016. This Return to the Petition is submitted by DEC, NCEMC, and the ORS (collectively "Respondents").

STATEMENT OF FACTS

Lee Combined Cycle Project

In their application DEC and NCEMC asked the Commission to issue a Certificate to allow the construction of the LCCP. In support of the application DEC and NCEMC presented evidence of the need for the facility, the suitability of the LCCP to meet that need and the environmental impact of the project. The Applicants submitted the DEC 2013 Integrated Resource Plan ("IRP") in support of the application. (R. Vol. II, p. 342.) The IRP is prepared by DEC pursuant to the provisions of South Carolina Code Section 58-37-40. The development of the DEC IRP is a detailed multi-step process that assesses various relevant planning considerations, including load forecasts, the impact of existing and likely environmental regulations, fuel costs and potential appropriate generation and efficiency resources to meet the needs that are identified. (R. Vol. I, P. 175.)

The DEC 2013 IRP showed an expected growth in demand of 1.5 percent per year over a 15-year planning period and a need for an additional 317 MWs in 2017, growing to 573 MW in 2018 and an additional 3400 MWs by 2028. (R. Vol. I, P. p.157.) Through its IRP planning process DEC determined that the LCCP would best meet the identified needs. (R. Vol. pp. 157, 181-184, 193.) In particular the planning process and analysis showed that construction of the LCCP was the lowest cost approach for meeting the needs of DEC's customers. (R. Vol. I, p. 167.)

The need for the additional generation represented by the LCCP is driven in part by retirements of 1297 MWs of coal generation and 350 MWs of aging combustion turbine generation and additional planned retirements of 370 MWs of coal generation in 2015. (R. Vol. I, p. 180.) These retirements are driven largely by environmental considerations as the older plants are not able to meet newer air permit requirements. (R. Vol. I, pp. 180-181.) The proposed LCCP is expected to emit 69% less carbon dioxide, 98% less nitrogen oxide and 100% less sulfur dioxide than the coal units currently located on the same site in Anderson County. (R. Vol. I, pp. 157-158.)

The DEC and NCEMC application was also supported by testimony and exhibits showing the probable environmental impact of the LCCP. A siting study performed in 2011 and updated in 2013 was submitted. (R. Vol. I, pp. 274, 561.) The siting studies evaluated various factors including land availability, cultural and land use, natural gas availability, water availability, electric transmission and air permitting. (R. Vol. I, p. 273.)

ORS witness Gene Soult supported the application by DEC and NCEMC for a Certificate for the LCCP. Soult testified that the application met all requirements of the Act (R. Vol. II, p. 333); that the overall environmental impact of the project will be positive (R. Vol. II, p. 335); and that the public convenience and necessity will be served by construction of the LCCP. (R. Vol. II, p. 336.)

The Petitioners' Solar Proposal

The Petitioners have not challenged DEC's need for the additional capacity the LCCP will provide or the appropriateness of the LCCP to provide this capacity. At the hearing on the DEC/NCEMC application, Petitioners made three different suggestions to

the Commission for altering or conditioning the issuance of the Certificate. (R. Vol. I, p. 305.) However, in their petition for rehearing and on appeal they have only focused on arguing that the Certificate should be conditioned upon DEC issuing an RFP for a 375 MW solar facility to be operated in conjunction with the natural gas facility.

The two Petitioner witnesses who made the suggestion have no experience in the construction or operation of any type of electricity generation facility: one of the witnesses is a lawyer and the other is a public policy advocate. (R. Vol. I, pp. 302-303.) The Petitioners' recommended 375 MW solar facility would be the largest such facility in the world, exceeding by 85 MW the size of a facility currently under construction in Arizona. (R. Vol. I, p. 319.) A 375 MW solar facility would require 2,625 acres of land. (R. Vol. I, p. 207.) No evidence was presented to the Commission to suggest where such a facility would be located. In fact, the Petitioners suggested that the Commission might alternatively require a series of smaller solar installations across the State. (R. Vol. I, p. 320.)

The Petitioners' witnesses estimated that their proposed solar facility would have a capacity factor of approximately 22% as compared to a 90% capacity factor for the proposed LCCP. (R. Vol. I, p. 317.) Petitioners do not suggest that the solar facility they propose would replace or reduce the need for the natural gas facility. Instead they want both facilities built. (R. Vol. I, p. 316.) The Petitioners' proposal is heavily dependent on the cost of their proposed solar facility, yet their witnesses offered two cost estimates that varied by a factor of 100% - from approximately $2000 per kilowatt to $4000 per kilowatt. (R. Vol. I, p. 317.)

ARGUMENT

I. Introduction

As is readily apparent from a comparison of the "Questions Presented" by Petitioners and Respondents there is a significant difference of opinion as to whether this case presents any issue which meets the requirements of South Carolina Appellate Court Rule 242(b) and is thus reviewable by this Court. Contrary to the Petitioners' assertions, there is no novel question of law presented. The Commission rejected Petitioners' arguments not because it didn't understand those arguments or because its view of the Siting Act was legally incorrect; the Commission rejected Petitioners' arguments because it disagreed with them factually and legally. The Commission's decision was supported by substantial evidence and was a correct reading of the Siting Act. The Court of Appeals was correct to affirm the Commission. In addition to there being no novel question of law presented, the petition should also be rejected because this case is an effort by Petitioners to force the development of solar energy; however, the General Assembly has now comprehensively addressed that subject in Act 236 of 2014.

II. The Commission's Approval of the LCCP Was Supported by Substantial Evidence as Required by Lark v. Bi-Lo.

Following the adoption of the Administrative Procedures Act (S.C. Code Ann. Sections 1-23-310 *et seq.*) in 1977 this Court addressed the appropriate standard of review for administrative appeals in the leading case of Lark v. Bi-Lo, *supra*. In that case the Court set out the following definition of the substantial evidence standard:

> "Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, 276 S.C. at 135.

This Court recently reaffirmed that the substantial evidence standard of review of Lark v. Bi-Lo provides the appropriate standard of review for appeals from the Public Service Commission. In Friends of the Earth v. Public Service Commission of South Carolina, 387 S.C. 360, 692 S.E.2d 910 (2010), the Court considered a decision by the Commission approving the construction of a nuclear generating plant. That decision was made under the Base Load Review Act (S.C. Code Ann. Sections 58-33-210 *et seq.*) which is similar to, and closely associated with, the Siting Act under which the Commission approved the LCCP. In the Friends of the Earth decision this Court rejected an argument that a stronger standard of review should be applied and instead applied its familiar standard of review for appeals from Commission decisions:

> Consequently, "[t]his Court employs a deferential standard of review when reviewing a decision of the Public Service Commission and will affirm that decision when substantial evidence supports it." Duke Power Co. v. Public Service Comm'n of South Carolina, 343 S.C. 554, 558, 541 S.E.2d 250, 252 (2001) (citing Porter v. South Carolina Public Service Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998)). In applying a substantial evidence test, an appellate court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, unless its findings or conclusions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Lark v. Bi–Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); S.C. Code Ann. § 1–23–380 (Supp. 2009). Substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency. Lark at 135–36, 276 S.E.2d at 306–07.

> Furthermore, the Court may not substitute its judgment for the Commission's on questions about which there is room for a difference of intelligent opinion. Duke Power Co., 343 S.C. at 558, 541 S.E.2d at 252. Because the Commission's findings are presumptively correct, the party challenging a Commission 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 on the whole record. Id.

Friends of the Earth v. Public Service Commission, 387 S.C. at 365-366.

The Commission's decision to approve the LCCP was supported by substantial evidence. The application for approval of the LCCP was submitted to the Commission under the Siting Act which requires six specific findings that the Commission must make in order to issue a Certificate. S.C. Code Ann. § 58-33-160 (1976). Specific findings regarding each requirement were made by the Commission in its order granting the Certificate. (R. Vol. I, pp. 9-18.) A brief review of the evidence supporting the findings of the Commission on the six statutory requirements follows.

1. **The basis of the need for the facility.** DEC submitted its 2013 IRP to support the need for the facility. (R. Vol. II, p. 342.) DEC witness Janice Hager, who oversaw the preparation of the IRP, testified in support of the IRP and explained how it was prepared and how it demonstrated that the LCCP met the need identified in the IRP. (R. Vol. I, pp. 166-169.) DEC witness Clark Gillespy, State President, South Carolina, explained the need for additional resources in the 2017-2018 time period and the Company's conclusion that a 750 MW combined cycle natural gas-fired facility best met those needs. (R. Vol. I, p. 157.) ORS witness Gene Soult testified about the ORS review of the 2013 IRP and the conclusion reached by the ORS that the need for the facility had been established. (R. Vol. II, p. 270.)

2. **The nature of the probable environmental impact.** DEC presented the testimony of Mark Landseidel, Director of Project Development and Initiation, in support of its application. (R. Vol. I, p. 270.) Mr. Landseidel sponsored and explained two siting studies DEC performed that explored potential sites for new generation. (R. Vol. I, p. 273; R. Vol. II, p. 503.) He testified that the studies reviewed various siting criteria including land availability, cultural and land use, natural gas availability, water availability, electric transmission, air permitting and proximity to existing facilities. (R. Vol. I, p. 273.) Landseidel also testified that the siting studies concluded the Anderson County site of the existing Lee Steam Station (a coal fired facility scheduled to be retired) was the best location for the proposed LCCP, taking into account all of these various factors including the probable environmental impact. (R. Vol. II, p. 334.)

3. **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.** In reaching its conclusion that the environmental impact of the LCCP was justified the Commission relied on the testimony of Gillespy, Hager and Landseidel and the 2013 IRP and siting studies. (R. Vol. I, pp. 15-16.) In addition, the Commission explained why the resource need identified by the IRP could not be met by a solar facility:

> In the joint testimony of Mr. Davis and Mr. Wilson they advocate for a 375 MW solar facility to be located at or near the Lee site. Mr. Davis testified that, when conditions exist for economic solar energy production, the solar energy could offset generation from the LCCP. This Commission appreciates the desire for renewable sources of energy; however, in this instance, the need is for a specified level of capacity in conjunction with energy production and the two are not synonymous. Mr. Soult testified that the Company is expecting the LCCP to produce sufficient electricity to meet base or intermediate load requirements at an expected capacity factor between 50% to 75% for a period of 20 to 30

> years. Solar energy has a much lower operating capacity factor due to its limited availability, making it not an optimal source for base or intermediate load.

(R. Vol. I, pp. 15-16.) There was substantial evidence supporting the Commission's conclusion that the LCCP was the right resource to meet the need that was identified.

4. The facilities will serve the interests of system economy and reliability. The testimony of Hager and Landseidel and the 2013 IRP show that the LCCP is the right resource to meet the needs of DEC's customers as demand grows and older plants are retired. ORS witness Soult offered this testimony on system economy and reliability: "The proposed power block is a proven design that is already in use in the Company's system. These existing units have demonstrated high capacity factors and availability factors, which provides a good indication of the reliability of the LCCP when properly operated and maintained." (R. Vol. II, p. 335.)

5. There is reasonable assurance that the proposed facility will conform to applicable State and local laws and regulations. DEC witness Landseidel testified at length about the Company's experience with the operation of the combined cycle facility of the type proposed for the LCCP. (R. Vol. I, pp. 271-273; 276-279.) ORS witness Soult confirmed and supported the Landseidel testimony that the Company had a track record of successful operation of the proposed facility. (R. Vol. II, p. 335.)

6. The public convenience and necessity support the construction of the facility. The Commission's decision that the LCCP will serve the public convenience and necessity is supported by the evidence described above that showed the need for additional generation resources, that the LCCP was the best, least cost choice to meet that need, and that its environmental impact is reasonable given the other factors.

The Commission's decision to issue a Certificate for the LCCP was supported by substantial evidence. The Applicants submitted thorough and persuasive evidence on every element required by the Siting Act. The ORS, charged by statute with the responsibility of representing the public interest, entered into a settlement agreement with DEC and NCEMC and supported issuance of the Certificate. Appellants failed to make any showing that would support a reversal of the decision by the Commission to issue the Certificate.

III. The Commission's Decision to Reject Petitioner's Solar Proposal Was Also Supported by Substantial Evidence.

As discussed above, the Siting Act provides a detailed process for the review and approval of proposed major utility facilities. South Carolina Code Ann. Section 58-33-120 sets out the requirements for a Siting Act application including a statement of the need for the proposed facility and summaries of studies done to show how the proposed facility will meet those needs. Section 58-33-160 (1976) sets out the findings the Commission must make in order to issue a certificate under the Siting Act. Those requirements focus on the need shown for a facility and how the proposed facility addresses that need. The likely environmental impact of the proposed facility is required to be weighed against the availability of other options to meet the need identified in the application. Analysis under the Siting Act starts with consideration of what resource is needed by the utility.

In its orders approving the LCCP, the Commission properly focused on the demonstrated need for the facility in rejecting Petitioners' solar proposal.

> Solar energy has a much lower operating capacity factor due to its limited availability, making it not an optimal source for base or intermediate load. This Commission understands SCCL's and SACE's idea of having solar

> generation in lieu of LCCP electricity generation when solar conditions are right; however the LCCP could not be built with lower than the Company needed 650 MWs, since the Company has demonstrated a need for this additional capacity in the 2017-2018 time frame. The reliability and operating 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.

(R. Vol. I, pp. 15-16.) This analysis is exactly right and what is called for by the Siting Act. In their application, DEC and NCEMC demonstrated a need for a facility to provide a level of capacity and reliability that no solar facility can provide. The Commission correctly determined that accepting the Petitioners' solar proposal would be approving or ordering DEC to move forward on a facility for which no need had been demonstrated, a result that is at odds with the entire structure of the Siting Act.

The Commission also rejected the Petitioners' solar proposal because it conflicted with the notice requirements of the Siting Act. The Act contains several provisions designed to ensure that state environmental agencies and affected local governments are informed about proposals for utility facilities. South Carolina Code Ann. Section 58-33-120(2) (Supp. 2014) requires that any Siting Act application be served on "...the Office of Regulatory Staff, the chief executive officer of each municipality, and the head of each state and local government agency, charged with the duty of protecting the environment or of planning land use, in the area of the county in which any portion of the facility is to be located." S.C. Code Ann. Section 58-33-140(1)(b)(Supp. 2014) automatically makes the ORS, DHEC, the Department of Natural Resources ("DNR") and the Department of Parks Recreation and Tourism ("PRT") parties to any proceeding under the Act.

In the present proceeding, as required by the Act, the Applicants certified that the application and supporting materials were served on all statutorily required entities:

Applicants' certificate of service shows that a total of twenty-four people were served. (R. Vol. I, pp. 48-49.) Those entities therefore received documents explaining the resource need identified by the DEC 2013 IRP and the Applicants' proposal for meeting those needs - the LCCP. Attached to the application was the testimony of Mark Landseidel and his exhibits, including the siting studies described within his testimony. (R. Vol. I, pp. 42, 269; Vol. II, p. 561.) Recipients of these documents would have been informed in detail about the proposed LCCP and its potential environmental impact. What the recipients would not have received was any information whatsoever about a proposal for the largest solar facility in the world that would require approximately 2,625 acres. (R. Vol. I, pp. 207, 319.) The Commission correctly pointed out that accepting the Appellants' solar proposal would be expanding the scope of the application without notice to the public in contravention of the notice provisions of the Act. (R. Vol. I, pp. 15-16.)

Petitioners' argument appears to be based on the assumption that the only environmental impact at issue in this Siting Act proceeding is the impact of carbon dioxide emissions from a natural gas facility. The Siting Act clearly contemplates a much wider range of potential impacts to be considered, as evidenced by the fact that local governments and planning agencies, as well as DNR and PRT are statutorily required to be given notice.

The location of solar facilities can generate substantial controversy and opposition from neighbors of such facilities. On this point it is instructive to review a recent case decided by the Vermont Supreme Court. In *In re* Petition of Rutland Renewable Energy, LLC for Certificate of Public Good Pursuant to 30 V.S.A. §248, *et al*, No. 2015-230,

2016 VT 50, 2016 Vt. Lexis 51 (April 29, 2016), a 2.3 MW proposed solar facility was opposed by the town where it was proposed to be located and by individual neighbors. Although the decision by the Vermont utility regulator to approve the facility was eventually affirmed, the case took three years and an appeal to the highest court in the state before it was finally resolved.

In comparison to the relatively tiny facility in Vermont, Petitioners' proposal was for a 375 MW facility that would occupy 2,625 acres. The Commission appropriately rejected Petitioners' request that it issue an order in this proceeding requiring the development of a giant solar facility without the notice required in the Siting Act. The Commission's decision was correct and supported by substantial evidence.

IV. The Commission Properly Evaluated the Environmental Impacts of the LCCP and Rejected Petitioners' Requested Modifications to it.

In their petition for a writ of certiorari Petitioners argue that South Carolina Appellate Court Rule 242(b)(1), is satisfied because novel questions of law are presented by the Commission's failure to understand its obligation to evaluate the environmental impacts of the LCCP or its authority to require modifications to the project. The record does not support either contention. The Court of Appeals described in some detail the Commission's extensive review of the environmental impacts of the LCCP:

> The Commission found Duke Energy and NCEMC had appropriately evaluated the environmental impacts of the proposed plant, and the Commission described those impacts. Specifically, the Commission found the proposed plant (1) had "critical infrastructure such as available land, water supply, and transmission facilities . . . already in place," due to its location—adjacent to an existing power plant; (2) had archeological clearance; (3) would have "minimal effects on the visual resources and scenic quality" of the area; (4) would feature "state of the art environmental control technology for natural gas combined cycle generation;" and (5) would include a cooling tower to minimize "both the intake and discharge impacts to the Saluda River." The Commission also

> noted the Office of Regulatory Staff's witness testified the proposed plant would not result in any significant impacts to the environment and the Department of Health and Environmental Control, the Department of Natural Resources, and the Department of Parks, Recreation and Tourism were all parties to the case and did not appear.

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 750 MW Combined Cycle Generating Plant near Anderson, SC, Op. No. 2016-UP-054 at p.4 (S.C. Ct. App. Filed February 10, 2016).

Petitioners do not agree with the Commission's evaluation of the environmental impacts of the LCCP, but the record shows that those impacts were carefully reviewed by the Commission and the Commission's decision was supported by substantial evidence. While Petitioners focus their arguments exclusively on carbon dioxide related environmental impacts, the Commission followed the requirements of the Siting Act by considering a much broader range of environmental impacts. This issue does not present a novel question of law; instead it was properly decided by the Court of Appeals under the substantial evidence rule of Lark v. Bi-Lo, *supra*.

In a related argument Petitioners complain that the Commission and Court of Appeals took too narrow a view of the Commission's authority under the Siting Act to require modifications to the project. Petitioners' argument is based on a selective reading of South Carolina Code Ann. Section 58-33-160(1) which gives the Commission authority to approve projects upon "such terms, conditions and modifications" as the Commission deems appropriate. However, Petitioners fail to address that part of the Siting Act which is most relevant to the modification that Petitioners think the Commission should have required. South Carolina Code Section 58-33-160(2) specifically addresses modifying a project by changing the location:

> If the Commission determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, **provided that the municipalities and persons residing therein affected by the modification shall have been given reasonable notice.**

(Emphasis added.)

In this case Petitioners asked the Commission to condition the certificate on the Applicants issuing an RFP to develop a 2,625 acre solar facility for which no location had been found or even suggested. Since no location for the proposed facility had been specified, there is no way that affected municipalities or neighbors could have been given notice of it. Thus the Siting Act itself precludes, as a matter of law, the Petitioners' proposed "modification." The Commission and Court of Appeals were correct in determining that what Petitioners sought was beyond the scope of modifications permitted by South Carolina Code Ann. Section 58-33-160.

V. The Passage of Act 236 of 2014 is an Additional Reason Why This Court Should Not Issue a Writ of Certiorari.

Petitioners attempted to use provisions of the Siting Act in their arguments before the Commission to obtain an order requiring the construction of a large solar facility. As is evident from a review of the record, the proceeding to consider the application for approval of the LCCP was not an appropriate vehicle for consideration of a solar facility. Applicants identified a specific utility need that would be best met by a combined-cycle natural gas facility. The Petitioners do not dispute the need for this facility. Petitioners' solar proposal facility was a poor fit for that need, so they are attempting to "boot strap" the construction of a solar facility by alleging that both facilities are needed, notwithstanding the fact that a solar facility the size of Petitioners' proposal would

require its own Siting Act approval and the record in this proceeding completely fails to provide support for that approval.

In asking this Court to issue a Writ of Certiorari, Petitioners want to continue their efforts to force an interpretation of the Siting Act that was not intended by the General Assembly when it was enacted in 1971. Respondents encourage the Court to consider the passage of Act 236 of 2014 ("Act 236"). Act 236 was passed unanimously in both Houses of the General Assembly with the support of environmental and utility industry stakeholders and was intended to encourage the deployment of solar and other renewable energy resources in South Carolina. It addresses in a comprehensive way the multitude of issues relating to the implementation of renewable energy measures in South Carolina. Act 236 required the Public Service Commission to hold a number of regulatory proceedings to adopt orders and tariffs to implement the policies adopted in the legislation. Those proceedings have been held, and solar facilities of various types and sizes are being built in this State now on a scale that far exceeds what came before Act 236. The success of Act 236 in encouraging the solar energy industry is a compelling reason for this Court to decline Petitioners' effort to convert the Siting Act into a vehicle for promoting solar energy development.

CONCLUSION.

The Petition for a Writ of Certiorari should be denied. The Commission properly understood and rejected the Petitioners' proposal that approval of the LCCP be conditioned on the construction of a large solar facility. The Commission's decision to approve the LCCP without requiring the Applicants to pursue the solar facility was supported by substantial evidence and is consistent with the Siting Act. The Court of Appeals properly denied Petitioners' appeal. There is no novel issue of law presented, and the General Assembly has now adopted comprehensive legislation addressing renewable energy in South Carolina. For all these reasons Petitioners respectfully urge the Court to deny the Petition.

Robinson McFadden & Moore, PC

By: _____

Frank R. Ellerbe, III
Post Office Box 944
Columbia, SC 29202
Fellerbe@robinsonlaw.com
(803) 779-8900

Timika Shafeek-Horton, Esquire
Duke Energy Carolinas, LLC
Post Office Box 1321 (DEC 45A)
Charlotte, NC 28201

Representing Duke Energy Carolinas, LLC

Len S. Anthony, Esquire
1701 N. Ocean Blvd.
N. Myrtle Beach, SC 29582
Len.anthony1@gmail.com
(919) 601-7871

Shannon Bowyer Hudson

Shannon Bowyer Hudson, Esquire
Jeffrey M. Nelson, Esquire
Florence P. Belser, Esquire
Nanette S. Edwards, Esquire
South Carolina Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
(803) 737-0889
(803) 737-0823
(803) 737-0853
(803) 737-0575
(803) 737-0895
shudson@regstaff.sc.gov
jnelson@regstaff.sc.gov
fbelser@regstaff.sc.gov
nsedwar@regstaff.sc.gov

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In Re: 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 Cycle Generating Plant Near Anderson, SC.

CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below a copy of the Return of Duke Energy Carolinas, LLC, The North Carolina Electric Membership Corporation and The South Carolina Office of Regulatory Staff to the Petition for Writ of Certiorari of South Carolina Coastal Conservation League and Southern Alliance for Clean Energy in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

J. Blanding Holman, Esquire
Christopher K. DeScherer, Esquire
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403

Susan A. Lake, Esquire
SC DHEC
2600 Bull Street
Columbia, SC 29201

Gudrun Thompson, Esquire
Southern Environmental Law Center
601 W. Rosemary Street, Suite 220
Chapel Hill, NC 27516

Len S. Anthony, Esquire
1701 N. Ocean Blvd.
N. Myrtle Beach, SC 29582

Richard L. Whitt, Esquire
Austin & Rogers, PA
P.O. Box 11716
Columbia, SC 29211

Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
Shannon B. Hudson, Esquire
Florence P. Belser, Esquire
SC Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Dated this 13th day of June, 2016.

Toni C. Hawkins