

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2026-158-E

Concerned Citizens of Spartanburg)
 County and Southern Alliance for)
 Clean Energy,)
)
 Petitioners,)
)
 v.)
)
 Valara Holdings, LLC,)
)
 Respondent.)

MOTION TO RECUSE
COMMISSIONER H. DAVID BRITT

Pursuant to S.C. Code Ann Regs. 103-829, Concerned Citizens of Spartanburg County and the Southern Alliance for Clean Energy (collectively, the “Petitioners”), by and through the undersigned counsel, submit to the Public Service Commission of South Carolina (the “Commission”) this Motion to Recuse Commissioner H. David Britt because of his actions and statements regarding the data center and power plant proposed by Valara Holdings, LLC (the “Respondent” or “Valara”), data centers in general, and concerned citizens like the Petitioners. As detailed below, before serving on the Public Service Commission, Commissioner Britt served on Spartanburg County Council as its Vice Chairman and Economic Development Committee Chairman, during which time he was a major proponent of the Valara data center that is the subject of this proceeding. Then-councilmember Britt made numerous comments about the alleged benefits the data center would bring and stated he was “thrilled” to have the Valara data center in Spartanburg County, while discounting the negative consequences of the data center. More recently, while sitting as a member of the Commission, Commissioner Britt sent an email to the

Spartanburg County Council Chairman—signing off with his official Commission email signature—in which he indicated a clear bias in favor of bringing data centers to Spartanburg County and a clear bias against anyone who opposes or questions the benefits of data center development in the County. These facts establish that Commissioner Britt must be recused from this docket and any subsequent Siting Act proceeding related to Valara’s data center and power plant. Commissioner Britt must also refrain from discussing this docket and any subsequent Siting Act proceeding with any other person, including other Commissioners or Commission staff.

I. BACKGROUND

Valara is actively constructing a large data center (the “Data Center”) and 450-megawatt gas-fired power plant (the “Power Plant”) (collectively, the “Project”) in Spartanburg County. Petitions ¶ 14, 43, *Concerned Citizens of Spartanburg County v. Valara Holdings, LLC*, Dkt No. 2026-158-E (filed June 22, 2026). On June 22, 2026, Petitioners filed two petitions with the Commission—a Petition for a Declaratory Order seeking a declaration from the Commission that Valara’s proposal is subject to the South Carolina Utility Facility Siting and Environmental Protection Act (“Siting Act”) and a Petition for a Rule to Show Cause Order asking the Commission to direct Valara to appear and explain why it should not cease construction pending Petitioners’ declaratory order petition and any subsequent Siting Act proceeding. *See generally id.* Given that Valara is proceeding rapidly with construction, *id.* at ¶ 43, Petitioners requested expedited relief on their rule to show cause petition to ensure Valara does not continue to construct its facilities in violation of South Carolina law, *id.* at ¶ 56–57.

II. BASIS FOR RECUSAL

The Commission is charged with objectively reviewing proposed “major utility facilities,” defined to include any electric generating plant and associated facilities “designed for, or capable of, operation at a capacity of more than seventy-five megawatts.” S.C. Code Ann. § 58-33-20(2). In implementing the Siting Act, the Commission is required to consider the need for the facility, the probable environmental impact, whether that impact is justified in light of alternative technologies and other relevant considerations, whether the facility will serve the interests of “system economy and reliability,” whether there is reasonable compliance with applicable state and local laws and, finally, “[t]hat public convenience and necessity require the construction of the facility.” *Id.* § 58-33-160(1). In fulfilling this duty, “[t]he commissioners . . . are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules.” *Id.* 58-3-30(B).

Under the Code of Judicial Conduct, each Commissioner must establish, maintain, and enforce “high standards of conduct” to ensure that “integrity and independence” are preserved because “[d]eference to the judgments and rulings of [the Commission] depends upon public confidence in the integrity and independence of [Commissioners].” Canon 1, Commentary, Rule 501, SCACR. Commissioners must “act *at all times* in a manner that promotes public confidence in the integrity and impartiality of the [Commission].” Cannon 2(A), Rule 501, SCACR (emphasis added). To achieve this, Commissioners must “act[] without fear *or favor*.” Canon 1, Commentary, Rule 501, SCACR (emphasis added).

“[Commissioners] must avoid all impropriety and *appearance* of impropriety.” Canon 2(A), Commentary, Rule 501, SCACR (emphasis added). “The test for appearance

of impropriety is whether the conduct would create in reasonable minds a perception that the [Commissioner's] ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.” Canon 2(A) Commentary, Rule 501, SCACR (emphasis added). When a Commissioner’s impartiality may reasonably be questioned, that Commissioner “*shall* disqualify himself.” Canon 3(E)(1), Rule 501, SCACR. Commissioners must perform their duties “without bias or prejudice.” Canon 3(B)(5), Rule 501, SCACR. And when a party shows some evidence of bias or prejudice, the Commissioner in question should be disqualified. *E.g.*, *Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004); *Roche v. Young Bros., Inc. of Florence*, 332 S.C. 75, 84–85, 504 S.E.2d 311, 316 (1998). In light of these precepts, Commissioner Britt must recuse himself given his prior statements and actions regarding Valara’s proposed Data Center and Power Plant, as detailed below, and in light of statements he has made as Commissioner concerning data centers in Spartanburg County and concerning concerned citizens who object to those data centers. If he does not, the Commission should direct his recusal.

When local news outlets first began reporting on the Valara Project, at the time only referred to as an “undisclosed company” pursuing a deal with the County that “[was] light on details,” then-Councilman Britt told reporters that “[t]his is the type of company we want here that wants to help raise the bar in Spartanburg” and that the Company would “make a difference” in the County.¹ He added that “the project [was] *not* a data center and that it would specialize in aerospace and engineering technology” and would “not use more

¹ Max White, *Spartanburg County Could See a \$2.8 Billion Investment, One of the Largest Ever in SC*. What to Know., POST & COURIER (Feb. 18, 2025), https://www.postandcourier.com/spartanburg/business/spartanburg-county-could-see-investment/article_003a6432-ed91-11ef-b987-abc5aaefbcd3.html (Attachment 1).

power than the site’s existing facility.”² Further, the public was not informed at the time that the facility would be a 450-megawatt facility, even though the County and Valara now acknowledge that the County knew from the outset of the large size of the facility.³ These reported statements and the failure to inform the public of the large size of the facility had the result of members of the public believing they had been misled about the nature of the proposal.⁴ Then-Councilman Britt further referred to the project as a “present for Spartanburg County” and talked about moving the deal forward “real quick,”⁵ saying that Valara was “a fantastic company” and “[he] want[ed] them here.”⁶ These statements and public positions alone require Commissioner Britt’s recusal under the Canons of Judicial Ethics.

Then, two months after then-Councilman Britt made the above statements, Spartanburg County passed a tax incentive—called a fee-in-lieu-of-tax agreement, or

² *Id.* (emphasis added)

³ Baker Maulsby, *Does NorthMark Data Center Mean Pollution, Noise? Forum Draws Hundreds*, SPARTANBURG HERALD-JOURNAL (June 26, 2026), <https://www.goupstate.com/story/news/local/2026/06/26/spartanburg-county-sc-residents-weigh-in-on-northmark-data-center/90703466007/> (reporting that Spartanburg County administrator Cole Alverson confirmed that the company’s original “project profile” made clear to County leaders that it would “scale up to 450 megawatts over time.”) (Attachment 2); *see also* Baker Maulsby, *NorthMark Executive Says Power Generation Plans Made Clear From Start*, SPARTANBURG HERALD-JOURNAL (June 25, 2026), <https://www.goupstate.com/story/news/local/2026/06/25/what-are-northmark-data-center-power-needs-spartanburg-sc-clarity-sought-at-meeting/90686762007/> (company confirmed that initial submittals indicated the plan to generate 450-megawatts of power on site) (Attachment 3).

⁴ Alexa Erbach, *Spartanburg Co. Residents Say They Were Misled About Data Center Project*, Fox Carolina (Apr. 30, 2026), <https://www.foxcarolina.com/2026/05/01/spartanburg-co-residents-say-they-were-misled-about-data-center-project/> (reporting that resident living near the Project said “I feel totally deceived by the county council, David Britt, anyone that supported that data center. . .”) (Attachment 4); *see also* Affidavit of Mark Felk ¶ 9, *Concerned Citizens of Spartanburg County v. Valara Holdings, LLC*, Dkt No. 2026-158-E (filed June 22, 2026); Affidavit of Ricky Heath ¶ 6, *Concerned Citizens of Spartanburg County v. Valara Holdings, LLC*, Dkt No. 2026-158-E (filed June 22, 2026); Affidavit of William “Kip” Darwin ¶ 14, *Concerned Citizens of Spartanburg County v. Valara Holdings, LLC*, Dkt No. 2026-158-E (filed June 22, 2026).

⁵ White, *supra* note 1.

⁶ *Officials Saying \$2.8B Investment May Be Coming to Spartanburg County*, Fox Carolina (Feb, 18, 2025), <https://www.foxcarolina.com/2025/02/18/officials-saying-28b-investment-may-be-coming-spartanburg-county/> (Attachment 5).

FILOT—and Commissioner Britt stated that Valara’s investment would be “a ‘game changer’ for not only the Upstate but all of South Carolina.”⁷ Then-Councilman Britt continued by stating how excited he was about the project and that it was “a great company that’s going to be a good corporate citizen that doesn’t tax our infrastructure.”⁸ In other reporting around the same time, then-Councilman Britt stated that “th[e] project comes at ‘zero cost to taxpayers’” and that “the project [is] a “win-win for both NorthMark and the community.”⁹ Finally, then-Councilman Britt was quoted in a press release, stating: “We are thrilled to welcome NorthMark Strategies to Spartanburg and look forward to the opportunities this project will bring to our community. Spartanburg will greatly benefit from this highly unique and dynamic investment for years to come.”¹⁰

More recently, Commissioner Britt expressed a clear bias in favor of data center development and a clear bias against those who oppose or express concerns about data centers. In an email obtained through the Freedom of Information Act by the South Carolina Environmental Law Project (“SCELP”), Commissioner Britt, when serving as a Commissioner, voiced strong support for data center development in Spartanburg to the Chairman of Spartanburg County Council. Specifically, Commissioner Britt emailed Chairman Lynch concerning another proposed data center and stated that “there is a small vocal element that hates everything related to growth and opportunities but yall [sic] need

⁷ Max White, *Computing Center Coming to Spartanburg County With \$2.8B Investment, 2nd Largest in SC History*, POST & COURIER (Apr. 21, 2025), https://www.postandcourier.com/spartanburg/business/northmark-strategies-spartanburg-computing-center/article_ac48993f-b936-4ee6-aa21-da9867e1ff7c.html (Attachment 6).

⁸ *Id.*

⁹ John Murphy, *Spartanburg County Welcomes a Game-Changing \$2.8B High-Performance Computing Center, Cost Seg Building* (Apr. 22, 2025), <https://www.costsegbuilding.com/category/data-centers/> (Attachment 7).

¹⁰ *NorthMark Strategies Selects Spartanburg County to Establish First South Carolina Operation*, Off. of the Governor (Apr. 22, 2025), <https://governor.sc.gov/news/2025-04/northmark-strategies-selects-spartanburg-county-establish-first-south-carolina> (Attachment 8).

to be careful not to fall into their trap of how bad data centers are to Spartanburg.”¹¹ Commissioner Britt continued by saying “[m]ore than 95% of their negativity is bull and not fact based.”¹² Commissioner Britt signed the email, not in his personal capacity as a Spartanburg resident, but as “H. David Britt, Commissioner, 4th District[,] South Carolina Public Service Commission.”¹³

These statements and actions are clear evidence of bias and prejudice in favor of the Valara Project and are clear evidence of bias and prejudice against those local citizens, like Petitioners, who oppose or question data center development in Spartanburg County. Petitioners are seeking to halt construction on the very data center that Commissioner Britt championed during his time on Spartanburg County Council. Petitioners are also asking that the Commission make clear that Valara must go through full Siting Act review and receive Commission approval before construction can continue. If the Petition is granted, the Commission will weigh the claimed benefits and adverse impacts of the Project to the Spartanburg community. If Commissioner Britt remains involved, his past statements and conduct would have the effect of destroying public confidence in the integrity or impartiality of any Commission decision in this docket. These facts establish that under the Code of Judicial Conduct, Commissioner Britt’s recusal is required. Further, Commissioner Britt’s participation in this proceeding would also violate Petitioners’ due process rights under the South Carolina and U.S. CONST, amend. XIV; S.C. CONST. art. 1, § 22; United States Constitution, Amendments 5 and 14.

¹¹ Email from David Britt, S.C. Public Service Commissioner, to Katherine O’Neill and Manning Lynch (Dec. 1, 2025, 15:42 EST) (Attachment 9).

¹² *Id.*

¹³ *Id.*

Finally, Commissioners are *prohibited* from communicating, directly or indirectly, with any person “regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication,” and it is likewise unlawful for any person to communicate with the Commission about issues in any proceeding. S.C. Code Ann. Regs §58-3-260(B)(1). With the opening of this proceeding, the benefits and potential harms of the Valara Project are certainly issues that could reasonably be expected to become an issue before the Commission, and as such, Commissioner Britt is prohibited from discussing those matters with any person, regardless of whether he participates in the instant proceeding.¹⁴ As such, Petitioners further request that Commissioner Britt refrain from any further communications with Spartanburg County Council, Valara, NorthMark, or any other person regarding issues involving the Valara Data Center and Power Plant.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that:

1. Commissioner Britt be recused from ruling on or participating in any discussions on the substantive or procedural matters related to this docket;

¹⁴ Commissioner Britt’s email exchange with Spartanburg County Council—which directly addressed “energy issues about data centers”—arguably violated these provisions already, as issues involving data centers and their impact on the electric grid have been before this Commission in multiple proceedings prior to and since the email exchange. For example, the Commission approved two settlement agreements which contemplated parties requesting the Commission open a proceeding to discuss issues involving “large load customers” like data centers, a proceeding which is now open and active. S.C. Pub. Serv. Comm’n Docket No. 2025-172-E, Application of Duke Energy Carolinas, LLC for Increase in Electric Rates, Adjustments in Electric Rate Schedules and Tariffs, and Request for an Accounting Order, Order No. 2025-769 at 125-129; S.C. Pub. Serv. Comm’n Docket No. 2025-154-E, Application of Duke Energy Progress, LLC for Increase in Electric Rates, Adjustments in Electric Rate Schedules and Tariffs, and Request for an Accounting Order, Order No. 2025-757 at 135-139; S.C. Pub. Serv. Comm’n Docket No. 2026-138-E, Petition to Establish a Generic Docket for the Purpose of Receiving Comments Addressing Large Load Additions.

2. If the Commission declares that Valara must receive Siting Act review and approval before continuing with construction of the Data Center and Power Plant, Commissioner Britt be recused from participating in the Siting Act proceeding;
3. Commissioner Britt have no further contact with members of the Commission or its staff regarding this docket or any subsequent Siting Act docket regarding the Valara Data Center and Power Plant;
4. Commissioner Britt avoid any further contact with Northmark Strategies, Valara, members of Spartanburg County Council, or any other person regarding the Valara Data Center and Power Plant; and
5. If Commissioner Britt does not recuse himself, the full Commission direct his recusal.

Date: June 30, 2026

Respectfully submitted,

/s/ Emily Wyche
Emily Wyche
SC Bar No. 105551
ewyche@selc.org

/s/ Frank S. Holleman III
Frank S. Holleman III
SC Bar No. 2564
holl2759@bellsouth.net

/s/ Kate Mixson
Kate Mixson
SC Bar No. 104478
kmixson@selc.org

/s/ Susie Carlson
Susie Carlson
SC Bar No. 106396
scarlson@selc.org

Southern Environmental Law Center

525 East Bay Street, Suite 200
Charleston, South Carolina 29403
Telephone: (843) 720-5270
Fax: (843) 414-7039

*Attorneys for Concerned Citizens of
Spartanburg County and Southern
Alliance for Clean Energy*

FITSNEWS