

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Aug 29 2024

SC Court of Appeals

APPEAL FROM
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Delton Powers, Chairperson

Docket No. 2023-361-E

Clyde Kennedy,

Appellant,

v.

Dominion Energy South Carolina, Inc.,

Defendant/Respondent.

NOTICE OF APPEAL

Clyde Kennedy appeals the following Directives and Orders of the Public Service Commission, attached as **Exhibit 1**:

- Commission Directive – Staff Presents for Commission Consideration Final Disposition of Docket No. 2023-361-E – May 2, 2024
- Commission Directive - Special Agenda Item #1 - Staff Presents for Commission Consideration Clyde Kennedy's Petition for Rehearing and/or Reconsideration (E-Served as Directive Order No. 2024-392)—June 6, 2024
- Order Denying Complaint—June 12, 2024
- Commission Directive - Agenda Item #9 - Staff Presents for Commission Consideration Petition for Rehearing Filed on Behalf of Clyde Kennedy—July 11, 2024
- Order Denying Petition for Rehearing—July 30, 2024

Appellants received notice of the denial of their Petition for Rehearing on July 30, 2024.

s/Kathleen McDaniel

Kathleen McDaniel (SC Bar No. 74826)
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ATTORNEY FOR APPELLANT

August 29, 2024
Columbia, South Carolina

EXHIBIT 1

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER
 MOTOR CARRIER MATTER
 UTILITIES MATTER

DATE May 02, 2024
 DOCKET NO. 2023-361-E
 ORDER NO.

RECEIVED
Aug 29 2024
SC Court of Appeals

SUBJECT:

DOCKET NO. 2023-361-E - Clyde Kennedy, Complainant/Petitioner v. Dominion Energy South Carolina, Inc., Defendant/Respondent - Staff Presents for Commission Consideration Final Disposition of Docket No. 2023-361-E.

COMMISSION ACTION:

I move that the Commission deny the Complaint of Clyde Kennedy v. Dominion Energy South Carolina, Inc., under S.C. Code Ann. Regs. 103-342(k), also known as the K Rule. A full order is forthcoming, outlining the basis for denial and dismissal of the Complaint.

PRESIDING:
Belser

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BELSER	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Present in Hearing Room</u>
CASTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Present in Hearing Room</u>
VACANT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
POWERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Present in Hearing Room</u>
THOMAS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Present in Hearing Room</u>
C. WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>Voting via WebEx</u>
J. WILLIAMS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Present in Hearing Room</u>

RECORDED BY: J. Schmieding



**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>June 06, 2024</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2023-361-E</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2024-392</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

Directive Order Ruling Petition for Rehearing and/or Reconsideration as Untimely

SUBJECT:

DOCKET NO. 2023-361-E - Clyde Kennedy, Complainant/Petitioner v. Dominion Energy South Carolina, Inc., Defendant/Respondent - Staff Presents for Commission Consideration Clyde Kennedy's Petition for Rehearing and/or Reconsideration.

COMMISSION ACTION:

The Commission has not yet issued its full written order in the case of Clyde Kennedy vs. Dominion Energy South Carolina, Inc. Therefore, Mr. Kennedy's Petition for Rehearing and/or Reconsideration is not timely. I move that the Commission withhold ruling on the Petition at this time. Following issuance of a full written Order, the parties will have an opportunity to file a Petition for Rehearing and/or Reconsideration pursuant to S.C. Code Ann. Section 58-27-2150 and S.C. Ann. Regs. 103-854(B).

PRESIDING: Belser SESSION: Special TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
BELSER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>Present in Hearing Room</u>
CASTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>Voting via WebEx</u>
VACANT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
POWERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>Present in Hearing Room</u>
THOMAS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>Present in Hearing Room</u>
C. WILLIAMS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>Present in Hearing Room</u>
J. WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>Present in Hearing Room</u>

RECORDED BY: J. Schmieding



BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2023-361-E ORDER NO. 2024-393

JUNE 12, 2024

IN RE: Clyde Kennedy, Complainant/Petitioner v.) ORDER DENYING
Dominion Energy South Carolina, Inc.,) COMPLAINT
Defendant/Respondent)

This matter comes before the Public Service Commission of South Carolina (Commission) on the Complaint of Clyde Kennedy against Dominion Energy South Carolina, Inc. (DESC or the Company). For the reasons outlined herein, the Complaint is denied.

I. FACTUAL AND PROCEDURAL HISTORY

In October 2023,¹ Mr. Clyde Kennedy (Mr. Kennedy) filed an Individual Complaint Form (Complaint) against the Company following its refusal to reconnect power at his property. Mr. Kennedy, a South Carolina property owner in DESC territory, stated “Dominion refuses to connect power to my property because the previous tenants (relatives) owe [the Company] a significant balance.” Complaint, p. 1. Mr. Kennedy asserted he evicted the previous tenants but “cannot restore [his] property without power services.” *Id.*

¹ The Complaint is dated October 20, 2023, but it was accepted for filing by the Commission on October 23, 2023.

Mr. Kennedy requested damages in the form of “restoration of utility service to [his] property, lost rental income, mold growth repairs, [and] any other damages identified resulting from utility service refusal to re-establish services....” *Id.* He also sought “compensation for [his] time in pursuit of this matter based on [his] current salary.” *Id.*

On October 25, 2023, pursuant to S.C. Code Ann. Regs. 103-830, the Commission served the Company with the Complaint and issued a Notice of Hearing and a Prefile Testimony Deadlines Letter. The Commission’s Clerk’s Office scheduled a hearing in this matter before a Commission-appointed hearing examiner on January 4, 2024.

Mr. Kennedy initially filed his Complaint *pro se*; however, he retained counsel in December 2023 to assist him. Based on the delay in securing representation,² the Clerk’s Office rescheduled the hearing for March 20, 2024.

On January 5, 2024, DESC responded to Mr. Kennedy’s Complaint by filing an Answer and Motion to Dismiss. The Motion to Dismiss relied upon S.C. Code Ann. Regs. 103-342—Reasons for Denial or Discontinuance of Service. The Company argued Kennedy’s allegations fall within the parameters of subsection (k) of Commission Regulation 103-342. No written Response was filed. The Commission decided to schedule an oral argument on the Motion to Dismiss on February 14, 2024, pursuant to S.C. Code Ann. Regs. 103-829(B), and all parties consented to the expedited timeline.

At the oral argument, Kathleen M. McDaniel, Esquire, appeared on behalf of Mr. Kennedy. Michael J. Anzelmo, Esquire, and K. Chad Burgess, Esquire, appeared on behalf

² This matter was held in abeyance for two 30-day periods to allow Mr. Kennedy an opportunity to retain counsel. No party objected. The hearing and filing deadlines were stayed. *See* Order Nos. 2023-127-H, 2023-141-H.

of the Company.³ Benjamin Mustian, Esquire, appeared on behalf of the Office of Regulatory Staff (ORS),⁴ an automatic party of record pursuant to S.C. Code Ann. section 58-4-10(B) (Supp. 2023). By Order No. 2024-143, the Commission denied the Company's Motion to Dismiss, and the matter proceeded to a hearing.

On March 20, 2024, the hearing took place before the Hearing Examiner in the Commission Hearing Room. Ms. McDaniel represented Kennedy. Mr. Burgess, Mr. Anzelmo, and Ms. Nielsen represented the Company. Ms. Donna Rhaney appeared on behalf of ORS.⁵

As a preliminary matter, the parties stipulated to the admissibility of certain documents produced by Mr. Kennedy in response to the Company's discovery requests. The discovery was admitted into evidence as Hearing Exhibit 1. Mr. Kennedy did not admit any pre-filed testimony into evidence, but he testified at the hearing in support of his Complaint.

DESC presented the testimony of Witnesses Cindi G. Hux and John H. Raftery. The Company submitted without objection the pre-filed Direct Testimony and Exhibit CGH-1 of Witness Hux, the Direct Testimony of Witness Raftery, and the Surrebuttal Testimony and Exhibit CGH-2 of Witness Hux. ORS made no objections to either party's case and did not present any witnesses.

³ Sarah B. Nielson, Esquire, also represents DESC, per a notice of appearance filed on January 5, 2024.

⁴ Joshua E. Austin, Esquire, also represents ORS, per a notice of appearance filed on October 24, 2023.

⁵ Ms. Rhaney did not file a Notice of Appearance for ORS but appeared on ORS's behalf at the hearing.

II. LAW

The Commission has the power to “ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities.” S.C. Code Ann. § 58-27-140 (2015).

An individual may file a written complaint with the Commission requesting a proceeding when “complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission.” S.C. Code Ann. Regs. 103-824 (2012).

A written complaint filed with the Commission shall contain the following information:

- (1) The name, address, e-mail address, and telephone number of the person making the complaint and of his authorized representative, if he is represented.
- (2) The name and address of the person about whom the complaint is made.
- (3) A concise and cogent statement of the factual situation surrounding the complaint. If a complaint relates to an act, rule, regulation or order administered or issued by the Commission, or to a provision in a tariff or contract on file with the Commission, the act, rule, regulation, order, tariff or contract should be specifically identified in the complaint.
- (4) A concise statement of the nature of the relief sought.

S.C. Code Ann. Regs. 103-824 (2012).

Pursuant to South Carolina law, unless otherwise stated, a customer is allowed a reasonable time in which to correct any discrepancy which may cause discontinued service.

S.C. Code Ann. Regs. 103-342 (2012). Nonetheless, service may be denied or discontinued

by the utility for certain reasons. *Id.* These reasons include, but are not limited to, misrepresentation of a customer’s identity, tampering, or previous noncompliance with commission regulations. *Id.* A customer can stop discontinuance of service or have service reconnected by paying a reasonable charge for an inspection (to insure proper operating conditions), a reasonable reconnect fee, and charges to compensate for any damage to the electrical utility’s facilities. *Id.*

Pursuant to S.C. Code Ann. Regs. 103-342(k),

No electrical utility shall be required to furnish its service or to continue its service to any applicant who, at the time of such application, is indebted or any member of his household is indebted, under an undisputed bill to such electrical utility for service previously furnished such applicant or furnished any other member of the applicant’s household. However, for the purposes of this regulation, the electrical utility may not consider any indebtedness which was incurred by the applicant or any member of his household more than six years prior to the time of application.

S.C. Code Ann. Regs 103-342(k) (2012) (emphasis added).

The standard of proof in this matter is the preponderance of the evidence. S.C. Code Ann. § 1-23-600 (Supp. 2023).

III. FINDINGS OF FACT

After a review of the evidence, including the testimony and exhibits of the witnesses, the Commission makes the following findings of fact:

1. Mr. Kennedy filed a Complaint against DESC regarding the Company’s refusal to re-establish electric service at his property.
2. Mr. Kennedy is a South Carolina property owner, and the property at issue is located within DESC’s service area.

3. The Commission has jurisdiction over this matter, except for the request for monetary damages.

4. Mr. Kennedy lived in the property from 2008 until 2015, established the initial electric service at the property, and then allowed a relative living at the property to transfer service into a relative's name to receive the benefit of continued electric service from the Company.

5. The Company provided the electric service at the property to the Complainant and then each of his relatives who had an account for electric service at the property between 2015 and 2023.

6. Each person who had an account with the Company and incurred electric charges at the property are relatives of Mr. Kennedy through blood or marriage.

7. Mr. Kennedy does not dispute that his relatives incurred a total of \$9,754.93 in electric charges owed to the Company.

8. Mr. Kennedy seeks to have the electric service at the property re-established in his name.

9. The specific facts of this case establish, by a preponderance of the evidence, that Kennedy established a household as contemplated by S.C. Code Ann. Regs. 103-342(k).

10. The \$9,754.93 in undisputed charges does not include any indebtedness incurred by Mr. Kennedy or any member of the household more than six (6) years prior to the time of application.

11. The Complainant failed to establish that the Company violated any rule, regulation, or order of the Commission.

12. The Company is, therefore, not required to reconnect service at the property until Mr. Kennedy satisfies the \$9,754.93 owed to the Company for electric service rendered at the property to his household.

IV. EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT

A. Evidence and Conclusions for Findings of Fact Nos. 1-3

The Commission has the authority to regulate public utilities, such as DESC, pursuant to section 58-27-140 of the South Carolina Code of Laws. The parties agree that Mr. Kennedy's property is located in the Company's service territory. Accordingly, Mr. Kennedy's claim for reconnection of service is subject to the Commission's jurisdictional authority.

The Commission "is a governmental agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004); *see also* S.C. Code Ann. § 58-27-1940 (2006) (referencing the Commission's authority to decide individual complaints). The Commission lacks jurisdiction to award monetary damages sought in the Complaint, and those claims are dismissed with prejudice. *See, e.g., Berry v. Dominion Energy S.C., Inc.*, Dkt. No. 2019-358-E, Order No. 2019-874 (Pub. Serv. Comm'n of S.C. Dec. 18, 2019) (concluding complaint "must be dismissed because the Commission lacks jurisdiction to award money damages"); *Kadoshnikov v. Broad River Elec. Coop.*, Dkt. No. 2009-356-E, Order No. 2010-545 (Pub. Serv. Comm'n of S.C. Aug. 12, 2010) (recognizing that a party seeking monetary damages "must do so in civil court"); *Jackson v. S.C. Elec. & Gas Co.*, Dkt. No. 2002-298-E, Order No. 2002-752 at 2 (Pub. Serv. Comm'n of S.C. Oct. 24, 2002) (granting dismissal and finding, in part, that

the Commission lacked “power to award any money damages”); *Bryant v. Carolina Water Serv., Inc.*, Dkt. No. 97-358-W, Order No. 97-1003 at 2 (Pub. Serv. Comm’n of S.C. Nov. 24, 1997) (“It should be noted that this Commission has no statutory authority to order the payment of damages in this type of situation.”); *Patel v. Dominion Energy S.C., Inc.*, Dkt. No. 2023-273-E, Order No. 2023-782 at 7 (Pub. Serv. Comm’n of S.C. Oct. 20, 2023) (dismissing the complaint because “[t]he Commission has no jurisdictional authority to award monetary damages arising out of property disputes.”).

B. Evidence and Conclusions for Findings of Fact Nos. 4-12

i. Summary of Evidence

In his Complaint, Mr. Kennedy admits that: 1) a “significant balance” is owed to the Company; 2) by previous tenants; and 3) the tenants have been evicted. Complaint, p. 1. He further identifies the tenants as his “relatives.” *Id.* The specific amount owed to DESC and incurred at the property by Mr. Kennedy’s relatives is \$9,754.93. Tr. 63.14:1-2. The Company refuses to connect power to Mr. Kennedy’s property until such payment is made. *Id.*; Complaint, p. 1.

Mr. Kennedy challenges the Company’s interpretation of S.C. Code Ann. Regs. 103-342(k) and its decision to deny reconnection of the service at his property until the outstanding charges are paid. Mr. Kennedy asserts his tenants/relatives are not “members of his household;” and therefore, DESC can not avail itself of the protections found in S.C. Code Ann. Regs. 103-342(k).

According to South Carolina law, electric service may be denied or discontinued for, among other reasons, nonpayment of a bill for service rendered. S.C. Code Ann. Regs. 103-342. Pursuant to S.C. Code Ann. Regs. 103-342(k), also referred to as the “K-Rule,”

an electrical utility is not required to furnish service to an applicant whose household member is indebted to the utility. The arguments in this case revolve around this rule, and the parties agree that it guides the Commission's decision.

The K-Rule provides:

No electrical utility shall be required to furnish its service or to continue its service to any applicant who, at the time of such application, is indebted or any member of his household is indebted, under an undisputed bill to such electrical utility for service previously furnished such applicant or furnished any other member of the applicant's household. However, for the purposes of this regulation, the electrical utility may not consider any indebtedness which was incurred by the applicant or any member of his household more than six years prior to the time of application.

S.C. Code Ann. Regs. 103-342(k) (2012) (emphasis added).

Mr. Kennedy contends that the Commission should interpret the term "household" to include a requirement of cohabitation in order for the K-Rule to apply. Mr. Kennedy argues that because he did not cohabit with his relatives at the property, they did not comprise his "household," and therefore, he is entitled to have service reconnected in his name. Tr. 30:24-32:9.

The Company, on the other hand, asserts that the term "household," as used in the K-Rule, does not require cohabitation. Although the term "household" is not defined in South Carolina Regulations, Chapter 27 of Title 58 (Electric Utilities and Electric Cooperatives) of the South Carolina Code of Laws uses the term "household" in its definition of a "special needs account customer," in Article 21 (Termination of Electric Service Due to Nonpayment). S.C. Code Ann. § 58-27-2510(2)(a) (2015). The definition reads:

- (a) when the customer can furnish to the utility a certificate on a form provided by the utility and signed by a licensed health care provider that states that termination of electric service would be dangerous to the health of the customer or **a member of his household at the premises to which electric service is rendered**; or...

Id. (emphasis added.)

If the term “member of [the] household” necessarily involved cohabitation, the statute would not need to reiterate that the household member resides “at the premises.” The inclusion of the words “at the premises” immediately following “household” acknowledges that a member of the household *could* include someone not living at the premises. Otherwise, the verbiage would be redundant. “If applying the regulation’s plain language would lead to an absurd result, we will interpret the regulation in a manner which avoids the absurdity.” *See Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011). Therefore, it is reasonable to find that a “household” does not necessarily require cohabitation, as asserted by Mr. Kennedy, particularly in the context of termination of electric service due to nonpayment.

DESC witnesses testified that what constitutes a household must be decided on a case-by-case basis, in light of the unique and specific factual situations that exist for each applicant seeking to reconnect service at a property. Tr. 75:3-76:15. According to the Company, if an investigation reveals that an applicant established a household, allowed individuals to live at the property, and those individuals fail to pay for their electric services, then the K-Rule may be applied to deny reconnection until the unpaid debt is satisfied by any member of the household. Tr. 68.12:1-68.13:2. The Company presented

the following evidence in support of Mr. Kennedy establishing a household at the property, for purposes of the K-Rule.

Mr. Kennedy initially opened an account for electric service at the property with the Company on July 1, 2008. Tr. 63.6:11-12. The account remained in his name until July 10, 2015. *Id.* Thereafter, Mr. Kennedy allowed numerous relatives to reside at his property and incur undisputed electric charges. Tr. 68.12:13-68.13:2.

Mr. Kennedy first allowed his ex-wife and daughter to live at his property. Tr. 30:24-31:2. On July 10, 2015, his ex-wife opened an account for electric service at the residence. Tr. 63.8:12-15. Mr. Kennedy then allowed his mother and father to move into the property a few months later. Tr. 31:8-11. Mr. Kennedy's ex-wife incurred \$2,297.19 in undisputed charges⁶ owed to the Company while she resided in the property with Mr. Kennedy's daughter, mother, and father. Tr. 63.6:14-16.

Prior to disconnection for Mr. Kennedy's ex-wife's non-payment, Mr. Kennedy's mother accessed the Company's online system and transferred service to her name. Tr. 63.6:16-17. From August 11, 2017, until June 22, 2020, the account for electric service remained in the name of Mr. Kennedy's mother. Tr. 63.6:18-19. Mr. Kennedy's mother incurred \$1,566.84 in undisputed charges owed to the Company, but she failed to make payment to the Company. Tr. 63.7:3-5.

Prior to disconnection, Mr. Kennedy's sister-in-law accessed the Company's online system and transferred service to her name and that of her husband, Mr. Kennedy's brother.

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⁶ The Company does not seek recovery of this amount from Mr. Kennedy because the amount was incurred more than six years prior to the time of Kennedy's application to reestablish service at his property. *See* S.C. Code Ann. Regs. 103-342(k).

Tr. 63.7:4-5; 8-9. From June 22, 2020, until September 15, 2021, Mr. Kennedy's sister-in-law incurred \$1,662.42 in undisputed charges owed to the Company, but she failed to make payment to the Company. Tr. 63.7:6-10.

Prior to disconnection, Mr. Kennedy's brother⁷ requested the service be transferred to his wife's stepfather. Tr. 63.7:8-13. Mr. Kennedy's mother continued to reside at the property at this time. Tr. 63.7:13-14. From September 15, 2021, until January 14, 2022, the relatives residing at Mr. Kennedy's property incurred \$1,270.18 in undisputed charges owed to the Company, but they failed to make payment to the Company. Tr. 63.7:15-17.

Prior to disconnection, Mr. Kennedy's relatives used the Company's online system to transfer service to another relative. Tr. 63.7:16-19. That relative incurred \$1,785.27 in undisputed charges from January 14, 2022, to July 15, 2022, but failed to make payment to the Company. Tr. 63.7:20-63.8:3. Mr. Kennedy's mother and sister-in-law continued to live at Mr. Kennedy's property during this time. *Id.*

Prior to disconnection, Mr. Kennedy's relatives transferred service to another relative who held the account from July 15, 2022, until February 14, 2023, and incurred \$1,509.32 in undisputed charges owed to the Company. Tr. 63.8:8-13. Mr. Kennedy's mother continued to reside at Mr. Kennedy's property during this time. Tr. 63.8:9-12.

Mr. Kennedy's relatives again avoided disconnection by transferring service to another relative, Mr. Kennedy's father, from February 14, 2023, until the Company received a request to turn off service at Mr. Kennedy's property on August 24, 2023. Tr. 63.8:15- 63.9:6. Mr. Kennedy's mother continued to reside at Kennedy's property. *Id.* Mr.

⁷ Kennedy's brother was listed as spouse on the account opened by Kennedy's sister-in-law. Tr. 63.7:8-9.

Kennedy's father incurred \$1,960.90 in unpaid electric service prior to disconnection.⁸ *Id.* Each of the individuals incurring the undisputed electric charges were related to Mr. Kennedy by blood or marriage. Tr. 63.10:2-3. In total, Mr. Kennedy's relatives incurred \$9,754.93 in undisputed charges owed to the Company for electric service at Mr. Kennedy's property. Tr. 63.10:5-8. Mr. Kennedy then attempted to reconnect service in his name at his property on September 7, 2023. Tr. 63.3:15-18. According to the Company, Mr. Kennedy admitted that he allowed his relatives to live in his property and that he kept the property to give his family a place to live. Tr. 63.3:18; 63.4:14-19; 68.2:19-21. DESC informed Mr. Kennedy that its investigation revealed that the property had been occupied by his mother and other relatives for the past several years, and as a result, the Company would not reconnect service at Mr. Kennedy's property until he satisfied the undisputed charges. Tr. 63.4:14-19; 63.5:11-17.

In addition to allowing his relatives to live in his property, Mr. Kennedy claimed the property as his legal residence while his relatives lived there. In 2017, 2019, 2020, 2021, and 2022, the Dorchester County online records⁹ showed Mr. Kennedy claimed the property as his legal residence and received the owner-occupied 4% tax rate from Dorchester County rather than the 6% tax rate applicable to non-owner-occupied residences. Tr. 63.13:1-9. During the hearing, Mr. Kennedy confirmed that he received the legal residence tax rate at the property. Tr. 50:10-18. Additionally, there were numerous

⁸ This amount includes a \$28.98 late charge assessed to the account on October 5, 2023.

⁹ According to the Company, the Dorchester County online records did not include a real estate tax notice for year 2018. Tr. 63.13, footnote 4.

cars in his name and at the property for each year from 2015 to 2023, which further established the property as his household. Tr. 45:10-49:18.

Mr. Kennedy also failed to offer to provide any lease agreement to the Company during their investigation. Tr. 68.2:6-11; Tr. 68.2:19-21. According to Witness Hux, when specifically asked if there was a lease agreement for the property, Mr. Kennedy denied a lease existed. Tr. 68.3:1-2; 16-19. Mr. Kennedy later produced a lease in discovery; however, it contained certain inconsistencies. Tr. 36:8-12. The documents contained in Hearing Exhibit 1, as well as Mr. Kennedy's testimony at the hearing, reveal that his relatives failed to timely pay rent and/or pay the full rental amount. Tr. 32:10-15. Kennedy took no action prior to the summer of 2023 to evict his relatives or otherwise collect the past due amounts despite the relatives' failure to adhere to the terms of the alleged lease.¹⁰ Further, Mr. Kennedy did not claim to be a landlord in any documentation from that time period. Tr. 36-44. Therefore, the Commission does not find Mr. Kennedy's representations regarding a landlord-tenant relationship credible.

ii. Commission Conclusion

Based on the evidence in the record, Mr. Kennedy established his household, connected service to his property, and then expanded his household by allowing his various admitted relatives to use his property. Those household members then incurred significant undisputed charges at the residence.

Company Witness Raftery testified that the K-Rule provides utilities with a tool to collect unpaid debts from those who benefit from the utility's delivery of electric service

¹⁰ Mr. Kennedy also allowed his relatives to remain in the property for approximately one month after he allegedly evicted them from the property. Tr. 68.11:8-17.

and to protect other customers from bearing the burden of uncollected costs incurred by another customer. Tr. 72.5:5-8. Witness Hux testified the Company conducts a fact-specific investigation to determine if the K-Rule applies to a customer's request to reconnect service at a property. Tr. 74:12-16. The Company asserts the facts and circumstances needed to establish a household may vary based upon, among other things, the different relationships, familial circumstances, various properties, and service relationships between the Company and the applicant.

According to Witness Raftery, an inflexible approach to the K-Rule would undermine the intent of the regulation and the Company's historic interpretation and application of the rule. Raftery argued Mr. Kennedy's application of the rule would impair the Company's ability to reduce the financial impacts that nonpaying customers, such as the Kennedy household, have on other residential customers. Tr. 72.5:9-14. The Commission finds that the evidence admitted at the hearing establishes the elements of the K-Rule in favor of DESC.

First, there is no dispute that Mr. Kennedy is an applicant seeking electrical service from the Company. Second, \$9,754.93 in undisputed charges exist related to the Company's provision of electric service at Mr. Kennedy's property. Third, by a preponderance of the evidence, Mr. Kennedy established a household at the property and the household members received the benefit of service from the Company.

Ultimately, DESC did not violate any rule, regulation, or order by requiring payment from Mr. Kennedy before re-establishing service. Rather, the Company properly

applied the K-Rule to deny Kennedy's request to reconnect electrical service at his property until the undisputed debt in the amount of \$9,754.93 is satisfied by Mr. Kennedy.

Moreover, prior to Kennedy filing his Complaint, ORS conducted an investigation and review of the matter, and ORS concluded that the Company did not violate any Commission rule, regulation, or order by refusing to reconnect service at the property at issue in the Complaint. Tr. 63.3:1-5; 86:4-7.

V. CONCLUSIONS OF LAW

1. The Commission has the authority to regulate public utilities, as set forth in section 58-27-140 of the South Carolina Code of Laws.

2. Mr. Kennedy's request for monetary damages fails as a matter of law.

3. Based on the specific facts of the case, Mr. Kennedy has not proven by a preponderance of the evidence that DESC improperly refused to reconnect service at his property.

4. Based on the specific facts of the case, DESC's application of S.C. Code Ann. Regs. 103-342(k) to this matter did not violate any rules, regulations, or Commission Orders.

5. The Company did not violate the K-Rule by denying Mr. Kennedy's request to reconnect electrical service at his property; therefore, the Company need not restore such service until the undisputed debt in the amount of \$9,754.93 is satisfied by Mr. Kennedy.

6. The Complaint should be dismissed by the Commission.

VI. ORDERING PARAGRAPHS

IT IS THEREFORE ORDERED:

1. The Complaint of Mr. Kennedy is denied and hereby dismissed.

2. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



A handwritten signature in black ink, appearing to read "Delton W. Powers, Jr.", is written over a horizontal line.

Delton W. Powers, Jr. Vice Chairman
Public Service Commission of
South Carolina
FOR THE MAJORITY

NOTICE TO ALL PARTIES: Pursuant to S.C. Code Ann. section 58-27-2150 (2015), any party to this proceeding may petition for a rehearing within ten (10) days after service of the notice of the entry of this order. An applicant may seek rehearing in respect to any matter determined in this proceeding. Pursuant to S.C. Code Ann. Regs 103-825(A)(4) (2012), the petition for rehearing shall set forth clearly and concisely: (a) the factual and legal issues forming the basis for the petition; (b) the alleged error or errors in the Commission order; and (c) the statutory provision or other authority upon which the petition is based. Additionally, pursuant to S.C. Code Ann. Regs 103-825(B) (2012), any petition for rehearing must conform to the requirements of R. 103-819 through 103-822.

Chair Belser dissenting, with Commissioner C. Williams concurring in dissent.

We respectfully dissent. We would grant the Complaint filed by Clyde Kennedy (Mr. Kennedy or Complainant) against Dominion Energy South Carolina, Inc. (DESC or the Company).

Pursuant to S.C. Code Ann. section 58-27-140, the Commission has the power to “ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities.” S.C. Code Ann. section 58-27-140 (2015). Under the regulations promulgated by the Commission, an individual may file a written complaint with the Commission requesting a proceeding when “complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission.” S.C. Code Ann. Regs. 103-824. The Commission’s regulations also provide for the contents of individual complaints filed with the Commission. *Id.* Additionally, the Commission’s regulations afford a customer a reasonable time in which to correct any discrepancy which may cause discontinued service. S.C. Code Ann. Regs. 103-342. However, the regulations state a number of reasons for which service may be denied or discontinued, including the reasons set forth in S.C. Code Ann. Regs. 103-342(k) (also referred to as the “K Rule”):

No electrical utility shall be required to furnish its service or to continue its service to any applicant who, at the time of such application, is indebted or any member of his household is indebted, under an undisputed bill to such electrical utility for service previously furnished such applicant or furnished

any other member of the applicant's household. However, for the purposes of this regulation, the electrical utility may not consider any indebtedness which was incurred by the applicant or any member of his household more than six years prior to the time of application.

S.C. Code Ann. Regs. 103-342(k) (2012).

The dispute before the Commission concerns the interpretation of the K Rule. More specifically, does the term "member of his household" in the K Rule require the applicant for service to have lived at the subject property? In our assessment and review of the applicable law and cases that have examined this issue, we believe the answer is yes.

South Carolina courts recognize that the same statutory construction rules are applied when interpreting an agency's regulations. *See Murphy v. S.C. Dep't of Health & Env'tl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012) (citing *S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 389, 699 S.E.2d 146, 151 (2010)). "The construction of a regulation by the agency charged with executing the regulations is entitled to the most respectful consideration and should not be overruled without cogent reasons." *Converse Power Corp. v. S.C. Dept. of Health & Env'tl. Control*, 350 S.C. 39, 48, 564 S.E.2d 341, 346 (Ct. App. 2002)) (citing *Faile v. S.C. Employment Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976)). To effectuate regulatory interpretation, "we look for the plain and ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand the regulation's operation." *See Murphy v. S.C. Dep't of Health & Env'tl. Control*, 396 S.C. 633, 639-40, 723 S.E.2d 191, 195 (2012) (citing *Converse Power Corp. v. S.C. Dept. of Health & Env'tl. Control*, 350 S.C. 39, 47, 564 S.E.2d 341, 346 (Ct. App. 2002)). Where a word is not defined in the regulations, "we interpret an undefined term in accordance with its usual and

customary meaning.” *Converse Power Corp. v. S.C. Dept. of Health & Envtl. Control*, 350 S.C. 39, 48, 564 S.E.2d 341, 346 (Ct. App. 2002)) (citing *Faile v. S.C. Employment Sec. Comm’n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976)). Courts in South Carolina considering this issue have found that, in addition to the language of the particular clause, the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law should be given consideration. *Branch v. City of Myrtle Beach*, 340, S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000) (citing *Whitener v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997)).

As noted at several points during this docket, the terms “household” and the phrase “member of [] household” are not defined in the Commission’s regulations. Accordingly, in determining whether use of the “K Rule” is warranted, we must look to the plain and ordinary meaning of these terms in the regulation.

The plain and ordinary meaning of “household” as defined by Merriam-Webster Dictionary is “those who dwell under the same roof and compose a family” and “a social unit composed of those living together in the same dwelling.” *Household Definition*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/household> (last visited May 20, 2024).

Being a “relative” of persons living in or renting one’s property is not sufficient to establish that a property owner or landlord is a “member of the household.” Based on our review of the evidence contained in the record of this case and the applicable law, there must be some “living together” to establish the “member of the household” connection.

Upon review of the record in this proceeding, we do not believe sufficient evidence has been presented to establish that Mr. Kennedy was a “member of the household” for purposes of applying the K Rule contained in S.C. Code Ann. Regs. 103-342(k). The record does not establish that Mr. Kennedy lived in the property during the period where family members were incurring arrearages on various accounts. Moreover, a “relative” is not synonymous with a “household member.” More specifically, there are number of references in the record that suggest Mr. Kennedy has not resided in the property since 2015, regardless of his Federal and State tax filings or where his vehicles were registered. *See* Tr. 24:20-25:6; 74:25-75:13; 78:24-79:18; 81:3-7. Based on our review of the evidence of record, none of the evidence presented indicates that Mr. Kennedy has ever lived in the Catawba property since 2015.

In granting Mr. Kennedy’s complaint, we would find that the “K rule” [Reg. 103-342(k)] is not applicable to the facts of this case and enter an order ruling in favor of the Complainant for connection of electric service to the property at issue. Further, we would find that the Complainant should not be required to pay any of the outstanding account balances incurred by the tenants of the property and that DESC must connect service to the property at issue.

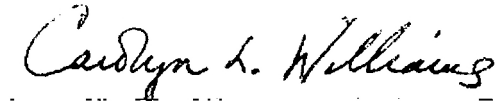
In addition to restoration of electric service to his property, the Complainant requested that the Commission award damages including lost rental income, mold growth repairs, other non-specified damages resulting from the refusal to reconnect electric service, as well as compensation for the Complainant’s time pursuing this matter based on his current salary. As previously outlined in Order No. 2024-143, issued in this docket on

February 27, 2024, the Commission lacks jurisdiction to award monetary damages. Order No. 2024-143, p. 7, Docket No. 2023-361-E (Feb. 27, 2024). Therefore, the Commission cannot address the Complainant's request for monetary damages.

FOR THE MINORITY, COMMISSIONERS BELSER
AND C. WILLIAMS



Florence P. Belser, Chair
2nd Congressional District



Carolyn L. Williams
1st Congressional District

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2023-361-E ORDER NO. 2024-537

JULY 30, 2024

IN RE: Clyde Kennedy, Complainant/Petitioner v.) ORDER DENYING
 Dominion Energy South Carolina, Inc.,) PETITION FOR
 Defendant/Respondent) REHEARING

This matter comes before the Public Service Commission of South Carolina (Commission) on the Petition for Rehearing of Mr. Clyde Kennedy (Mr. Kennedy or the Complainant) in the above-captioned Complaint. For the reasons outlined herein, the Petition for Rehearing is denied.

I. FACTUAL AND PROCEDURAL HISTORY

Mr. Kennedy filed his Complaint in October 2023 against Dominion Energy South Carolina, Inc. (DESC or the Company) following the Company’s decision not to reconnect power at his property in Summerville, South Carolina,¹ which is located in DESC’s service territory. In his Complaint, Mr. Kennedy admitted his relatives “owe [the Company] a significant balance” for service at his property. Complaint, p. 1. Nonetheless, he argued that DESC should re-establish his power and requested damages in the form of “restoration of utility service...[and] any other damages identified resulting from utility service refusal to re-establish services....” *Id.*

¹ Tr. 24:24-25; Tr. 60:7-12.

On October 25, 2023, pursuant to S.C. Code Ann. Regs. 103-830 (2012), the Commission served the Company with the Complaint and issued a Notice of Hearing and a Prefile Testimony Deadlines Letter. The Commission's Clerk's Office (Clerk's Office) scheduled a hearing in this matter before a Commission-appointed hearing examiner on January 4, 2024. S.C. Code Ann. Regs. 103-841 (2012). Based on a delay in securing representation, the Clerk's Office rescheduled the hearing for March 20, 2024.² On January 5, 2024, DESC responded to Mr. Kennedy's Complaint by filing an Answer and Motion to Dismiss.

The Commission scheduled an oral argument before the full Commission on DESC's Motion to Dismiss on February 14, 2024, pursuant to S.C. Code Ann. Regs. 103-829(B) (2012). Kathleen M. McDaniel, Esquire, appeared on behalf of Mr. Kennedy. Michael J. Anzelmo, Esquire, and K. Chad Burgess, Esquire, appeared on behalf of the Company.³ Benjamin Mustian, Esquire, appeared on behalf of the Office of Regulatory Staff (ORS),⁴ an automatic party of record pursuant to S.C. Code Ann. section 58-4-10(B) (Supp. 2023).

The oral argument revolved around S.C. Code Ann. Regs. 103-342(k) (2012), also known as the "K Rule," and the appropriate interpretation of "member of the household." Following legal arguments from both sides, the Commission voted to deny the Company's

² This matter was held in abeyance for two 30-day periods to allow Mr. Kennedy an opportunity to retain counsel. No party objected. The hearing and filing deadlines were stayed. *See* Order Nos. 2023-127-H, 2023-141-H.

³ Sarah B. Nielson, Esquire, also represents DESC, per a Notice of Appearance filed with the Commission on January 5, 2024.

⁴ Joshua E. Austin, Esquire, also represents ORS, per a Notice of Appearance filed with the Commission on October 24, 2023.

Motion to Dismiss at a regularly scheduled Commission Business Meeting on February 15, 2024.⁵

An evidentiary hearing took place before a hearing examiner on March 20, 2024.⁶ Several witnesses presented testimony and exhibits, including hundreds of pages of discovery, which were entered into the record of the case. After a review of the evidence, the Commission denied Mr. Kennedy's Complaint at a regularly scheduled Business Meeting. The Commission issued a directive stating that the matter was denied pursuant to the K Rule, and that a full order was forthcoming.

On May 21, 2024, Mr. Kennedy filed a Petition for Rehearing prior to the full order being issued by the Commission. Petition for Rehearing, p. 1. On June 4, 2024, DESC filed a letter with the Commission, asserting that an order had not yet been issued, and therefore, the Petition for Rehearing should be deemed "untimely." DESC letter dated June 4, 2024. The Commission agreed with the Company at a Special Business Meeting on June 6, 2024, and withheld ruling on the matter until issuance of a full written Order. Order No. 2024-392. The Commission stated the parties would have an opportunity to file a Petition for Rehearing and/or Reconsideration pursuant to S.C. Code Ann. section 58-27-2150 (2015) and S.C. Ann. Regs. 103-854(B) (2012). *Id.*

On June 12, 2024, the Commission issued a full Order (the Order) Denying the Complaint. On June 28, 2024, Mr. Kennedy filed a subsequent Petition for Rehearing, citing S.C. Code Ann. Regs. 103-854. The Company responded with a letter on July 1, 2024, citing both S.C. Reg. 103-854(B) and S.C. Code Ann. section 58-27-2150, which

⁵ See Order No. 2024-143, Docket No. 2023-361-E (Feb. 27, 2024).

⁶ Donna L. Rhaney, Esquire, represented ORS during the March 20, 2024, hearing.

requires a petition in electric utility matters to be made within ten (10) days. Accordingly, the Company requested denial of the Petition for Rehearing.

II. LAW

Petitions may be submitted to the Commission for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority. S.C. Code Ann. Regs. 103-825 (2012). According to Regulation 103-854,

[u]nless otherwise provided by law, no cause of action shall accrue in any court of competent jurisdiction to vacate or set aside any Order of the Commission, either in whole or in part, unless a petition for rehearing or reconsideration and proof of service are filed with the Commission, and an Order has been issued disposing of the matter.

S.C. Code Ann. Regs. 103-854 (2012).

A petition for rehearing shall set forth clearly and concisely: (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; (c) The statutory provision or other authority upon which the petition is based. S.C. Code Ann. Regs. 103-825(A)(4).

The timeline for filing a petition for rehearing depends upon which code section applies. Pursuant to S.C. Code Ann. Regs. 103-825(B), any party of record may, within 20 days after the date of receipt of the Order, petition the Commission for rehearing or reconsideration. However, S.C. Code Ann. Regs. 103-825(B) contains exceptions for certain statutes, including S. C. Code Ann. section 58-27-2150, which governs rehearings of electric utility matters and sets a timeline of ten (10) days to file a petition for rehearing. The statute provides in pertinent part:

After an order or decision has been made by the Commission any party to the proceedings may **within ten days after service of notice of the entry of the order or decision** apply for a rehearing in respect to any matter determined in such proceedings and specified in the application for rehearing, and the Commission may, in case it appears to be proper, grant and hold such rehearing. The Commission shall either grant or refuse an application for rehearing within twenty days, and a failure by the Commission to act upon such application within that period shall be deemed a refusal thereof. If the application be granted the Commission's order shall be deemed vacated, and the Commission shall enter a new order after the rehearing has been concluded.

S.C. Code Ann. § 58-27-2150 (2015) (emphasis added).

“The purpose of a petition for rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried... a second time.” *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933); *see also Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Moreover, “[t]he purpose of a Petition for Rehearing is not intended as a procedure for rearguing...[a] case merely because the non-prevailing parties disagree with the original decision.” *In re: BellSouth BSE, Inc.* Docket No. 97-361-C, Order No. 98-66, pp. 1-2 (February 2, 1998). Rather, the purpose of rehearing or reconsideration is to allow the Commission “to identify and correct specific errors and omissions in its orders.” *In re: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Co.*, Docket No. 2017-2-E; Order No. 2017-339, p. 1 (July 18, 2017).

III. FINDINGS OF FACT

1. The Complainant, an owner of South Carolina property in DESC's service area, filed a Complaint against DESC regarding the Company's refusal to re-establish

power service. The Commission denied the Complaint by directive on May 2, 2024, and indicated that a full order was forthcoming.

2. On June 12, 2024, the Commission issued the Order denying the Complaint under S.C. Code Ann. Regs. 103-342(k). *See generally* Order No. 2024-393.

3. The Complainant filed a subsequent Petition for Rehearing on June 28, 2024, more than ten (10) days after the issuance of the Order.

4. The Complainant's Petition for Rehearing dated June 28, 2024, is untimely and has not provided sufficient reason for the Commission to rehear the matter.

IV. EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT

A. Summary of Evidence

On May 2, 2024, the Commission issued a directive denying the Complaint and stating that a full Order was forthcoming.⁷ On June 12, 2024, the Commission issued the Order outlining its reasoning for denying the Complaint, and concluded the Company had not violated any rule, regulation, or Commission order. Order No. 2024-393. Based on the filings, testimony, and evidence of record, the Commission determined that Mr. Kennedy had not proven by a preponderance of the evidence that DESC improperly refused to reconnect service at his property. *Id.* Specifically, the Commission found DESC had not violated S.C. Code Ann. Regs. 103-342(k) in its interpretation of Mr. Kennedy's relatives as household members. *Id.* The seventeen-page Order was supported by a careful review of the record.

⁷ The Complainant filed a Petition for Rehearing on May 21, 2024, which was denied by the Commission as untimely because the full Order had not yet been issued. *See* Order No. 2024-392.

In the Order, the Commission provided notice to all parties that pursuant to S.C. Code Ann. section 58-27-2150, “any party to this proceeding may petition for a rehearing within ten (10) days after service of the notice of the entry of this order.” Order No. 2024-393, p. 17. Following the issuance of the Order, Mr. Kennedy filed a Petition for Rehearing on June 28, 2024.

In response, DESC filed a letter stating section 58-27-2150 of the South Carolina Code of Laws controls petitions for rehearing in electric docket and requires any petition for rehearing to be made within ten (10) days of service of notice of the entry of the order or decision. *See* DESC letter dated July 1, 2024; S.C. Code Ann. Regs. 103-854(B). The Company noted that S.C. Code Ann. Regs. 103-852(A) (2012) allows service of orders to be effectuated by “electronic service.” *Id.* The Commission electronically served the “notice of entry of the order” required by section 58-27-2150 by notice of electronic filing (NEF) titled “SCPSC eService Notification” the same day the Order was issued. Mr. Kennedy consented to service of the Order by NEF pursuant to S.C. Code Ann. Regs. 103-852(B), which establishes that service is effective upon transmission of the NEF.⁸ Therefore, DESC argues that electronic service of the Order by NEF “started the clock” for filing any petition for rehearing. *Id. See also* S.C. Code Ann. Regs. 103-817.1(E)(3) (Supp. 2023) (“[t]he NEF constitutes proof of service under Rule 5(b), SCRCPP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of Regulations”).

⁸ S.C. Code Ann. Regs. 103-852(B) states, “[a]ll parties of record, including attorneys of record or legal representatives, who electronically file documents through the Docket Management System, consent to service of orders through email or electronic service, and such service is effective upon the email or electronic service being sent.”

According to DESC, section 58-27-2150 set June 22, 2024, as the deadline for Complainant to file a petition for rehearing. The Complainant did not file and serve his Petition for Rehearing until June 28, 2024. *See* NEF No. 324429 dated June 28, 2024, at 2:30PM. As such, the Company argues that the Complainant’s Petition for Rehearing is untimely and should be dismissed.

B. Discussion and Conclusion

As asserted by DESC, the Petition for Rehearing was filed more than ten (10) days after the full Order was issued, making it untimely under S.C. Code Ann. Regs. 103-854(B) and S.C. Code Ann. section 58-27-2150. Accordingly, the Commission finds and concludes that the Petition for Rehearing was not timely. Moreover, the Commission finds and concludes that the Commission based its decision and Order upon a full record and no additional testimony is needed.

In its Order, the Commission found that the Company did not violate any rule, regulation, or order in its application of S.C. Code Ann. Regs. 103-342(k). As is the nature of a contested proceeding, parties will present differing evidence on points of contention to support their respective positions. Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of the fact are conclusive. *Holcombe v. Dan River Mills/Woodside Div.*, 286 S.C. 223, 225, 333 S.E.2d 338, 340 (Ct. App. 1985) *citing Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964).

Here, the Commission had the benefit of both an oral argument and evidentiary hearing. During the oral argument, the Commission heard from the parties regarding the K Rule and the proper interpretation of “member of the household,” among other legal issues.

The Commission then reviewed the record of the evidentiary hearing, which included the testimony and cross-examination of multiple witnesses and the introduction of various exhibits and other evidence. The Commission based its decision upon a full record, and no additional testimony was needed in order to make a determination. Ultimately, the Petition for Rehearing does not present sufficient grounds to modify, amend, or rehear the matter decided in Order No. 2024-393.

V. CONCLUSIONS OF LAW

1. The Petition for Rehearing was filed more than ten (10) days after the full Order was issued, which makes it untimely under S.C. Code Ann. Regs. 103-854(B) and S.C. Code Ann. section 58-27-2150.

2. The Commission based its decision and Order upon a full record and no additional testimony is needed.

3. The Commission concludes it is proper to deny the Petition for Rehearing filed on June 28, 2024.

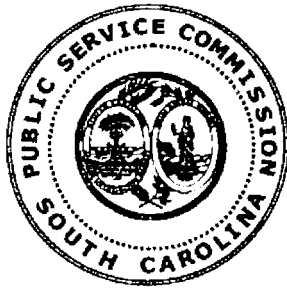
VI. ORDERING PARAGRAPHS

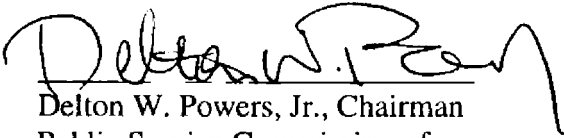
IT IS THEREFORE ORDERED:

1. The Commission denies Mr. Kennedy's Petition for Rehearing dated June 28, 2024.

2. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:




Delton W. Powers, Jr., Chairman
Public Service Commission of
South Carolina

NOTICE TO ALL PARTIES: Any party of record may appeal a Commission Order to the appropriate judicial forum pursuant to applicable provisions of law. S.C. Code Ann. Regs. 103-856 (2012); *see* S.C. Code Ann. § 58-27-2310.