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Oct 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Delton W. Powers, Jr., Chair

PSC Docket No. 2023-361-E
Appellate Case No. 2024-001447

Clyde Kennedy,

Appellant,

v.

Dominion Energy South Carolina, Inc.,

Respondent.

RETURN TO MOTION TO DISMISS UNTIMELY APPEAL

Dominion Energy South Carolina, Inc. has moved to dismiss Clyde Kennedy's appeal on the basis that Kennedy failed to file a petition for rehearing within 10 days of the Commission's full Order. Dominion relies on S.C. Code Ann. § 58-27-2150. Kennedy filed a petition for reconsideration within the required time period. Therefore, this Court should deny Dominion's motion to dismiss this appeal.

The Public Service Commission issued a Directive on dated May 2, 2024, denying Kennedy's complaint. The May 2 Directive stated that a full Order was forthcoming. However, the Commission did not issue its full Order until June 12, 2024.

In the intervening period between the May 2 Directive and the June 12 full Order, Kennedy filed a petition for reconsideration. Kennedy filed that petition for

reconsideration on May 21, 2024. Kennedy's May 21 petition for reconsideration set forth his detailed legal argument that the Commission erred in denying his Complaint. After the Commission issued its full Order on June 12, Kennedy resubmitted his petition for reconsideration making the exact same arguments as he had made in his first petition for reconsideration.

South Carolina Code Section 58-27-2150 requires a party to file a petition for reconsideration "within" 10 days after service of a Commission order. This statute requires only that the petition for reconsideration be filed before the expiration of the 10-day period. This includes filing the petition for reconsideration before the service of a Commission order.

Our Supreme Court addressed the interpretation of "within" in *Glaze v. Grooms*, 324 S.C. 249, 254, 478 S.E.2d 841, 844 (1996).

If an action is required by statute within a certain time "after" an event, the general rule is that the action may be taken before the event, since the statute will be considered as fixing the latest, but not the earliest, time for taking the action. 86 C.J.S. Time § 8, See also *Kanavos v. Hancock Bank & Trust*, 14 Mass. App. Ct. 326, 439 N.E.2d 311 (1982). When used relative to time "within" means "any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than." Black's Law Dictionary 1437 (5th Ed. 1979).

Applying the Supreme Court's statement of the law that "within" fixes the latest date that an action may be taken but not the earliest, Kennedy complied with S.C. Code Ann. § 58-27-2150 by filing a petition for reconsideration before the Commission issued its full Order. Accordingly, the Commission erred in holding that Kennedy's May 12 petition for reconsideration was untimely. In his Notice of Appeal, Kennedy specifically included as one of the decisions appealed the June 6 Commission directive finding his petition for reconsideration untimely.

Based upon the foregoing, this Court should find that Kennedy timely filed a petition for reconsideration such that his appeal in this matter was timely filed on August 29, 2024. This Court should deny Dominion's motion to dismiss this appeal.

Respectfully submitted,



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PROOF OF SERVICE

I certify that the **RETURN TO MOTION TO DISMISS UNTIMELY APPEAL** was served on the following counsel of record for Respondent Dominion Energy South Carolina, Inc. and the Office of Regulatory Staff on October 10, 2024, via electronic mail under Paragraph (d)(1) of Order re: Methods of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Appellate Case No. 2020-000447.

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October 10, 2024
Columbia, South Carolina