RECEIVED
Apr 21 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 19-ALJ-17-0153-CC

Appellate Case No. 2020-001542

Duke Energy Corporation, ... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

APPELLANT DUKE ENERGY CORPORATION'S RETURN TO RESPONDENT'S PETITION FOR REHEARING

INTRODUCTION

The South Carolina Department of Revenue ("Department") petitioned this Court for a rehearing of its Opinion No. 6107 ("Opinion") holding that the plain, unambiguous text of section 12-14-60(G) of the South Carolina Code (2014) ("Credit Limitation") establishes an annual limitation, rather than a lifetime limitation, on the amount of investment income tax credit that can be claimed by utilities such as Duke Energy Corporation ("Duke Energy"). There is no basis for a rehearing in this case and the Department's petition should be denied.

To prevail on a petition for rehearing, the Department "must state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR.

The Department fails to do so. Instead, it simply restates its arguments on appeal that this Court previously considered and rejected or that are otherwise wrong.

Specifically, the Department asks this Court to reject its unanimous, well-reasoned Opinion to follow the plain, ordinary meaning of the statutory text of sections 12-14-60(A) (which authorizes the annual income tax credit) and 12-14-60(G) (which limits the amount of that annual credit). These subsections of the same statute authorize an annual credit (i.e., a taxpayer can earn the tax credit every year in which the taxpayer places qualifying property in service) that is limited to $5 million per year for utilities like Duke Energy. In so doing, the Department ignores the cardinal rule of statutory construction that subsections of the same statute must be read together and the fact that for more than fifteen years the Department itself applied subsection (G) as an annual limitation and informed taxpayers and the South Carolina legislature that subsection (G) was an annual limitation. The Department's claim that the "plain language" of the statute provides a lifetime limitation borders on absurd given the Department's own interpretation to the contrary for over fifteen years.

The Department attempts to muddle the statute's plain language by cherry-picking isolated phrases from different subsections of the statute and interpreting them out of context. It also raises rules of statutory construction that have little to no applicability in the context of interpreting a statute that is plain on its face. For example, the Department contends that the phrase "limited to no more than" should always be read as a lifetime limitation *per se* because that phrase appears in other statutes that happen to impose lifetime limitations.

The Department then falsely claims that Duke "lobbied" to change 12-14-60(G) to an annual limitation in 2017. In fact, the 2017 proposed legislative amendment was a clarification that the 12-14-60(G) had always been an annual limitation.

Finally, the Department accuses this Court of purportedly disregarding prior precedent finding section 12-14-60 ambiguous by citing an opinion that the South Carolina Supreme Court withdrew and subsequently substituted with a decision finding section 12-14-60 unambiguous. The Department's arguments are wrong and do not present any grounds that this Court overlooked or misapprehended.

For the reasons provided herein, the Department's petition does not meet the standard of Rule 221(a), SCACR, and the restated arguments raised in the petition have no merit. Therefore, the Department's petition for rehearing should be denied.

STANDARD FOR REHEARING

Rule 221(a), SCACR, authorizes a party that believes that a court has overlooked or misapprehended points of law or fact to petition the court to reconsider its decision. A petition for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." *Id*. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).

ARGUMENT

I. This Court correctly interpreted the plain, ordinary meaning of section 12-14-60 in determining that section 12-14-60(G) establishes an annual limitation.

The central issue in this appeal is whether section 12-14-60(G) is an annual or lifetime limitation on the tax credit authorized under subsection (A) of the same statute. This Court thoughtfully and thoroughly analyzed the plain, ordinary meaning of the text of section 12-14-60 (the "Credit Statute") in holding that the Credit Limitation in subsection (G) is an annual one. The Court's analysis is entirely consistent with the Court's obligation to interpret section 12-14-60 "as

a whole" and construe the statutory words "in context" and according to their "plain and ordinary meaning." Opinion at 5; *Duke Energy Corp. v. S.C. Dep't of Revenue,* 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("The language of a tax statute must be given its plain and ordinary meaning in the absence of an ambiguity therein."); *Eagle Container Co., LLC v. Cnty. of Newberry*, 379 S.C. 564, 570-71, 666 S.E.2d 892, 896 (2008) ("If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning."); *CRFE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (statutes "must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect,") (*quoting S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)).

Applying these rules of statutory construction, the unanimous Opinion correctly interpreted the applicable provisions of the Credit Statute and concluded that "subsection (G) refers to the credit 'allowed by [section 12-14-60]' as described in subsection (A)(1), which explicitly defines the credit as being available in 'any taxable year.'" Opinion at 5. To do otherwise would make no sense in the context of a tax credit that one qualifies for annually and is claimed on an annual income tax return. (R. p. 10 ("[T]his section [12-14-60(A)(1)] plainly allows a taxpayer to earn and apply the tax credit <u>every year</u> the taxpayer places qualifying property into service." (Emphasis added).) Indeed, at oral argument, the Department admitted that the credit can be earned every year. Therefore, this Court correctly found that "Subsection (G) does not contain any time-specific language to describe the limit of tax credits available to an eligible entity" and "absent language providing for a lifetime limitation, we find a credit against a yearly tax is claimable in any taxable year in which the statutory requirements are met." Opinion at 5.

a. The Department's cherry-picking of isolated terms and subsections of section 12-40-60 is inconsistent with longstanding South Carolina principles of statutory construction.

The Department asserts that this Court's Opinion "overlooks the plain, ordinary meaning of the text in section 12-14-60," "is completely inconsistent with the common understanding of the phrase 'limited to no more than,'" and is "without any textual analysis of the common understanding of the phrase 'limited to no more than.'" Petition at 4-5. The Department's arguments are unavailing, particularly because they offer no textual analysis of section 12-14-60 as a whole, as required under South Carolina precedent. Instead, the Department's myopic view seeks to disconnect subsection (G) from the rest of the statute or, even worse, cherry-pick isolated phrases from different subsections of the statute.

Specifically, the Department's limited focus on the "the plain, ordinary, and literal meaning of the phrase ['limited to no more than']" in subsection (G) as the <u>sole</u> textual basis for its conclusion that the Credit Limitation "means a complete limitation" (Petition at 5) demonstrates the Department's misapprehension of the Court's analysis and South Carolina's rules of statutory construction. Similarly, the Department's focus on the word "all" in the phrase "all investments made after June 30, 1998" in subsection (G) is also unavailing. "All" plainly signifies that every investment made after June 30, 1998, which is the effective date of subsection (G), will be subject to the $5 million annual limitation set forth in that section.

This Court's textual wholistic reading of the plain text of section 12-14-60 reflects the clear import of the statutory text and the settled rules established by precedent. As this Court correctly recognized, "[a] statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one give effect." Opinion at 4; *CRFE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629).

Courts therefore may not "concentrate on isolated phrases within the statute," as the Department urges, and should instead "read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* That is exactly what this Court did in its Opinion and there is no basis to grant rehearing to part company with precedent and sound principle.

The Department argues, as it previously did in its briefs and during oral argument, that because subsection (A)(2) (which explains the calculation of the credit amount that can be earned each year depending on the type of property the taxpayer invested in) serves as a limitation on the amount of the credit authorized under (A)(1), "subsection (G) should be read to provide an even further limitation on the total credit amount allowed." Petition at 6. Restating the same argument that this Court thoroughly examined and carefully addressed is not persuasive and does not meet the test for rehearing to be granted. *See* Opinion at 5. Subsection (A)(2) computes the amount of the annual credit authorized under subsection (A)(1) for all taxpayers depending on the type of investment made in the state (e.g., the credit for three-year property is one-half percent of total aggregate bases of all such qualifying property whereas five-year property is entitled to a credit equal to one percent of total aggregate bases for all such qualifying property), while subsection (G) further limits the amount of that annual credit authorized under subsection (A)(1) and computed under (A)(2) to $5 million per year only for utilities. This Court correctly recognized that just because subsection (G) contains a limitation on the amount of the credit, it does not automatically follow that the limitation must be a lifetime one, absent plain language to that effect and especially given that subsection (G) expressly states that it limits an annual credit.

If there was any doubt that the Credit Limitation is an annual limitation under the plain language of section 12-14-60, the Department's own longstanding practice and guidance confirms the annual application of the Credit Limitation. For more than fifteen years, the Department

instructed utility taxpayers through its tax forms and during audits that they could claim up to $5 million of the credit for each taxable year they invested in the state. (R. p. 294, lines 7-9; R. p. 254, lines 8-10; R. p. 294, lines 11-13.) Shortly after section 12-14-60 was enacted, the Department drafted and published the credit form, which taxpayers were required to complete to claim the credit. S.C. Code Ann. § 12-60-1720 (taxpayers are mandated to "comply with the department's regulations, rules, and procedures, and shall use the forms the department prescribes.") (R. pp. 674-713; R. p. 280, lines 9-14.) The Department agrees that it amended and published new credit forms eleven times and consistently required taxpayers to apply the Credit Limitation on an annual basis. (R. p. 253, lines 3-5; R. p. 307. line 21-p. 308, line 5; R. p. 295, lines 4-7, p. 296, lines 12-15.)

The Department's prior audits also reflected its application of the Credit Limitation as an annual limitation. As discussed, the Department audited Duke Energy for tax years 2008 through 2011. In that audit, the Department used its standard workpaper template used for auditing the amount of the credit claimed by utilities subject to the license tax. (R. p. 751; R. p. 264, lines 7-10, p. 265, lines 4-16.) Using that template, the Department applied the Credit Limitation on an annual basis. The Department's audit report did the same. (R. p. 751.)

The Department's longstanding interpretation of the Credit Limitation was also known by South Carolina legislators and the South Carolina Office of Revenue and Fiscal Affairs ("RFA"). In considering the 2017 legislation that would have clarified that subsection (G) establishes an annual limitation, the Legislature understood that applying the Credit Limitation as an annual limitation was "DORs[sic] stance for 15+ yrs," and that "[t]his clarifying amendment does not alter any current practices by the Department of Revenue" and was intended to "conform to policy and practice." (R. p. 359; R. pp. 813-814; R. p. 805.) Contrary to the Department's assertion in its

petition, and as demonstrated by the evidence in the record, the 2017 legislation was not drafted as a "change [to] the limitation from a lifetime to annual basis;" rather, it was a "clarifying amendment" intended to "conform to policy and practice" of applying the limitation on an annual basis. *Id.* The RFA was also fully aware that the 2017 Bill "does not alter any current practices by the Department of Revenue, and therefore, would not affect state General Fund income tax revenue in FY 2017-18, and later fiscal years." (R. p. 805).

When asked about this longstanding position and practice during oral argument, Department's counsel was not able to provide justification for the Department's retroactive change in its interpretation other than to say the Department made the same mistake time and time again for more than fifteen years. The Department's answer to the Court's question was telling. The Department read the statute, for over fifteen years, in the same way that Duke Energy does and consistently with this Court's Opinion.

b. The Department's analogy of 12-40-60(G) to other credit limitations is misplaced.

The Department contends, as it did in its briefs and during oral argument, that the Credit Limitation is a lifetime limitation because it is similar in text to certain other credits that are subject to a lifetime limitation. The Department's analogies are as flawed now as when it first made these arguments. For example, while the credit set forth in S.C. Code Ann. § 12-6-3570 "is allowed over more than one taxable year," the controlling statute expressly provides that "a taxpayer's total credit in all years . . . may not exceed one hundred thousand dollars." S.C. Code Ann. § 12-6-3570(A) (emphasis added). None of this underlined language appears in subsection (G) or anywhere else in section 12-14-60.

Similarly, the other credits used as purported analogs by the Department apply to projects and expenses with inherently limited scopes and lifetimes, such as one-time gifts of property,

construction projects, or film productions, all of which materially differ from the annual credit for investments in section 12-14-60. *See* S.C. Code Ann. § 12-6-3440 (unlike 12-14-60, credit includes a financial limitation on credits per year) (emphasis added); S.C. Code Ann. § 12-6-3515 (provides credits for land contributions that inherently occur in a single taxable year); S.C. Code Ann. § 12-6-3620(B) (unlike 12-14-60, which applies to longer-term investments like construction, software, and other large-scale projects, this credit only applies to the one-time purchase and installation of biomass-energy equipment); S.C. Code Ann. § 3420(B)(2) (specifically states that for "any one infrastructure project" the credits are limited annually) (emphasis added); S.C. Code Ann. § 12-6-3790(D)(1)(a) (credit is naturally limited to a single taxable year or tuition year); S.C. Code Ann. § 12-10-81(B)(1) (legislation with a target and limited scope for distressed or lease developed counties). Accordingly, these code sections are entirely distinguishable from the investment tax credit and the Credit Limitation.

c. The Department's strict construction of the term "total," which does not appear in section 12-14-60, is misplaced.

The Department's petition repeats its contention that the presence of the term "total" in the title of the legislation that enacted 12-14-60(G), but not in the statute that codifies the limitation or the statute's title, purportedly supports its position that the Credit Limitation is applied on a lifetime basis. But, as this Court correctly noted during oral arguments, the use of the word "total" in the title "does not necessarily" make the Credit Limitation a lifetime limitation. Even the ALC rejected the Department's argument "because 12-14-60(G) could still be read to refer to § 12-14-60(A)(1), in which case the word 'total' could simply mean the entire or whole credit for 'any taxable year.' (R. p. 17).

Further, it is well-settled South Carolina law that the titles of statutes and section headings are of use "only when they shed light on some ambiguous word or phrase and as tools available

for resolution of doubt." *See Garner v. Houck*, 312 S.C. 481, 486, 435 S.E.2d 847, 849 (1993) (emphasis added). Titles and headings "cannot undo or limit what the text makes plain," and "may not be construed to limit the plain meaning of the text." *Id.* The Department conceded, and this Court correctly found, that section 12-14-60(G) is plain and unambiguous. Department's Br. at 13; Opinion at 5. Accordingly, the Department's reliance on the title of the 1998 legislation is of no consequence and it is not a point this Court misapprehended or overlooked.

II. This Court correctly analyzed the purpose of section 12-14-60 as a whole.

This Court correctly determined that a lifetime limit of $5 million is incompatible with the intent and purpose of the Credit Statute, which was designed to "revitalize capital investment in this State, primarily by encouraging the formation of new business and the retention and expansion of existing businesses" and to "promote meaningful employment," as clearly set forth by the legislature in section 12-14-20. Opinion at 5; S.C. Code Ann. § 12-14-20.[1] In its petition, the Department claims that this Court incorrectly focused on the purpose of the Credit Statute as a whole, rather than the purpose of section 12-14-60(G). Tellingly, the Department fails to cite any support for this argument because it is the Department, and not this Court, that, once again, misapprehends the South Carolina cannons of statutory interpretation. This Court and the South Carolina Supreme Court have consistently held that the legislative intent of different parts of a statute must be construed as a whole to determine the purpose of the statute. *See, e.g.*, *Abell v. Bell*, 229 S.C. 1, 7, 91 S.E.2d 548, 551 (1956) ("The Act should be construed not piecemeal, but as a whole, and in the light of the circumstances and conditions existing at the time of its pages, and of

---

[1] Section 12-14-20 sets forth the legislative purpose for "this chapter 14," which encompasses section 12-14-60, as follows: "It is the purpose of this chapter to establish a program of providing tax incentives for the creation of capital investment in order: (1) to revitalize capital investment in this State, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses; and (2) to promote meaningful employment."

the legislative purpose manifest in its preamble."); *Scholtec v. Estate of Reeves*, 327 S.C. 551, 558, 490 S.E.2d 603, 607 (Ct. App. 1997) (noting language of a statute "must be read in a sense which harmonizes with its subject matter and accords with its general purpose"); *Smalls v. Weed*, 293 S.C. 364, 370, 369 S.E.2d 531, 534 (Ct. App. 1987) (providing that it "[c]onstru[ed] [a] statute as a whole in an attempt to determine the legislative purpose of its enactment"). Thus, searching for legislative purpose for specific aspects of the Credit Statute is improper.

Having failed to demonstrate why the stated legislative purpose for the entire section 12-14-60 should not apply to subsection (G), the Department next summarily asserts that the Credit Limitation is a lifetime limitation because utilities do not need incentives. This is simply not true. Duke Energy's 30(b)(6) witness explained, "Once we make [an] investment, we have to maintain it, but we have optionality about where we put it." (R. p. 326). The witness also explained, "We made investment decisions based on these credits being available." (R. p. 334). The Department's focus on the fact that utilities make long-term investment is also of no consequence because, as this Court pointed out in its Opinion, the purpose of the Credit Statute is "not limited to only the formation or initial employment, rather it contemplates the expansion and retention of business." Opinion at 5.

Curiously, the Department cites to *SCANA Corp. v. S.C. Dep't of Revenue*, No. 05-ALJ-17-0042-CC (Final Order & Decision Apr. 13, 2006, Kittrell, J.) for the proposition that 12-14-60(G) must be a lifetime limitation because the investment tax credit was not enacted to foster "longer range" economic growth but was enacted as "emergency legislation." Department's Br. at 10. The Department fails to mention, however, that the ALC in that case based its statements regarding the purpose of the legislation <u>on a statute that has since been amended</u> to broaden the purpose of the Credit Statute. Specifically, the ALC provided that the purpose of the Economic

Impact Zone Community Development Act of 1995 ("Act") was to "correct a grave economic climate created by military base and federal facility closings" based on the purposes clause of the Act, as expressed in S.C. Code Ann. § 12-14-20 (2000). *SCANA Corporation*, No. 05-ALJ-17-0042-CC (Final Order & Decision Apr. 13, 2006, Kittrell, J.).

Indeed, at the time, the purposes clause provided that the tax incentives program were established "to revitalize economically and physically distressed areas impacted as a result of the closing or realignment of a federal military installation area, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses, to promote meaningful employment for economic impact zone residents; and to encourage individuals to reside in the economic impact zones in which they are employed." S.C. Code Ann. § 12-14-20 (2000). By 2010, however, the purposes clause was broadened to provide that the tax incentives were established "to revitalize capital investment in this State, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses[,] and to promote meaningful employment." S.C. Code Ann. § 12-14-20 (2010). The Department also fails to mention that the ALC's order was reversed by the Richland County Circuit Court and that reversal was subsequently upheld by the South Carolina Supreme Court. *See SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 390, 683 S.E.2d 468, 469 (2009). Therefore, the Department's contention is inapposite and certainly not a point that warrants rehearing.

Finally, interpreting subsection (G) as an annual limitation does not lead to an absurd result. The Department claims that interpreting subsection (G) as an annual limitation effectively renders it to be no limitation at all but cites to a case in which the $5 million annual limitation would have limited the credits earned in a single tax year. Specifically, in *SCANA Corp. v. S.C. Dep't of Revenue*, another utility earned a nearly $30 million investment tax credit in a single tax year and

was permitted to carryforward those credits to subsequent years. *Id.* Had the five-million-dollar limitation been in place at the time, it would have limited SCANA's credit by $25 million.

The Department also makes much of the fact that the investment tax credits covered the income tax it would have paid during the years at issue. However, the Department's narrative fails to consider that Duke Energy conferred significant benefits on the State of South Carolina by making significant investments in the State. (R. pp. 332-45.) During the Audit Period, Duke Energy invested substantial amounts in its power generating facilities in South Carolina and placed in service significant amounts of qualified manufacturing and productive equipment property throughout the state. (R. pp. 324, 334, 339.) For tax years 2010-2014 alone, Duke Energy invested over $1 billion into the state as seen in its South Carolina corporate income tax returns and Credit Forms. (R. pp. 1290-1300.) This is precisely that type of investment that the Legislature intended to encourage when it enacted section 12-14-60. Just like the other purported errors Department cites, the unanimous Opinion provides no plausible basis for rehearing.

III. Section 12-14-60(G) is not ambiguous and the Court's Opinion correctly applied controlling precedent.

Agreeing with both the Department and Duke Energy, this Court correctly concluded that section 12-14-60(G) is unambiguous. Opinion at 5-6. Curiously, the Department first claims that the Opinion "overlooked or misapplied its own controlling precedent" because it "overlooks the plain, ordinary meaning of the text of section 12-14-60." Petition at 1-2. At the same time, the Department asserts that the Opinion "disregards[] this Court's controlling precedent … that ambiguity must be resolved in favor of the State and against the taxpayer." *Id.* at 12. Which is it? Does subsection (G) have a plain meaning or does it not? For fifteen years the Department thought the statute had a plain meaning and this Court found that the statute had a plain meaning in its own unanimous Opinion.

This Court conducted a thorough *de novo* review of the applicable provisions of the statute, finding them to be unambiguous and applying well-established plain and ordinary meaning principles of statutory construction, as discussed above. Therefore, this Court did not need to resort to rules of statutory interpretation applicable to ambiguous statutes.

The Department does not contend that any specific section or term of section 12-14-60 is ambiguous. Instead, its entire ambiguity complaint is premised on the decision of the South Carolina Supreme Court in *SCANA Corp. v. S.C. Dep't of Revenue*, Op. No. 26511, 2008 S.C. LEXIS 195, *4 (2008) (Adv. Sh. No. 28 at 38) (Petition at13.), finding that the effective date language of a different subsection, subsection (D) of section 12-14-60 was ambiguous. But the Department's petition fails to inform this Court that the South Carolina Supreme Court's 2009 decision in that case, which was issued after the Court **withdrew** the 2008 opinion and **substituted** it with the 2009 opinion, held that section 12-14-60(D) was **un**ambiguous. *See SCANA Corp.*, 384 S.C. at 392, 683 S.E.2d at 470. Thus, this case is inapposite and provides no support for the Department's position.

The Department's remaining contentions are similarly unavailing. The Department makes no headway with their passing suggestion that this Court's conclusion that "subsection (G) 'does not contain any time-specific language to describe the limit of tax credits available to an eligible entity' . . . is indicative of an ambiguity in subsection (G)." Petition at p. 13. This argument, which the Department previously raised and this Court previously rejected demonstrates, once again, the Department's misapprehension of the Opinion's analysis.

As discussed, this Court carefully reviewed the text and structure of section 12-14-60 in accordance with the governing rules of statutory construction, which require that "the statute must be read as a whole and section which are part of the same general statute law must be construed

together and each one given effect." Consequently, the Court correctly concluded that while subsection (G), which imposes a limitation on the amount ($5 million) of credit available to utilities, "does not contain any time-specific language to describe the limit of tax credits available to an eligible entity," "subsection (G) refers to the credit 'allowed by [section 12-14-16]' as described in subsection (A)(1), which explicitly defines the credit as being available in 'any taxable year.'" Opinion at p.5. In other words, subsection (A)(1)[2] authorizes a taxpayer to earn and claim the credit every tax year the taxpayer makes the requisite investment in the State. Subsection (G) of the statute limits "[t]he credit allowed by this section" to $5 million. S.C. Code Ann. § 12-14-60(G). "The credit allowed by this section" is the Credit allowed under subsection (A) for "any taxable year." Thus, the specific reference to "[t]he credit allowed by this section" in subsection (G) makes clear that subsection (G)'s dollar limitation applies to the same Credit allowed under subsection (A) for "any taxable year." Contrary to the Department's claim, that is not silence or ambiguity; it is a reference that explains that the Credit Limitation applies annually because the credit authorized in section 12-14-60 is an annual credit that can be earned and claimed each year. Rehearing on this point is, therefore, not warranted.

Similarly unavailing is the Department's contention that the Opinion "impermissibly broadens the scope of the tax credit" because it "assumes a textual presumption – the limitation of a tax credit is annual absent language to the contrary." Petition at 14. First and foremost, no such textual presumption could be found in or discerned from the Opinion. This Court did not conclude that the Credit Limitation is an annual limitation absent language to the contrary. Rather, this Court construed subsection (G) in the context of the whole statute and harmonized that subsection with

---

[2] There is no dispute about the interpretation of subsection (A)(1). *See* Department's Br. at 30-31. *See SCANA Corp.*., 384 S.C. at 390, 683 S.E.2d at 469 (concluding that the credit is an annual credit). Indeed, the Department confirmed that was their understanding of the credit when questioned during oral argument.

the other subsections of the statute. Consequently, because subsection (G) limits "[t]he credit allowed by this section" to $5 million and "[t]he credit allowed by this subsection" is the credit allowed under subsection (A) for "any taxable year," the Court found that subsection (G) can only be an annual limitation, not a lifetime one. This conclusion fully "effectuate[s] the intention of the legislature" to create an annual tax credit. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). Therefore, the Department's argument is not grounds for rehearing.

Finally, the rule of strict construction does not mean, as the Department implies, that the Court should "search for an interpretation in the Tax Commission's favor where the plain and unambiguous language leaves no room for construction." Opinion at 4; *Southeastern-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). Here, this Court correctly concluded that the Credit Limitation is unambiguous and therefore, the rule of strict construction does not apply. Rehearing on this issue is not warranted.

CONCLUSION

The vast majority of the arguments advanced in the Petition are rehashes of points that were previously and extensively briefed and addressed by this Court. Although the Department predictably disagrees with the disposition of this case, the Petition falls far short of demonstrating that this Court "overlooked or misapprehended" anything. Accordingly, this Court should deny the Department's petition.

s/Lawrence M. Hershon
Lawrence M. Hershon (SC Bar No. 77514)
The Hershon Law Firm, P.A.
1565 Sam Rittenberg Blvd., Suite 103
Charleston, SC 29407
Tel: (843) 829-2022
lawrence@hershonlawfirm.com

Eric S. Tresh (*pro hac vice*)
Maria M. Todorova (*pro hac vice*)

Eversheds Sutherland (US) LLP
999 Peachtree Street, NE, Suite 2300
Atlanta, GA 30309
Tel: 404.853.8000
erictresh@eversheds-sutherland.com
mariatodorova@eversheds-sutherland.com

Attorneys for Appellant
Duke Energy Corporation

April 21, 2025
Charleston, South Carolina

RECEIVED
Apr 21 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

Case No. 19-ALJ-17-0153-CC

2020-001542

Duke Energy Corporation……………………………....... Appellant,

v.

South Carolina Department of Revenue…………………... Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify that I have served ***Appellant Duke Energy Corporation's Return to Respondent's Petition for Rehearing*** on counsel of record via their AIS designated email addresses on April 21, 2025, as follows:

Jason.Luther@dor.sc.gov
Allen.Myrick@dor.sc.gov
erictresh@eversheds-sutherland.com
mariatodorova@eversheds-sutherland.com
mitch.brown@nelsonmullins.com
john.vonlehe@nelsonmullins.com
bryson.geer@nelsonmullins.com

s/Lawrence M. Hershon
Lawrence M. Hershon (SC Bar No. 77514)
The Hershon Law Firm, P.A.
1565 Sam Rittenberg Blvd., Suite 103
Charleston, South Carolina 29407
Telephone: (843) 829-2022
Facsimile: (843) 829-2023
lawrence@hershonlawfirm.com

Attorney for Appellant
Duke Energy Corporation

THE HERSHON LAW FIRM, P.A.

RECEIVED
Apr 21 2025
SC Court of Appeals

April 21, 2025

Via Email <ctappfilings@sccourts.org>

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: ***Duke Energy Corporation v. South Carolina Department of Revenue***
Appellate Case No. 2020-001542

Mrs. Kitchings:

Enclosed please find Appellant Duke Energy Corporation's Return to Respondent's Petition in the above-referenced matter.

Sincerely,

Lawrence M. Hershon

LMH:
Enclosure

cc: Jason P. Luther, Esq. (via email)
Allen Myrick, Esq. (via email)
Eric Tresh, Esq. (via email)
Maria Todorova, Esq. (via email)
C. Mitchell Brown, Esq. (via email)
John C. von Lehe, Jr., Esq. (via email)
Bryson M. Geer, Esq. (via email)

1565 Sam Rittenberg Boulevard, Suite 103
Charleston, SC 29407

P: (843) 829-2022 F: (843) 829-2023
lawrence@hershonlawfirm.com