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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Appellate Case No. 2026-001436

Public Service Commission of South Carolina;

Dominion Energy South Carolina, Inc.………...……………………...........…Respondent

v.

Thomas M. Ragon Jr………...…………………………..………………...........…..Appellant

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APPELLANT'S RETURN IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS

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Pursuant to Rule 240(e), SCACR, Appellant, Thomas M. Ragon Jr., appearing *pro se*, respectfully submits this Return in Opposition to Respondent's Motion to Dismiss. For the reasons set forth below, Appellant respectfully requests that this Court strike Respondent's Motion to Dismiss with prejudice. In support of this requested relief, Appellant states as follows:

I. THRESHOLD ISSUE:

RESPONDENT'S MOTION IS PROCEDURALLY DEFECTIVE AND MUST BE STRUCK IN LIMINE

Before reaching the merits of Respondent's timeline calculations, Appellant respectfully requests that this Court strike Respondent's Motion to Dismiss for facial non-compliance with the South Carolina Appellate Court Rules.

Respondent seeks the ultimate sanction of dismissal based on strict procedural rigidity, explicitly invoking Rules 240, 203(b)(6), and 203(d)(2)(B) in its opening paragraph. Yet, Respondent failed to comply with the mandatory filing requirements of this Court. The rules governing the Form and Content of Motions and Petitions are found in Rule 240; specifically Rule 240(c)(2) explicitly mandates that each motion or petition "*shall include... A memorandum with citation of authorities in support of the motion.*"

Respondent deliberately failed to include the mandatory supporting memorandum. Pursuant to SCACR Rule 240(g),

"*Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.*"

The memorandum requirement is not a mere formatting preference; it is the mechanism by which the moving party demonstrates legal entitlement to relief. Without it, the Court is deprived of the authorities necessary to evaluate dismissal, rendering the motion structurally incomplete.

Respondent cannot weaponize procedural rules to deny Appellant's statutory right to review while simultaneously abandoning its own motion through deliberate procedural noncompliance. The Motion is legally abandoned, defective on its face and should be struck.

II. RESERVATION OF RIGHTS

Notwithstanding the foregoing threshold issue, and so as not to preclude relevant artifacts and arguments which would prejudice the Appellant, the statements and assertions hereafter are made in a limited, provisional capacity to facilitate judicial economy in the adjudication of the underlying matter. Appellant maintains that Respondent's Motion to Dismiss—much like Order Nos. 2026-127 and 2026-242, is a procedural nullity, and the following arguments on the merits are made strictly without waiver of the aforementioned threshold issues of procedural noncompliance. Appellant's engagement with Respondent's timeline assertions is made solely to prevent prejudice and does not constitute acceptance of the Motion's procedural validity.

III. INTRODUCTION

Respondent Dominion Energy South Carolina, Inc. ("DESC" or "Respondent") asks this Court to dismiss the instant appeal by relying on a selectively curated timeline that intentionally conceals systemic procedural failures and delayed service by the Public Service Commission of South Carolina ("Commission"). Respondent invokes the strict rigidity of appellate timelines while simultaneously omitting its own prior written admission that the Commission withheld service of the foundational order from the *Pro Se* Appellant for days after it was issued.

Furthermore, Respondent relies on the general rule against successive petitions for reconsideration to argue Appellant's timeline expired. This argument fundamentally misrepresents the procedural posture of this docket. The general bar on successive petitions presupposes that the underlying administrative body issued a lawful, independent order. Here, Order No. 2026-242 was a procedural nullity. The Commission's order reflects verbatim adoption of Respondent's legal characterizations, including stylistic and citation conventions atypical of Commission orders, indicating the absence of independent quasi-judicial analysis required under § 58-3-250(A)(1).

Appellant's May 5, 2026 petition was not a dilatory tactic; it was a mandatory procedural remedy required to demand a lawful, independent adjudication of admitted evidence. This retroactive suppression of Appellant's evidence severely prejudiced Appellant's substantial rights, deliberately blinding the record to critical building science and financial warnings. This specific suppression directly enabled Respondent to introduce entirely new, contradictory, and predatory customer-facing program materials to the Commission on June 18, 2026—weeks after Respondent now claims the appellate window had closed. Granting Respondent's Motion to Dismiss would effectively sanction the active suppression of forensic evidence and establish a dangerous precedent that utilities can bypass statutory prudence simply by drafting the Commission's defective denial orders for them.

IV. STATEMENT OF PROCEDURAL POSTURE

Respondent's Motion to Dismiss is built upon fatal statutory contradictions and the active omission of the administrative record.

A. The Service vs. Issuance Trap and Failure to Perfect Statutory Service

Respondent demands strict adherence to the 10-day timeline under S.C. Code Ann. § 58-27-2150. However, Respondent fatally ignores the stringent statutory prerequisites required to trigger that timeline.

Under § 58-27-2150, the 10-day window does not commence upon issuance; it triggers only "after service of notice of the entry of the order." The South Carolina General Assembly explicitly defined the authentication and delivery mechanisms required for this service in **S.C. Code Ann. § 58-27-2110**[1]:

> *"A copy of such order, certified under the seal of the Commission, shall be served either personally or by*

[1]Where the General Assembly has prescribed a specific service mechanism as a prerequisite to triggering reconsideration timelines, those statutory requirements control over general appellate rules.

> *registered mail upon the person... against whom it runs... and notice thereof shall be given either personally or by registered mail to the other parties..."*

A simple automated email notification satisfies neither element of this statute. Electronic transmission lacks the verifiable chain of custody of "*registered mail*" and inherently lacks a physical, authenticated "*seal of the Commission*." An electronic image of a seal pasted into a PDF provides zero cryptographic or legal authenticity and is susceptible to rampant manipulation. The legislature mandated physical seals and registered mail precisely to prevent the unauthorized manipulation of jurisdictional timelines.

Appellant, a *pro se* intervenor legally restricted from the Commission's Authorized E-Filer portal, was never served Order No. 2026-127 (attached hereto as **Exhibit A**) personally nor by registered mail, nor with a certified seal. This failure to perfect statutory service under § 58-27-2110 was not a systemic inability, but a selective omission.

The Commission has previously demonstrated its capability and awareness regarding physical service upon Appellant, having utilized regular mail earlier in this exact proceeding (Docket No. 2025-173-E) for the approval of intervention and the January 16 Directive Order, and having utilized certified return-receipt mail in Docket No. 2026-49-E. By selectively abandoning lawful physical service for Order No. 2026-127, the 10-day timeline under § 58-27-2150 was never lawfully triggered.

Furthermore, even if this Court were to entertain the Commission's defective electronic transmission in lieu of the statutory mandate, Respondent relies heavily on *Coward Hund* and *Elam* to argue strict adherence to appellate timelines. Yet, Respondent ignores the foundational premise of those very rulings: under SCACR Rule 203, statutory timelines are triggered by the **receipt of written notice of entry of the order**, not the date of issuance.

Respondent explicitly calculates the exhaustion of Appellant's timeline by triggering the clock on the March 5, 2026, issuance date of Order No. 2026-127 *(see Ex. A at 1 [eService log]*. However, Respondent actively omitted its own prior written admission to the Commission made on March 20, 2026, *(attached hereto as* Exhibit B. *See* Ex. B at 5*, n. 1)*, wherein counsel confessed in response to Appellant's Petition for Reconsideration:

> *"For reasons that are unclear to the Company, the Commission did not serve Order No. 2026-127 on Intervenor until Sunday, March 8, 2026, at 4:15 p.m."*

Having formally conceded that the Commission withheld legal service of the foundational order from the *Pro Se* Appellant until March 8th, Respondent is precluded from calculating its timeline from March 5th. Respondent cannot weaponize *Coward Hund* to enforce a deadline while actively ignoring the "*receipt of written notice*" standard established by that exact line of case law to hide the Commission's documented delay in serving a *Pro Se* intervenor.

Under either the strict statutory standard of § 58-27-2110 or Respondent's own admission of delayed transmission, Appellant's March 17, 2026 filing was inherently timely.

B. Judicial Estoppel and Waiver of Rights on Timeliness

Respondent has legally waived any timeliness defense. In its March 20, 2026 Response to the Commission, Respondent attacked Appellant's Petition for Reconsideration strictly on the merits, explicitly arguing that the petition *"failed to set forth any basis*" and "*lacked merit*" (*see* Ex. B at 5*)*. Respondent never asserted to the Commission that the filing was time-barred.

Judicial estoppel applies where a party adopts inconsistent positions in separate phases of the same proceeding to obtain procedural advantage, precisely the scenario presented here. Respondent is judicially estopped from litigating a petition on the merits at the agency level, only to manufacture a fabricated timeline dispute for the first time before this Court.

C. Jurisdictional Defect and eService Bias

Respondent initiated this docket via a Request filed on May 30, 2025, attached hereto as Exhibit C *(see* Ex. C*)*. However, Respondent's counsel did not legally enter a Notice of Appearance, attached hereto as Exhibit D, until June 12, 2025. *(See Ex. D at 3).* This 13-day gap between the foundational application and counsel's legal appearance renders the initial filing procedurally defective.

Furthermore, the Commission's own metadata for this June 12 filing explicitly logs "eService Notifications: No notifications" (*see Ex. D at 1),* directly contradicting the generated Notice of Electronic Filing (*See Ex. D at 5-6),* These systemic discrepancies prove the Commission's electronic docket is fundamentally unreliable for calculating strict statutory timelines. In addition, the Commission's eService metadata logs demonstrate a systemic, prejudicial bias: Respondent's counsel and aligned state agencies routinely receive electronic transmission of dispositive orders days before the system transmits the identical order to Appellant,[2] structurally affording Respondent an unearned head start.

D. The Procedural Nullity of Order No. 2026-242

Respondent relies on *Elam v. S.C. Dept. of Transp.* to argue that a second petition for rehearing does not toll the time to appeal. However, the well-settled exception to this rule—as evidenced in *Coward Hund Constr. Co. v.* Ball *Corp.*—applies when an order materially alters the procedural posture or the original judgment.

On January 16, 2026, the Commission formally admitted Appellant's Direct Testimony, Formal Challenge, and Forensic Audit into the record via Order No. 2026-46 (*See Ex. E at 1-2)*. Yet, on April 23, 2026, via Order No. 2026-242, the Commission executed a structural shift in the case, retroactively declaring Appellant's admitted evidence *"irrelevant, unrelated, or unhelpful." (See Ex F at 7).* The Commission did not reach this conclusion through independent analysis as required by S.C. Code Ann. § 58-3-250(A)(1). A textual comparison reveals that Order No. 2026-242 adopts Respondent's official response to Appellant's Petition[3] verbatim, including stylistic conventions atypical of Commission orders, indicating the absence of independent quasi-judicial analysis required under § 58-3-250(A)(1). This is evidenced by the inclusion of third-person references to Respondent's counsel

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[2] *See* Ex. A at 1. *See also* Order No. 2026-242, hereto attached as Exhibit E (*see* Ex. E at 3) *Compared to* Order No. 2026-242, hereto attached as Exhibit F (*See* Ex. F at 1) Detailing that Appellant received the order at the same time as those same parties, prior to other parties of record in the docket.

[3] *See* Ex. A at 4. Compare Ex. A at 4 (citing October 1, 2025 as the date of granting intervention) with Ex. F at 3 (erroneously citing September 11, 2025 as the date of intervention. It is worth noting that September 11, 2025, the Commission issued an order Denying Waiver of Hearing for the proceeding).

("Michael J. Anzelmo, Esquire"), litigator-specific citation styling ("*see also*"), and a visibly pasted signature block and Commission Seal *(See Ex. F at 10).*

The Commission formally admitted nearly 300 pages of appellant's forensic evidence into the record on January 16, but Order No. 2026-242 retroactively stripped it of relevance. Admitting evidence to satisfy due process, adopting the position of the respondent, and providing no reasoning for the change of framing constitutes a material alteration of the evidentiary landscape.

Because Order No. 2026-242 materially altered the evidentiary landscape by retroactively nullifying previously admitted evidence, Appellant's May 5 petition was not successive; it was the first opportunity to challenge the new, altered judgment and a direct, necessary challenge to that new posture as well as a legally mandated requirement to preserve the record and demand independent agency review.

V. PREJUDICE TO SUBSTANTIAL RIGHTS & THE JUNE 18TH AMBUSH

Prejudice is established where an agency's failure to consider admitted evidence results in a materially defective record that impairs meaningful judicial review.

The Commission's unlawful suppression of Appellant's evidence caused immediate prejudice to Appellant's substantial rights and created a false "illusion of finality." Respondent argues the appellate window closed in May 2026. Yet, the administrative record was not final.

Respondent told the Commission Appellant's building science and safety testimony was "irrelevant".[4] When viewing the testimony against the text of the orders, it is highly probable that the Commission did not meaningfully review Appellant's evidence before adopting Respondent's framing as findings of fact. [5]

The suppressed evidence detailed severe, unmitigated programmatic flaws, including a $3.4 million structural deficit in the Pilot Program, outdated pricing from historic price indexes instead of current pricing,, the reliance on a "Factor of 4" and phantom load algorithm errors in the billing software that together artificially manufactures "High-Use" data, and the thermodynamic health, safety and property damage dangers of performing "shell-only" weatherization without mechanical ventilation in a humid climate.

By utilizing the precursor to Order No. 2026-127-E, issued as a Directive Order, attached hereto as Exhibit H, that features no Order Number, as a means to slam the evidentiary door shut without a hearing, the Commission provided Respondent the cover to quietly alter the program off-docket. On June 18, 2026—weeks after Respondent claims the appellate window expired—Respondent filed entirely new customer-facing documents, attached hereto as Exhibit I, that rewrote the program approved by the Commission.

These documents stripped out the mandated Building Performance Institute (BPI) certifiers, reversed the eligibility requirements to target previously participating homes, which excludes the very customers the program was advertised, and approved under, to help, and introduced predatory cost-shifting that legally mandates low-income participants pay "at cost"

[4] *See* Rebuttal Testimony of Sheryl K. Shelton, throughout, supplied hereto as Exhibit G.
[5] *See* Ex. G (Rebuttal Testimony of Sheryl K. Shelton), *passim.*

for the exact mechanical ventilation Appellant warned was necessary. The documentation Respondent filed explicitly utilized Appellant's suppressed warnings—specifically regarding mold growth and mechanical ventilation—to draft liability waivers shielding Respondent from lawsuits regarding the issues that Appellant specified as flaws within the program's scope of work and implementation.. Evidence cannot be 'irrelevant' for regulatory scrutiny while simultaneously serving as the foundation for the utility's legal liability shields.

Appellant's second petition was a necessary procedural anchor to address a regulatory target that Respondent was actively moving. Dismissing this appeal under Respondent's timeline would reward the utility for concealing the true, defective nature of its program until after it believed the appellate window had closed.

VI. THE "NEEP PARADOX" AND THE ARBITRARY NULLIFICATION OF PRIOR COMMISSION ORDERS

An agency acts arbitrarily and capriciously when it disregards the plain text of its own prior orders without explanation, particularly where such disregard shifts financial burdens from shareholders to ratepayers.

The Commission's actions in the underlying docket transcend mere procedural error; they constitute an arbitrary and capricious nullification of its own prior decrees, designed explicitly to shield utility shareholders from financial obligations at the direct expense of South Carolina ratepayers.

A. The 2024 Mandate

In the comprehensive settlement approved via Order No. 2024-610 (Docket No. 2024-34-E), the Commission mandated the creation of this Pilot Program specifically *"through NEEP [Neighborhood Energy Efficiency Program]*.[6] Concurrently, the Commission ordered Respondent DESC to provide a "$3 million infusion" of shareholder funds into the NEEP budget. The structural intent was unambiguous: shareholder capital was mandated to address the health and safety barriers inherent in low-income weatherization.

B. The Utility's Rebuttal and Evasion

When confronted by the Appellant with the mathematical insolvency of the proposed Pilot Program and the necessity of utilizing the mandated $3 million shareholder fund, Respondent's witness, Sheryl K. Shelton, testified under oath that NEEP is an *"existing DSM program that is wholly separate from this Pilot Program"*. This assertion was a direct attempt to insulate the $3 million shareholder fund from the Pilot Program's structural deficit, shifting the financial liability entirely onto a new ratepayer-funded rider. [7]

C. The Arbitrary Adoption

Rather than enforcing the plain text of its own Order No. 2024-610, the Commission inexplicably adopted the Respondent's contradictory testimony. By utilizing Order No. 2026-127[8] and Order No. 2026-242[9] to formally validate Witness Shelton's claims, the Commission

[6] This mandate was cited by all parties in support of the program in their respective testimony, as well as in the foundational Application. See Ex. C at 3-5.
See Ex. G at 9. This assertion was in direct contradiction to her own prior sworn testimony, the testimony of ORS and CCL/SACE, and the foundational Application.
[8] *See* Ex. A at 11-13
[9] *See* Ex. F at 7-8

legally ruled that a program it specifically ordered to be run *through* NEEP is now *wholly separate* from NEEP.

D. The Impending Threat to the Regulatory Compact

An administrative body that capriciously invalidates its own comprehensive settlement orders solely to accommodate the financial convenience of a utility witness has abandoned its quasi-judicial mandate. This Court must exercise its original jurisdiction because this specific failure is a harbinger of a catastrophic regulatory breakdown. If the Commission will openly contradict its own foundational orders to shield $3 million in shareholder capital, it is fundamentally ill-equipped to safeguard South Carolina ratepayers during the impending $67 billion corporate merger and subsequent grid expansions. The administrative process is structurally broken, necessitating immediate intervention by this Court.

VII. THE PUBLIC INTEREST DEMANDS ADJUDICATION TO PREVENT A BLUEPRINT FOR REGULATORY EVASION

Even if this Court were to entertain Respondent's flawed procedural timeline, this Court should retain jurisdiction and rule on the merits because the underlying Commission orders establish a dangerous, predatory precedent of great public importance that is capable of repetition, yet evading review.

This Court has long recognized that issues capable of repetition yet evading review warrant adjudication even where procedural disputes exist, particularly where the challenged conduct affects the public interest and future ratepayer protections.

If this appeal is dismissed, Respondent will be officially armed with a judicially sanctioned blueprint to bypass statutory due process. The Commission has allowed Respondent to utilize a "Temporal Loophole" to bypass the mandatory hearing requirements of S.C. Code Ann. § 58-27-870. Respondent secured approval by presenting a deceptively reduced price tag of $0.08, explicitly assuring the Commission that "approval of the Pilot Program in and of itself does not increase the Company's currently approved rates".

Yet, Respondent's own witness admitted under oath that the $0.08 figure only accounted for "first-year expenses" and that the actual multi-million dollar program costs "will be included in the Company's annual DSM filing" at a later date. This was well after the deadline intervention has passed and in the Notice of Filing presented to the public, the total cost was projected to be $5.5 million resulting in an estimated monthly increase to bills at approximately $0.08.

By separating the *approval* of the program from the *collection* of the costs, Respondent successfully evaded public scrutiny, denied ratepayers a hearing, and secured a blank check. If this Court dismisses this appeal, Respondent will use this exact playbook to quietly pass subsequent rate hikes through administrative rider updates without notice or due process. The Supreme Court of South Carolina must adjudicate this matter to definitively close this Temporal Loophole and protect the captive ratepayers of this state from retroactive financial ambush.

VIII. IRREPARABLE HARM, INTENDED CONSOLIDATION, AND EXTRAORDINARY RELIEF

Respondent's attempt to dismiss this appeal on a manufactured technicality would compartmentalize systemic billing irregularities and insulate them from comprehensive judicial review. The suppression of Appellant's forensic evidence does not merely affect the instant Pilot Program; it threatens imminent and irreparable financial harm to the residential ratepayer class statewide.

Appellant intends to seek consolidation of this appeal with forthcoming judicial reviews of related Commission dockets—particularly the general rate proceedings in which Respondent is actively relying on the same artificially inflated "Factor of 4" metering data identified herein. If Respondent is permitted to dismiss this appeal and thereby bury evidence of the underlying temporal and algorithmic defects, the resulting harm to the public will be both substantial and irreversible.

Extraordinary jurisdiction is appropriate where agency actions exceed statutory authority and pose a risk of irreparable harm to the public interest, especially where the challenged conduct is capable of repetition yet evading review. The PSC dockets intended for consolidation are presently fragmented in a manner that allows the same underlying defects to recur across proceedings without unified judicial oversight. Ratepayers continue to bear the financial consequences of these unresolved issues.

The Commission has demonstrated a pattern of acting outside its lawful authority—initiating dockets without jurisdictional grounding, departing from its own comprehensive settlements, and adopting utility positions as findings of fact without the independent neutrality required by SCAPA. Should this Court conclude that the Commission's procedural irregularities defeat a standard statutory appeal, the seriousness of these ultra vires actions will necessitate Appellant's petition for extraordinary jurisdiction to ensure the underlying agency actions are reviewed and, if appropriate, voided ab initio.

To preserve judicial economy and prevent further regulatory instability, Appellant respectfully submits that this Court should exercise its inherent authority to protect the public interest, retain jurisdiction over this matter, and deny Respondent's Motion to Dismiss in its entirety.

IX. CONCLUSION

Respondent's Motion to Dismiss relies on a legally invalid start date, a statutorily contradictory timeline, and a procedurally void agency order. Appellant's May 5, 2026 petition was lawfully filed to exhaust administrative remedies and force the Commission to cure the fatal defects introduced in Order No. 2026-242.

Furthermore, the doctrine of Unclean Hands prevents a party from seeking equitable relief when they are actively violating the rules themselves. Respondent demands strict compliance with a 10-day timeline they manufactured using the date of issuance of the order, not of the date of service as required by Law, while actively violating this Court's mandatory filing rules by omitting their required Memorandum of Law in their Rule 240 Motion to Dismiss.

This facial defect is not merely a clerical error; it operates as a tactical war of attrition. By filing a procedurally non-compliant motion, Respondent forces a single pro se ratepayer to expend severely limited time and resources defending against a baseless dismissal effort, rather than preparing the substantive Memorandum of Law for Consolidation currently pending before this Court. A multi-billion-dollar corporation with extensive legal resources does not inadvertently omit a mandatory memorandum; such an omission operates as a strategic burden-shifting device that forces a single pro se litigant to expend limited resources responding to a procedurally defective motion.

Finally, striking a procedurally defective motion with prejudice is appropriate where the defect is structural, where the moving party has abandoned the motion under Rule 240(g), and where permitting refiling would reward procedural gamesmanship.

For the foregoing reasons, Appellant respectfully requests that this Honorable Court STRIKE Respondent's Motion to Dismiss WITH PREJUDICE, or in the alternative, DENY the Motion, retain jurisdiction over this matter, and permit the appeal to proceed on the merits.

Respectfully submitted,

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August 13, 2026