

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2013-CP-37-0575

Duke Energy Carolinas, LLC

Respondent,

v.

Randall S. Hiller and Janet C.
Hiller,

Appellant.

MOTION TO DISMISS

PLEASE TAKE NOTICE that the Respondent, Duke Energy Carolinas, LLC, (hereafter "Duke Energy"), moves this Court pursuant to Rule 240, SCACR for an Order dismissing Appellant's Appeal as untimely.

SCRCP Rule 59(e) provides that a motion to alter or amend the judgment "shall be served not later than 10 days after receipt of written notice of the entry of the order." The lower court issued and mailed the relevant order, a short order granting Duke's motion to enforce settlement (copy attached), on May 13, 2015. However, the Appellant

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did not serve its Motion to Reconsider until June 12, 2015 (copy attached), thirty (30) days after issuance of the court's order. The Motion to Reconsider was not timely and, therefore, did not stay the thirty day time limit for Appellant to file its Notice of Appeal under SCACR 203(b)(1). Therefore, the Notice of Appeal was not timely and should be dismissed.

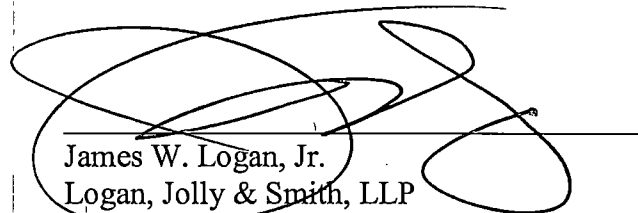
SCRCP 6(e) provides as follows: "[w]henver a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail ... five (5) days shall be added to the prescribed period." The lower court's short order was signed, filed, and mailed from Oconee County (Walhalla, S.C.) to the attorneys on May 13, 2015. The Respondent's undersigned attorney received the order in Anderson, S.C. on May 18, 2015. The Appellant's claim that he did not receive the order (in Greenville, S.C.) until June 2, 2015 (twenty (20) days after it was mailed), simply defies logic and reason. The deadline for the Appellant to file a motion to reconsider, alter, or amend, at the latest, was May 28, 2015. Therefore, the Appellant's Motion to Reconsider mailed on June 12, 2015 was untimely and did not stay the time limit for filing a notice of appeal.

Under SCACR 203(b)(1), a Notice of Intent to Appeal "shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a *timely* ... motion to alter or amend the judgment ... has been made, the time for appeal ... shall be stayed... ." (Emphasis added.) Even allowing the additional five (5) days provided by SCRCP 6(b) for mailing, Appellant's deadline for

filing the Notice of Appeal was no later than June 12, 2015.¹ However, the Notice of Appeal herein (copy attached) was not mailed until July 31, 2015, some seventy-eight (78) days from the date the original order was signed, filed, and mailed.

Therefore, since neither the Appellant's Motion to Reconsider nor Notice of Appeal were timely filed, this appeal should be dismissed as untimely.

Respectfully submitted,



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Dated: 10/27/15

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¹ The Respondent finds it more than coincidental that the Motion for Reconsideration was mailed on June 12, 2015, exactly thirty (30) days after the lower court's order, and believes that the Appellant most likely believed that he had thirty (30) days, rather than ten (10), to file the motion.