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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

Case No. 2013-CP-37-575

APR 18 2016

SC Court of Appeals

Duke Energy Carolinas, LLC,

Respondent,

v.

Randall S. Hiller and Janet C.
Hiller,

Appellant.

MOTION

Appellant, by and through its undersigned counsel, move, pursuant to Rule 240, South Carolina Appellate Court Rules, to strike from Respondent's Designation of Matter to be Included in the Record on Appeal all items designated which were not offered or entered as evidence in the Record, being numbers 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

The Respondent's Designation of Matter to be Included in the Record on Appeal (Attached as Exhibit A) seeks to include in the Record in violation of S.C.R.A.C. Rule 210(c) correspondence and photographs that were not admitted into evidence.

The May 12, 2015 transcript of record reflects that two exhibits were marked for identification and none were admitted into evidence. (See Exhibit B)

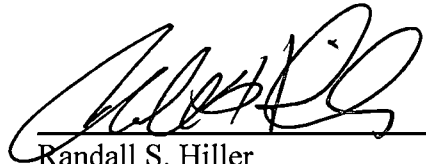
Arguments by counsel do not and cannot qualify as evidence unless made under oath, *South Carolina Rules of Evidence*, Rule 603, and upon personal knowledge, *South Carolina Rules of Evidence*, Rule 602.

S.C.R.C.P. Rule 43(e) requires, "When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but may direct that the matter be heard wholly or partly on oral testimony or depositions."
S.C.R.C.P. Rule 11(c) requires all affidavits to be sworn to or affirmed before an officer authorized to administer oaths, state that the affiant knows the facts stated to be true of his own knowledge.

Accordingly, the documents designated by Respondent to be made a part of the Record on Appeal meet none of the above requirements nor was any attempt made to enter any of the aforesaid documents into evidence at the hearing and therefore are not properly included in the Record on Appeal.

Respectfully submitted this 14 day of April, 2016.

April 14, 2016



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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APR 18 2016

SC Court of Appeals

Case No. 2013-CP-37-0575

Appellant Case No. 2015 - 001672

Duke Energy Carolinas, LLC..... Respondent

v.

Randall S. Hiller and Janet C. Hiller..... Appellants

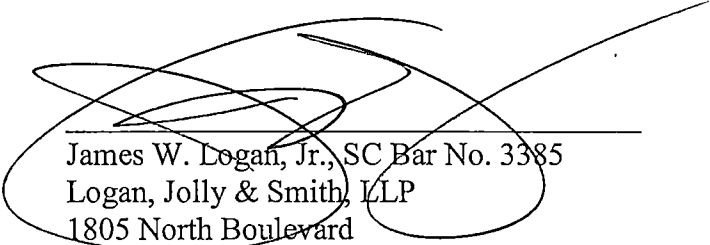
DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

Respondent proposes the following matter to be included in the Record on Appeal:

1. Order granting Motion to Enforce Settlement.
2. Complaint
3. Answer
4. Duke Energy's Motion to Enforce Settlement

5. Transcript of Motion to Enforce Settlement Hearing held before the Honorable R. Lawton McIntosh on May 12, 2015.
6. Memorandum of Agreement dated September 2, 2014.
7. ADR Compliance Form dated September 3, 2014.
8. Letter to Hiller dated November 25, 2014 with attachments referenced therein.
9. Letter from Hiller dated November 26, 2014.
10. Electronic mail to Hiller and Hiller's response both dated December 22, 2014.
11. Letter to Hiller dated December 22, 2014.
12. Electronic Mail to Hiller with attachments referenced therein dated December 30, 2014.
13. Letter from Hiller dated December 30, 2014.
14. Letter to Hiller dated February 12, 2015.
15. Letter from Hiller dated February 18, 2015.
16. Letter to Hiller dated March 18, 2015.
17. Letter to Hiller with enclosures referenced therein dated May 7, 2015.
18. Two photographs of "spud pole."

I certify that this designation contains no matter which is irrelevant to this appeal.



James W. Logan, Jr., SC Bar No. 3385
Logan, Jolly & Smith, LLP
1805 North Boulevard
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931

Anderson, South Carolina

Date: _____

4/7/16

EXHIBIT B

1 State of South Carolina

In the Court of Common Pleas

2 County of Oconee

3

4 Duke Energy Carolinas, LLC,)

5 Plaintiff,)

2013-CP-37-575

6 -vs-)

May 12, 2015

7 Randall Hiller and)
8 Janet Hiller,)

9 Defendants.)

Transcript of Record

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12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge

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15 A P P E A R A N C E S:

16 James W. Logan, Jr., Esquire
17 Attorney for Plaintiff

18 Randall S. Hiller, Esquire
19 Pro Se

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21

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Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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I N D E X

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WitnessesPage

3

RANDALL S. HILLER

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Reporter's Certificate

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E x h i b i t s

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For the Plaintiff:

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Marked

Description

I.D.

Admitted

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11 Letter/attachments from
Mr. Logan to Mr. Hiller
dated May 7th

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12 Photograph of spud pole

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For the Defendant:

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Marked

Description

I.D.

Admitted

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None offered.

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Appellant.

PROOF OF SERVICE

I certify that I have served the Appellants' Motion to Strike on Duke Energy Carolinas, LLC by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2016, addressed to its attorney of record, James W. Logan, Post Office Box 259, Anderson, South Carolina 29622.

April 14, 2016



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
850-B WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609

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SC Court of Appeals
Attn: Clerk
1015 Sumter Street
Columbia, SC 29201

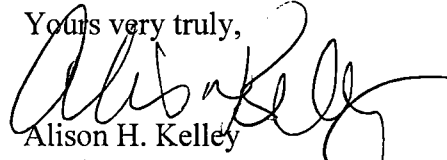
Re: Duke Energy Carolinas, LLC (Respondent) v. Randall S. Hiller and Janet C. Hiller (Appellants)
C.A. No.: 2013-CP-37-575

Dear Madam Clerk:

Please find enclosed one original and two copies of Appellants' Motion to Strike regarding the above. Please file the original and return the stamped copies to me in the envelope provided.

By copy of this letter I am providing opposing counsel with same.

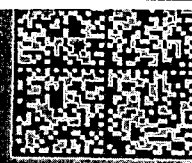
Yours very truly,


Alison H. Kelley
Paralegal to Randall S. Hiller

/ak

Enclosures

cc: James Logan, Esq.



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RANDALL S. HILLER, P.A.
ATTORNEYS AT LAW
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GREENVILLE, SOUTH CAROLINA 29609

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