

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2008-CP-23-5245
Appellate Case No. 2015-001836

RECEIVED

AUG - 1 2016

SC SUPREME COURT

Blue Ridge Electric Cooperative, Inc.Petitioner,

vs.

Kathleen J. GreshamRespondent.

REPLY BRIEF OF PETITIONER BLUE RIDGE ELECTRIC COOPERATIVE, INC.

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ARGUMENTS IN REPLY

Petitioner Blue Ridge Electric Cooperative, Inc. (“BREC”) hereby submits this Reply Brief in response to the Brief of Respondent, Kathleen J. Gresham, dated July 20, 2016 and received via U.S. Mail, on July 21, 2016. For the reasons stated herein and in the prior filings in support of its granted Petition for Certiorari, BREC respectfully requests that the Court grant its request to address and reverse the Court of Appeals and the lower court, to follow precedent in the matter of Gressette v. South Carolina Electric & Gas, 370 S.C. 377, 655 S.E.2d 538 (2006), and to order a reversal of the trial judge’s denial of the motion for JNOV, or, in the alternative, order a new trial on the Respondent’s sole claim of trespass.

As addressed its Petition for Certiorari that was granted by the Court on May 5, 2016, the issues presented to the Court are a matter of great importance and significance for BREC, utility providers, and also for State of South Carolina. Allowing a ruling, decision or order stand that ignores well-established precedent and law concerning right-of-ways has a direct and adverse impact not only on BREC, but also other utilities operating in the State of South Carolina. This Court should not allow well-established law to be ignored and discarded at a whim so that no utility can properly utilize an existing highway right-of-way when it obtains approval to install utility poles and lines lawfully within the existing right-of-way without having to also seek adjacent landowner approval after it receives permission from the SCDOT via its encroachment permit in direct contradiction to Gressette v. South Carolina Electric & Gas, 370 S.C. 377, 655 S.E.2d 538 (2006).

- I. **AN ISSUE OF EXCEPTIONAL PUBLIC IMPORTANCE EXISTS AS THE DECISION OF THE SOUTH CAROLINA COURT OF APPEALS AND THE LOWER COURT DISREGARD ESTABLISHED PRECEDENT BY THE SOUTH CAROLINA SUPREME COURT AND WELL ESTABLISHED LAW RELIED UPON BY ALL UTILITIES.**

As stated in its Petition for Writ of Certiorari, as well as within BREC’s post-trial

motions made with the trial court, its Briefs and other appellate filings, the failure of the trial court to grant BREC's motion for JNOV or its post-trial motions is controlled by an error of law. With regard to the cause of action for trespass, the only evidence in the record is that the single pole and guy wire anchor are well within the South Carolina highway right-of-way of fifty (50) feet from the center line of South Carolina Highway 11. (**Appendix/R. pp. 192-201**). BREC timely applied for and was issued an encroachment permit from the South Carolina Department of Transportation (SCDOT) in accordance with state law and procedure. (**Appendix/R. p. 195**). The encroachment permit entered into evidence clearly shows that the pole is well within the existing right-of-way. (**Appendix/R . pp. 192-201**). The testimony of all witnesses who have credible knowledge of the width of the right-of-way testified that the pole and guy wire were within the fifty (50) feet from the center line of the South Carolina Highway 11. (**Appendix/R . p. 101-105**). None of the witnesses for Respondent could establish that the pole and guy wire were outside the SCDOT fifty (50) foot right-of-way from the center of South Carolina Highway 11 and no one (other than the Petitioner's employees and representatives) ever made any measurements. (**Appendix/R .pp. 75-76, 89, & 138-139**). The Petitioner through the testimony of Ronnie Alexander and others along with the permitting and staking sheets placed in the Record clearly demonstrated that guy wires were, at most, forty-seven (47) feet from the center line of South Carolina Highway 11. (**Appendix/R. pp. 101-105, 137-139, & 192-201**). Therefore, all evidence shows that the BREC's pole and guy wires were clearly placed within the highway right-of-way with the express permission of the SCDOT— which was the sole entity with the legal right to provide and grant access and use of the right-of-way to BREC.

The 2006 South Carolina Supreme Court decision of Gressette v. South Carolina Electric and Gas Co., 370 S.C. 377, 635 S.E.2d 538 (2006), **ruled that utility instrumentalities**, such as

lines and poles, *may be located and placed within highway rights-of-way with the express permission of SCDOT.* *Id.* at 382, 635 S.E.2d 540. Further, the Gressette case does not require permission of the property owner to construct utility instrumentalities inside an existing SCDOT right-of-way. The jury's verdict in the instant case—and subsequent ruling by the trial judge related to the post-trial motions and the South Carolina Court of Appeals—operates to vitiate the Gressette opinion. BREC, just like any other utility, properly and reasonably relied upon the well-established process by applying for a SCDOT encroachment permit. BREC was ultimately granted the encroachment permit from the SCDOT. However, when BREC followed the well-established process and law, it was then punished and found guilty of a trespass despite the fact that they Record contained evidence of an encroachment permit from the SCDOT granting permission to BREC to place its instrumentalities, as well as uncontroverted written evidence that the utility's instrumentalities (i.e., pole and guy wire) were within the SCDOT right-of-way. (Appendix/R.p. 194). The use of encroachment permits from the SCDOT has been utilized by all utilities for many years and is relied upon by all utilities to ensure their ability to provide efficient, safe, and reliable services to the people of South Carolina. If this Court does not find for BREC by reversing the Court of Appeals and the lower court, following precedent in the matter of Gressette v. South Carolina Electric & Gas, 370 S.C. 377, 655 S.E.2d 538 (2006), there can be no assurance to any utility wanting to place, or having already placed, any of its instrumentalities within a SCDOT right-of-way that it will not be sued for a trespass cause of action even though they had a proper, lawful SCDOT permit granting permission and use of the right-of-way.¹ It also creates an unstable environment for a utility not knowing if it will be sued

¹ This action began wherein BREC lawfully sought judgment against the Respondent for monies which Blue Ridge alleged they owed for unpaid electricity that had been consumed on their property located at 1524 Highway 11, Landrum, Greenville County, South Carolina, during the period of June 25, 2003 through May 16, 2007, in the amount of Eight Thousand Six Hundred Sixty-Seven And 64/100

for trespass or how a judge or jury might rule. Juries in different counties, or maybe within the same county, could reach a different conclusion and finding with similar facts. This type of uncertainty or inconsistency is likely to restrict and discourage legitimate business development, innovation, and possible lead to higher costs.

It is undisputed in the Record that BREC placed a power pole and guy line with the express permission of the SCDOT and within the SCDOT right-of-way on S.C. Highway 11 which happened to be located on the Respondent's property. The SCDOT would have never issued a permit for BREC to install the power pole and its related utility instrumentalities if it was not going to be placed in the SCDOT's right-of-way. The permitting process by the SCDOT is governed by specific statutory authority and a well-established permitting process to provide a means whereby citizens can have reasonable access to utilities while balancing the needs of society with the rights, safety and welfare of the public.

The Respondent did not provide the lower court with any map or drawing showing the placement of the contested power pole and guy line. BREC provided the only drawings and information on the exact location of the power pole and guy line. On April 12, 2007, Staking Sheets (scaled drawings) for the project that BREC intended to construct were prepared showing the location of the old or existing poles and guy wires that would be used or changed out and the new poles and guy wires that were to be installed within the South Carolina right-of-way with

(\$8,667.64) Dollars. As set forth in the Complaint and explained at trial, the Respondent refused and made it impossible for BREC to enter upon the premises to read the meters and as a result, BREC was forced to estimate the electricity consumer and bill the Respondent based upon the estimates rather than the actual metered usage. However, the single issue now before this Court is failure by the Court of Appeals to reverse the lower court for the following reasons: the lower court's Order is wholly unsupported by the evidence in the record and admitted at trial; the trial court erred in failing to grant BREC a new trial; the Court of Appeals erred when it failed to grant the BREC's Petition for Rehearing; the failure of the Respondent to establish by preponderance of the evidence that BREC placed the power pole and guy lines outside the SCDOT right-of-way; the failure of the Respondent to submit any evidence to refute the SCDOT approved Permit granted to BREC to install its power pole in the right-of-way; and no factual information that SCDOT's right-of-way was limited to 20 feet.

references to the specific location of each of the individual poles and guy wires from the centerline and within the SCDOT right-of-way.

Once the Staking Sheets were completed, on September 28, 2007, BREC submitted its formal application with supporting Staking Sheets to SCDOT for an Encroachment Permit to construct and maintain the proposed upgraded 7.2 KV overhead power line along the right-of-way of S.C. Highway 11. [Appendix/R. pp.192-201]. The BREC application was signed by Ronnie Alexander, Staking Supervisor for BREC, who personally supervised the development and preparation of the Staking sheets, or drawings, which were submitted to SCDOT as part of the permit application, as well as the specific BREC employee that personally measured and established the actual location of the poles and guy wires that were subsequently constructed and installed. [Id.] The BREC permit was approved by SCDOT on October 16, 2007, for the proposed maintenance and construction work as shown on Staking Sheets 1-5 which were attached to the permit and were an integral part of the approved application. [Id.] Sheet 2 of the Staking Sheets showed pole #10A, the single pole which Respondent, Kathleen Jennings, claimed was unlawfully placed on her property without her permission and which she claimed constituted a trespass, to be a stub or support pole for the electric distribution line installed on the south side of S.C. Highway 11. [Id.] It also established that pole #10A was to be placed on the north side of S.C. Highway 11, thirty-four (34') feet from the centerline of S.C. Highway 11 and well within the SCDOT right-of-way of fifty (50') feet from the centerline of the highway. [Id.] The permit application, approved by SCDOT on October 16, 2007, specifically enumerated the new poles that were to be permitted as poles #5, #10, #10A, #11, #12, #13, #14, #15, #16, #17 and #17.5, for a total of eleven (11) poles to be located within the SCDOT right-of-way of S.C. Highway 11. [Id.]

This case has exceptional circumstances which result in a substantial adverse impact upon not only BREC, but also all and any utility with its instrumentalities located within, or planned to be located within, any SCDOT right-of-way. The SCDOT has obtained thousands of right-of-way easements from property owners in order to construct, operate, and maintain the roads and highways of the state. The established law provides that within these right-of-way easements, SCDOT is authorized to award encroachment permits to utility providers such that the utilities may construct and maintain instrumentalities necessary for the provision of utility services to South Carolina residents. When a utility seeks to construct instrumentalities within the SCDOT right-of-ways, it must first apply to the SCDOT for an encroachment permit by submitting detailed scale drawings and plans establishing their intended use and location within the SCDOT right-of-way. BREC followed all required steps and timely obtained SCDOT approval to construct within the designated right-of-way. However, despite this direct approval and placing instrumentalities completely within the boundaries of the right-of way, BREC has been found to have trespassed – which is an error of law in direct conflict with this Court’s ruling. *See Gressette v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 635 S.E. 2d 538 (2006). BREC was operating service instrumentalities within the SCDOT right-of-way in this matter. It was operating within the easement obtained by SCDOT. **(Appendix/R. p. 194)**. Based upon the South Carolina Supreme Court decision in *Gressette*, *supra*, BREC was not required to obtain prior approval from the landowner and should not have been subject to claims of trespass. *See Gressette v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 635 S.E. 2d 538 (2006).

If allowed to stand, the Opinion of the Court of Appeals will have unprecedented and ongoing serious adverse implications and potential liability for utility providers regardless of

whether they properly act and construct within the scope of SCDOT permits issued to the affected utility. All such consequences which would serve to deter innovation, system upgrades, improvements, and efficiencies necessary to address growth, safety, and economic development for our communities and the State. The verdict of trespass in this matter marks the first time in BREC's seventy-six year history where there is a Court ruling that it had engaged in an intentional invasion of private property amounting to a trespass despite the fact that it had timely complied with all applicable SCDOT easement rules and guidelines. BREC respectfully asks the Court to reverse the Court of Appeals and the lower Court.

II. THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN FAILING TO FOLLOW SOUTH CAROLINA SUPREME COURT PRECEDENT AND IN FAILING TO REVERSE THE LOWER COURT WHEN THERE IS NO EVIDENCE, MUCH LESS ANY CREDIBLE EVIDENCE, UPON WHICH SUCH CLAIMED TRESPASS COULD OR CAN BE FOUND.

As BREC stated in its Writ for Certiorari and related briefs filed in this matter, the underlying case before the trial court was initially brought by BREC to collect an alleged unpaid utility bill owed by Respondent Kathleen Gresham ("Ms. Gresham") and her husband, Defendant Steve Gresham. However, the issue now before the Court is the failure of the lower court and the South Carolina Court of Appeals to follow precedent in the matter of *Gressette v. South Carolina Electric & Gas*, 370 S.C. 377, 655 S.E.2d 538 (2006), and the related adverse impact upon BREC, and other utilities who follow the correct permitting process with the SCDOT, to operate in fear of being sued for trespass claims when installing their respective properly permit approved utility instrumentalities within the SCDOT right-of-way as allowed by statute.

The claims against Mrs. Gresham's husband were dismissed by BREC. (**Appendix/R. p. 12**). While the first four-pages of the Respondent's Brief dated July 20, 2016 discusses the BREC dismissed claims for payment against the Respondent's husband, BREC dismissed its

claim against Stephen Gresham which is shown by Order of Judge R. Lawton McIntosh and thus, BREC asserts that such issue is not part of the underlying appeal and was never appealed by BREC. (Id.) In fact, there was no appeal of the dismissal of the claims against Stephen Gresham by anyone.²

The case then proceeded on BREC's appealed claims which relate to the trespass claim, lack of evidence, and trial judge's denial of the motion for JNOV. The Respondent counter-claimed, raising allegations of trespass related to the installation and position of a single utility pole and guy wire on her property. At trial, the jury found in favor of Ms. Gresham as to the debt collection and as to the trespass claim. The jury awarded Ms. Gresham the nominal amount of \$ 0.01 for trespass. BREC and Ms. Gresham timely filed post-trial motions, which were summarily denied.

BREC timely filed a notice of appeal and attempted to order a transcript. There were significant delays in obtaining the transcript and it was eventually discovered that substantial portions of the trial testimony related to the claim of trespass were lost.³ A reconstruction hearing was ordered by the Court of Appeals. Following further delays in the scheduling of the reconstruction hearing, a reconstruction hearing was finally conducted. Thereafter, the Court of Appeals decided on the appeal without oral argument from counsel.

At trial, BREC presented both sworn testimony and documentary evidence that the single pole and guy wire at issue were installed within SCDOT's right-of-way, as expressly approved by SCDOT on October 16, 2007. (Id.) In order to try to support her claim of trespass, Ms. Gresham offered only her own personal opinion testimony, the personal opinion testimony of her

² BREC further disagrees with many characterizations by Ms. Gresham in her Brief. For example, the statements related to the witnesses availability of Charles Dalton and Ken Southerland. Counsel duly followed the rules of practice in the profession and made the Respondent aware of conflicts within their schedules.

³ It was later discovered that the Court Reporter apparently lost the trial tapes.

husband Steve Gresham, and the personal opinion testimony of Steve Austin in order to claim that the BREC pole and guy wire were erected upon her land without her express permission. Importantly, neither Ms. Gresham nor her two witnesses presented any specific testimony or documentary evidence challenging the exact location of SCDOT's right-of-way or the exact position of the utility pole and guy wire installed by BREC. [Appendix/R. p.87, lines 13-24; p.89, line 13]. The personal opinion testimony from Respondent's witnesses established that it was only their respective beliefs that BREC pole and guy wire were trespassing on Ms. Gresham's property.⁴ [Id.; p.67, line 22-p.68, line 16; p.70, lines 7-23; p.73, line 19-p.74, line 3; p.74, line 23-p.75, line 8; p.75, lines 21-25; pp.202-206]. Stated differently, Respondent's opinions and beliefs were unsupported by any factual basis or any specific measurements, and were contradicted by the specific SCDOT documentary evidence, including the encroachment permit to construct issued by SCDOT. The law of South Carolina requires that the opinions or assertions of the witness must have a factual foundation. See, Hamm v. South Carolina Pub. Svs. Comm'n, 298 S.C. 309, 312, 380 S.E.2d 428, 430 (1989) (recognizing that opinions and assertions, to be accorded any weight or reliability, must have a factual foundation). Despite the fact that BREC obtained the required SCDOT encroachment permit prior to commencing any work on the Highway 11 project, the jury returned a verdict of trespass and the trial judge declined BREC's post-trial motions for new trial and Judgment Notwithstanding the Verdict ("JNOV"). The trial court's rulings to deny BREC's post-trial motions directly contradicts and ignores well-established law providing that BREC can utilize an existing highway right-of-way if it obtains approval to install utility poles and lines without having to seek adjacent landowner approval when it receives permission from the SCDOT via its encroachment permit. See,

⁴ Importantly, Ms. Gresham's own testimony as to the location of the pole and guy wire at issue also establishes that the instrumentalities at issue were within the SCDOT right-of-way.

Gressette v. South Carolina Electric & Gas, 370 S.C. 377, 655 S.E.2d 538 (2006).

Based on the procedural posture of this case, the evidence presented, and the ruling of the trial court and the Court of Appeals, a South Carolina resident now need merely to “say” they “believe” a utility is trespassing on their property, despite the existence of an express written right-of-way construction permit duly approved by SCDOT to construct instrumentalities within the SCDOT easement, for the utility to be subject to a verdict of trespassing on the resident’s property even though the utility has followed the proper procedures and guidelines granting permission to construct in a SCDOT right-of-way. This disturbing result has been fully sanctioned by the Court of Appeals in its Opinion, despite the utility —here BREC—presenting uncontroverted, documentary evidence in the trial record, without objection, regarding the position of the pole and guy wire at issue as fully and clearly within the SCDOT fifty (50) foot right-of-way. For these reasons (and as more fully explained and set forth in the Petitioner’s Petition for Writ of Certiorari and related brief filed in this matter), BREC respectfully requests that the Court grant its request to reverse the Court of Appeals and the lower court, to follow precedent in the matter of Gressette v. South Carolina Electric & Gas, 370 S.C. 377, 655 S.E.2d 538 (2006), and issue a reversal of the trial judge’s denial of the motion for JNOV, or, in the alternative, to order a new trial on the Respondent’s sole claim of trespass.

a. BREC SEEKS ENFORCEMENT OF EXISTING LAW THAT CLEARLY AUTHORIZES UTILITIES TO UTILIZE EXISTING HIGHWAY RIGHT-OF-WAYS FROM SCDOT

BREC is not complaining “that Jennings did not focus on monetary loss for the trespass.” (Respondent’s Brief, p. 4). BREC is asserting that the South Carolina Supreme Court has established clear standards on the rights of utilities to utilize existing highway right-of-ways to install utility poles and lines without having to seek adjacent landowner approval. The Supreme Court ruled in 2006 that utilities may be located and placed within highway rights-of-way with

the permission of SCDOT and does not require permission of the property owner to do so. Gressette v. S.C. Electric & Gas, 370 S.C. 377, 655 S.E. 2d 538 (2006). This is the exact action taken by BREC regarding its installation of a 7.2 KV electric line at issue (which the Respondent counter-claimed trespass) in this matter were BREC acted fully consistent with the Gressette ruling and in accordance with the SCDOT. The efforts of BREC in bringing this matter before the Court are not frivolous claims or character attacks but are significant and important public policy and legal issues that need to be addressed. As a result, BREC disputes any claim by the Respondent to enjoin or to seek sanctions or any other remedy against BREC.

The only viable appeal before the Court was made by BREC. While the Respondent's Brief seeks to untimely address whether or not BREC's Petition for Certiorari should have been granted, it is clear that the only evidence in the record is that the single pole and guy wire anchor of BREC is well within the SCDOT highway right-of-way of fifty (50) feet from the center line of South Carolina Highway 11. (**Appendix/R. pp. 192-201**). BREC timely applied for and was issued an encroachment permit from the SCDOT in accordance with state law and procedure. (**Appendix/R. p. 195**). The encroachment permit was admitted into evidence and it clearly shows that the single BREC pole is well within the existing SCDOT right-of-way. (**Appendix/R . pp. 192-201**). Testimony from the witness (Ronnie Alexander) who measured and has actual specific, factual knowledge of the width of the right-of-way testified that the single pole and guy wire were within the fifty (50) feet from the center line of the South Carolina Highway 11. (**Appendix/R . p. 101-105**). None of the Respondent's witnesses could establish that the pole and guy wire were outside the SCDOT fifty (50) foot right-of-way from the center of South Carolina Highway 11 and no one (other than BREC's employees and representatives) ever made any measurements. (**Appendix/R .pp. 75-76, 89, & 138-139**).

The Record contains all information relevant and duly brought before the appellate court. BREC objects to the inclusion of any evidence or materials not part of the record, including any summaries of deleted witness testimony which is not part of the record before the Court and BREC reserves the right to supplement or amend its brief based upon any filing by the Respondent moving to include such items in the Appendix.⁵

III. THE COURT OF APPEALS BASED ITS RULING ON THE INCOMPLETE TRIAL TRANSCRIPT WHICH HAS MISSING OR LOST PORTIONS OF WHAT WAS PRESENTED BY BREC AND THUS, THE COURT OF APPEALS ERRED AND THE DECISION REVERSED

The Court of Appeals filed its Opinions pursuant to Rule 220, SCACR, and supporting authorities; however, the result is that BREC's request for a reversal of the jury verdict on trespass or for a new trial is based on an incomplete appellate record. Specifically, and of import, the Court of Appeals cited in its Opinion, dated January 14, 2015, State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273, for the proposition that, "[b]efore a defendant can establish that he is entitled to a new trial on the basis of an inadequately reconstructed record, he must identify a specific appellate claim that this court would be unable to review effectively using the reconstructed record;" and Sweat v. Crawford, 292 S.C. 324, 327, 356 S.E.2d 147, 149 (Ct. App. 1987), for the proposition that omissions from the record did not prejudice BREC because the available evidence included in the record sufficiently supported the rulings made by the lower court.

However, the Court of Appeals completely misapprehended the importance of the missing trial transcript addressing the claim of trespass and of the trial court ruling being controlled by an error of law; thus, inadvertently creating an internally inconsistent opinion. An appellate review of the motion for a new trial motion and the JNOV motion requires a review of

⁵ On Friday, July 29, 2016, BREC received a copy of the motion by Respondent to amend the Appendix and BREC will respond to the motion and reserves the right to make the appropriate filing or amended filing.

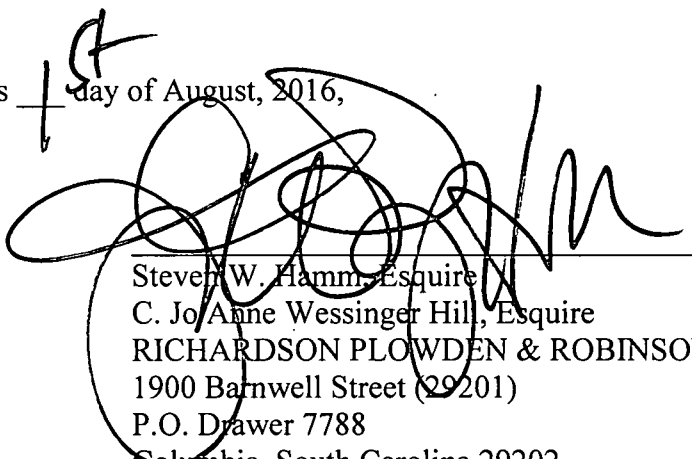
all of the evidence adduced at trial, the testimony and factual basis for that testimony, and the reasonable inferences to be drawn therefrom. See Brinkley v. S.C. Dep't of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). Given the fact that the transcript of the trial is incomplete in that all of the trespass claim testimony adduced at trial was lost by the court reporter; respectfully, the Court of Appeals could not have adequately assessed whether the trial court erred in denying the post-trial motions; however, it is undisputed by the Respondent that BREC obtained the permit approval from the SCDOT to construct and place its power pole and guy wire within the SCDOT right-of-way. [Appendix/R. pp.192-201]. The missing trial transcript testimony deals specifically with the trespass claim—the single subject of BREC's post-trial motions. For these reasons, BREC respectfully requests this Court grant its request for reversal of the Court of Appeal and the trial judge's denial of the motion for JNOV, or, in the alternative, to order a new trial to rehear this matter to address the claim of trespass.

CONCLUSION

As a result of the trial court's rulings and the Opinion issued by the Court of Appeals, BREC now has a jury verdict of trespass on record in Greenville County when BREC followed and adhered to the exact procedure required to prevent a claim of trespass by timely obtaining an encroachment permit from SCDOT in compliance with well-established state law, Gressette v. South Carolina Electric and Gas Co., 370 S.C. 377, 635 S.E.2d 538 (2006), and which is the only entity authorized to grant permission for use by a utility of the area within the SCDOT right-of-way. The testimony and factual evidence at trial clearly confirm that BREC constructed completely within the SCDOT right-of-way in accordance with the permit SCDOT awarded to it. However, BREC is now faced with the potential of other trespass claims from property owners who "believe" BREC may somehow be trespassing on their property with poles and electric

wires despite specific SCDOT approval to construct in its right-of-way and exact measurements that confirm such construction was in the SCDOT right-of-way. The vital protections afforded to a public utility like BREC under Gressette and related case law have been denied to BREC by the trial court's order refusing BREC motion for a new trial or JNOV and by the Court of Appeals. Accordingly, BREC respectfully requests that the Court reverse the decision of the Court of Appeals and the lower court and order a new trial so that these issues of exceptional statewide importance can be heard and decided; and therefore, BREC respectfully seeks a reversal of the trial judge's denial of the motion for JNOV, or in the alternative, a new trial on the sole issue of trespass.

Respectfully submitted, this 1st day of August, 2016,



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PROOF OF SERVICE

I certify that I have served the **Reply Brief of Petitioner Blue Ridge Electric Cooperative, Inc.** upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on August 1, 2016, to *Kathleen Jennings Gresham, 1524 Highway 11, Landrum, South Carolina 29356.*

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