

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.

RECORD ON APPEAL

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

Other Counsel of Record:
James W. Logan
P.O. Box 259
Anderson, SC 29622
Attorney for Respondent

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STATE OF SOUTH CAROLINA)
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COUNTY OF OCONEE)
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Duke Energy Carolinas, LLC,)
)
Plaintiff,)
)
vs.)
)
Randall S. Hiller and Janet C.)
Hiller,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C. A. NO.: 2013-CP-37-575

**NOTICE OF MOTION AND MOTION TO
ENFORCE SETTLEMENT AGREEMENT**

TO: Randall S. Hiller, Attorney for Defendants

PLEASE TAKE NOTICE that the Plaintiff, Duke Energy Carolinas, LLC, (hereafter “Duke Energy”), will move this Court in ten days or as soon as it may be heard thereafter for an Order compelling enforcement of the Settlement Agreement signed by all parties and their counsel on September 2, 2014. This Motion is made pursuant to Rules 43 (k) and 41.1, SCRPC, as well as legal precedent regarding enforcement of settlement agreements.

BACKGROUND

On September 2, 2014, the parties participated in mediation. After lengthy negotiations, the parties reached a settlement agreement. The settlement agreement was reduced to writing and signed by the parties and their counsel. (Exhibit 1). The signed document set forth the clear and specific terms of the settlement agreement between the parties. *Id.* Thereafter, the mediator, Eric K. Englebardt, signed and filed a Proof of ADR report, indicating that the case was “fully settled.” (Exhibit 2).

As of November 25, 2014, the Defendants had failed to comply with all the terms of the settlement agreement to which they had agreed. (Exhibit 3). The Defendants responded on.

November 26, 2014. (Exhibit 4). On December 22, 2014, the Defendants informed Duke Energy that the work had been completed. (Exhibit 5). Upon inspection, Duke Energy determined that the work had not been completed and notified the Defendants accordingly. (Exhibit 6). The Defendants responded on December 30, 2014. (Exhibit 7). On February 6, 2015, Duke Energy representatives along with their attorney met with the Defendant, Randall S. Hiller, at the property in question on Lake Keowee in an effort to resolve all remaining issues. Duke Energy documented the results of that meeting in its letter to the Defendants dated February 12, 2015. (Exhibit 8). The Defendants responded by letter dated February 18, 2015 (Exhibit 9) by basically telling Duke Energy that they will perform the work they agreed to do when they get around to it. Duke Energy responded with its letter of March 18, 2015. (Exhibit 10).

LEGAL ANALYSIS

Duke Energy seeks an Order of this Court enforcing the settlement agreement between the parties pursuant to SCRCP 43 (k), which states:

(k) Agreements of Counsel. No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP. (emphasis added).

The purpose of Rule 43(k) is: [T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. The time of the court should not be taken up in controversial matters of this character. *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 495, 458 S.E.2d 533, 535 (1995) (quoting 83 C.J.S. Stipulation § 4 (1953)); *see also, Motley v. Williams*, 374 S.C. 107, 111, 647 S.E. 2d. 244, 246 (Ct. App. 2007) (stating the application of Rule 43(k) will help avoid disputes

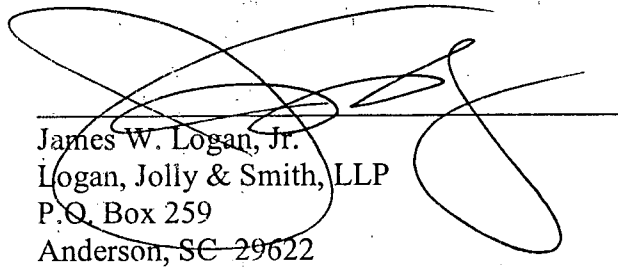
regarding the terms of settlement). Settlement agreements are reviewed by the circuit court in much the same way as contracts. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 37234, 640, 643 S.E.2d 692, 695 (Ct. App. 2007). When “an agreement is clear and capable of legal construction, the courts [sic] only function is to interpret its lawful meaning and the intent of the parties as found within the agreement.” *Messer v. Messer*, 359 S.C. 614, 628, 598 S.E. 2d 310, 317 (Ct. App. 2004). When an agreement is plain and unambiguous, the court does not have the authority to modify its terms. *Patricia Grand Hotel*, 372 S.C. at 640, 643 S.E.2d at 695.

Applying the law to the facts and current procedural posture of the case, it is clear that SCRCP 43 (k) applies to the binding nature of settlement agreements. It is further clear that of the three options available in SCRCP 43 (k), the parties hereto have an agreement between counsel that affects the proceedings in this action and which has been reduced to writing and signed by the parties and their counsel. The Court should view this settlement agreement in the same way and under the same scrutiny that it would afford a contract. There are no ambiguous terms; indeed there is no dispute between the parties as to the terms, rather the Defendants seek to nullify what Duke Energy considers a binding contract under both the Rules of Civil Procedure and legal precedent and/or modify the terms of that contract.

CONCLUSION

Duke Energy respectfully requests an Order of the Court compelling the enforcement of the settlement agreements attached hereto. Duke Energy reserves the right to further supplement this Motion with a Memorandum of Law and/or additional arguments at the hearing on this matter.

Respectfully submitted,



James W. Logan, Jr.
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Anderson, SC 29622
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Fax 864-226-1931
logan@loganjollysmith.com
Attorneys for Plaintiff

Dated: 4/1/15

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS


Case No. 2013-CP-37-575

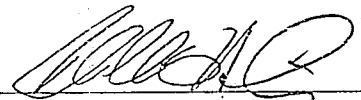
Duke Energy Carolinas LLC,)
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Plaintiffs,)
)
vs.)
)
Randall S. Hiller and Janet C. Hiller,)
)
Defendants.)

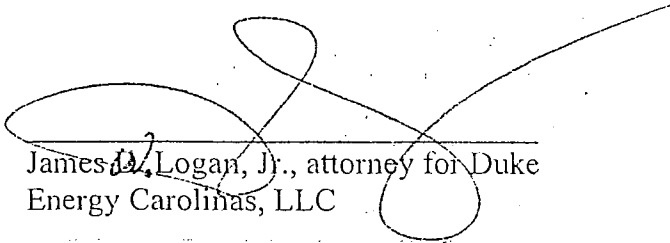
MEMORANDUM OF AGREEMENT

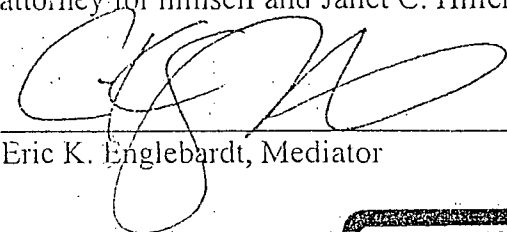
At mediation on 2 September 2014, the parties agreed to resolve this dispute as follows:

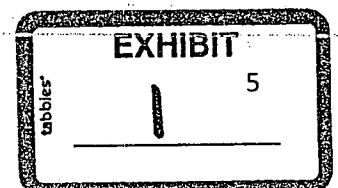
- 1) Duke will place the existing dock, at the Hillers' cost, at the dock location shown on the Stephen Edwards & Associates survey of 19 May 2011 closest to lot 2.
- 2) Duke agrees to waive the permit application for a second dock on the Hillers' property for a period of five years. Duke will agree to approve the application as previously negotiated and shown on the Stephen Edwards & Associates survey of 19 May 2011, unless regulations change for reasons outside of Duke's control that make approval of the application impossible. Duke will make the Hillers aware of any regulatory changes that require a change to the approved permit at least 30 days prior to their going into effect. The Hillers are responsible for resubmitting their application on an annual basis or this portion of the settlement agreement is moot.
- 3) The Hillers will pay Duke \$379.70.
- 4) The parties will dismiss all claims and counterclaims with prejudice and enter into a mutual release/settlement agreement to be drafted by counsel for Duke.
- 5) This agreement will be confidential to the fullest extent possible by law.


Representative of Duke Energy


Randall S. Hiller, individually and as attorney for himself and Janet C. Hiller

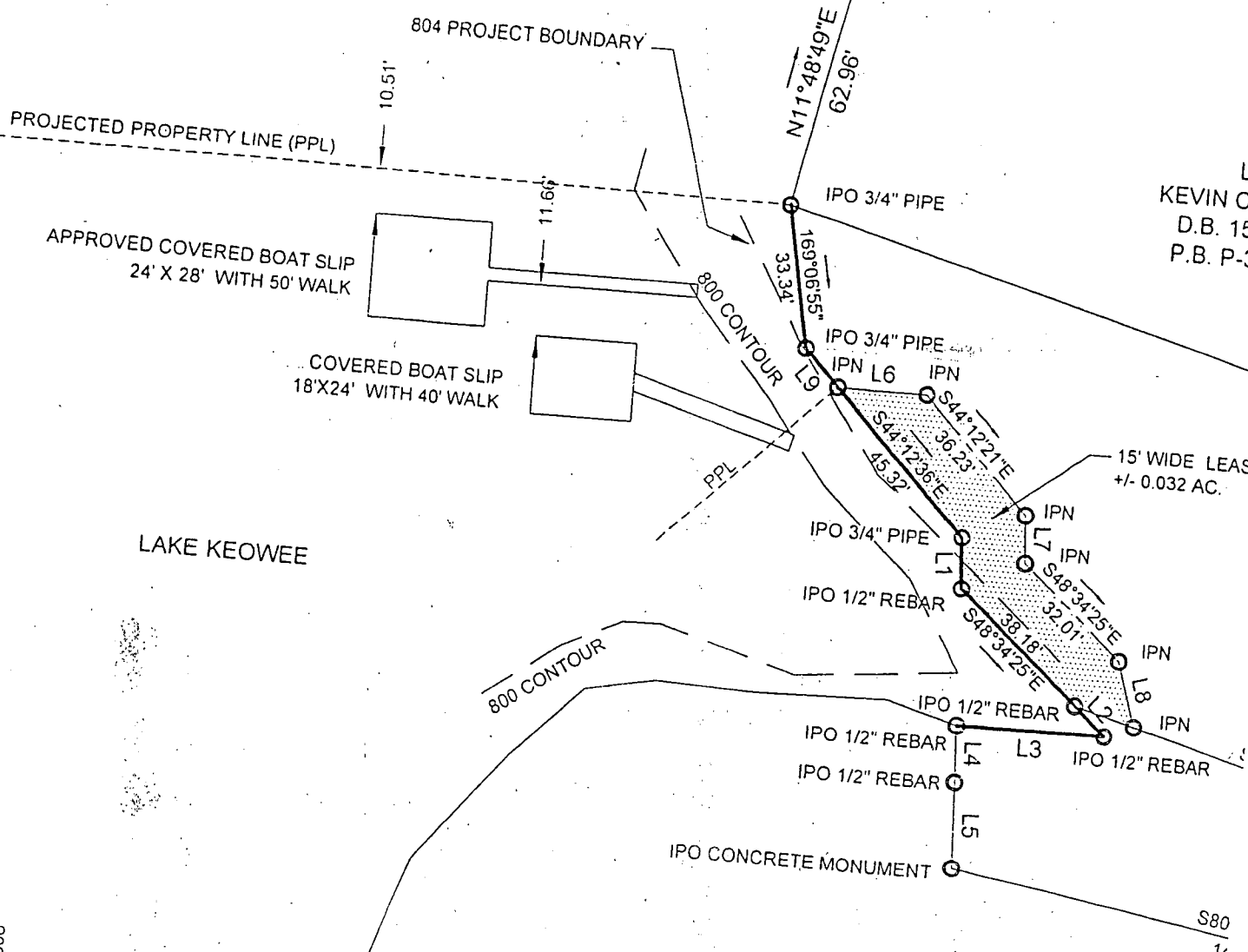

James W. Logan, Jr., attorney for Duke Energy Carolinas, LLC


Eric K. Englehardt, Mediator



LI
KEVIN C.
D.B. 150
P.B. P-3

REF. PLAT BY
LANDRITH SURVEYING
DATED 06-14-2006



LAKE KEOWEE

LOT 1
CRAIG & HAZEL DANCE
D.B. 1594 PG. 72
P.B. B-200 PG. 10

NOTES

- 1) REFERENCES
-D.B. 1573 PG. 270
-P.B. B-146 PG. 2
-TAX MAP NUMBERS: 179-00-02-007 & 179-00-02-020
- 2) ACREAGE SHOWN INCLUDES ALL RIGHT-OF-WAYS AND OR EASEMENTS.
- 3) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAYS AND OR RESTRICTIONS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.
- 4) IPN ARE 5/8" REBAR UNLESS LABELLED OTHERWISE ON PLAT.

SURVEY FOR

HILLER DOCK PERMIT

OCONEE COUNTY, SOUTH CAROLINA

STEPHEN R. EDWARDS & ASSOCIATES, INC.
1432 W. MAIN ST. - WEST UNION, S.C. - 29696
(864) 718-1120

E: 05-19-2011

JOB NUMBER: 11-050

1 State of South Carolina In the Court of Common Pleas
2 County of Oconee

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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B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

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

Randall S. Hiller, Esquire
Pro Se

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

I N D E X

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Witnesses

Page

RANDALL S. HILLER

11

Reporter's Certificate

20

E x h i b i t s

For the Plaintiff:

Marked	Description	I.D.	Admitted
11	Letter/attachments from Mr. Logan to Mr. Hiller dated May 7th	8	
12	Photograph of spud pole	9	

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:14 a.m.)

4 THE COURT: Mr. Hiller, Mr. Logan.

5 This is a motion to enforce settlement.

6 MR. LOGAN: That is correct, your Honor.

7 THE COURT: This is your motion, Mr. Logan.

8 MR. LOGAN: It is, your Honor.

9 THE COURT: All right.

10 MR. LOGAN: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. LOGAN: I filed, on behalf of Duke Energy, a
13 motion to enforce settlement on April 1, 2015, with the
14 Court of this year. And attached to that motion were
15 ten -- are ten exhibits. Mr. Hiller was served with
16 that motion along with -- that was sent to the Court or
17 the clerk's office.

18 The first exhibit is the memorandum of agreement.
19 By way of background, Duke and Mr. and Ms. Hiller have
20 had a dispute among each other that has been going on
21 for years. And Mr. and Ms. Hiller own a place on Lake
22 Keowee. He is -- he and his wife have owned it for
23 years. Their children are grown. They basically have
24 no more use for it, don't use it is my understanding,
25 and it has -- I think he would like to dispose of it.

1 But it's one of those things it's out of sight, out of
2 mind. And over the years his dock or docks that he has
3 had attached to the front of his property have
4 periodically been -- have periodically come loose, gone
5 out into the cove, created a navigational issue, and
6 Duke has had -- and also resulted in complaints from
7 the adjoining property owners as far as how that area
8 is maintained along with Lakeshore.

9 Multiple actions have been filed. We think we
10 come to agreements as to how it's going to be resolved,
11 and it does not get resolved. Never gets resolved. We
12 had a mediation on September 2, 2014. The mediator was
13 Eric Englehardt. It resulted in a memorandum of
14 agreement, which is attached to this motion as
15 Exhibit 1, and also a plat that shows where the docks
16 are to be located. And he wants permission to put in a
17 future dock sometime within the next five years.

18 Well, as a result of the mediation, the terms were
19 set forth in the memorandum of agreement and also in
20 subsequent letters once we started having problems
21 getting the agreement enforced.

22 Exhibit 1, as I say, is the memorandum and the
23 attached plat. Exhibit 2 is the ADR compliance form
24 signed by the mediator. Exhibit 3 is my letter to
25 Mr. Hiller dated November the 25th of 2014 after my

1 client advised me that this work that he agreed to do
2 in front of his property had not been done. I set out
3 the five components of the agreement in that letter
4 pointing out that only items one and two had been
5 completed.

6 It was agreed at the mediation that a few days
7 after the mediation, Mr. Hiller would meet a Duke
8 representative and the contractor chosen by Duke in
9 order to discuss and implement the agreed terms as far
10 as the location of the dock and how it would be
11 anchored as well as other things set forth in those
12 five points.

13 Well, unfortunately, I wasn't able to be there at
14 that meeting on the property. And Mr. Hiller decided
15 that he didn't want Duke's contractor to do it but
16 would get a contractor to do all of that work himself.
17 So that's how it was left, and with this letter of
18 November -- and that meeting occurred on September the
19 22nd as set forth on the first page of Exhibit 3.

20 Upon finding out that the work had not been done,
21 I sent Mr. Hiller the letter of November 25th, and I
22 told him in that letter not only what had not been done
23 but what was left to be done, and that's on the second
24 page. And I also attached several photographs that
25 showed the status of the dock work that had been done

1 at that particular point, which obviously shows that
2 the work had not been completed as had been
3 represented. And those are attached to Exhibit 3.

4 Mr. Hiller responds to my letter on November the
5 26th with his own letter saying that he had a
6 contractor to come out and supposedly do all the work
7 that was to be done, but obviously, as he says in the
8 second paragraph, based upon the photographs you
9 provided, the contractor did not perform adequately.
10 Well, it's the contractor's fault now. So he says he's
11 going to correct it.

12 Exhibit 5 is an e-mail of December 22nd to me from
13 Mr. Hiller or actually to my paralegal, Stephanie.
14 "Please advise Mr. Logan that the repairs have been
15 completed." So, in other words, his representation is
16 all the work has been done. Well, again, I contact my
17 client and asked them to send out a Lakeshore
18 representative to take photographs to see if, in fact,
19 the work had been done. And that is Exhibit 6 of my --
20 attached to my letter from, at my request, my paralegal
21 to Mr. Hiller advising him that, "Following receipt of
22 your e-mail of December 22nd, I asked Duke to verify
23 completion of the dock repairs. The work has not been
24 completed." I attached photographs again taken by the
25 Duke representative showing the status of the work at

1 that particular time. And you will see three
2 photographs attached, one of which includes the
3 alignment issue and also how it was moored.

4 Mr. Hiller responds with his letter of
5 December the 30th which is Exhibit 7, in which he
6 basically tells Duke, I'll get around to it when I can.
7 I respond with my letter of February 12th in which I
8 advised him that that was not acceptable. And I agreed
9 to meet with him -- this is my letter of February 12th,
10 which is Exhibit 8. I agreed to meet with Mr. Hiller
11 and a Duke representative on his property hopefully to
12 come to a final resolution of this matter in compliance
13 with the settlement agreement.

14 Following that meeting, which occurred on
15 February the 6th, I write to Mr. Hiller a letter of
16 February the 12th, which is Exhibit 8, and I point out
17 to him once again what had been agreed to at the
18 mediation in particular, number one, the alignment,
19 proper alignment of the dock, which would have been
20 done had a Duke contractor been used, and number four
21 on that list, anchoring the dock with what's called
22 spud poles. In the past the problem that he has had
23 with the dock breaking loose is that it's been anchored
24 in the cheapest way possible, just tying metal rope
25 around trees or on very unsubstantial metal spikes in

1 the ground. Spud poles would prevent that from
2 happening and are used when a property owner has
3 problems with his dock breaking loose from how it is
4 actually attached to the land. So I write that letter
5 following our meeting on site in which he agrees to do
6 these things and have that done.

7 Well, as soon as I write that letter or a few days
8 later, I get a letter back from him, which is
9 Exhibit 9, February the 18th of this year, in which he
10 basically says again, I'll get around to it when I can.
11 And Exhibit 10 is my letter to Mr. Hiller basically
12 telling him that that was not acceptable to Duke, and
13 unless the work was completed within ten days, we were
14 going to proceed with appropriate measures.

15 Now, in addition to that material, I wrote
16 Mr. Hiller. The latest correspondence is -- I'm going
17 to pass up to the Court. And I'd like for it to be
18 marked as whatever the next exhibit is.

19 (WHEREUPON, Plaintiff's Exhibit Number 11
20 was marked for identification.)

21 MR. LOGAN: And that is my letter to him of
22 May the 7th. "I received your e-mail of April the 27th
23 stating that the requirements have been completed."
24 All right. They're completed now, according to him.
25 For the third time they're completed. I sent another

1 Duke representative out -- this is either the third or
2 fourth time -- to take a look at what had been done and
3 to take photographs. And as I state in the letter, the
4 dock is not aligned correctly and spud poles were not
5 used to anchor the dock. And that is shown in the
6 photographs that are attached, and these were taken on
7 May 5th as referenced in the letter.

8 While he has completed the decking, the alignment
9 issue that we discussed while I was out there, it's not
10 properly aligned as he agreed to align it with the pole
11 across the way, and you will see how the dock is tied
12 to the lake. Spud poles are not used, and this type of
13 mooring to the lake is going to result in the same
14 problem that he has been having over the years,
15 creating a navigational issue, creating complaints to
16 Duke from the neighbors that the dock floats away, gets
17 up on other people's property and the shore, and,
18 therefore, they make their complaints known to Duke,
19 and all of that is in violation of the Shoreline
20 Management Guidelines.

21 The final exhibit I will pass up to the Court and
22 ask to be marked as the next exhibit is a picture of
23 what a spud pole looks like.

24 (WHEREUPON, Plaintiff's Exhibit Number 12
25 was marked for identification.)

1 MR. LOGAN: That's down into the lake bed. The
2 dock is able to rise up and down as the lake levels
3 change, and it avoids, as much as possible, the dock
4 breaking loose. And that's a picture of one that's
5 actually on the lake and is used when property owners
6 have problems of this nature.

7 Had a Duke contractor as was agreed upon been
8 used, that was the type of mooring, the type of
9 docking, and the type of alignment that would have been
10 already there. And it's not there. As far as I know,
11 that's the current status. It's not in accordance with
12 the agreement.

13 You will see that Mr. Hiller, as part of the
14 settlement agreement, had asked that Duke waive the
15 permit application for a second dock for a period of
16 five years. In other words, he wouldn't have to put in
17 a dock within a year of an application being made,
18 contrary to the otherwise established Lakeshore
19 Guidelines. His second dock is not there. But Duke
20 agreed because he was trying to sell the property, and,
21 obviously, he wants dock access. He wants a dock in
22 front of his property. He wants a permit for the dock
23 because it adds to the value of his property. The
24 problem is he's not willing to maintain that dock and
25 he's not willing to maintain it in accordance with the

1 terms of the agreement. I ask that the agreement be
2 enforced. Thank you, sir.

3 THE COURT: Mr. Hiller.

4 MR. HILLER: Excuse me, your Honor. I'm a little
5 surprised that nobody from Duke is here to testify, but
6 I intend to testify, if you want to swear me in,
7 because --

8 THE COURT: Do you swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth?

10 MR. HILLER: I do.

11 **RANDALL S. HILLER,**

12 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 THE COURT: Go ahead.

14 MR. HILLER: Your Honor, I've owned this property
15 since 1993. For the first 25 years I didn't have any
16 problems. Never had a problem. In 2008, I subdivided
17 the lot just before -- or 2007 just before the
18 Shoreline Management Guidelines changed that would have
19 required a greater frontage. Subdivided the property,
20 ordered -- I mean requested a Duke dock permit, had a
21 dock installed, then went back and made the application
22 for the second dock permit. It was refused.

23 I filed a lawsuit against Duke. They ultimately
24 agreed to give me the second permit. That was in 2008.
25 Ever since then, your Honor, I mean, it is just a

1 constant, constant harassment and a constant -- I mean,
2 as Mr. Logan keeps pointing out, and he's making a big
3 deal about these spud poles. Every time I make an
4 agreement with Duke, as soon as the agreement is made,
5 they wait two months and then add ten conditions.

6 You have the settlement agreement in front of you.
7 Is there anything in there about spud poles? I had
8 never even heard of a spud pole until I met up there
9 three days after this or four days after this
10 mediation. I drove up here. I met with Mr. Hudish,
11 the Duke representative, and a contractor that he
12 brought because I had told them at the time of the
13 mediation that I don't do docks. I don't know anything
14 about docks. I don't have it. When I had it installed
15 originally, the contractor installed it, the same one
16 that made it. It was installed with cables just like
17 the dock on my right and the dock on my left. Both of
18 them have cables, cables running to the shore and a
19 fixed pier attached to the rising and lowering pier.

20 This dock had to be moved as a result of the
21 settlement of the original lawsuit, and Mr. Hudish and
22 the contractor, and as you'll see from my
23 correspondence back to Mr. Logan, the contractor they
24 brought said right out, I mean the minute we got there,
25 he said, "There's no way we can do this in 30 days."

1 He said, "I can't do it. We can't build the fixed pier
2 portion, it's not possible for it to be done within
3 30 days." So he and Mr. Hudish got out their tape
4 measures and physically measured the lines where the
5 dock would need to go. And then Mr. Hudish puts stakes
6 exactly where the fixed posts would have to be
7 installed. And I agreed with their contractor. He
8 said, "All we can do is set the dock, and I'll send you
9 a price." And, you know, Mr. Hudish, the contractor,
10 and I agreed that I would find a contractor to install
11 the fixed portion.

12 Now, I always understood this agreement to say
13 that the dock was going to be put in the location that
14 the survey said. Didn't say anything about it having
15 to be pretty or as nice as my neighbors. It just had
16 to be put in that location within 30 days. I hired the
17 contractor. I went up there with them the day they
18 installed the posts and watched them dig the holes and
19 install the fixed pier post right where the stakes had
20 been set by Duke's representative. Then they built the
21 frame and attached the dock to it directly out from
22 that. That's all I agreed to do. And we did exactly
23 what I agreed to do.

24 Only afterwards, apparently, and this was --
25 Mr. Logan says we have had problems with the dock. We

1 have. People -- I mean, it's been vandalized at least
2 four times. The cables have been physically cut right
3 at the dock where we can see what's still hanging, cut
4 twice. It was cut again in November. I sent the
5 contractor back up there. We completely rebuilt the
6 frame, reattached it. Although I didn't agree to do
7 all the other things that Mr. Logan keeps adding on and
8 added on in March, as I responded to him then, I said,
9 if I determine -- if I determine, if the contractor
10 determines the spud poles are necessary, I'll put them
11 in, but I don't -- that wasn't part of this settlement.
12 And it was determined it was not necessary. Cables are
13 in. They're on my property. They aren't in the lake.
14 They go to the dock just like the one on the right,
15 just like the one on the left. Went ahead and had them
16 finish the decking. That's the only thing that was
17 missing.

18 That dock is in alignment with where Duke Energy
19 said it had to be when I was out there with them. When
20 we went back out there in March, Mr. Hudish, this time,
21 not the time when I was up there with him before I
22 started construction, sent somebody over to the other
23 side of the lake and had them go put a stake in based
24 on where he was pointing after I had already put the
25 dock in, and had them put a stake on the other side of

1 the lake, which I told him then, I said, "That's
2 25 feet left of where you set this."

3 And, your Honor, if that dock needs to be turned,
4 it needs to be Duke's responsibility because I relied
5 on Duke Energy's specifically measuring and putting
6 stakes in the ground saying this is where your dock
7 needed to be. It is exactly there. And if Mr. Hudish
8 was here, he'd have to admit it.

9 So I have complied with everything I agreed to do,
10 and it's not Duke's prerogative to continuously add
11 additional obligations on me. I assure you, there's
12 not a single word in that Shore Management Plan that
13 talks about spud poles being required or mandated or
14 anything else. The dock is in place. It's properly in
15 place, and it's exactly where Duke asked me to put it
16 or told me to put it.

17 THE COURT: Let me ask you this, Mr. Hiller. How
18 did it go from Duke placing the existing dock to you
19 placing the existing dock?

20 MR. HILLER: Because the contractor they brought
21 said he couldn't do it in the time frame. They were
22 supposed to bring the contractor. They did bring a
23 contractor.

24 THE COURT: There was no time frame.

25 MR. HILLER: Oh, it was 30 days.

1 THE COURT: It didn't say it in here. Says, "Duke
2 will place the existing dock at the Hillers' cost at
3 the dock location shown on the Steven Edwards &
4 Associates survey of 19 May 2011 closest to Lot 2." It
5 doesn't have a time frame in there that I can see. And
6 there is time frames for being notified of the changes
7 in permit regs on number two, but that's a different
8 item.

9 MR. HILLER: Yeah. Well, it was always 30 days.
10 And Mr. Logan's and my correspondence would reflect
11 that fact. I bought -- at the mediation about trying
12 to get up there that very next Friday, but, you know, I
13 finally agreed to go that week, that Friday, to meet
14 with Mr. Hudish because of the 30-day timeline. And
15 it's in my letter back to Mr. Logan afterwards that,
16 you know, we all understood it to be 30 days.

17 And then, of course, after I met back up there
18 again and this time with Mr. Logan and Mr. Hudish and
19 he complained about the location and complained about
20 the fact that we hadn't put the decking on it, they
21 tried to put the 30-day time limit on me, too, at that
22 time. I wouldn't -- you know, I wouldn't agree with
23 that.

24 And, in fact, my letter back in February 10th, I
25 talk about the fact that because of the deadline the

1 first time, and because their contractor couldn't do
2 it, I had been forced to get whoever was available
3 rather than who I really wanted to do it to do it. I
4 hadn't really looked at this since the original time,
5 your Honor, but I don't think Mr. Logan -- you aren't
6 going to deny it was 30 days?

7 MR. LOGAN: I'm going to admit it's what's in
8 here.

9 And I will represent to the Court that I had no
10 idea that this discussion had gone on at the lake three
11 to four days after this mediation in which Mr. Hiller
12 wanted to have his own contractor do it for whatever
13 reason. I think I know what the reason is, but Duke --
14 the agreement was that Duke would go out there and
15 place the dock, put the dock there, do this work, put
16 those poles in so we wouldn't have this problem again.
17 And then for whatever reason, Mr. Hiller talks the
18 representative into letting his -- he wants his own
19 contractor to do it. If Duke's contractor had done
20 this as it was agreed to in the mediation and as I
21 recite in this, we wouldn't be here today because that
22 work would have been done at Mr. Hiller's expense.

23 So this is just a continuation of the same type
24 problem we have been having and representative --
25 representations of who agreed to do what.

1 I submit to you that what's in here in this
2 memorandum of agreement, there is no 30-day time
3 period. Duke wanted the work done, and they wanted it
4 done right so that they wouldn't continue to have these
5 problems with Mr. Hiller. And I don't know why he is
6 opposing -- this does nothing but enhance the value of
7 his property if it's done right. But apparently he
8 would rather argue with Duke and not do what he agreed
9 to do in the mediation than have it done properly so
10 that the property value is enhanced and we don't have
11 to be up here in front of the Court continuously.

12 MR. HILLER: Your Honor, like I said, I was
13 testifying, and I will testify and have testified that
14 it was not my idea not to use their contractor. It was
15 the contractor saying that he could not do the work in
16 front of Mr. Hudish within the 30 days that was
17 mandated. And, specifically, he said there was no way
18 he could build the fixed portion, and there was a
19 chance he wouldn't be able to actually set the dock
20 onto the fixed portion. There was going to be a
21 20-foot fixed portion, and then there is a 30-foot
22 prebuilt portion that's already attached to the dock.

23 It was not my idea. The last thing I wanted to do
24 was try to find somebody to go up to Lake Keowee and
25 put in those posts and fix it. But because he couldn't

1 do it, that's why I agreed to do it, and that's why
2 they placed the stakes so that I would know exactly
3 where to put it.

4 MR. LOGAN: Your Honor, all you have to do is look
5 at Exhibit 3. And I addressed this in my letter. I
6 said, "Thereafter, you instructed" -- he e-mailed the
7 contractor for Duke after that meeting on September the
8 22nd. I didn't know that. I didn't know it until I
9 wrote this letter of November 25th. He instructed the
10 contractor not to come out there.

11 THE COURT: All right, gentlemen. Thank you.
12 I'll take it under advisement and I'll issue an order.

13 (WHEREUPON, the hearing ended at 10:42 a.m.)

14 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 12th day of May 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 28, 2015

Diane L. Marcengill

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013CP3700575

2015 MAY 13 PM 4 52

Duke Energy

Randall Hiller

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other Rule 41(b) (Invol. Nonsuit)
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

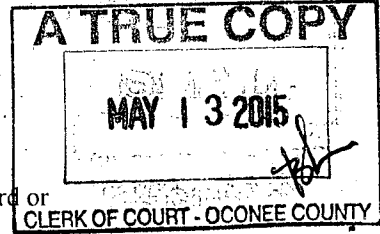
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

[Handwritten Signature]

Circuit Court Judge

2155
Judge Code

5-13-15
Date



For Clerk of Court Office Use Only

This judgment was entered on the 13th day of May, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 13th day of May, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

James W. Logan Jr. (mail)

Randall S. Hiller (mail)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Dianne Marcengill – Court Reporter

Beverly Whitfield – Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Plaintiff's motion to enforce settlement agreement granted, defendant shall grant Duke representatives access to the property as necessary to complete terms of the settlement agreement. No formal order to follow.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAY 13 PM 4 52

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

2013 AUG -8 P 12:31

Duke Energy Carolinas, LLC
Plaintiff(s)

CIVIL ACTION COVERSHEET

2013 - CP - 31 - 515

vs.

Randall S. Hiller and Janet C. Hiller
Defendant(s)

(Please Print)
Submitted By: James W. Logan, Jr.
Address: 1805 North Boulevard
Anderson, SC 29621

SC Bar #: 3385
Telephone #: 864-226-1910
Fax #: 864-226-1931
Other:
E-mail: logan@loganjollysmith.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check one box below)

- JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

NATURE OF ACTION
(Check One Box Below)

- | | | | |
|--|---|--|--|
| <p>Contracts</p> <input type="checkbox"/> Construction (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Wrongful Breach (140)
<input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
<input type="checkbox"/> Other Malpractice (299) | <p>Torts - Personal Injury</p> <input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Other (399) | <p>Real Property</p> <input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input checked="" type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <input type="checkbox"/> PCR (500)
<input type="checkbox"/> Sexual Predator (510)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)**
<input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <input type="checkbox"/> Driver License Reinstatement (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture (840)
<input type="checkbox"/> Other (899) | <p>Appeals</p> <input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | | | |

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: _____ Date: August 6, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

***FOR MANDATED ADR COUNTIES ONLY**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Duke Energy Carolinas, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Randall S. Hiller and Janet C. Hiller,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 C. A. NO.: 2013-CP 37-515

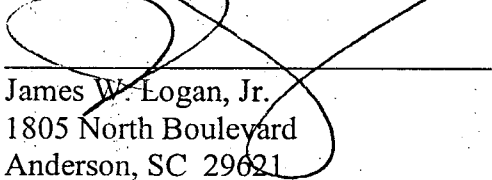
FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 AUG - 8 P 12: 31

SUMMONS FOR RELIEF

TO: THE DEFENDANT(S) ABOVE NAMED: Randall S. Hiller and Janet C. Hiller

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices located at 1805 North Boulevard, Post Office Box 259, Anderson, South Carolina 29622, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

LOGAN, JOLLY & SMITH



 James W. Logan, Jr.
 1805 North Boulevard
 Anderson, SC 29621
 864-226-1910 (voice)
 864-226-1931 (fax)
logan@loganjollysmith.com

Dated: 8/6/13
 Anderson, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Duke Energy Carolinas, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Randall S. Hiller and Janet C. Hiller,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 C. A. NO.: 2013-CP-37-575

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 AUG - 8 P 12:31

COMPLAINT

The Plaintiff herein, complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

1. The Plaintiff, Duke Energy Carolinas, LLC (hereinafter "Duke Energy"), a division of Duke Energy Corporation, is a limited liability company duly organized and existing under the laws of the State of North Carolina and it is fully authorized and empowered to transact and carry on its business in Oconee County, South Carolina.
2. The Defendants, Randall S. Hiller and Janet C. Hiller (hereafter, "Hillers"), are upon information and belief, citizens and residents of Greenville County, South Carolina and the parties and the subject matter herein are within the jurisdiction of this Court.
3. Duke Energy is the owner of certain real property located within the Project Boundary of Lake Keowee in Oconee County, South Carolina which is the subject matter of this Complaint. The Hillers are in violation of the Shoreline Management Guidelines ("SMG") for Lake Keowee, which were developed pursuant to Duke Energy's FERC License Project Number 2503 for Lake Keowee, for refusing to remove an unapproved and/or unsafe structure owned by the Hillers located within the Project Boundary of Lake Keowee. The Hillers' structure is not in an approved location and presents a continued potential public safety and navigational hazard.

4. Duke Energy, as a Federal licensee, is charged with managing the property within the Project Boundary of Lake Keowee and is required to regulate the uses of the Project to protect the scenic, recreational, and environmental values of the Project. Items referenced above are in violation of the applicable SMG for this Project developed pursuant to the FERC license for said Project.

5. The Hillers have previously been advised of the violations in question and have failed and refused to remove the unapproved and/or unsafe structure, and therefore, Duke Energy is seeking an Order from the Court as follows: directing the Hillers to either remove said structure from the Project Boundary of Lake Keowee or, in the alternative, comply with item #1 in the letter of October 10, 2011 (attached hereto as Exhibit 1) so that the dock application previously submitted by the Hillers to Duke Energy can be approved and the structure then properly secured to an approved location within the Project Boundary for Lake Keowee; permanently enjoining and restraining the Hillers from any further trespass on Duke Energy's property except to the extent necessary to comply with Duke Energy's request as set forth above; and directing the Hillers to pay all of the costs associated with this action, including all attorney's fees incurred by Duke Energy, as well as any and all removal costs, contractor expenses, landfill fees, a set management fee of \$1000.00, and the sum of \$379.70 as shown on the invoice attached hereto as Exhibit 2, incurred by Duke Energy for debris removal from the Hiller's property.

Wherefore, Duke Energy prays the Court rule that it has and shall recover of the Defendant as follows:

1. That this Court direct the Hillers to remove the unapproved and/or unsafe structure owned by the Hillers located within the Project Boundary for Lake Keowee or, in the

alternative, comply with item #1 in the letter of October 10, 2011 (attached hereto as Exhibit 1) so that the dock application previously submitted by the Hillers to Duke Energy can be approved and the structure then properly secured to an approved location within the Project Boundary for Lake Keowee;

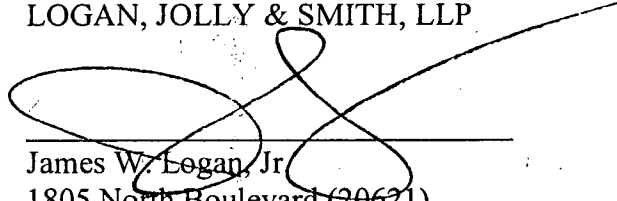
2. That this Court permanently and perpetually enjoin the Hillers, their heirs, servants, agents and assigns and all persons claiming by through or under them, from trespassing on Duke Energy's property except to the extent necessary to comply with Duke Energy's request set forth in Paragraph 1 above;

3. That this Court grant permission to Duke Energy, and any and all persons acting on its behalf, to remove the unapproved and/or unsafe structure from Lake Keowee should the Hillers fail to either remove the dock or to comply with the requirements set forth in the letter of October 10, 2011, and to award Duke Energy a monetary judgment in its favor and against Defendant for all expenses, including attorney's fees, incurred by Duke Energy as a result of any such removal work;

4. For all costs in this action, including attorney's fees incurred by Duke Energy as well as any and all removal costs, contractor expenses, landfill expenses, a set management fee of \$1,000.00, and the sum of \$379.70 as shown on the invoice attached hereto as Exhibit 2, incurred by Duke Energy for debris removal from the Hiller's property; and

5. For such other and further relief as the Court may deem just and proper.

LOGAN, JOLLY & SMITH, LLP



James W. Logan, Jr.
1805 North Boulevard (20621)
Post Office Box 259 (29622)
Anderson, South Carolina
(864) 226-1910
(864) 226-1931 (Fax)
Attorneys for Plaintiff

Anderson, South Carolina

Dated: 8/6/13



James W. Logan, Jr., Esquire
e-mail: logan@loganjollysmith.com

October 10, 2011

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Randall S. Hiller, Esquire
Randall S. Hiller, PA
P.O. Box 1716
Greenville, SC 29602-1716

Re: Randall S. Hiller and Janet C. Hiller vs. Duke Energy
C. A. No.: 2008-CP-37-886

Mailing Address
Post Office Box 259
Anderson, SC 29622

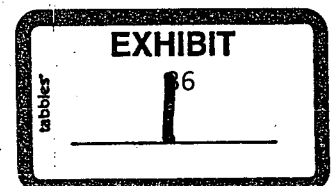
Dear Mr. Hiller:

The below items need to be addressed prior to approving the dock application for Lot 1-A:

1. Locate the existing dock in the approved location for lot 1-B as shown on the survey dated May 19, 2011. It is the northern location of the two docks shown;
2. A signed projected property line encroachment form from lot 1-B allowing lot 1-A to cross over the property line with the dock. The required form is attached. The form with the original signatures needs to be returned to me and I will forward it to Duke;
3. Remove the old derelict dock that had broken loose from the lake. It is now currently tied off down the cove southwest of your lot; and,
4. Remove the small pier extending into the lake and the piece of derelict seawall from within the project boundary line in front your lots (see enclosed pictures).

These items were listed in the July 23, 2010 memorandum included in my letter to you of July 28, 2010.

www.loganjollysmith.com

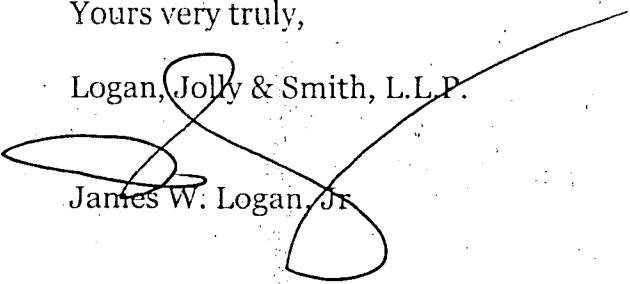


Randall S. Hiller, Esquire
Page 2
October 10, 2011

If you have any questions, do not hesitate to contact me.

Yours very truly,

Logan, Jolly & Smith, L.L.P.



James W. Logan, Jr.

JWL,jr/bk
Enclosure

bc: Lauren Bowen via e-mail
Tina Saims via e-mail
Jack Hudish via e-mail
Kelvin Reagan via e-mail
Joe S. Hall via e-mail

7

Projected Property Line Approval Letter

I, _____, owner of Lot # _____ in Subdivision
(Print Name)

_____ give approval to _____,
(Print Name)

owner of adjacent Lot # _____ in Subdivision _____ to

encroach over the projected property line between our lots for uses that are

checked below:

- Dock
- Dock Cable Anchor
- Dredge

(Signature)

(Date)

