

# The South Carolina Court of Appeals

Duke Energy Corporation, Respondent,

v.

South Carolina Department of Revenue, Appellant

Appellate Case No. 2017-001260

**RECEIVED**

NOV 08 2017

SC Court of Appeals

---

## ORDER

---

Respondent has filed a motion to dismiss this appeal, arguing Appellant failed to timely serve Respondent's counsel of record with the notice of appeal. In its return, Appellant explains that it timely served a notice of appeal on Respondent's attorney Eric S. Tresh; however, Appellant concedes the notice of appeal was for a separate and unrelated case. We find that the error in serving Mr. Tresh with a notice of appeal for an unrelated case is more than a mere clerical error. *See Weatherford v. Price*, 340 S.C. 572, 577, 532 S.E.2d 310, 313 (Ct. App. 2000) (noting "a mere clerical error in a [n]otice of [a]ppeal does not warrant dismissal of the appeal" (emphasis added)). Although Appellant subsequently served Mr. Tresh with the correct notice of appeal, Appellant concedes it did not do so within thirty days of receipt of the underlying order. Further, although Appellant notes that it timely served attorney Burnett R. Maybank, III, with a notice of appeal for this case, Mr. Maybank does not represent Respondent in this matter.

After careful consideration, this appeal is dismissed because Appellant failed to timely serve Respondent with the notice of appeal. *See* Rule 203(b), SCACR (providing in an appeal from the administrative law court, the notice of appeal shall be served on all respondents within thirty days after receipt of the decision); Rule 263(b), SCACR (providing an appellate court cannot extend the time for serving the notice of appeal under Rule 203); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."). The remittitur will

be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

cc:

Jason Phillip Luther, Esquire  
Sean Gordon Ryan, Esquire  
Eric S. Tresh, Esq, Esquire  
Marsha Anne Ward, Esquire  
Maria M. Todorova, Esq, Esquire

**FILED**

October 30, 2017



**South Carolina Court of Appeals**

JENNY ABBOTT KITCHINGS, CLERK  
POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211

NOV 08 2017  
SC 290  
NOV 08 2017  
FBI 2.1

Hasler  
10/30/2017  
**US POSTAGE**

FIRST-CLASS MAIL  
**\$00.46<sup>0</sup>**  
ZIP 29201  
011D12602824



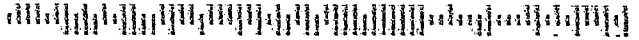
**RECEIVED**  
NOV 08 2017  
SC Court of Appeals

MARSHA ANNE WARD  
999 PEACHTREE ST, NE  
ATLANTA GA 30309

NIXIE 300 DC 1 0011/06/17

RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD

BC: 29211162929 \*1554-00571-30-37



ANK  
29211>1629  
30309-391599