



The South Carolina Court of Appeals

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November 17, 2017

The Honorable Jana E. Shealy
1205 Pendleton Street
Columbia SC 29201

REMITTITUR

Re: Duke Energy v. SCDOR
Lower Court Case No. 2012ALJ170031CC
Appellate Case No. 2017-001260

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

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

The South Carolina Court of Appeals

Duke Energy Corporation, Respondent,

v.

South Carolina Department of Revenue, Appellant.

Appellate Case No. 2017-001260

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.

A large, stylized handwritten signature in black ink, appearing to read 'James E. ...', is written over a horizontal line. Below the line, the text 'FOR THE COURT' is printed in a simple, sans-serif font.

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