



# 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

**RECEIVED**

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

DEC 04 2017  
SC Court of Appeals

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

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## ORDER

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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

**FILED**

October 30, 2017

cc:

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



South Carolina Court of Appeals

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