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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appellate Case No. 2018-000475

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No. 2017-32-E

3109 Hwy. 25 S. L.L.C. d/b/a
25 Drive-In and Tommy McCutcheon,..... Respondent,

v.

Duke Energy Carolinas, LLC,Appellant.

RECORD ON APPEAL

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INDEX

Orders

Public Service Commission Order No. 2017-774,
Docket No. 2017-32-E (issued Dec. 21, 2017)..... 3

Public Service Commission Order No. 2018-101,
Docket No. 2017-32-E (issued Feb. 13, 2018) 10

Public Service Commission Order No. E-976,
Docket No. 13,277 (issued July 13, 1966)..... 14

Payne v. Duke Power Co., No. 85-CP-24-381
(8th Cir. Mar. 22, 1990)..... 19

Pleadings

Complaint..... 62

Pre-Filed Direct Testimony of Douglas T. Fowler 70

Pre-Filed Direct Testimony of Jesse S. Gonzalez..... 84

Pre-Filed Direct Testimony of Theo L. Lane..... 87

Pre-Filed Direct Testimony of Joel M. Lunsford..... 93

Pre-Filed Supplemental Testimony of Joel M. Lunsford..... 103

Pre-Filed Direct Testimony of Tommy McCutcheon..... 106

Pre-Filed Rebuttal Testimony of Carolyn McCutcheon 110

Pre-Filed Direct Testimony of James R. Calhoun 124

Respondent’s Proposed Order..... 128

Transcript

Transcript of Proceedings, Hearing #17-11605,
Volume 1 (Apr. 5, 2017)..... 141

Transcript of Proceedings, Hearing #17-11605,
Volume 2 (Apr. 19, 2017)..... 300

Other Documents

Act No. 1293, 1966 S.C. Acts 3294..... 468

Certificate of Appellant..... 473

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2017-32-E - ORDER NO. 2017-774

DECEMBER 21, 2017

IN RE: 3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-In) ORDER GRANTING
and Tommy McCutcheon,) RELIEF
Complainant/Petitioner v. Duke Energy)
Carolinas, LLC, Defendant/Respondent)

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Complaint of Tommy McCutcheon (“McCutcheon” or “Complainant”), owner of 3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-In, against Duke Energy Carolinas, LLC (“Duke” or “DEC”), asserting that DEC wrongfully transferred McCutcheon off the Greenwood Rate.

A hearing was held in this matter on April 5, 2017, and April 19, 2017. Complainant was represented by Alexander G. Shissias and John J. Fantry, Jr., of The Shissias Law Firm, L.L.C. DEC was represented by Rebecca J. Dulin, Esquire, Senior Counsel for DEC, and Frank R. Ellerbe, III of Sowell, Gray, Robinson, Stepp & Laffitte, LLC. The Office of Regulatory Staff (“ORS”) was represented by Jeffery M. Nelson, Esquire. In support of the Complaint, the Complainant presented testimony from Tommy McCutcheon, Carolyn McCutcheon, and James R. Calhoun and Exhibits that were marked Hearing Exhibits 1 through 4. DEC presented testimony from Douglas T. Fowler, Jesse Gonzalez, Theo Lane, and Joel Lunsford and Hearing Exhibits 5 through 9. The ORS presented testimony from April Sharpe.

On January 27 of 2017, the Commission received a Complaint from Mr. Tommy McCutcheon regarding the revocation of his access to the Greenwood Rate by Duke Energy Carolinas, LLC. More specifically, McCutcheon's business entity, a drive-in movie theater in Greenwood, known as 3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-In, was removed by Duke Energy from the Greenwood Rate in June of 2015. The current action arises out of a series of events taking place at the theater and/or related to its electric service between May 30, 2015, and June 18, 2015.

The theater was built in the 1940's and purchased by McCutcheon in 2008, at which time it had not been in operation in 25 years. After the purchase and during subsequent operation, McCutcheon added, among other things, modern cooking equipment and new projection screens - one in 2008 and one in 2016 - in addition to the single original screen.

The theater was, until June of 2015, subject to the Greenwood Rate. The Greenwood Rate is a product of Act No. 1293 of 1966. The Act approved a negotiated contract for the purchase of the Greenwood County Electric Power Commission's facilities by Duke Power Company – the predecessor to Duke Energy Carolinas, LLC. One of the provisions of the Act was that existing electrical connections at the time of the sale were to be charged the lower of the then-current rate being charged by Greenwood, or the Duke rate. At the time, it was anticipated that electric prices would be going down, and Greenwood customers would eventually be migrated to the Duke rate. This expectation proved to be dramatically incorrect. As a result, there are a number of customers – about 2,540 – that continue to be on the Greenwood Rate. Because it is now substantially lower

than the regular Duke Rate, the Complainant has an interest in retaining access to the Greenwood Rate.

The Complainant was removed from the Greenwood rate in June of 2015 due to certain events. It is uncontested that, on Saturday, May 30, 2015, the theater experienced a power outage during which a very bright spark and burned cable were observed. The cable, in this case, was the service wire that connects the theater facility to the pole-mounted transformer. A Duke Energy crew was able to repair the damage and enabled the theater to continue operations that night. It is also uncontested that two weeks later, on Saturday, June 13, 2015, there was a second power outage. During this second outage, it was observed that the coating had melted off the service wire, and it was smoking. Once again, a Duke Energy crew repaired the line, enabling the theater to continue showing films for the rest of the night.

Following the second outage, the Duke Construction and Maintenance Supervisor for the area, Tommy Fowler, visited the theater and inspected the facilities. He determined that the existing facilities were insufficient to handle the load demand of the theater and that the electrical facilities serving the theater needed to be upgraded. The record shows that the fuse on the primary side of the pole-mounted transformer melted. This is indicative of excess current flow, which would result in a thermal overload. In this case, we have uncontested testimony that the service line providing power to the theater was a single 2/0-3 aluminum triplex wire, which has a carrying capacity of 185 amperes. As the melted fuse and wire were indicators of thermal overload, Duke Energy determined a replacement of the facilities serving the theater was necessary. The Company replaced the single 2/0

aluminum triplex wire with two 4/0 triplex wires, with a load capacity far above the originally installed service wires. At this time, Duke also replaced the 25 KVA pole-mounted transformer with a 50 KVA transformer and replaced the current transformers and metering equipment at the facility. Testimony was presented that, using data gathered following the repairs, improvements, and reconnection of the facility, demand of the theater was calculated to be 225 amperes, or about 122% of the rating of the line¹. Pursuant to these modifications and its existing policy, Duke Energy removed the Complainant from the Greenwood Rate.

On June 13, 2015, however, Duke Energy's installed equipment did not meter the load being carried over the service line, but merely the amount of energy that had been used in kilowatt-hours, which is not necessarily indicative of peak load. The calculation of 225 amps drawn by the theater resulted from the readings taken from the new metering equipment installed as upgrades to the existing facilities. The load information, though, was not available at the time of the outages. It would seem that, particularly in the case of a sophisticated commercial establishment, measures would be taken by the operator – here, the Complainant – to ensure compliance within the limits of the Greenwood Rate. In fact, we were presented with testimony that supports that supposition: equipment was chosen for upgrades to the theater which were energy efficient and would operate on single-phase power.²

¹ Lunsford Direct Tr. at p. 238

² T. McCutcheon Direct Tr. at p. 18

Clearly, it is a critical matter for the utilities to ensure safe, reliable delivery of power to its customers. In this case, a smoked-damaged building with burning cables had been reported. That problem required resolution in a timely fashion, and it was resolved. However, it remains important to provide information to customers and arrive at a safe and economical solution to the problem. There must be a balancing of interests. It would not be appropriate to punish Duke for taking action to safely provide power in what was an unsafe situation. However, it would not be appropriate to have the Complainant -- operating for a number of years in apparent compliance with the Greenwood Rate, and taking measures to ensure compliance with the Rate -- to be removed from the rate without specific proof that they had become non-compliant with the rate. Nevertheless, now that the facilities serving the theater have been greatly upgraded, it would not seem reasonable to give the theater access at the Greenwood Rate to capacity significantly greater than that which it would have access to under the original facilities serving the premises.

The balancing of the interests of the parties results in this Commission allowing the Complainant to have an opportunity to return to the Greenwood Rate, with some limitations.

IT IS THEREFORE ORDERED THAT:

1. There is to be no allowance for recovery for the difference in the normal Duke Rate and the Greenwood Rate from the time the theater was removed until the time that the Complainant is placed back on the Greenwood Rate.
2. The Complainant shall not be granted fees or costs as requested.

3. The Complainant shall be allowed to continue on the Greenwood Rate only so long as the theater stays within the original limitations of the equipment serving the premises. Thus, if the theater experiences a demand as indicated by metered peak usage corresponding to amperage greater than the original capacity of the service line - 185 Amperes – it shall be proper to remove the Complainant from the Greenwood Rate again, and be placed permanently on the applicable Duke rate. The demand shall be measured in a manner consistent with the demand component measurement of Duke Energy Carolinas, LLC's commercial customers that are subscribed to a demand rate schedule. Accordingly, demand shall be measured using rolling 30-minute intervals, with the demand being calculated as the highest 30-minute average demand during each billing period.

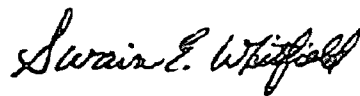
4. Duke Energy Carolinas, LLC shall provide electric metering information sufficient for the Complainant to determine peak electric usage.

5. All relief herein granted shall take effect in the first billing cycle after January 1, 2018, unless the Complainant communicates to the Commission and the Company that he would like more time to come into compliance with the conditions of our ruling before re-entering the Greenwood Rate.

DOCKET NO. 2017-32-E – ORDER NO. 2017-774
DECEMBER 21, 2017
PAGE 7

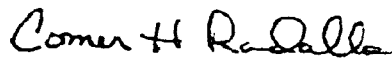
6. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Swain E. Whitfield, Chairman

ATTEST:



Comer H. Randall, Vice Chairman

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-32-E - ORDER NO. 2018-101
FEBRUARY 13, 2018

IN RE: 3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-In) ORDER DENYING
and Tommy McCutcheon,) REQUEST FOR
Complainant/Petitioner v. Duke Energy) RECONSIDERATION OR
Carolinas, LLC, Defendant/Respondent) REHEARING

This matter comes before the Public Service Commission of South Carolina (“Commission”) pursuant to S.C. Code Ann. Section 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825(A)(4), and applicable South Carolina law. Respondent Duke Energy Carolinas, LLC (“DEC” or the “Company”) petitioned the Public Service Commission of South Carolina (“Commission”) to rehear or reconsider its grant of relief in Order No. 2017-774. A hearing was held in this matter on April 5, 2017, and April 19, 2017, and the Commission served its Order on DEC on December 21, 2017. This Petition was filed January 2, 2018, with the Complainant responding in opposition to the Petition on January 5, 2018.

The Petition states that the factual findings of the Commission in Order No. 2017-774 do not provide a basis for the relief granted, but that is not the case. The Petition mischaracterizes our Order as requiring DEC to place the Complainant back on the Greenwood Rate “unless and until the demand of the Complainant’s business exceeds the capacity of the facilities that were replaced in June 2015.” However, the Commission Order requires that the Complainant be given access to the Greenwood Rate as long as he stays

within the original limitations of the equipment that was installed to serve the premises, which was in place at the time of Act 1293 of 1966, and the subsequent purchase of Greenwood County Electric Power Commission by Duke (at the time, Duke Power Company). We are limiting, in effect, the ability of the Complainant to exceed the facility capacity equal to the facility capacity available over 50 years ago at the site, unless the Complainant migrates off the Greenwood Rate. As a practical matter, this may be more restrictive than the previously unmonitored limitation, which used the electrical delivery facility's physical limits as its only load restriction.

The Commission's ruling, which is specific to the facts of this case, does not unjustly enrich the Complainant, nor unduly penalize the Respondent. It merely affords an active participant on the Greenwood Rate an opportunity to comply with the facility limitations that he had been unaware might have been strained. The Commission did not have testimony to support the position that the demand load was the same after installation of the new facilities as before. It is questionable whether the Commission could have been presented with credible testimony to that effect, since the demand load was not being measured or reported.

Additionally, Order No. 2017-774 is neither inconsistent with the *Payne v. Duke Power Co.*, 304 S.C. 447, 405 S.E.2d 399 (1991) Supreme Court Opinion, nor does it go further than to clarify, as applied to the facts and circumstances of this case, the Commission's own rulings from 1966 forward. DEC's Petition characterizes Act 1293, *Payne*, and prior Commission rulings as requiring that a change in a customer's needs that requires a change in the facilities used by the Company to provide service to that customer

means the customer is no longer eligible for the Greenwood Rate. We note that Act 1293 does not enumerate what constitutes a change in character of a connection, nor how such a change may originate. The Supreme Court’s decision in *Payne* does not provide an exhaustive list of what is and is not considered a “change in character” of the connection. However, to the extent that a customer changes his service from single- to three-phase, or from a residential to commercial operation (or likewise the reverse of each), then the Court has spoken to the change of applicability of the Greenwood Rate.¹ We decline to address an expansion, contraction, or modification of previously established principles and interpretations of what constitutes a change in the character (or type) of the connection in this instance. Here, the Commission found an inadequacy of information available to make a determination as to whether such a change in character occurred. Such a finding is not a departure from prior interpretation of Act 1293 nor does it differ from the longstanding prior practice as recognized by the Court and the Commission.

The Commission agrees, as DEC points out, that Act 1293 does not provide an opportunity to re-qualify for the Greenwood Rate.² Nor has the Commission provided such an opportunity. Rather, the Commission simply concluded that inadequate information was available to determine that a change in character was necessitated in this case due solely to the actions of the Complainant.

¹ “[W]e agree with the trial court that a change in either the character of the connection (e.g. from single to three phase) or use of the premises (e.g. from **402 residential to commercial) constitutes a new connection effectuating a transfer to Duke rates.” *Payne v. Duke Power Co.*, 304 S.C. 447 (1991)

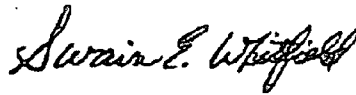
² “[The] PSC, the agency charged with administering Act 1293, has, without exception, construed it as establishing a closed rate schedule, that is, one precluding retransfer of customers.” *Payne v. Duke Power Co.*, 304 S.C. 447 (1991)

The Commission has struck an appropriate balance between the needs of the utility to provide safe, reliable, and economic power, and the concerns of the consumer to make informed and self-determinative actions to exercise its rights under its approved electric tariff.

For these reasons the Commission denies the Petition for Rehearing or Reconsideration.

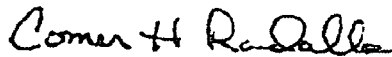
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Swain E. Whitfield, Chairman

ATTEST:



Comer H. Randall, Vice Chairman



State of South Carolina

The Public Service Commission

ADDRESS REPLY TO:
ELECTRICAL UTILITIES DIVISION
329 WADE HAMPTON STATE OFFICE BUILDING

Columbia 1, S. C.

July 13, 1966

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN RE: Rates for Customers
Purchased from Greenwood County
Electric Power Commission

BEFORE THE PUBLIC SERVICE COMMISSION

ORDER NO. E-976

DOCKET NO. 13,277

TO: DUKE POWER COMPANY, CHARLOTTE, NORTH CAROLINA

WHEREAS, this Commission's Order E-969 in Docket No. 13,277 approved the purchase by Duke Power Company of the electric properties, except the Buzzard Roost Hydro Project, of Greenwood County Electric Power Commission; AND

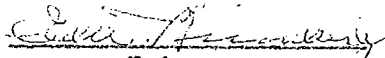
WHEREAS, the Act providing for the Referendum that authorized the sale of the electric system provided that after the transfer of the properties the lower of the Greenwood County or Duke Power Company rates would be used in billing the customers transferred from Greenwood to Duke; AND

WHEREAS, Duke Power Company has requested approval of the rates in use by Greenwood before the transfer for billing those customers who would receive a lower bill under the Greenwood rates than under the applicable Duke rates;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Schedule A, Schedule B-L, Schedule EL, Industrial Power Rate and Municipal Power Rate, copies of which are attached to and made a part of this Order be, and the same hereby are approved for billing those customers transferred from Greenwood County so long as bills under these rates are lower than bills under approved Duke Power Company rates; AND

IT IS FURTHER ORDERED, that no new customers shall be billed under the attached rates, and that whenever a customer is disconnected for any reason, the proper Duke rate shall be applied when the customer is reconnected.

BY ORDER OF THE COMMISSION.


Chairman

ATTEST:


Executive Secretary

July 13, 1966

STATE OF SOUTH CAROLINA)	
	)	BEFORE THE PUBLIC SERVICE COMMISSION
COUNTY OF RICHLAND)	
-----)	
IN RE: Rates for Customers	)	ORDER NO. E-976
Purchased from Greenwood County	)	DOCKET NO. 13,277
Electric Power Commission)	
-----)	

TO: DUKE POWER COMPANY, CHARLOTTE, NORTH CAROLINA

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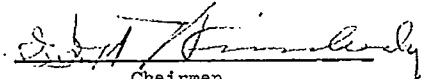
WHEREAS, the Act providing for the Referendum that authorized the sale of the electric system provided that after the transfer of the properties the lower of the Greenwood County or Duke Power Company rates would be used in billing the customers transferred from Greenwood to Duke; AND

WHEREAS, Duke Power Company has requested approval of the rates in use by Greenwood before the transfer for billing those customers who would receive a lower bill under the Greenwood rates than under the applicable Duke rates;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Schedule A, Schedule B-L, Schedule SL, Industrial Power Rate and Municipal Power Rate, copies of which are attached to and made a part of this Order be, and the same hereby are approved for billing those customers transferred from Greenwood County so long as bills under these rates are lower than bills under approved Duke Power Company rates; AND

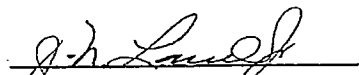
IT IS FURTHER ORDERED, that no new customers shall be billed under the attached rates, and that whenever a customer is disconnected for any reason, the proper Duke rate shall be applied when the customer is reconnected.

BY ORDER OF THE COMMISSION.



 Chairman

ATTEST:



 Executive Secretary

GREENWOOD COUNTY ELECTRIC POWER COMMISSION
RURAL ELECTRIC SYSTEM
Rate Schedules

SCHEDULE A
Farm & Home Service

First 40 KWH or less per month - \$ 1.50
Next 40 KWH @ 3¢/KWH
Next 170 KWH @ 2¢/KWH
Next 200 KWH @ 1.5¢/KWH
Over 450 KWH @ 1.25¢/KWH

Minimum Monthly Charge: \$1.50 per month
Plus 75¢ per KVA of transformer above 3 KVA capacity

SCHEDULE B-1
Commercial & Industrial Lighting and Power Service

Monthly Capacity Charge:

First 35 KW of billing demand - No Charge
All over 35 KW of billing demand @ \$1.00/KW

Monthly Energy Charge:

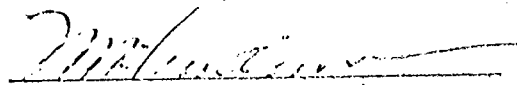
First 40 KWH or less per month - \$1.50
Next 110 KWH @ 4¢/KWH
Next 4850 KWH @ 2¢/KWH
Over 5000 KWH @ .9¢/KWH

Monthly Minimum Charge: 75¢ per KVA of transformer capacity

SCHEDULE SL
Outdoor Lighting

7,000 Lumen Mercury \$3.00/Mo
20,000 Lumen Mercury \$5.00/Mo.

This is to certify that this rate was and still is in effect as of
March 4, 1966.


T. W. Henderson, General Manager
Greenwood County Electric Power Commission

MAY 27 1966

GREENWOOD COUNTY ELECTRIC POWER COMMISSION

MUNICIPAL POWER RATE

DEMAND CHARGE:

\$1.00 per kilowatt of maximum demand determined as intergrated

(60) sixty minute peak.

ENERGY CHARGE:

First	100,000	kilowatt	hours	per	month	at	5	Mills	per	K.W.H.
Next	200,000	"	"	"	"	"	4	"	"	"
All Over	300,000	"	"	"	"	"	3	"	"	"

In no case shall the energy charge plus the demand charge aggregate

less than 7.3 Mills per K.W.H. for current consumed.

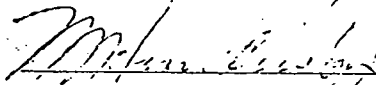
MINIMUM MONTHLY BILL:

\$1.00 per kilowatt of maximum intergrated monthly demand for current
month plus energy charge.

This is to certify that this rate was and still is in effect as of
March 4, 1966.

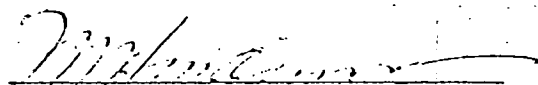
Effective April 1, 1962 - Rural Electric
Systems

The Rural Electric Systems are invoiced on
above rate with .3 Mill per K.W.H. credit
for furnishing substations.



T. W. Henderson

May 27, 1966



T. W. Henderson, General Manager
Greenwood County Electric Power Commission

MAY 27 1966

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GREENWOOD COUNTY ELECTRIC POWER COMMISSION
INDUSTRIAL POWER RATE

ENERGY CHARGE:

First 100,000 Kilowatt hours per month at 10.0 Mills per K.W.H.
Next 100,000 Kilowatt hours per month at 9.0 Mills per K. W.H.
Next 100,000 Kilowatt hours per month at 8.0 Mills per K. W.H.
Next 100,000 Kilowatt hours per month at 7.0 Mills per K. W.H.
All Over 400,000 Kilowatt hours per month at 6.5 Mills per K. W.H.

BONUS: For improved Load Factor the POWER PLANT will allow a discount on total of each month's billing as follows:

For a Load Factor of 50% or under no discount will be allowed.

For a Load Factor of 50% to 55% a Discount of 3% will be allowed.
For a Load Factor of 55% to 60% a Discount of 4% will be allowed.
For a Load Factor of 60% to 65% a Discount of 5% will be allowed.
For a Load Factor of 65% to 70% a Discount of 6% will be allowed.
For a Load Factor of 70% to 75% a Discount of 7% will be allowed.
For a Load Factor of 75% to 80% a Discount of 8% will be allowed.
For a Load Factor of 80% to 85% a Discount of 9% will be allowed.
For a Load Factor of over 85% a Discount of 10% will be allowed.

Per Cent Load Factor in this contract -

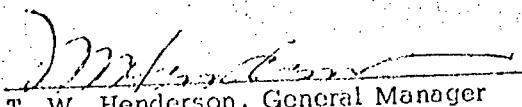
$$\frac{\text{Kilowatt Hours for the Month} - \% \text{ Load Factor.}}{\text{Maximum K.W. Demand X 730}}$$

In no case in which this Bonus applies shall the energy charge aggregate less than 7.0 Mills per K.W.H. for current consumed.

MINIMUM MONTHLY BILL:

\$.75 per KVA of installed transformer capacity or contract demand.

This is to certify that this rate was and still is in effect as of March 4, 1966.


T. W. Henderson, General Manager
Greenwood County Electric Power Commission
MAY 27 1966

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

COURT OF COMMON PLEAS

Filed Court of Common Pleas
Eighth Judicial Circuit
Greenwood, South Carolina

Lota G. Payne, et al.,)
individually, and on behalf)
of all others similarly)
situated, as a class,)

3-22-90 Date
3 pm

Plaintiffs,)

vs.)

ORDER

Duke Power Company and)
Greenwood County,)

File No. 85-CP-24-381

Defendants.)

Ball H
H2853

This action was originally filed on March 17, 1980. The Complaint alleged that Duke Power Company had violated the provisions of its offer to purchase the facilities of the Greenwood County Electric Power Commission and the terms of the enabling legislation by systematically transferring the members of the Plaintiff Class to the Duke Power Company rate schedule. Plaintiffs alleged that these actions violated the provisions of Act 1293 of 1966 which provided as follows:

"The rates to be charged for electric power for all connections which exist at the consummation of the sale shall be the lower of the rates charged by the Greenwood County Electric Power Commission and Duke Power Company and the same shall not be grounds for any claim alleging discrimination. The rates to be charged for electrical power for connections after the date of the sale shall be the applicable rates of Duke Power Company. As used herein the word 'connections' shall be deemed to mean the physical connection of a residence or business establishment and shall have no reference to the person or business firm occupying the premises so connected, and the benefit of the lower rate shall continue although the person or firm occupying such premises may change from time to time." [Emphasis added].

PT#
w/p

ATTEST A TRUE COPY
PAY ESTES
CCCP AND CS
GREENWOOD COUNTY
SC

Plaintiffs alleged that, subsequent to the sale of Greenwood County's electrical generation and transmission system to Duke in 1966, Duke has systematically assigned approximately 5,000 to 6,000 old Greenwood ratepayers to the Duke rate in three separate categories:

1. Upwards of 4,000 former Greenwood ratepayers assigned to the Duke rate under Duke's systematic monthly billing analysis.
2. Approximately 600 former Greenwood ratepayers assigned to the Duke rate because of a change in the character of their connection.
3. Four former Greenwood ratepayers assigned to the Duke rate because of a change from residential to commercial.

Plaintiffs seek a declaratory judgment as to the meaning of that portion of the enabling legislation quoted above as it applies to these three categories, damages and injunctive relief. Plaintiffs also seek a Writ of Mandamus against Greenwood County to enforce the provisions of their sales agreement with Duke Power Company.

Defendant Duke contends that Duke has complied with the contract and also pleads the statutes of limitations and laches. Defendant Greenwood pleads in addition that the transfer was a complete sale and imposed no duty on Greenwood to monitor compliance by Duke.

Subsequent to the filing of the Complaint, Duke filed a rate application before the Public Service Commission, and subsequently an action in court, which resulted in the South Carolina

Handwritten initials:
RHR
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Supreme Court's opinion in Duke Power Co. v. South Carolina Public Service Commission, 284 S.C. 81, 326 S.E.2d 395 (1985). In that case, the court held that the enabling legislation under which Duke purchased the old Greenwood Electric Power Commission system [Act 1293 of 1966] was constitutional, and that the Public Service Commission had no power to increase the old Greenwood rates.

Plaintiffs' Motion for Class Certification was granted by Special Judge George M. Stuckey, Jr. on March 30, 1988. Thereafter, on August 2, 1988, Judge Bruce Littlejohn, who was, at that time, assigned to hear the case, entered an Order:

1. Requiring notice to the class via publication in the Greenwood Index Journal once a week for four consecutive weeks; and,
2. Separating the case into two stages -- the first on the issue of liability of defendants to the class and the second stage on damages, if it was determined in the first stage the class was entitled to relief.

An Affidavit of Compliance regarding the Notice was thereafter filed.

The case was thereafter assigned to me as special judge to try the case. A non-jury trial was held during the week of May 1, 1989. Thereafter the issues were extensively briefed by all parties. I have now studied the entire file, including the trial transcript, all exhibits, depositions, briefs, oral arguments, etc. Based upon the evidence and the record, I make the following findings of fact and conclusions of law hereinafter set forth pursuant to Rule 52(a) South Carolina Rules of Civil Procedure.

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FINDINGS OF FACT

1. The parties are subject to the jurisdiction of this Court.

2. This class action was instituted on March 17, 1980, some fourteen years after the sale to Duke.

3. Shortly after the Greenwood County Electric Power Commission (GEPC) made known its interest in selling its electric distribution system to Duke, representatives of the parties met. At this May 10, 1965 meeting the parties discussed the best method of accomplishing an orderly merger of the two systems and came to an understanding. Duke Exh. D1[1]. Duke's May 28, 1965 offer to purchase the properties of the GEPC was made in the context of this understanding which included the following elements:

(a) Former GEPC customers existing on the date of the sale to Duke would be placed on the appropriate Duke rate if their bills thereon were lower than bills on the old Greenwood County rates, and the old Greenwood County rates would continue while bills on the old Greenwood County rates were lower than on Duke's rates;

(b) The old Greenwood County rates would be closed as of the date of acquisition and Duke's rates would be applicable to any new connection; and

(c) The criteria for serving an old Greenwood County customer on Duke's rates or leaving a customer on the old Greenwood County rates would be a comparison of the totals of the bills computed on both sets of rates for the previous twelve months. Duke Exh. D1[1][4].

P#4
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4. Duke's offer was made at a time when its rates had been reduced five times in the preceding six years and at a time when the Duke's costs were on a downward trend and were anticipated to decline further, as was occurring nationwide. Duke Exh. D1[1][4]. The testimony is uncontradicted that at the time Act 1293 was passed all parties anticipated that electric rates would decrease, not increase.

5. On May 28, 1965, Duke offered to purchase all of the assets of the Greenwood County Electric Power System and the Greenwood County Rural Electric System in a letter to the Greenwood County Legislative Delegation upon certain stated conditions, including the following:

"As to all customers other than municipalities and cooperatives, Duke Power Company system wide rates will be applied to those Greenwood County customers whose bills would be lower on Duke rates. On those Greenwood customers whose bills would be higher on Duke rates, the Greenwood County rate will be left in effect. Thus, no customer would receive an increase in rates and 30% of the customers will receive reductions in rates . . . Duke rates would be applied to all new connections after consummation of the sale . . ." [Plaintiffs' Exhibit #1, p. 3, ¶ 6].

6. Thereafter, and in response to this offer, the General Assembly adopted Act 1293 of 1966, which provided for a referendum to be held on April 12, 1966, to ascertain the wishes of the qualified electors of Greenwood County on the question of whether the County electric power system should be sold to Duke. The Act provided that, if more than one-half of the voters voted in favor of the sale, the Greenwood County Finance Board would convey the system to Duke. Among the terms and conditions of the sale as set forth in the enabling legislation were the following:

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"The rates to be charged for electric power for all connections which exist at the consummation of the sale shall be the lower of the rates charged by the Greenwood County Electric Power Commission and Duke Company . . . The rates to be charged for electric power for connections after the date of the sale shall be the applicable rates of Duke Power Company. As used herein, the word 'connection' shall be deemed to mean the physical connection of a residence or business establishment and shall have no reference to the person or business firm occupying the premises so connected, and the benefit of the lower rate shall continue although the person or firm occupying such premises may change from time to time." [Plaintiffs' Exhibit #2, p. 3, ¶3].

7. Act 1293 was signed into law on March 11, 1966.

8. Prior to the referendum Duke, itself, did little actual campaigning. However, it organized and utilized a "Citizens for Greenwood County Progress" committee, which conducted an active campaign. This citizens committee utilized several advertisements, including the follows:

(a) A radio ad which ran for two weeks stating in part as follows:

"In spite of the speculation you may have heard, Duke Power cannot increase electric rates if we accept its offer to buy the County electric system . . . Duke is prohibited by South Carolina law from increasing Greenwood County's electric rates. The law says that Duke must charge either its rates or the County's rates, whichever are lower. No one will get a rate increase . . . " [Plaintiffs' Exhibit #52, p. 7].

(b) A printed handout addressed "To Citizens of Greenwood County" stating that "Greenwood County's position after sale to Duke" would be the "same or lower rates." [Plaintiffs' Exhibit #53].

(c) A quarter-page ad in the Greenwood Index-Journal on April 6, 1966, also stating that "Greenwood County's position after sale to Duke" would be the "same or lower rates." [Plaintiffs' Exhibit #56].

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(d) A handout to members of the "Citizens Committee" setting forth "points to stress favoring the Greenwood County Sale" including the following:

"No one will receive higher electric rates. If the Greenwood rate is lower than Duke, it will apply for all existing customers . . ." [Plaintiffs' Exhibit #58, p. 1, ¶ 6].

9. In addition to these "Citizens Committee" ads, Duke's Senior Vice President, G. G. Mattison, was quoted extensively in an article in the Greenwood Index-Journal on April 8, 1966, entitled, "Duke Official Lashes Out At 'Rumors and Falsehoods.'" In this article, Mr. Mattison stated in part as follows:

"The law provides that the rates to be charged County electric customers will be whichever is lower, the County rate or the Duke Power rate. We will abide by this law and Duke Power will assist in defending to a successful conclusion any lawsuit brought by anyone contesting this provision . . .

"Those who say that Duke will not charge the lower of the two rates are either uninformed . . ., or they are attempting to deliberately mislead the people of Greenwood County." [Plaintiffs' Exhibit #55].

10. All of these advertisements and statements, and Act itself, state that, upon the completion of the sale, Duke will charge the lower of the applicable two rates. Nowhere in any of the advertisements, statements, or in the Act itself, is there any provision for re-transfer to another rate once the initial transfer to the lower rate is made.

11. The provisions in Act 1293 were structured so that GEPC system and its customers could be integrated into Duke's system and rate schedules at that time without any customer

PA#7
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receiving an increase in rates charged for electric service. Duke Exh. D1[4]. This manner of integrating a small system into a much larger system was in accordance with the usual industry practice of applying the purchasing utility's rate schedules when the bills computed thereon were less than bills computed using the selling utility's rate schedules. T. 222-226. In this way, the former GEPC customers were given the full advantage of the lower of the two rates and some 30 percent received a reduction in the rates they were paying. Once the sale to Duke received regulatory approval, the old Greenwood County rate schedules were to be "closed", i.e., not offered to any new customers after the sale date, and there would be only one changeover of customers from the Greenwood County rate schedules to Duke's rate schedules. All of this was fully discussed with the Greenwood Delegation to the South Carolina General Assembly existing at that time, the GEPC officials, and with the South Carolina Public Service Commission. Duke Exh. D1[1][4].

12. A referendum was held pursuant to the enabling act on April 12, 1966, at which a majority of the electors voted in favor of the sale.

13. On April 18, 1966, Duke filed an application with the Federal Power Commission seeking an order pursuant to §203 of the Federal Power Act authorizing Duke to acquire the Greenwood County Electric Power System. An order was issued by the Federal Power Commission on June 29, 1966, approving the acquisition, based on certain conditions, with the sale to be consummated on July 1, 1966. Among the conditions set forth by the Federal Power

PA 8
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Commission were the following:

"The rates to be charged for electric energy for all physical connections of residences or business establishments existing at the time of consummation of the sale shall be the lower of the rates charged by Greenwood Commission and Duke respectively. The rates to be charged for electric energy for such physical connections made after the consummation of the sale shall be the applicable rates of Duke." [Plaintiffs' Exhibit #3, p. 5, §5].

14. The sale was consummated on July 1, 1966.

15. At or about the time of the consummation of the sale, Duke's district manager, T. C. Berry, authored a letter "To Our New Customers" which stated in part as follows:

"We are happy to welcome you as a customer of Duke Power Company.

"We are now contacting each of the former customers of Greenwood County Rural System to see which of the Duke residential rates applies to their locations. The appropriate rate depends on whether or not certain appliances are in use. Therefore, until this is finished, we will continue to compute your bill on the Greenwood rate.

"After the proper Duke rate has been determined, the electric bill for your location will be computed for the twelve months preceding July 1, 1966, on both the Duke and Greenwood rates.

"If the Duke rate is lower, you will be billed on the Duke rate for all future billing at that location, and you will be given a credit for any difference between the two rates rendered since the 1st of July. In all probability, this will occur within two to three months.

"If your bill is lower on the Greenwood rate you will continue to be billed on the Greenwood rate at your location. Every month a comparison will be made and when the 12 month billing becomes lower on the Duke rate, your billing will be changed to the Duke rate. Therefore, it will not be necessary that you request a change to the lower rate." [Plaintiffs' Exhibit #11].

P#9
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16. This letter was sent to all of the ratepayers in Duke's newly acquired territory. The letter made it plain to all customers that if at the time of the sale their rate was lower on the Duke rate, they would be billed at the Duke rate "for all future billings." If at the time of sale, their rate was lower on the Greenwood rate, the account would be monitored and if it ever became lower at the Duke rate, the billing would be changed to the Duke rate. Nowhere in the letter does it state that a customer would be changed back to the Greenwood rate if the Duke rate became higher. This letter was sent to all the new ratepayers in July or August, 1966.

17. Following the sale, the Public Service Commission, by Order No. E-976, dated July 23, 1966, (Duke Exh. 3) approved the old Greenwood County rate schedules for billing. S.C. Code Ann. §58-27-830 (1976) prevents utilities from charging customers for service except on rates "prescribed in the schedules . . . then on file" with the PSC. Duke, therefore, was required to file the old Greenwood County rate schedules with the PSC and get the Commission's approval to charge such rates, where applicable. This was to accomplish the purpose of Act 1293 to provide service on the lower of the rates charged by the former Greenwood County Electric Power Commission, or Duke. Prior to the issuance of this order by the PSC, Duke notified the Commission by letter dated July 7, 1966, of the methodology proposed to accomplish the rate schedule comparisons necessary to carry out the terms of Act 1293. Duke Exh. 2. That letter specified that Duke would send a letter

p#10
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explaining the rate comparison method along with the first bill to each new customer (the old Greenwood County customers). The letter, which accompanied the first month's billing after the sale, also specified that Duke would use a twelve-month period preceding July 1, 1966, comparison on both the Duke and the old Greenwood County rates. If the bill computed on the Duke rate was lower, the customers would be billed on the Duke rate for all future billings at that location. (Emphasis added.) If the bill was lower on the old Greenwood rate, the customer would continue to be billed at that rate unless the Duke rate later became lower. Order No. E-976, dated July 13, 1966, drafted by Harry M. Lightsey, then general counsel for the PSC, (Duke Exh. 13) did not contemplate that Duke would be required to continue making a comparison once a customer was placed on Duke's standard systemwide rate schedules, because the rate was then the lower of the two rates. T.155, 156. Mr. Lightsey testified that the PSC's action simply confirmed the Legislature's intent to close the old Greenwood County rate schedules to "new" customers and to transfer to the standard Duke rates those customers who would receive lower bills thereunder. T.156, 157.

18. After the sale, Duke conducted a survey of the former Greenwood County customers to determine, based on electrical equipment present at each premises, the rate schedule for which the premises qualified. Next, in October, 1966, at the conclusion of the survey and, after calculating the 12-month billing comparisons, each customer received a bill for previous months' usage at that location. If the customer's account had been shown by the 12-month

p# 11
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survey to be less on the applicable Duke rate than on the old Greenwood County rate and lower during one or more of the three months following the sale, the bill also showed a credit indicated as a separate line on the bill as "CREDIT RATE DIFF" and a numerical amount demonstrating that the bill was lower on the appropriate Duke rate; that the account had been credited with the difference between the two rates for the months of July, August, and September, 1966; and that the account had been placed on the applicable Duke rate.

19. As a consequence of the merger of the old Greenwood County system with Duke's system, 10,387 electric accounts (9,807 active, 580 inactive) became Duke accounts on and after July 1, 1966. Almost 70 percent of the 3,375 locations transferred to the appropriate Duke rate in October, 1966 were sent a bill containing the above-described credit and notice. Duke Exh. D1[3], T.33, 126. The customers transferred to the applicable lower Duke rate realized savings of approximately \$41,000 annually. Duke Exh. D1[1][2].

20. Additionally, the bills sent by Duke to each customer in its Greenwood District every month after July 1, 1966, contained a rate code and an explanation of the various codes. The customers served on the old Greenwood County rate schedules were on one or more of the following rate schedule codes: ER (Residential), EC (Commercial), EL (Lighting), and EH (Electric Heating) which were the GEPC codes with an "E" prefix to each one. Customers on Duke's rate schedules were on one or more of the following codes: R (Standard Residential), RA (Residential All Electric), RW (Residential

P#12
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with Electric Water Heating), G (General Service), GA (General Construction), or I (Industrial). In no instance are the rate codes the same. When a customer was transferred from the old Greenwood County rate schedules, the rate code on the customer's bill was changed that month and for all succeeding months. Duke Exh. D1[3], T.127, 128.

21. Also, at the time it began serving the former Greenwood customers, Duke followed a practice of billing a "net" amount if the bill were paid by a certain billing date and a "gross" amount thereafter. Those customers served on Duke rate schedules received both the "net" and "gross" amounts on their monthly bills. Those customers served on the old Greenwood County rate schedules continued to receive monthly bills, as they had before Duke purchased the Greenwood system, with only a "net" amount due. Those customers transferred to the applicable Duke rate schedules immediately saw a difference in the presentation of the amount of their monthly power bill. Also, after rate increases were approved by the PSC, the customers clearly saw an immediate increase in the amount of their bill. This would have begun in January, 1971 after the first rate increase was approved by the PSC. Duke Exh. D1[3], T.30-36, 127.

22. Since July 1, 1966, Duke has constantly followed the terms of Act 1293 and the PSC Orders in changing locations to the applicable Duke rate where indicated by the 12-month bill comparison procedure, changes in connection, and changes in the character of the service location.

p# 13
21

23. The PSC was fully aware of and approved of Duke's handling of these locations in this manner. The chief legal counsels to the PSC from 1966 to 1980 stated that all rate schedule inquiries received by the PSC from Greenwood area residents about the reasons for changeovers to the standard Duke Power rates were answered in a manner consistent with the way Duke Power had implemented the terms of Act 1293. Duke Exh. D1[5][6][7][8].

24. According to the uncontradicted evidence, in 1966 Duke had discussed with the PSC staff and the Greenwood County Delegation that the Duke rate proposal involved one changeover and one changeover only.

25. In light of the circumstances existing at that time it was the contemplation of all that once a connection was transferred to the applicable Duke rate it would remain there, and that the old County rate would be thereafter closed with respect to that connection.

26. In addition to the foregoing reasons for transferring accounts to the applicable Duke rate, the Company fulfilled the pre-July 1, 1966 commitment made by the GEPC to the City of Greenwood by transferring electric distribution facilities and customers in newly-annexed areas from being owned and served by Duke to the City-owned and operated electrical system managed by the Commissioners of Public Works (CPW). The following transfers of Duke customers took place under the authority and direction of the PSC: July, 1968 - 438 locations; November, 1968 - 392 locations; December, 1968 - 276 locations; August, 1970 - 263 locations;

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April, 1972 - 293 locations; April, 1975 - 26 locations; and May, 1982 - 15 locations, for a total of 1,703 locations. Duke Exh. D1[2][3]. This substantial body of customers is not, and cannot be, covered by this action.

27. In April, 1970, Duke sought an 18 percent rate increase from the PSC. At the hearing before the PSC in that proceeding, Duke's witnesses testified that the proposed increase was to be applied to the old Greenwood County customers who had been transferred to Duke's standard rates but not to those still served on the old Greenwood County rates. Duke Exh. D1[4]. The PSC granted Duke a 15.4 percent rate increase effective January 1, 1971. Duke Exhs. D1[3], 7.

28. In March, 1972, Duke again applied to the PSC for a rate increase. During that hearing before the Commission, Duke's President Carl Horn testified in response to questions asked by the Greenwood County Legislative Delegation. Mr. Horn stated that the increase Duke Power sought would apply to all former Greenwood customers who had been switched over to the applicable Duke rate schedules, but not to customers still served on the old Greenwood County rates because their bills had never been lower on the applicable Duke rate schedules. He also explained Duke's understanding of Act 1293 to involve ". . . one changeover and one changeover only, and that the Act (Act 1293) did not contemplate our constantly switching back and forth between the old frozen County rate and the then-existing Duke rate, and we had no controversy about that at the time, and that is the way we have

P#15
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administered it and that's the way we still interpret the Act."
Duke Exh. D1[4].

Greenwood County representatives attended the hearing in 1972 because they had received inquiries from a number of their constituents as to who would or would not receive a rate increase. In the presence of the full Commission, Mr. Horn said clearly that when Duke transferred a customer to the standard Duke rate, that customer was not retransferred when the bill became higher than it would have been on the old Greenwood County rate. Mr. Horn said that had been the policy, was the then present policy, and would continue to be the policy of Duke. Duke Exh. 8. Furthermore, as pointed out in the affidavits of Glen A. Coan and William F. Austin, it has been made clear in the previous (first) general rate increase proceeding that those customers who remained on the old Greenwood County rate would not receive an increase but that those who had been transferred to the Duke rate would. Duke Exh. D1[1][6].

29. No action on anyone's part was taken at that time concerning Duke's position on this matter. The PSC approved it. The PSC continued its policy of the previous rate case, allowed an increase in rates for those transferred customers, and thereby further supported its policy from the beginning that no retransfer was required. Moreover, there was no participation in any of the subsequent Duke rate increase hearings before the PSC during the 1970's by Greenwood officials. No member of the public appeared either at public hearings held in the Duke service area of South Carolina, or before the PSC in Columbia in any of Duke Power's

p# 16
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general rate cases after 1972 to protest the manner in which Act 1293 was implemented. Duke Exh. D1[5][6][7][8].

30. Due to rate increases granted by the PSC in 1971 and 1973, Duke customers' rates were increased almost 31 percent, compounded, and this ended the 12-month bill comparison by Duke. Duke Exh. D[1][3].

31. When this lawsuit was filed in 1980, 3,288 Duke customers still served on the old Greenwood County rate schedules were paying an average of 1.5 cents per kilowatt hour (kwh) while 12,711 other Duke Greenwood customers on Duke's standard rate schedules were paying an average of 4 cents per kwh. Today, that disparity is 1.5 cents per kwh vis-a-vis 7.1 cents per kwh.

32. In this case the plaintiffs either knew or should have known that they had been transferred to the standard Duke rate more than six years prior to the institution of this action. In addition to the initial letter which was sent out to all customers in July, 1966, (Duke's Exh. 4) the differential in rates was the talk of the town, or the general topic of conversation in the early 1970's at the time of the first general rate increase. T.134-136, 211, 212.

33. Plaintiffs either knew, or should have known, by exercise of reasonable diligence, by 1971 or 1973, at the latest, that they were paying the standard Duke rate and that this rate was higher than the old Greenwood County rate. The subject matter of this lawsuit was widely discussed in Greenwood County by the people who were affected and unaffected by the dual rate schedules,

p#17
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and by the media within Greenwood County. There can be no doubt at all that this matter was the "talk of the town" during this time frame. T.134-136, 211, 212.

34. No one, in any manner, contested the "no transfer" policy before the Public Service Commission, the General Assembly, the governing body of Greenwood County, nor the Courts until this lawsuit was brought in 1980.

35. In addition to the bill comparison procedure, there were two other reasons accounts were changed to the applicable Duke rates. The first was when the customer's electrical needs changed, requiring changes in the equipment Duke had to provide to serve the premises. This was a "new" connection, and under the terms of Act 1293 and PSC Order No. B-976, the standard Duke rate was thereafter applicable to the location. Approximately 600 locations were transferred for this reason. The second was where the character of the customer's premises changed from one service classification to an entirely different one, such as residential to commercial. There were four instances of such a change.

36. These conversions took place because the language of Act 1293 referred specifically to the connection as it existed on the date of the sale. Any subsequently changed connections requiring increased investment in the service facilities by Duke was a "new" connection and the Act required that it be placed on the applicable Duke rate schedule. After the sale the old Greenwood County rate schedules were unavailable to "new" connections, according to the terms of the Act and the July 13, 1966 Order of

P#18
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the PSC. The Public Service Commission's Order in this regard provides: "IT IS FURTHER ORDERED, that no new customers shall be billed under the attached (Old Greenwood County) rate, and that whenever a customer is disconnected for any reason, the proper Duke rate shall be applied when the customer is reconnected." The old Greenwood County rate schedules available to "old" connections were closed on July 1, 1966.

37. A change in connections is, in effect, a "new connection," no longer eligible for the old Greenwood County rate.

38. A change from residential use to a commercial establishment was also a "new" connection, no longer eligible for the old Greenwood County rate.

39. Every transfer of a premises from the old Greenwood County rate after July 1, 1966, resulted in that customer's paying less money for electricity ("the benefit of the lower rate") in the year of the transfer and in all subsequent years until Duke Power's rates became higher. This was true for customer's transferred due to bill comparison, changes in connection, and changes in the character of the connection. Such action by Duke clearly demonstrated its understanding of Act 1293, and its efforts to implement it as written. All the evidence of record is that the PSC fully concurred with this understanding of the statute.

40. The Plaintiffs have never filed a complaint with the PSC and the two-year statute of limitations contained in S.C. Code Ann. §58-27-960 has expired.

41. There is no duty upon Greenwood County, after the closing of the sale, to continuously monitor the charges of Duke

p#19
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or to analyze, compare, or notify former customers of GEPC of the results thereof, or enforce Duke's performance in perpetuity. This is properly the function of the South Carolina Public Service Commission.

42. The sale and closing thereof accomplished a completed transfer of all electric utility operations and functions, including service of electricity, service area, administration, and supervision from a theretofore self-regulated utility to Duke, a privately owned public utility regulated by the PSC.

43. Such sale and transfer included all the utility records, tangible utility personal properties and all employees of GEPC. Following the closing on July 1, 1966, the South Carolina General Assembly in January, 1967, abolished the GEPC by statute.

44. From July 1, 1966 to the commencement of this action in 1980, the plaintiffs have neither sought nor made any claims against Greenwood County concerning any relief from the county in this action.

45. That during the entire negotiations, and GEPC Board consideration for the sale, and until statutory dissolution there was no discussion, hearing of, reading of or overhearing any consideration or suggestion of any alleged duties continuing upon the County. The sale was a total sale, a closing, and Duke took over completely as the sole owner-operator regulated by the PSC.

46. Due to the long delay of Plaintiffs before 1980 and the lack of notice that Plaintiffs' claims would be made, death has claimed many of the once available witnesses for the Defendants which has prejudiced them by the loss of witnesses and evidence.

P#20
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CONCLUSIONS OF LAW

I find the following law to be applicable in this case. The background of this case is discussed at length in Duke Power Co. v. South Carolina Public Service Commission, 284 S.C. 81, 326 S.E.2d 395 (1985). In that case a majority of the Supreme Court held that the old Greenwood rates should remain frozen as they were at the time of the sale and that the PSC did not have authority to change those rates or "to alter the contract's terms in the public interest." The Court specifically did not pass upon the propriety of the interpretation of the contract and statute as it had been interpreted for fifteen years by Duke and the PSC, but merely stated that "assuming, without deciding, that this interpretation of the Act is proper," it is not unconstitutional.

I find and hold that the interpretation of Act 1293, approved by the PSC, Duke, members of the county delegation, and participants at PSC hearings over the past fifteen years (until the bringing of this suit) is consistent with the fundamental principles that rates shall be just and reasonable and that no preference or unreasonable difference in rates shall be allowed. One of the primary purposes of Act 1293 was to provide a framework for an orderly merger of the Greenwood Electric Power Commission facilities and customers into the Duke Power system if the voters approved the sale. Such mergers almost invariably include a transition period to facilitate the movement of customers onto the acquiring company's rate schedules. In this regard, see State ex rel. McKittrick v. P.S.C., 352 Mo. 29, 175 S.W.2d 857, 52 P.U.R.

p#21
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(NS) 447 Mo. Supreme Ct. 1943; Re Con. Light and Power Company, 44 P.U.R. (NS 65, Conn. P.U.C. 1942; Re Georgia Power Company, 18 P.U.R. 3d 138, Securities and Exchange Commission 1957; Ala. Power Company v. Patterson, 224 Ala. 3, 138 So. 421, P.U.R. 1932 B 209 Ala. Supreme Ct. 1931; Re Pac Gas & Elec. Co., P.U.R. 1923 C 535, Cal. Railroad Commission 1922; and Columbia Gas & Fuel Co. v. Columbus, 32 P.U.R. (NS) 321, Ohio P.U.C. 1939. This is precisely what happened in this instance. Duke Power's "one change-over only" provision was accepted by the PSC. The PSC approved the procedure and closed the old Greenwood rates as of the date of the sale in order to provide customers a smooth, clear-cut mode of transition onto Duke Power's standard rates which South Carolina law requires to be just, reasonable and non-preferential.

This is in harmony with the time-honored doctrine that where a statute can be, and has been construed so as to be compatible with other statutes, it is the Court's duty to do so, rather than interpret it so as to be in conflict with those statutes. See S.C. Code Ann. §58-27-810 and 58-27-840 requiring that rates be just, reasonable and non-preferential.

Plaintiffs' argument that Act 1293 requires retransfer to the old Greenwood County rate is contrary to all principles of public utility law and regulation and should be avoided, so as not to foster additional discrimination and inequity among Greenwood County electric customers. Act 1293 neither authorizes nor requires a retransfer to the old Greenwood County rates from the regular, approved Duke rates once there was a transfer under the PSC Order.

PH-22
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(Duke Exh. 3) Act 1293 is completely silent concerning the matter of retransfer. Had it been the General Assembly's intent to require retransfer between rate schedules, then a provision to that effect would have been included within the Act, (T.225) both because retransfer would have been contrary to all prior industry practice, and because retransfer would require new arrangements to meet the complexities of month-by-month transfers and retransfers. Since Act 1293 is silent regarding retransfers, this court is not inclined to add such a provision to the Act at this late date. The function of this court is to interpret, not to rewrite, agreements. The court concludes that the proper interpretation of Act 1293 is that it provided a mechanism for a smooth transition onto the standard Duke rates without disadvantaging customers during the transition period.

Act 1293 of 1966 provides that the rates to be charged for all connections which existed "at the consummation of the sale" shall be the lower of the Greenwood County rates or the Duke rates. Of course, the future tense is used as the Act specifies what will take place after its enactment and consummation of the sale in July, 1966. The clause of Act 1293 emphasized by the Plaintiffs: "the benefit of the lower rate shall continue," is contained in the sentence or clause that applies the rate to the location or the premise rather than the customer. It was inserted to clarify that the rate follows the premise and not the customer, not to require that Duke indefinitely monitor rates or flip-flop between the two rates continuously by retransferring back and forth. Act 1293

pt # 23
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was so implemented by Duke, and locations transferred to the standard Duke rates received "the benefit of the lower rate" just as the Act provided.

The PSC Order E-976, Docket No. 13,277, dated July 13, 1966 (Duke Exh. 3) approved use by Duke of the old Greenwood County rates attached to the Order "for billing those customers transferred from Greenwood County so long as bills under those rates are lower than bills under approved Duke rates . . ." Thus, from the beginning the Commission made it clear that the old Greenwood County rate would remain in effect only "so long as" billing under the rate was lower than under the approved Duke rates; when no longer lower, transfer to the Duke rate would occur without a provision for re-transfer. This view had been clearly made known to the Greenwood representatives, the old Greenwood County Electric Power Commission, and to the Public Service Commission in early discussions and has been constantly adhered to by Duke from 1966 to date. (T.122-123, Duke Exh. D1[4]).

The testimony of Harry M. Lightsey, Jr., who drafted the July 13, 1966 Order (Duke Exh. 3) as legal counsel for the Commission, is specific and unmistakable on this point, and it is further borne out by affidavit testimony of successive General Counsels of the Commission. D1[5][6][7][8]

The Commission's interpretation of Act 1293 has been adhered to in each of the rate increases decisions handed down by the PSC between the date of the sale and the filing of this action. Duke's position on the retransfer issue was broadcast

p#24
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during these hearings. Yet not a single challenge was raised against this interpretation in any of these hearings. Moreover, no action was ever taken in the General Assembly to change the "no retransfer" policy.

The practice that has been constantly followed is the best evidence of the statute's meaning. See 73 Am. Jur 2d Statutes §§161, 162 (1974). 82 C.J.S. Statutes §§357, 358 (1953), Inland Waterways Corp. v. Young, 309 U.S. 517, 84 L.Ed. 901, 60 S.Ct. 646 (1939), reh'g denied, 309 U.S. 698 84 L.Ed. 1037, 60 S.Ct. 884 (1939), United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co. 275 U.S. 415, 72 L.Ed. 345, 48 S.Ct. 198 (1927), Stackhouse v. Pure Oil Co., 176 S.C. 318, 180 S.E. 188 (1935), Langston v. Niles, 265 S.C. 445, 219 S.E.2d 825 (1975), and Duke Power Co. v. South Carolina Tax Comm'n, 81 F.2d 513 (4th Cir. 1936), cert. denied, 298 U.S. 669, 80 L.Ed. 1392, 56 S.Ct. 834 (1936).

The PSC is the proper agency to monitor the continuing performance under Act 1293. Plaintiffs seem to argue that the decision in Duke Power Co v. SCPSC, supra, held that the PSC has no jurisdiction regarding matters pertaining to Act 1293. As previously mentioned the Supreme Court's holding in that case, as far as the PSC was concerned, limited to a finding that the PSC did not have jurisdiction to alter the terms of the Act by raising the rates of those customers remaining on the old Greenwood County rate schedules. The Supreme Court specifically held that it was not ruling upon the propriety of the practice at issue in this lawsuit.

p#25
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This construction of Act 1293 should be maintained. The case law of this State is clear that where a special act such as Act 1293 takes precedence over a general law (§58-27-810 - rates must be just and reasonable and §58-27-840 - rates must not be discriminatory), the special act is to be given a narrow interpretation. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (1987); Greenville Baptist Association v. Greenville County Treasurer, 281 S.C. 325, 315 S.E.2d 163 (1984); Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 236 (1968); Purdy v. Moise, 233 S.C. 298, 75 S.E.2d 605 (1953); Southern Ry. Co. v. S.C. Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960); and cases cited in West S.C. Digest, Statutes §239. This is easily understood, for to give a wide or expansive interpretation to a special act would bring about results not contemplated by the Legislature. To further illustrate the applicability of that principle in this case, 1,703 customers of the old GEPC were transferred to and became customers of the City of Greenwood after 1966 pursuant to a series of PSC-approved transfers.

Certainly it could not be argued that Act 1293 overruled the general laws (§§58-27-1010 and 58-27-1360) regarding transfers of these customers. Such an interpretation of Act 1293 would have gone way beyond the provisions of the Act and would have rendered meaningless the general law regarding expansion of municipal limits. Applying the same reasoning, I conclude that a narrow interpretation should be maintained in this instance.

The PSC's interpretation of Act 1293 is entitled to great weight. It is clear that the PSC all along has had exclusive

p#26
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jurisdiction over the manner in which Act 1293 was implemented. The South Carolina Court of Appeals recently held that a state agency entrusted with enforcing a statute has exclusive jurisdiction over all matters pertaining to that statute. In Laboureur v. Harleyville Mut. Ins. Co., 298 S.C. 213 ; 379 S.E.2d 291 (1989) the Court held that the Circuit Court did not have jurisdiction over an employer's claim against its workers' compensation carrier and insurance agent for an alleged wrongful cancellation of its workers' compensation insurance policy. The Court noted an earlier decision of the Supreme Court in which it was held that "the Court will refuse a declaration 'where special statutory remedy has been provided. . .'", (citing Williams Furniture Corp. v. Southern Coating & Chem Co., 216 S.C. 1, 7; 56 S.E.2d 576, 578 (1949)). The reasoning in these cases is certainly applicable to the facts of the instant case.

As was held by the Supreme Court in Faile v. South Carolina Employment Sec. Comm'n, 267 S.C. 536, 540, 230, S.E.2d 219, 221-222 (1976), "the construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons." In the same case, the Court went on to note that the regulation in dispute had been in effect for many years and had remained unchallenged by the Legislature since then. "Such acquiescence provides further reason for deferring to the administrative construction.: Id. See Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 222; 353 S.E.2d 131, 133 (1987) (reversing Circuit Court's rejection of the administrative agency's

PH 27
W/B

interpretation of certain statutes). See also William C. Logan & Assocs. v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986); Emerson Elec Co. v. Wasson, 287 S.C. 394, 339, S.E.2d 118 (1986); and Harling v. Board of Comm'rs of Police Ins. and Annuity Fund, 205 S.C. 319, 31 S.E.2d 913 (1944).

In applying this standard, it is apparent that the interpretation by the PSC of Act 1293 of 1966 is entitled to great deference. Consequently, testimony by individuals familiar with that agency's interpretation is quite persuasive.

The evidence adduced through four former General Counsels for the PSC, i.e., Lightsey, Austin, Bowen and Bockman, clearly illustrates the interpretation of Act 1293 and administration of same by the PSC. Once a customer was switched over to the applicable Duke Power rate schedule, that customer was removed from the former Greenwood County rate schedule and thereafter remained on the Duke Power rate schedule. Duke Exhs. D1[5][6][7][8], and T. 155-157. As the affidavit of William F. Austin recites:

Mr. Horn's testimony that once a customer was switched from the old Greenwood rate schedules to the Duke Power system-wide rate schedules, that customer would not be switched back to the old Greenwood rate schedules, was fully consistent with the Commission's understanding and administration of the rate provisions of Act 1293. Duke Exh. D1[6].

All rate schedule inquiries received from Greenwood area residents about this matter were answered by the PSC in a manner consistent with the above understanding. Duke Exh. D1[5][6][7][8].

While in the final analysis this Court, not experts, must interpret the statute, it is helpful to consider the

P#28
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testimony of undisputed experts in the field of utility law. Mr. Joseph Swidler, who was formerly general counsel of the Tennessee Valley Authority, former Chairman of the New York State Public Service Commission, former Chairman of the Federal Power Commission, and who has practiced public utility law, primarily in the electric utility area, for many years, testified at the trial. His testimony was that it would have been contrary to public utility industry practice for Duke Power to have switched customers back and forth between the old Greenwood County rate schedule and the Duke Power standard rate schedules depending upon the amount of the bills computed each month on both sets of rate schedules. He also testified that during his more than fifty years of public utility regulation and legal work, he did not know of a single situation involving the monthly transfer of a select group of customers to a closed rate schedule from an open one. Further, he stated that such a scheme would be entirely contrary to public utility regulatory principles. It was his opinion that Act 1293 did not contemplate a continuous monitoring or a monthly transfer or switching of customers back and forth between the rate schedules, and that if this had been the intent, then the statute would have spelled out this procedure. T.236-238.

The construction given a statute for a long period of time is strong evidence of its meaning. The law is well settled that courts may resort to contemporaneous construction of a statute, especially where such construction has prevailed for a long period of time, in order to determine its meaning. 73 Am.

pk 29
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Jr.2d Statutes §§161, 162, (1974). 82 C.J.S. Statutes §§357, 358 (1953). Only compelling language in the statute itself will warrant the rejection of a construction long and generally accepted, especially when overturning the established practice will have far reaching consequences. Maynard v. Elliott, 283 U.S. 273, 75 L.Ed. 1028, 51 S.Ct. 390 (1931).

Applying this rule of law to our present situation, it is plain that Duke's practice, which has been consistently applied since 1966, and sanctioned by the Greenwood Electric Power Commission, and the South Carolina Public Service Commission, is the best evidence as to the intent of Act 1293. Furthermore, the General Assembly has met many times and not a single bill has been introduced to change the "no retransfer" policy.

An important rule in construing statutes and contracts is to effect to the extent possible the parties' intention and to avoid a construction that produces an unreasonable or absurd result. As stated by the South Carolina Supreme Court in Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977):

The purpose of all rules of contract construction is to determine the parties' intention. The Courts, in attempting to ascertain this intention, will endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into. Bruce v. Blalock, 241 S.C. 155, 127 S.C.2d 439 (1962). The court should put itself, as best it can, in the same position occupied by the parties when they made the contract. In doing so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered into so that it may judge the meaning of the words and the correct application of the language. 17 Am. Jur.2d, Contracts §272 (1964).

p#30
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The law of South Carolina and other jurisdictions is clear that a statute must be given an interpretation that does not bring about an absurd result. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949); Ex Parte Fillibertie, 62 F.Supp. 744 (E.D.S.C. 1945); Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928); Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910); Charleston & W. Carolina Ry. Co. v. Joyce, 231 S.C. 493, 99 S.E.2d 187 (1957); Sanders v. GMAC, 180 S.C. 338, 185 S.E. 180 (1936); and Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962). In Charleston & W. Carolina Ry. Co. v. Joyce, 231 S.C. 493, 99 S.E.2d 187 (1957), the South Carolina Supreme Court also held that it is the policy of the Court to give a reasonable and equitable construction to a contract and avoid giving a construction that will bring about absurd results. 231 S.C. at 506.

In Bruce v. Blalock, *supra*, the South Carolina Supreme Court, in construing a contract between the Spartanburg Commission of Public Works and Campobello Water District created by Act of the South Carolina General Assembly in 1954 to buy water for a thirty-year period, quoted from the trial judge's order as follows:

"Applying the foregoing law to the case at hand this Court finds that the plaintiffs' interpretation of the agreement must be denied as being a very unfair and unreasonable construction and interpretation thereof. It would most certainly bring about a very inequitable result to the defendants. It would result in the plaintiffs obtaining an unfair and unreasonable advantage over the defendants and one which was never intended by the parties hereto. In our constantly changing and inflated economy which affects all types of businesses, including the water works system of the City of Spartanburg, it would be most difficult, if not impossible, for this Court

p#31
WJS

to conceive of duly elected public servants tying their hands with a set water rate for a period of thirty years to the detriment of the citizens of the City of Spartanburg for whom the water works was originally created."

He concluded:

"It necessarily follows that the only reasonable construction which the Court can place on this entire agreement and contract is that the defendants have the authority under the terms of the contract to charge the plaintiffs the same water rates that it charges other consumers of the same class, which rates, of course, are subject to any increase or decrease affecting all consumers of the same class. It is the Court's opinion that this construction carries out the intention of the parties; is in accord with the purposes of the parties to the contract; is fair and is a sensible and reasonable construction and such as would not lead to absurd consequences or unjust results." 241 S.C. at 163.

For this Court now to construe the Act in the manner for which plaintiffs contend would obviously bring about a result that was not intended by the parties. Retransferring thousands of customers to a 1950's cost-based rate would plainly violate the principle regarding interpreting statutes to avoid absurd results. Discrimination among similarly situated customers is inherently unfair. For one customer to pay for a kilowatt hour half as much, or twice as much, when the cost to serve each is approximately the same is simply inequitable. Duke Exh. D1[11]. At present the old Greenwood County rate is roughly one-fifth of the Duke Power rate. Duke Exh. D1[3][11]. That difference will, in all likelihood, continue to increase. The relief Plaintiffs are seeking, i.e., to be retransferred to the old Greenwood County rates, should be denied so as to avoid additional discrimination and inequity among Greenwood County electric customers.

P#32
W 10

I find that the South Carolina six-year Statute of Limitations, S.C. Ann. §15-3-530, is applicable in this case. Plaintiffs concede that alleged overcharges for bills rendered prior to March, 1974, are barred. I find as a fact and conclude as a matter of law, however, that this six-year Statute of Limitations bars all claims asserted in this suit, which was not filed until March, 1980. Either the Plaintiffs knew, or should have known, by September, 1973, by the exercise of reasonable diligence, that they were paying the standard Duke rate and that this rate was higher than the old Greenwood County rate. As a general rule, the Statute of Limitations begins to run in civil actions on statutory or contractual causes from the time of the breach of the agreement and the discovery of the same by the Plaintiff. Santee Portland Cement v. Daniel Construction Co., 299 S.C. 269 384 S.E.2d 693, (1989), 51 Am Jr. Contracts, §126 (1964).

There is nothing in the record to suggest that the exercise of any amount of effort on the Plaintiffs' part would have failed to reveal their true situation. Certainly, the initial letter that Duke sent in July, 1966, to all former GEPC customers explained the procedure to be used for assigning the proper rate schedule to each location. Anyone uncertain about the rate schedule his location was billed under could have inquired of Duke. Many did. The evidence shows plainly that the dual rate structure existing in Greenwood was the "talk of the town" both then (1971-1973) and now.

p# 33
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Two critical facts are unchallenged. First, Duke Power's "no retransfer" interpretation was fully explained during the March, 1972 rate hearing. Certainly, the Greenwood County delegates to the Legislature who questioned Mr. Horn at the March, 1972 rate increase hearing reported back to their constituents regarding Duke's interpretation of Act 1293. Second, the 1971 and 1973 rate increases allowed by the PSC increased rates to the former GEPC customers then served on Duke's standard rates by some 30 percent. It is unlikely that a 30 percent increase in electric rates would have escaped attention or gone unnoticed and in the exercise of reasonable diligence by Plaintiffs (or their predecessors in title) this substantial increase should have been noticed. Plaintiffs either knew, or should have known, by the exercise of reasonable diligence, by 1971, or 1973 at the latest, that they were paying the Duke rate and that this rate was higher than the old Greenwood County rate.

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought, or a full-blown theory of recovery developed. Snell v. Columbia Gun Exchange, 276 S.C. 301, 178 S.E.2d 333 (1981).

pt 34
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The Plaintiffs are also barred by the two-year Statute of Limitations, S.C. Code Ann. §58-27-960 (1976), since their action involves an alleged excessive charge on which reparation orders may be made. It is undisputed that the Plaintiffs have never filed an action with the PSC; therefore, the two-year period has long since expired. Plaintiffs' reliance on Tunstall v. United Telephone Company, Inc., 283 S.C. 588, 325 S.E.2d 61 (1985) is misplaced. The two-year reparation statute of limitations clearly applies to the situation where, as here, customers claim a utility has charged them unreasonably excessive or discriminatory rates. Tunstall involved charges ancillary to the receipt of the utility service not alleged overcharge of rates, which Plaintiffs in this case are claiming. The two-year statute requires that excessive rate claims be brought before the PSC because that body has the special expertise to deal with such matters. Plaintiffs' action, not having been brought within the two-year period, is barred by this statute.

The Plaintiffs attempt to avoid the application of the statute of limitations by arguing that Duke's obligation is either continuing or involves a severable contract. In other words, Plaintiffs claim that a right of action for breach of a continuing, or severable, contract accrues from day to day, or with each payment of a bill.

This is not the law of this State and the "discovery rule" does not dictate such a result. This not being an action for tort, a cause of action accrues when the breach occurs and

P#35
W J

when Plaintiffs either knew or should have known that a breach occurred. Once this rule is satisfied in a contract action the statute begins to run, since damages flowing from the breach are not the result of a new or continuous breach, but relate to the original breach which gave the right of action and without which damages would not have occurred. Livingston v. Sims, 197 S.C. 458, 15 S.E.2d 770 (1941) is still a valid precedent in this regard. In that case our Supreme Court stated:

Such damages are not the result of a new or continuous breach, but relate back to the original breach which gave the right of action and without which they could not exist. Nominal damages at least can be recovered immediately upon the happening of the breach, and the Statute of Limitations then begins to run; its operation is not delayed until substantial or consequential damages accrue. Thomas' Ex'rs v. Ervins Ex'rs, Cheves 22, 34 AM. Dec. 586; Sams v. Rhett, 2 McMul. 171; Sinclair's Ex'rs v. Bank of South Carolina, 2 Strob.L. 344; Annotations, 126 Am.St. Rep. 944, 13, Ann. Cas. 692, 15 L.R.A., N.S., 156, 34 Am. Jur., Limitations of Actions, Secs. 113, 115, 137 and 230. And see Annotation 118 A.L.R. 215.

This is not a case of temporary successive taking, but one that accrued when Plaintiffs first learned, or should have known, that the Duke rate first was higher than the old Greenwood County rate. See also Webb v. Greenwood County, 229 S.C. 267, 92 S.E.2d 688 (1956); Hilton v. Duke Power Company, 154 F.2d 118 (4th Cir. 1958).

The Plaintiffs are also guilty of laches under the facts of this case, and are thereby barred from recovery. Laches is the negligent failure to act for an unreasonable period of time.

pt 36
or 13

Burnett v. Holliday Brothers, Inc., 279 S.C. 22, 305 S.E.2d 238 (1983). In Burnett, the Supreme Court, in reinstating a Master's report denying Plaintiffs' claim because of laches, held:

Under our cases, the Doctrine of Laches simply denotes a failure to act for some undue lapse of time, and neglect to act when there was an opportunity to have acted sooner. Where there is an unexplainable delay for an unreasonable length of time, one may be barred, or estopped. See Stribling v. Fretwell, 157 S.C. 297, 154 S.E. 415, Bagwell v. Hinton, 205 S.C. 377, 32 S.E.2d 147, and other cases. 279 S.C. 15, 227.

The South Carolina Appellate Courts have denied recovery to Plaintiffs based on the defense of laches in a number of recent cases. In Gray v. South Carolina Pub. Serv. Auth., 284 S.C. 397, 325 S.E.2d 547 (1985), the Supreme Court, due to a lapse of time, refused to recognize Plaintiffs' right to repurchase land condemned by the Public Service Authority but never used to construct the Santee-Cooper system. Plaintiffs obtained an interest in the property in 1971 but waited ten years until 1981 to bring an action. The Court held that, "However meritorious the appellants' claim would have been if timely made, the claim is barred by the lapse to time and the supervening circumstances." 284 S.C. at 400, 325 S.E.2d at 549 [citing Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955)].

In Rabon v. Mali, 289 S.C. 37, 344 S.E.2d 608 (1986) the Supreme Court refused to allow a group of residential lot owners to enforce restrictive covenants violated by defendant's operation of a commercial enterprise in the subdivision. The

pt 37
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Court held that because the plaintiffs were aware of defendant's commercial use of the property for some 20 years, had not previously objected to such use, and defendant had spent \$43,000 on improvements to the property, the defense of laches prevailed.

Similarly, in Arcaneaux v. Arrington, 284 S.C. 500, 327 S.E.2d 357 (1985), the Court of Appeals affirmed the trial court's judgment against plaintiffs' attempt to enforce restrictive covenants in a subdivision. The Court found that plaintiffs had waited over two years after they knew or should have known the restrictive covenants were being violated to assert their rights. Meanwhile, defendant incurred the expense of erecting the metal building without protest. Under these circumstances the Court ruled it would be unjust to permit plaintiffs now to enforce their claimed rights.

Significantly, the Court also found no merit in plaintiffs' argument that the delay in bringing their suit was caused by defendant's failure to disclose the restrictive covenants which pertained to defendant's tract. Plaintiffs contended that since they did not know of their rights, their delay in commencing the suit was not unreasonable. Unpersuaded by this argument, the Court held:

The general rule is that to charge a party with laches in the assertion of an alleged right, he must have knowledge of the facts upon which he bases his claim. However, if the circumstances are such as to have put him upon inquiry and the means of ascertaining the truth were readily available had inquiry been made, the neglect of the party to make inquiry will charge him with laches the same as if he had known the facts. (citations omitted) 327 S.E.2d at 359 (emphasis added)

p#38
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Since the restrictive covenants were referenced in the deed Defendant received upon purchasing the tract and the deed was recorded in 1979, it was immaterial, said the Court, that Plaintiffs did not actually discover the restrictions until 1981.

Applying the foregoing case law to the facts in this case, it appears to the Court that laches bars Plaintiffs' claims. The hundreds of inquiries received by Duke's Greenwood office since the sale in 1966 demonstrate that most, if not all, of the Plaintiffs had actual knowledge of their accounts having been transferred from the old Greenwood County rate to the standard Duke rates. Duke Exhs. D1[4], 3 and T.134, 135. Some of these inquiries came in October, 1966, after the July, 1966 letter and the initial transfer of 3,375 customers in October following the house-by-house survey. Hundreds more calls and visits came following the first two general rate increases in January, 1971, and September, 1973. Duke Exhs. 7A, 7B, and T.137. In the absence of actual knowledge of the transfer of their account, certainly these two large rates increases, totaling approximately 30 percent compounded, would have captured the attention of any customer who was previously unaware of the transfer. Even assuming a stable level of kilowatt hour usage, every customer served on Duke Power's standard rates saw his/her bill increase by roughly one-third. Subsequent general rate increases of 8 percent in November, 1973; 2.25 percent in January, 1974; 6.45 percent in April, 1974; 20% in June, 1975; 2.8 percent in January, 1976; 5.4 percent in September, 1978; and 6 percent in October, 1979, removed any

p#59
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lingering vestiges of comparability between the old Greenwood County and Duke Power rates. (Duke Exh. D1[3], Duke Exhs. 7C-7F). Without a doubt, Plaintiffs were aware of the sharp divergence in the rates.

I am persuaded that the reason the Plaintiffs did not pursue legal action until March, 1980, is because they perceived they had received the benefit of the lower of the two rates in accordance with the terms of the Act. It was clear there was to be no retransfer. Having waited until 1980 to take any action regarding this matter, Plaintiffs have delayed for an unreasonable time to assert their claims.

The Plaintiffs, in addition, appear to be basing their claim upon a mistake of law, that is, that these utility charges were paid under a mistake of law, i.e., they claim they mistakenly believed that the higher Duke rates were authorized by law. It has been the law of this State for many years that money paid under a mistake of law, with full knowledge of the facts, cannot be recovered by the party making the payment. See Moody v. Stam, 214 S.C. 45, 51 S.E.2d 163 (1948).

Since the Plaintiffs under their own theory voluntarily paid these rates under a mistake of law they, at this time, have no cause to complain. It is noted in this regard that I do not hold that there was a mistake of law, but that the rates charged were proper and properly implemented the terms of Act 1293.

The most reasonable interpretation of Act 1293 is that a change in connection and a change from residential use to a commercial establishment is, in fact, a "new connection," no longer eligible for the old Greenwood County rate.

pt 49
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This case as to Greenwood County does not involve a claim for money damages, but seeks a writ of mandamus requiring the County to exercise "a continuing duty to monitor and enforce the performance of Duke Power under the transfer agreement, statutes, approvals, and permits described above for the benefit of the individual plaintiffs and the class". The County denies such allegations and asserts that mandamus is not proper under the facts and the law in this case.

"The writ of mandamus is the highest writ known to the law, and it is well settled that it is issued only in cases where there is specific legal right to be enforced or where there is a positive duty to be performed, and when there is no other specific remedy. When the legal right is doubtful, or when the performance of the duty rest in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully issue. See Ex Parte Mackey, 15 S.C. 330; Port Royal Mining Co. v. Hagood, et al., Board of Agriculture, 9 S.E. 686 (1889).

The above quotation from Port Royal is copied in the oft-quoted decision on mandamus. Willimon v. City of Greenville, 132 S.E.2d 169 (1963).

"The primary purpose of function of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. It is designed to promote justice, subject to certain well-defined qualifications. Its principal function is to command and execute and not to inquire and adjudicate; therefore, it is not the purpose of the

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writ to establish a legal right, but to enforce one which has already been established. 55 C.J.S. Mandamus, Section 51, p. 85."

I find as a fact and conclude as a matter of law that here there is no established right in the plaintiffs to require, nor is there any duty imposed upon the County, neither by statute, by contract, or at common law, to continually monitor Duke's performance under the contract of sale. Such duty, as it may exist, is the obligation of the PSC. The application for writ of mandamus should be denied.

In the event that any of the findings of fact herein contained also constitute or include conclusions of law, they are hereby adopted as such. In the event that any of the conclusions of law herein contained also constitute or include findings of fact they are likewise hereby adopted as such.

In passing upon the issues raised by the pleadings in this case, I considered the three subclasses defined in the complaint and certified by previous court order as being the proper plaintiffs. I did not consider whether any individual ratepayer had been improperly placed in such a subclass. Some of plaintiffs' testimony at the May, 1989, hearing seemed to be directed at the issue of whether a particular ratepayer may have erroneously been included in a particular subclass. In this order I make no finding as to whether any individual ratepayer is properly or improperly within the class or any subclass thereof.

I therefore hold, find, rule, and declare that:

(1) The plaintiffs, and all subclasses thereof, were properly placed upon the Duke rates and that once placed upon

PH 12
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the Duke rate they were properly not allowed to return. to the Greenwood rate.

(2) The construction placed upon Act 1293 by Duke and the PSC was correct and consistent with fundamental principles of rate setting.

(3) Duke has properly complied with the Act from the time of the sale to date.

(4) Plaintiffs causes of action are barred by the six year statute of limitations, §15-3-530 S.C. Code (1976).

(5) Plaintiffs causes of action are barred by the two year statute of limitations, §58-27-960 S.C. Code (1976).

(6) Plaintiffs causes of action are barred by laches.

(7) A writ of mandamus should not issue in this case.

It is, therefore ORDERED that plaintiffs' complaint be, and it is hereby, dismissed with prejudice, each party to bear its own costs.

Walter J. Bristow, Jr.

Walter J. Bristow, Jr.
Special Presiding Judge
Eighth Judicial Circuit

Columbia, South Carolina

March 22, 1990

PH 43
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Complete Form, Print, Sign and Mail to:
 Public Service Commission of South Carolina
 101 Executive Center Dr., Suite 100
 Columbia, SC 29210



Phone: 803-896-5100
 Fax: 803-896-5199
 www.psc.sc.gov

Individual Complaint Form

Date*: 01/27/2017

Complainant or Legal Representative Information **Requested Relief**

Name * John J. Fantry Jr.
 Firm (if applicable) The Shissias Law Firm, LLC
 Mailing Address * 1422 Laurel Street
 City, State Zip * Columbia SC 29201 Phone * 803-712-0100
 E-mail john@fantrylaw.com

Name of Utility Involved in Complaint Duke Energy Carolinas, LLC

Type of Complaint (Check all that apply)

- | | | | |
|--|--|--|---|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input checked="" type="checkbox"/> Wrong Rate | <input type="checkbox"/> Refusal to Connect Service |
| <input type="checkbox"/> Disconnection of Service | <input type="checkbox"/> Payment Arrangements | <input type="checkbox"/> Water Quality | <input type="checkbox"/> Line Extension Issue |
| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) _____ | | | |

Have you contacted the Office of Regulatory Staff (ORS)? Yes No Name of ORS Contact Takisha Anderson

Outline Statement of Facts/Complaint (This section must be completed. Attach additional information if this page is necessary.)

See attached complaint

Relief Requested (This section must be completed. Attach additional information if this page is necessary.)

I GIVE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PERMISSION TO PUBLISH THIS COMPLAINT AND TO COMMENT ON THE COMMISSION'S RESPONSE TO IT. I UNDERSTAND SUCH INFORMATION MAY BE SUBJECT TO PUBLIC SCRUTINY OR FURTHER RELEASE. Yes No
 S/ John J. Fantry Jr.
Complainant's Signature (MUST BE SIGNED, DO NOT PRINT)

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

VERIFICATION

I, Attorney for Tommy McCutcheon verify that I have read my complaint filed on 1/27/17
Complainant's Name * Date *

and know the contents thereof, and that said contents are true. S/ John J. Fantry Jr.
Complainant's Signature * (MUST BE SIGNED, DO NOT PRINT)

Internal Use Only

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2017-32-E

In re:)
)
TOMMY MCCUTCHEON,)
Complainant/Petitioner,) COMPLAINT
)
v.)
)
)
Duke Energy Carolinas, LLC,)
Defendant/Respondent.)
_____)

Tommy McCutcheon, (hereinafter "McCutcheon," acting through his representatives, brings this Complaint against Duke Energy Carolinas, LLC (hereinafter, "DEC"), pursuant to S.C. Code Ann. § 58-27-960, S.C. 58-27-2410, and S.C. Code Ann. Regs 103-824, alleging as follows :

COMPLAINANT AND DEFENDANT

McCutcheon is an individual residing in Greenwood County, South Carolina, who together with his wife owns and operates a drive-in movie theater located on Highway 25 South in Greenwood County, South Carolina, 3109 Hwy 25 S LLC, d/b/a 25 Drive-In. Under the facts of this case, McCutcheon is a customer of DEC seeking restoration of what is known as the "Greenwood Rate" and other relief as may be granted.

DEC is a North Carolina Corporation, duly registered and conducting business in the State of South Carolina. Under the facts of this case, DEC is a provider of electric services to McCutcheon.

COMPLAINT

1. As discussed in the contemporaneously filed Affidavit and Prefiled Testimony of Tommy McCutcheon, Complainant/Petitioner purchased and resumed operation of the above referenced theater in 2008.
2. Complainant/Petitioner transferred the existing electrical account, # _____, into his name upon purchasing the Property and associated business.

3. The Property was served by DEC under the special rate (The "Greenwood Rate") applicable to connections existing upon the sale of the Buzzard's Roost Hydro-electric project by Greenwood County to Defendant/Respondent's predecessor, Duke Power Company, in 1966.

4. From his purchase of the Property McCutcheon paid all invoices timely and that before June of 2015 received the benefit of the Greenwood Rate.

5. From his purchase of the Property McCutcheon used the property for its historically established uses, specifically as a commercial drive in Movie Theater with a concession stand. McCutcheon did not change the use of the Property from Commercial to Residential, and did not upgrade the service from single phase to three phase service.

6. From his purchase of the Property McCutcheon did not significantly increase his use of electricity from the demand when the Property was first developed, and in fact has installed modern projection equipment which is more energy efficient.

7. In making his selection of modern projection equipment McCutcheon considered and rejected three phase equipment as he knew it would result in the loss of the Greenwood Rate, as he wanted to keep the Greenwood Rate.

8. In June of 2015, DEC's service line malfunctioned twice causing interruptions in McCutcheon's business. The McCutcheon affidavit and the affidavit of James R. "Bob" Calhoun, a licensed electrician, both indicate that the malfunctions were caused on DEC's side of the meter box located in the projection room, which has been and is the historical location of DEC's electrical connection to McCutcheon's business.

9. On or about June 15, 2015, DEC's agents, Tommy Fowler and Theo Lane, met with McCutcheon, telling him that his meter box and other wiring had to be replaced. They notified McCutcheon that as a result he would lose the Greenwood Rate.

10. McCutcheon objected to this work being performed and refused to allow DEC to perform said work.

11. On June 16, 2015, Tommy Fowler and Theo Lane notified McCutcheon that if he did not allow the repairs DEC would cut off his electrical supply.

12. On June 17, 2015 McCutcheon filed a formal complaint with The Office of Regulatory Staff and DEC was made aware of the complaint.

13. During the pendency of this complaint DEC's agents continued to attempt to disconnect the power to the Property, over McCutcheon's objections. On June 17, 2015, DEC's agents physically severed the electrical supply line to the Property, in contravention of S.C. Code Ann. Reg. 103-345.

14. June is a peak time for the drive-in season. As a result of the disconnection of power McCutcheon's refrigerated and frozen concession products spoiled.

15. McCutcheon met with DEC's agents Fowler and Lane on June 17, 2015. Fowler and Lane notified McCutcheon they were aware of the complaint and that McCutcheon could either proceed with the ORS complaint, with the electrical service remaining disconnected until the complaint was resolved, which could take 30 days or more, or he could acquiesce, allow his meter box to be removed, give up the Greenwood Rate, and have his power restored the next day.

16. Under duress and at the direction of Fowler and Lane, McCutcheon was forced to sign a document Fowler and Lane had prepared, which does not bear official DEC letterhead. In it the activity was referred to as an "upgrade." Fowler and Lane witnessed this document.

17. McCutcheon did not voluntarily sign this document; he only signed it as Fowler and Lane threatened him with an extended loss of service to his business which would have resulted in the failure of McCutcheon's business. McCutcheon was assigned a new account number, # [redacted] and has been paying for electrical service under DEC's standard rate structure, which is significantly higher than the Greenwood Rate.

18. The actions of DEC's agents Fowler and Lane involved improper threats leaving McCutcheon no reasonable alternative.

19. Fowler and Lane were acting within the scope of their employment and pursuant to S.C. Code Ann. § 58-27-2450, DEC is deemed to have committed said acts.

20. Under South Carolina law, the elements of establishing that a contract was obtained by duress are: (1) coercion; (2) putting a person in such fear that he is bereft of the quality of mind essential to the making of a contract; and (3) that the contract was thereby obtained as a result of this state of mind. See *In re Nightingale's Estate*, 182 S.C. 527, 189 S.E. 890 (1937). The fear which makes it impossible for a person to exercise his own free will is not so much to be tested by the means employed to accomplish the act, as by the state of mind produced by the means invoked. *Id.*; *Willms Trucking Co. v. JW Constr. Co.*, 314 S.C. 170, 442 S.E.2d 197 (Cl. App. 1994). If one of the parties to an agreement is in a position to dictate its terms to such an extent as to substitute his will for the will of the other party thereto, it is not a mutual, voluntary agreement, but becomes an agreement emanating entirely from his own mind. *In re Nightingale's Estate*, 182 S.C. at 547, 189 S.E. at 898; *Willms Trucking Co.*, 314 S.C. at 179, 442 S.E.2d at 202. If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim. *Willms Trucking Co.*, 314 S.C. at 179, 442 S.E.2d at 202.

20. McCutcheon is unaware of any action taken by ORS to resolve his complaint.

21. Contemporaneously filed with this complaint is the affidavit and prefiled testimony of James R. "Bob" Calhoun. Calhoun has been an electrician in the state of South Carolina for over 37 years, has known McCutcheon since he was a child, and he is personally familiar with the electrical connection on the theater's side of the power service system.

22. Calhoun's historical knowledge of and his inspection of the system revealed the following:

- a. that prior to DEC's work in June of 2015, on DEC's side of the meter there was a single 800 to 5 current transformer, which is capable of taking 1200 amperes of load without failing;
- b. that the theater's system was only a 400 ampere system;
- c. that he was aware of the two failures in June of 2015 and after inspecting the remains of the power system, he concludes that both times fault current caused the line to short out and destroy the 800 to 5 current transformer;
- d. that after the second failure DEC eliminated the use of the 800 to 5 current transformer and replaced it with two (2) 200 to 5 circuit transformers.

e. that there was no need to install two 200 to 5 circuit transformers; that the system could have been repaired with a new single 800 to 5 current transformer, and that the only reason DEC installed two 200 to 5 circuit transformers was for its sole convenience and benefit;

f. that McCutcheon's 400 ampere service could not have overloaded DEC's power system; and that there is no way the failures in June of 2015 could have been caused by need of additional power or power demand;

g. that after inspecting the meter box that DEC eliminated, there was nothing wrong with the meter and that it never experienced a failure;

h. that in the past the theater had xenon arc projectors; that the projectors for each of the theater's screens were served by two 60 ampere breakers. Following the installation of digital equipment the theater's screens are each served by a single 40 ampere breaker;

g. that installation of the digital equipment decreased electrical demand for the theater as a whole;

h. that after inspecting the electrical equipment on the theater's side of the service connection he concluded that it was unchanged from the type of electrical switch and fuse equipment that was present when the theater was first built;

i. that he is familiar with the supply line where it comes off a 50 kva transformer and enters the Property; that in the past there was a 25 kva transformer and before that a 15 kva transformer; and that the 25 kva transformer had previously experienced a failure;

j. that DEC had added load to this transformer as residences were added behind the theater and that this failure had nothing to do with the operation of the theater;

k. that in his professional opinion the Property did not require a new physical connection to DEC's service, and that no professionally licensed electrical contractor could truthfully make such a statement; and that DEC cannot call the work performed in June of 2015 a "change in the character of the connection" or a "new connection" for the purpose of applicability of the Greenwood Rate;

l. that when power line to the Property shorted out in June of 2015, it put a tremendous amount of fault current through the 800 to 5 CT; that the fault current, building up a magnetic field from the shorted out wires caused the CT to fail, not an overload of service.

23. That based on the facts set forth hereinabove, DEC and DEC's agents acted in violation of state statutes, regulations, and Orders of the PSC.

24. DEC violated S.C. Code Ann. Regs 103-345 (B), by discontinuing service to an account after being notified of the receipt of a complaint and before the results of ORS's investigation have been received by the utility;

25. DEC acted in violation of PSC Order E-976, as interpreted by the South Carolina State Supreme Court in *Payne v. Duke Power Co.*, 405 S.E.2d 399 (S.C. 1991), in that Duke cannot change the rate on a customer unless there has been a change in the "character of the connection" (single phase to 3 phase) or change in the "type of use" (commercial to residential) thereby rendering the connection a "new connection."

26. By acting in violation of PSC Order E-976, DEC violated S.C. Code Ann. §58-27-40.

27. Pursuant to S.C. Code Ann. § 58-27-960, where a petition is filed with the PSC and the PSC finds after hearing "...that the utility charged an unreasonable, excessive, or discriminatory amount for electric current or service, the commission may order the electrical utility to make due reparation to the petitioner, with interest from the date of collection..."

28. The PSC has jurisdiction to consider this matter. S.C. Code Ann. §§ 58-27-850. (Commission may make finding that existing rate is unjust, unreasonable, insufficient, unreasonably discriminatory, or in any way in violation of any provision of law, may determine proper rate and issue order fixing proper rate). See also *Warming v. Duke Energy Carolinas, LLC*, C/A No. 8:13-839-TMC (D.S.C. Jun. 5, 2013) (finding PSC has jurisdiction to consider whether customer is entitled to Greenwood Rate).

29. McCutcheon is represented by counsel in this proceeding:

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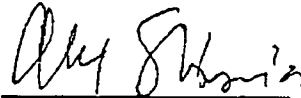
WHEREFORE, Complainant/Petitioner prays for the following relief:

(a) That DEC be ordered to reactivate McCutcheon's electrical utility account # _____ under the Greenwood Rate structure;

(b) That DEC be ordered to pay McCutcheon due reparations under S.C. Code Ann. § 58-27-960 in the amount of the difference between what his bill would have been from June 2015 to present under the Greenwood Rate and the actual amount he was charged and has paid, with interest from the date of collection;

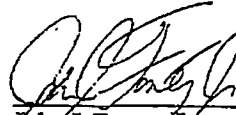
(c) That the Commission assess appropriate penalties and reasonable expenses, including attorney's fees against DEC pursuant to S.C. Code Ann. § 58-27-2410 for "failing, omitting or neglecting to obey, observe or comply with any lawful order of the Commission, or any part or provision thereof..." and,

(d) For such other and further relief as is just and proper.



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January 27, 2017



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January 27, 2017

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
Defendant/Respondent.)

**DIRECT TESTIMONY
OF
DOUGLAS T. FOWLER, JR.
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME, CURRENT POSITION, AND BUSINESS**
2 **ADDRESS.**

3 A Douglas T. Fowler, Jr., Supervisor of Construction and Maintenance, Duke Energy
4 Carolinas, LLC, 763 SC-72, Greenwood, South Carolina 29649.

5 **Q PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **BACKGROUND.**

7 A After receiving an Associates Degree in Industrial Electronics from Greenville Tech., I
8 went to work for DEC in 1987. I started as an engineer designing projects to provide
9 service to customers. I then moved to a position working on major projects which again
10 involved designing and constructing facilities to provide service to customers. In 2003 I
11 assumed my current position supervising construction and maintenance projects. In all of
12 the positions I have held in DEC I have been involved in construction of new facilities to
13 serve customers and in maintaining existing facilities to serve customers.

14 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A The purpose of my testimony is to describe the facts and circumstances surrounding the
16 two power failures that occurred in May and June of 2015 at the drive-in movie theater
17 owned by Petitioner Tommy McCutcheon (“McCutcheon”) and located at 3109 Hwy 25
18 South in Greenwood County, South Carolina (the “Drive-In”) and to describe the actions
19 Duke Energy Carolinas, LLC (“DEC”) took in response to those power failures.

20 **Q PLEASE STATE WHAT ACTIONS YOU HAVE TAKEN IN ORDER TO**
21 **PREPARE YOUR TESTIMONY IN THIS CASE.**

1 A I have reviewed the Complaint, the Affidavit and Pre-filed Testimony of McCutcheon, the
2 Affidavit and Pre-Filed Testimony of James R. Calhoun, and the exhibits filed on behalf
3 of McCutcheon. I have also reviewed DEC's records relating to the Drive-In and spoken
4 with the DEC individuals who addressed the electrical failures at the Drive-In.

5 **Q PLEASE STATE YOUR UNDERSTANDING OF THE POWER FAILURE THAT**
6 **OCCURRED AT THE DRIVE-IN IN MAY OF 2015.**

7 A The first power failure occurred at the Drive-In on May 30, 2015. Jimmy Brown, a DEC
8 lineman who works for me, responded to the report. We received a call from the customer
9 reporting electrical arcing and that there had been a flash at the rear of the building. DEC
10 determined that a fuse had blown on the pole mounted transformer that serves the Drive-
11 In and the electrical wire that runs from the pole to the Drive-In had melted near its
12 intersection with the current transformer, which is located adjacent to the meter for the
13 Drive-In. We replaced the section of wire that had melted and were able to restore power
14 to the Drive-In.

15 **Q PLEASE STATE YOUR UNDERSTANDING OF THE POWER FAILURE THAT**
16 **OCCURRED AT THE DRIVE-IN IN JUNE OF 2015.**

17 A The second power failure at the Drive-In occurred on June 13, 2015. Mr. Brown returned
18 to the Drive-In and found that the electrical wire had melted in the same location. It was
19 again determined that a fuse had blown on the pole mounted transformer. Our crew was
20 able to replace the line that had melted and restore power.

21 **Q DID YOU VISIT THE SITE?**

1 A Yes. I went to the Drive-In on the morning of Monday June 15th following the second
2 incident. I observed smoke damage on the back of the building near where our metering
3 equipment is located. It was clear to me at that point that the existing 2/0-3 al service
4 connection did not have sufficient thermal capacity and wasn't strong enough to safely
5 provide service to the Drive-In, as shown by the fact that the line had melted on two
6 occasions.

7 **Q DOES DEC HAVE RECORDS OF THE CALLS THAT CAME INTO THE**
8 **COMPANY RELATING TO THESE INCIDENTS?**

9 A Yes. We have call records that are business records of the company, that are created at the
10 time of the events described and that are maintained by DEC in the regular course of its
11 business. **Exhibit A** is our record of the report that was phoned in on the first incident on
12 Saturday, May 30, 2015. It includes the following: "cust states power out, there was a very
13 bright spark, cable looks burned from pole to meter." **Exhibit B** is our record of the report
14 that was phoned in on the second incident on Saturday, June 13, 2015. It includes the
15 following: "Cust states the line going from the pole to the building is on fire, cust contacted
16 FD."

17 **Q DID DEC MAKE ANY DETERMINATIONS IN RESPONSE TO THE MAY AND**
18 **JUNE 2015 POWER FAILURES AT THE DRIVE-IN?**

19 A Yes. After the June 13, 2015 power failure, Mr. Brown, Mr. Gonzalez, and I determined
20 that the power failures that had occurred at the Drive-In were the result of thermal overload.
21 It was our opinion that there was a dangerous situation at the Drive-In and that something
22 needed to be done. Based on DEC's determination that the electrical system failures were

1 caused by thermal overload and because of the concern that there was a significant risk of
2 fire at the Drive-In, DEC made the determination that it was necessary to upgrade the
3 facilities providing McCutcheon's electrical supply. I communicated with Theo Lane who
4 handles Government and Community Relations for DEC in Greenwood and brought him
5 up to date on the situation. He then took over communications with Mr. McCutcheon who
6 was concerned that the upgrade would cause him to lose the Greenwood Rate.

7 **Q DID DEC DISCONNECT THE SERVICE TO THE DRIVE-IN?**

8 A Yes. Mr. Lane can explain the details but, when Mr. McCutcheon wouldn't agree to the
9 upgrade we proposed, we had a crew disconnect the service. The disconnection took place
10 on Wednesday, June 17.

11 **Q DID MR. MCCUTCHEON CHANGE HIS MIND ABOUT AGREEING TO THE**
12 **UPGRADE?**

13 A Yes, Mr. Lane and I met with him later on June 17th when he and his wife came into our
14 office and he signed an agreement consenting to the upgrade.

15 **Q WHAT ACTION DID DEC TAKE TO UPGRADE THE ELECTRICAL SUPPLY**
16 **AT THE DRIVE-IN?**

17 A DEC replaced the service lines serving the Drive-In and changed the transformer from a
18 25 KVA transformer to a 50 KVA transformer. The line serving the Drive-In before the
19 upgrade was one run of 2/0-3 al triplex wire. The lines we installed as part of the upgrade
20 are two runs of 4/0-3 al triplex wire. I have brought samples of the 2/0 and 4/0 wires to
21 show the difference. DEC made the decision to insist on an upgrade based upon the belief

1 that the Drive-In's thermal load had increased to an extent that additional facilities were
2 necessary to ensure safety.

3 **Q WAS DEC ABLE TO PERFORM THE UPGRADE WORK AT THE DRIVE-IN**
4 **FACILITY?**

5 A Yes. DEC was able to get the work done in time for the Drive-In to be open on Thursday,
6 June 18th so that Mr. McCutcheon did not lose revenues.

7 **Q DOES DEC HAVE RECORDS OF PREVIOUS OUTAGES OR INQUIRIES**
8 **RELATING TO THE DRIVE-IN?**

9 A Yes. Records of four outage reports in 2009 and one work request in 2008 are attached as
10 Exhibit C to my testimony.

11 **Q ARE THESE RECORDS CREATED AT OR NEAR THE TIME THAT THE**
12 **EVENTS OCCURRED AND ARE THEY MAINTAINED BY DEC IN THE**
13 **ORDINARY COURSE OF ITS BUSINESS?**

14 A Yes.

15 **Q DO THESE RECORDS SHED ANY LIGHT ON THE MATTERS BEING**
16 **CONSIDERED IN THIS PROCEEDING?**

17 A I was not directly involved so I can only interpret the documents, but they appear to show
18 that there had previously been issues relating to the ability of our facilities to serve the
19 greater load that was required by the Drive-In beginning in 2008.

20 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A Yes, it does.

Daily All Report

Start Date: 5/29/2015 Page 3 of 16
 End Date: 5/31/2015 Tuesday, February 03, 2013

Circuit	Substation	Event	Phases	Date Time Off	Date Time On
03351203	UTOPIA	9641480	C	5/30/2015 10:00:00 PM	5/30/2015 11:50:00 PM

Dev Type	Fac Id	Dur	Cus	RS	CD	CS	WE	PO	CT	FM	IC	MS
TXOH	38806224	110	1	OH	09	11		F2		D4		75

Dev Size	PD Address	Fault Location	Cust Out Min	Class
25.0			110	CC-E-Out:Out-O

Action Taken	Type Event	Completed By
29	OUT	GW541SQNH

Cust Name	Cust Address	Cust Remarks
TOMMY MCCUTCHEON	3109 HIGHWAY 25 S	cust states power out, there wa a very bright spark, cable looks burned from pole to meter. Mr. Thomas 864-325-7647

Crew	Crew Comments
GW541SQNH	CNPL 05/30/2015 23:50 on MWMS by GW541SQNH; RSN1; RNK1; REPAIRED BURNED UP CONNECTION AT WEATHER HEAD

FUN

Page: 11 of 13 Ready 100%

R-DailyOut - Microsoft Access

Print Preview

Print Size Margins Print Data Only Portrait Landscape Columns Page Setup Zoom One Page Two Pages More Refresh Excel Text File PDF or EPS Email More Close Print Preview

Daily All Report

Start Date: 6/13/2015 Page 35 of 30
 End Date: 6/18/2015 Tuesday, February 09, 2016

Circuit	Substation	Event	Phases	Date Time Off	Date Time On
07351203	UTOPIA	9657114	C	6/13/2015 9:51:22 PM	6/13/2015 10:56:00 PM

Dev Type	Fac Id	Dur	Cus	RS	CD	CS	WE	PO	CT	FM	FC	MS
TNOH	39806224	75	1		07	20				20		

Dev Size	PD Address	Fault Location	Cust Out Min	Chgs
25.0			75	Equip E-911-PF- Oth, Equip E-Out

Action Taken	Type Event	Completed By
27	OUT	dl2674

Cust Name	Cust Address	Cust Remarks
TONNY MCCUTCHEON	3109 HIGHWAY 25 S	Cust states the line going from the pole to the building is on fire, cust contacted FD.

Crew	Crew Comments
GW545SQNH	CMPL 06/13/2015 22:56 on MWMS by: GW545SQNH; RSN: ; RMR: REWORKED SVC GOING THROUGH CTS WITH 400PER 541_545JB...JG

FUN

Page: 35 of 35
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InList

Energy Delivery

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Outage Report

GREENWOOD

CIRCUIT	X-GRID	Y-GRID	PHS	OUT-ID	DATE/TIME OFF	DATE/TIME ON	DUR				
07351203	1052442.375	158038.2969		2792833	04/09/2009 11:19	04/17/2009 15:18	11758				
Status CMP	#CUST 0	RS	CD 43	CS	WE 00	PO	CT	FM D4	EQ 70	MS NA	CMI 0
SUBSTATION NAME	FACILITY ID	DEVICE TYPE	SIZE	SUB EVENT	CREW	CLUES					
UTOPIA	39806224	TXOH	15	N	GW344	Othr-LF					

PD ADDRESS:

ACTION TAKEN:

CREW REMARKS: gw543 repaired bad neutral on tx resla-18

CUSTOMER NAME: MCCUTCHEON,TOMMY **ADDRESS:** 3109 HIGHWAY 25 S **PHONE:** 8649809871

CUSTOMER REMARKS: lights flickering ,cust said she followed pwr line and appears there are limbs on the lines , not sure if this is the cause , pls check , may contact carolyn @ 864-980-9871 or 864-229-3979..theatre will open in 2 weeks or less need taken care of asap

ADDITIONAL REMARKS:

FAULT LOCATION:

FOLLOW-UP NOTES:



InList

Energy Delivery

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Outage Report

GREENWOOD

CIRCUIT	X-GRID	Y-GRID	PHS	OUT-ID	DATE/TIME OFF	DATE/TIME ON	DUR				
07351203	1052442.375	158038.2969	C	2849735	05/30/2009 19:51	05/30/2009 20:45	53				
Status	#CUST	RS	CD	CS	WE	PO	CT	FM	EQ	MS	CMI
CMP	1		04		00			11	NA	NA	53
SUBSTATION NAME	FACILITY ID	DEVICE TYPE	SIZE	SUB EVENT	CREW	CLUES					
UTOPIA	39806224	TXOH	15	N	GW545	Out					

PD ADDRESS:

ACTION TAKEN:

CREW REMARKS: GW545BILL..TECH REFUSED 3D TX FUSE..DIDNT HOLD..TECH PUT 5D TX FUSE..TECH THINK 15 KVA TX MIGHT BE GOING BAD..IF POWER GOES BCK OUT, TX WILL HAVE TO BE CHG TO BIGGER SIZE

CUSTOMER NAME: MCCUTCHEON, TOMMY **ADDRESS:** 3109 HIGHWAY 25 S **PHONE:** 8649809871

CUSTOMER REMARKS: states lot full of cars for drive-in movie ... pls assist

ADDITIONAL REMARKS:

FAULT LOCATION:

FOLLOW-UP NOTES:



InList

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Outage Report

GREENWOOD

CIRCUIT	X-GRID	Y-GRID	PHS	OUT-ID	DATE/TIME OFF	DATE/TIME ON	DUR				
07351203	1052442.375	158038.2969		2850032	05/31/2009 05:41	05/31/2009 18:30	768				
Status	#CUST	RS	CD	CS	WE	PO	CT	FM	EQ	MS	CM
CMP	0		43		00			D4	48	NA	0
SUBSTATION NAME	FACILITY ID	DEVICE TYPE	SIZE	SUB EVENT	CREW	CLUES					
UTOPIA	39806224	TXOH	15	N	GW544	On-Othr-0					

PD ADDRESS:

ACTION TAKEN:

CREW REMARKS: BILL & KEITH TO COME IN LATER IN THE MORNING & CHG TX

CUSTOMER NAME: MCCUTCHEON,TOMMY ADDRESS: 3109 HIGHWAY 25 S PHONE: 8649809871

CUSTOMER REMARKS: TX NEED TO BE CHG

ADDITIONAL REMARKS:

FAULT LOCATION:

FOLLOW-UP NOTES:



InList

Energy Delivery

[Print](#) [Close](#)

Outage Report

GREENWOOD

CIRCUIT	X-GRID	Y-GRID	PHS	OUT-ID	DATE/TIME OFF	DATE/TIME ON	DUR				
07351203	1052218.875	158150.9375	C	2802007	04/17/2009 14:52	04/17/2009 15:05	12				
Status CMP	#CUST 1	RS	CD 04	CS	WE 00	PO	CT	FM D4	EQ 70	MS NA	CMI 12
SUBSTATION NAME	FACILITY ID	DEVICE TYPE	SIZE	SUB EVENT	CREW	CLUES					
UTOPIA	39806224	TXOH	15	N	GW543						

PD ADDRESS:

ACTION TAKEN:

CREW REMARKS: gw543 trasak checking voltage @ 3109 hwy 25S has pwr off 15 min. (related to event 2802007) tech took off tx to make repairs respstl1917

CUSTOMER NAME:

ADDRESS:

PHONE:

CUSTOMER
REMARKS:

ADDITIONAL
REMARKS:

FAULT LOCATION:

FOLLOW-UP
NOTES:

Duke Energy Carolinas, LLC
Exhibit C to Testimony of Douglas T. Fowler, Jr.
Docket No. 2017-32-E

STORMS Work Request Details - STRM-002

WR Type	Sv A	WR No	Job Type	Status	On
DESG	GRWD	1513023	C/I-SVC3	4X	9/26/2008 3:05 PM

Customer	Subdvn	Lot
HWY 25 DRIVE IN MARKETPLACE		

Street Number	Street Prefix	Street Name	Street Type	Street Suffix	City	State
3109		HIGHWAY 25		S	GREENWOOD	SC

Contact Name	Contact Telephone Num
TOMMY MCCUTCHEON	8649809871

Ext Job Number: 150410300343 CIS Reference Number:

Remark Type	Remark Type Desc	Remark	Remark Date	Remark Created By
CANC	CS/Cancel Work request	HAVE NOT HEARD BACK FROM CUSTOMER REGARDING THIS SERVICE AFTER SITE VISIT.	05/14/2009	JWCROUC
CUST	CS/Customer Inquiries	aerice/b&i/ per cust is interested in putting an add'l 3ph serv at this drive in movie theater..wants to spk to an engr about what he needs to do, is going to be purchasing another projector screen soon...	09/26/2008	AUTOGENWR
DIR	DIRECTIONS	OLD DRIVE-IN THEATER/ FRN GREENWOOD TOK OLD HWY 25 SOUTH GOING TOWARD EDGEFIELD ON LEFT ABOUT 3 MILES OUT CITY LIMITS .AUTO DRIVE IN THEATER..NEXT TO SOUTHPOINT TIRE	09/26/2008	AUTOGENWR
ENGR	Engineering Remark	SITE VISIT 9/29/08 SPOKE TO CUSTOMER TOMMY MCCUTCHEON CONCERNING SERVICE TO THE PROJECTOR BOOTH FOR THE RE-OPENING OF THE DRIVE IN THEATER ON HWY 25. SOUTH. CUSTOMER HAS A PLANNED OPENING OF MARCH 2009 AND IS LEASING A 3 PHASE PROJECTOR. HE WANTS TO KEEP EVERYTHING AS IS AS FAR AS THE EXISTING SERVICE ON THE PROJECTOR BOOTH GOES SO HE CAN KEEP THE OLD DUKE RATE. HE HAS A SINGLE PHASE 60 AMP EXISTING SERVICE THAT LOOKS A LITTLE STRANGE. I GAVE HIM A LOAD SHEET AND ASKED HIM TO PUSH FORWARD ON GETTING HIS LOAD IN LINE AS NOT TO HOLD HIM UP.	09/29/2008	JWCROUC

Requirement	Requirement Description	Requirement Status	Updated On

Project ID Installation	Project ID Removal	Project ID Transfer
CINISC	CINRSC	CINISC

Contact Type	Oper ID	Name
ENGR	JWCROUC	CROUCH,JILES WAYNE

Inspection Number: Inspection Date Received:
 Locate Ticket #: Date and Time Good: Date Locate Expires:
 Meter Set Date:
 Site UFIN Current Date: Site UFIN Original Date:

Duke Energy Carolinas, LLC
 Exhibit C to Testimony of Douglas T. Fowler, Jr.
 Docket No. 2017-32-E

STORMS Work Request Details - STRM-002

CIAC Type:

CIAC Amount:

Point	To	Span Length	CU Code	CU Description	Action	On	Qty	Project ID	
Class	Work Packet Name			Hours	Sched Start date	Est Completion Date	Date Completed	Assigned	Crew
Work Packet		Crew Class	Material Item	Material Item Description	Reqn Qty	WO No	Account No	Usage	

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
Defendant/Respondent.)

DIRECT TESTIMONY

OF

JESSE S. GONZALEZ

ON BEHALF OF DUKE ENERGY CAROLINAS, LLC

1 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A My name is Jesse S. Gonzalez. My business address is 848 Bypass 72 NW, Greenwood,
3 South Carolina 29649.

4 Q BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?

5 A I am employed by Duke Energy Carolinas, LLC as a Distribution Line Technician B. I
6 report to Douglas T. Fowler, Jr.

7 Q PLEASE BRIEFLY DESCRIBE YOUR WORK EXPERIENCE FOR DEC?

8 A I have worked for the company almost six years, starting as a Distribution Line Helper. I
9 have been a Distribution Line Technician B for three years.

10 Q WERE YOU INVOLVED IN RESPONDING TO THE OUTAGE CALL AT THE
11 HIGHWAY 25 DRIVE-IN ON JUNE 13, 2015?

12 A Yes. I responded to the call and helped to restore power to the Drive-In.

13 Q DID YOU REPLACE THE FUSE ON THE POLE MOUNTED TRANSFORMER
14 THAT SERVED THE DRIVE-IN AT THAT TIME?

15 A Yes.

16 Q PLEASE DESCRIBE THE CONDITION OF THE FUSE WHEN YOU EXAMINED
17 IT THAT NIGHT?

18 A The fuse had melted, which caused it to open and stop the flow of electricity to the Drive-
19 In.

20 Q WHAT DID YOU DO?

21 A I removed the melted fuse and replaced it.

1 Q WAS PART OF THE LINE RUNNING FROM THE POLE MOUNTED
2 TRANSFORMER TO THE DRIVE-IN REPLACED?

3 A Yes, it had melted and had to be replaced in order for service to be restored.

4 Q WAS SERVICE TO THE DRIVE-IN RESTORED?

5 A Yes, we were able to restore power that night. This enabled the Drive-In to continue
6 showing movies that night.

7 Q DOES THIS CONCLUDE YOUR TESTIMONY

8 A Yes, it does.

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
Defendant/Respondent.)

**DIRECT TESTIMONY
OF
THEO L. LANE
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME, CURRENT POSITION, AND BUSINESS**
2 **ADDRESS.**

3 A Theo L. Lane, Government & Communications Relations Manager II, Duke Energy
4 Carolinas, LLC, 763 SC-72, Greenwood, South Carolina 29649.

5 **Q PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **BACKGROUND.**

7 A I was educated in the South Carolina public school system before continuing my
8 undergraduate education at the Citadel and University of South Carolina where I earned
9 both AS and BS degrees, then later earned my Masters in Education (MEd) from
10 Columbia College.

11 After a 12 year career in SC law enforcement, I was recruited to then Duke Power
12 Company in 1989 - serving for the next 20 years as a Senior Regional (SC and western
13 NC) Coordinator for the Protective Services Division, overseeing internal investigations,
14 physical asset security programs, and senior level Executive Protection.

15 In 2009, I accepted my current position as a SC District Manager for Government &
16 Community Relations. In this capacity, I oversee local elected official liaison activities;
17 community relations; critical issues management; and philanthropic support to a nine
18 county region of this State. I am now in my 28th year of service with Duke Energy.

19 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A The purpose of my testimony is to discuss the facts and circumstances leading to the June
21 17, 2015 agreement executed by Tommy McCutcheon ("McCutcheon"), me, and Tommy
22 Fowler pursuant to which McCutcheon requested that Duke Energy Carolinas, LLC

1 (“DEC”) restore electric service at his drive-in movie theater located at 3109 Hwy 25 South
2 in Greenwood, South Carolina (the “Drive-In”) to accommodate the current load
3 requirements of the Drive-In.

4 **Q PLEASE STATE WHAT ACTIONS YOU HAVE TAKEN IN ORDER TO**
5 **PREPARE YOUR TESTIMONY IN THIS CASE.**

6 A I have reviewed the Complaint, the Affidavit and Pre-filed Testimony of McCutcheon, the
7 Affidavit and Pre-Filed Testimony of James R. Calhoun, and the exhibits filed on behalf
8 of McCutcheon. I have also reviewed DEC’s records relating to the Drive-In.

9 **Q FOLLOWING THE POWER FAILURES AT THE DRIVE-IN ON MAY 30TH AND**
10 **JUNE 13TH OF 2015, DID DEC DISCONNECT THE POWER AT THE DRIVE-IN?**

11 A Yes, it did.

12 **Q PLEASE EXPLAIN THE EVENTS LEADING UP TO THE DISCONNECTION.**

13 A After the second power failure, DEC determined that in order to safely supply power to the
14 Drive-In, it was necessary to upgrade the electrical system. I informed Mr. McCutcheon
15 that it would be necessary to upgrade the system. During that discussion Mr. McCutcheon
16 brought up the effect that the upgrade would have on his continuing to receive service on
17 the Greenwood rate. I confirmed to him that the upgrade would disqualify him for the
18 Greenwood rate. McCutcheon objected. I told him that DEC considered the existing service
19 to be dangerous because of the risk of fire. I told him that if he would not agree to an
20 upgrade we would have to disconnect service. We had several conversations during the
21 early part of the week of June 15th, 2015. Our conversations came to a close when Mr.
22 McCutcheon told me that I should direct my discussions to his lawyer, Billy Garrett. I told

1 Mr. McCutcheon that we would be moving forward with the disconnection and I
2 specifically told him that we would delay the disconnection until Wednesday, June 17 so
3 that he would have time to protect perishable food.

4 **Q WAS DEC ABLE TO DISCONNECT SERVICE?**

5 A Yes, but not with any cooperation from Mr. McCutcheon. When our crew reached the
6 Drive-In we found the entrances blocked with trucks and a backhoe. However, our trucks
7 were able to access our facilities through neighboring property and the disconnection was
8 completed on Wednesday, June 17th.

9 **Q DID MCCUTCHEON SUBSEQUENTLY AGREE TO ALLOW DEC TO**
10 **UPGRADE THE ELECTRICAL SYSTEM AT THE DRIVE-IN AND TO BILL**
11 **MCCUTCHEON AT THE CURRENT DEC RATES?**

12 A Yes, he did. Mr. McCutcheon got back in touch with me on June 17th and told me he would
13 agree to the upgrade. Tommy Fowler and I met with him at our offices on June 17th to
14 discuss the upgrade and its impact on the Greenwood Rate. During that meeting Mr.
15 McCutcheon signed the agreement that is attached to my testimony as **Exhibit A**. Also
16 during that meeting Mr. McCutcheon told us that he was worried about losing business if
17 the Drive-In could not open on Thursday, June 18th. I told him that we would make every
18 effort to complete the upgrade so that he could open on Thursday the 18th.

19 **Q WAS DEC ABLE TO ACCOMPLISH THE UPGRADE ON THURSDAY JUNE**
20 **18TH?**

21 A Yes. We had a crew on site early on the morning of the 18th and the work was completed
22 by the middle of the afternoon on the 18th. I went by the Drive-In myself to check on the

1 progress of the work and to thank our crew for getting our customer back on in time to
2 serve his customers on Thursday evening.

3 **Q DID YOU IN ANY WAY THREATEN OR COERCE MCCUTCHEON INTO**
4 **SIGNING THE JUNE 17, 2015 AGREEMENT?**

5 A No. Neither I nor Tommy Fowler in any way threatened or coerced Mr. McCutcheon. We
6 simply explained to McCutcheon that, in order for DEC to provide safe electrical service
7 to the Drive-In, it was necessary to upgrade the electrical service and that upgrading the
8 electrical service would result in an increase in rates. McCutcheon freely and voluntarily
9 signed the agreement and did so without any threats, coercion, or duress.

10 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A Yes, it does.

June 17, 2015

I, Tommy McCutcheon, have met with Theo Lane, District Manager, Duke Energy South Carolina to discuss the overload service safety concern present at my Greenwood County business, located at 3109 Hwy 25 south, Greenwood, SC.

I request that Duke Energy upgrade and restore my electric service at 3109 Hwy 25 south, Auto Drive-In, to create a safe and reliable service delivery, and accommodate the current load requirements of my business.

It has been explained to me, by Theo Lane, that my request to upgrade the service will require that my business be billed in the future at current Duke Energy rates (beginning immediately after service reconnection), and that the ' old Greenwood County rate ' will no longer apply.

Signed Tommy McCutcheon
Tommy McCutcheon Tommy McCutcheon

Witnessed Theo L. Lane
Theo L. Lane , District Manager, Duke Energy South Carolina

Witnessed Tommy Fowler
Tommy Fowler, Supervisor, Construction & Maint, Greenwood Operations Center

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
 Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
 Defendant/Respondent.)

**DIRECT TESTIMONY
OF
JOEL M. LUNSFORD
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME, CURRENT POSITION, AND BUSINESS**
2 **ADDRESS.**

3 A My name is Joel M. Lunsford. I am the General Manager, Construction and Maintenance,
4 for Duke Energy Carolinas (“DEC”). In my current position as General Manager of
5 Construction and Maintenance, I am responsible for the distribution grid in the Upstate of
6 South Carolina. My business address is 1636 Pearman Dairy Road, Anderson, SC 29625.

7 **Q PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
8 **BACKGROUND.**

9 A I graduated from Clemson University in 1982 with a B.S. in Electrical and Computer
10 Engineering. After graduating from Clemson, I began my career with Duke Energy and
11 have been employed by DEC for approximately thirty-five years. I am a licensed
12 professional engineer, having first obtained my license in 1986. My license has been active
13 at all times since I first obtained it. Throughout my career as a licensed professional
14 engineer, I have experience in the areas of transmission, distribution, underground network,
15 training, safety, and standards. On numerous occasions during my work for DEC I have
16 been involved in determinations of the proper equipment and facilities that were necessary
17 to provide service to various customers in a safe and efficient way. That type of analysis
18 is very similar to the subject of my testimony in this case.

19 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A The purpose of my testimony is to respond to allegations made in the Complaint filed by
21 Petitioner Tommy McCutcheon (“McCutcheon”), to respond to the opinions offered on
22 behalf of McCutcheon by James R. Calhoun (“Calhoun”), and to state my opinions

1 concerning the electrical failures that occurred at McCutcheon's drive-in movie theater
2 located at 3109 Hwy 25 South in Greenwood County, South Carolina (the "Drive-In").

3 **Q PLEASE STATE WHAT ACTIONS YOU HAVE TAKEN IN ORDER TO**
4 **PREPARE YOUR TESTIMONY IN THIS CASE.**

5 A I have reviewed the Complaint, the Affidavit and Pre-filed Testimony of McCutcheon, the
6 Affidavit and Pre-Filed Testimony of Calhoun, and the exhibits filed on behalf of
7 McCutcheon. I have also reviewed DEC's records relating to the Drive-In and spoken with
8 the DEC individuals who addressed the electrical failures at the Drive-In and I have visited
9 the Drive-In. I am familiar with the facilities and equipment that were in place to serve the
10 Drive-In prior to June, 2015 and with the facilities and equipment that were installed as
11 part of the June 2015 upgrade.

12 **Q IS IT YOUR UNDERSTANDING THAT THE DRIVE-IN EXPERIENCED TWO**
13 **POWER FAILURES IN MAY AND JUNE OF 2015?**

14 A Yes.

15 **Q DO YOU HAVE AN OPINION CONCERNING THE CAUSE OF THE MAY AND**
16 **JUNE 2015 POWER FAILURES AT THE DRIVE-IN?**

17 A Yes. In my professional opinion, the power failures were caused by thermal overload.

18 **Q EXPLAIN WHAT YOU MEAN BY THERMAL OVERLOAD.**

19 A Any conductor used to deliver electricity from one point to another is designed to safely
20 carry a certain maximum load. If the conductor is used to try to carry a load in excess of
21 what it is designed to carry it will heat up. Eventually the insulation can melt and even
22 cause a fire.

1 Q CAN YOU GIVE AN EXAMPLE OF THERMAL OVERLOAD THAT MIGHT BE
2 EXPERIENCED BY NON-ELECTRICIANS?

3 A Yes. Any hardware store will carry various types of extension cords that are designed for
4 different applications, from a basic thin extension cord that you might use to plug in a lamp
5 to a heavy duty cord designed to safely conduct sufficient power to operate something like
6 a power tool. Anyone who has used a small extension cord to try to operate an appliance
7 that requires a significant load has probably felt the cord get hot. That is thermal overload.

8 Q WHAT IS THE BASIS FOR YOUR OPINION THAT THE MAY AND JUNE 2015
9 POWER FAILURES AT THE DRIVE-IN WERE CAUSED BY THERMAL
10 OVERLOAD?

11 A At the time of the power failures, the Drive-In was served by a single triplex overhead 2/0-
12 3 conductor with polyethylene insulation rated at 75 degrees Celsius. The continuous
13 amperage rating for this type cable is 185 amperes. I believe that in June 2015 the Drive-
14 In had a demand load of at least 225 amperes, significantly higher than the capacity of the
15 conductor. It is my opinion that the overloaded line overheated and melted the insulation
16 causing the fires and the power outage.

17 Q WHAT IS THE BASIS FOR YOUR OPINION THAT THE DEMAND LOAD OF
18 THE DRIVE-IN WAS AT LEAST 225 AMPERES?

19 A. Prior to June 2015 there was no demand meter in place serving the Drive-In so we don't
20 have a direct record of the demand load at the time of the fires. However, when the
21 facilities were upgraded a kilowatt demand meter was installed at the Drive-In. Based on
22 what we know about operations of the Drive-In, I think the demand readings following the

1 upgrade are indicative of the peak demand during the period leading up to the fires.
2 Readings from June of 2015 show that the Drive-In's maximum load was 49.4 kilowatts.
3 This equates to 225 amperes of demand load which is the figure I used in reaching my
4 conclusion that the overhead service line to the Drive-In was loaded at 122% of its rating.

5 **Q ARE THERE OTHER RECORDS OF DEC THAT SUPPORT YOUR**
6 **CONCLUSION?**

7 A Yes. The spreadsheet attached as **Exhibit A** shows the annual usage for the Drive-In from
8 2004 through 2016. The spreadsheet was compiled from the business records of DEC that
9 are created continuously as we deliver service and then maintained by the company. The
10 values given in the chart are in Kilowatt Hours which shows total annual usage and doesn't
11 directly show what the demand was at any given point. However, the overall usage
12 increased significantly after 2008 and continued to increase leading up to the problems that
13 were experienced in 2015. These DEC records show an increase in the overall load in the
14 operation of the Drive-In. Given what we know about the typical demand of an operation
15 like a drive-in theater, with most of the demand for projection, cooking and cooling all
16 occurring at about the same time of day, I would expect the overall increased power usage
17 of the Drive-In to result in the type of increased peak demand that I think caused the thermal
18 overload.

19 **Q DO YOU HAVE A DIAGRAM THAT ILLUSTRATES THE ELECTRICAL**
20 **SERVICE PROVIDED TO THE DRIVE-IN IN MAY AND JUNE OF 2015?**

1 A Yes. The diagram attached as **Exhibit B** does that. The diagram shows the current
2 transformer, the 2/0-3 conductor, and the delivery point. The diagram also shows the
3 approximate location of the conductor failure due to thermal overload.

4 **Q IS IT YOUR UNDERSTANDING THAT DURING BOTH OUTAGES A FUSE WAS**
5 **BLOWN ON THE POLE MOUNTED TRANSFORMER THAT SERVES THE**
6 **DRIVE-IN?**

7 A Yes.

8 **Q IS THAT FACT CONSISTENT WITH YOUR EXPLANATION OF HOW THE**
9 **TWO INCIDENTS OCCURRED?**

10 A Yes. One of the reasons that there is a fuse in the transformer is to stop the delivery of
11 electricity to a service line that is overloaded. In both incidents the fuse worked as it was
12 intended, shutting down the flow of electricity to a service line that was being damaged as
13 a result of thermal overload.

14 **Q EXPLAIN THE FUNCTION OF THE CURRENT TRANSFORMER THAT IS**
15 **SHOWN ON THE DIAGRAM.**

16 A The current transformer metered the electricity usage of the Drive-In.

17 **Q DO YOU AGREE WITH MR. CALHOUN'S OPINION THAT THE ELECTRICAL**
18 **FAILURE DESTROYED THE 800/5 CURRENT TRANSFORMER?**

19 A No, I do not.

20 **Q WHAT IS THE BASIS FOR YOUR OPINION?**

21 A The 800/5 current transformer was not destroyed. I have confirmed with the DEC
22 employees that it was not destroyed but was replaced as part of the upgrade. Additional

1 proof that the old current transformer was not destroyed is that if it had been destroyed, it
2 would have stopped metering. It did not stop metering – we have metering readings from
3 May 30th through June 17th. If the meter had been destroyed during either of the outage
4 events it would have stopped functioning. Therefore, we know that the current transformer
5 was not destroyed.

6 **Q DID DEC REPAIR THE METERING INFRASTRUCTURE AT THE DRIVE-IN?**

7 A No. The metering infrastructure was never damaged. DEC simply upgraded the meter
8 installation to a new metering standard that provides more accurate meter readings.

9 **Q IN YOUR OPINION, DID THE EXISTING ELECTRICAL SYSTEM AT THE**
10 **DRIVE-IN IN MAY AND JUNE OF 2015 POSE A SAFETY HAZARD?**

11 A Absolutely. The existing electrical cables were insufficient to handle the thermal load at
12 the Drive-In and posed a fire risk. This is evidenced by the fact that on two separate
13 occasions in May and June of 2015, the Drive-In suffered loss of electrical power as a result
14 of a melted electrical cable.

15 **Q DO YOU AGREE WITH MR. CALHOUN'S STATEMENT THAT THE DRIVE-**
16 **IN'S "SERVICE ON ITS SIDE IS NOW AND HAS ALWAYS BEEN A 400**
17 **AMPERE SERVICE, WHICH COULD NOT HAVE OVERLOADED [DEC'S]**
18 **POWER SYSTEM?**

19 A No. Service size, as described by an electrician, is a function of the amperage of the main
20 breaker and has no influence on the load demand of the customer's electric system. The
21 electrical failures in this matter were caused by thermal overload.

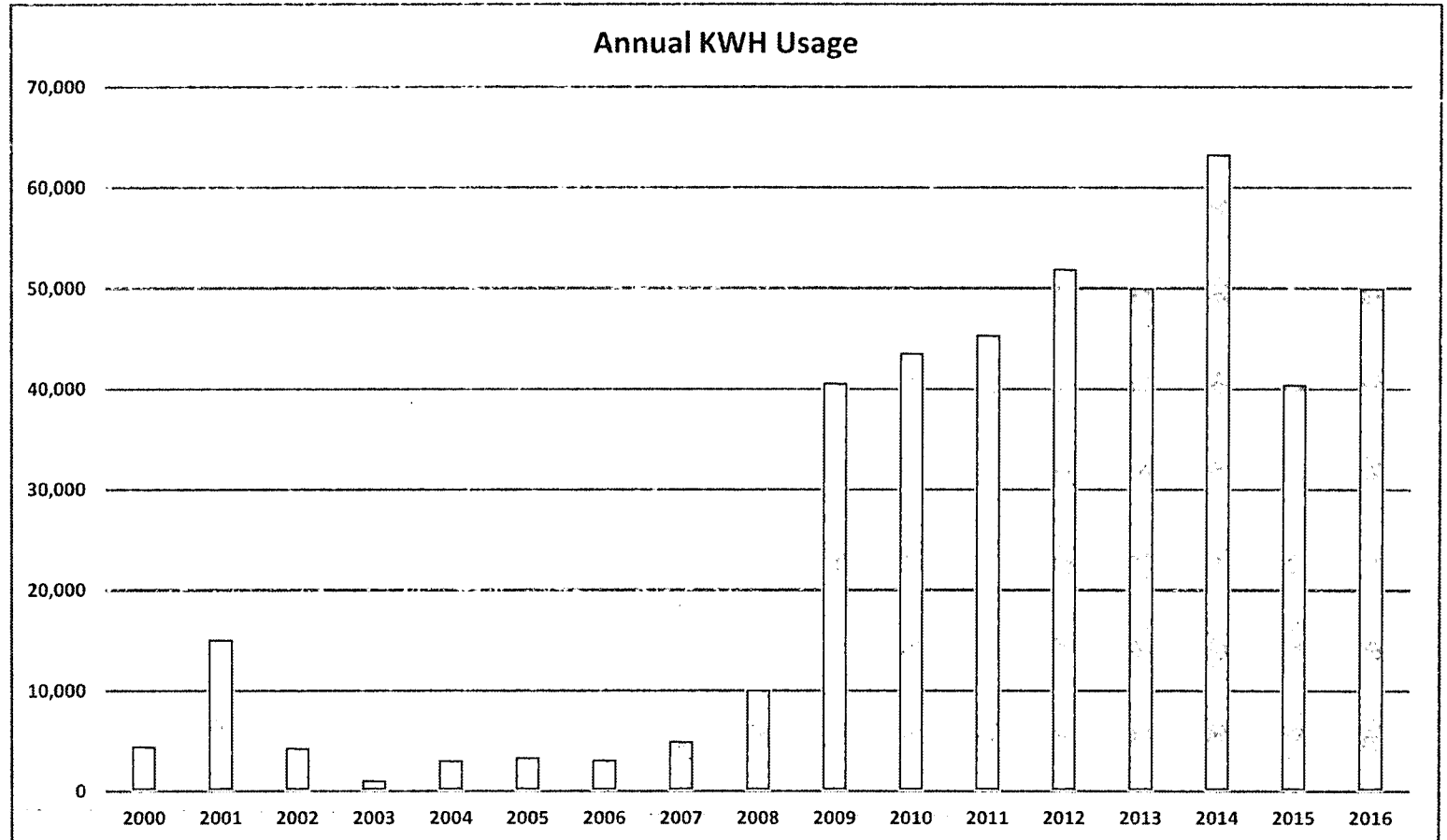
1 **Q AFTER THE MAY AND JUNE 2015 POWER FAILURES AT THE DRIVE-IN,**
2 **WAS IT NECESSARY FOR DEC TO CHANGE THE CHARACTER OF THE**
3 **CONNECTION AT THE DRIVE-IN?**

4 **A** Yes. The overhead service conductors were thermally overloaded and posed a risk of fire.
5 It was necessary to upgrade the customer to ensure that electricity was supplied to the
6 Drive-In in a manner that was safe.

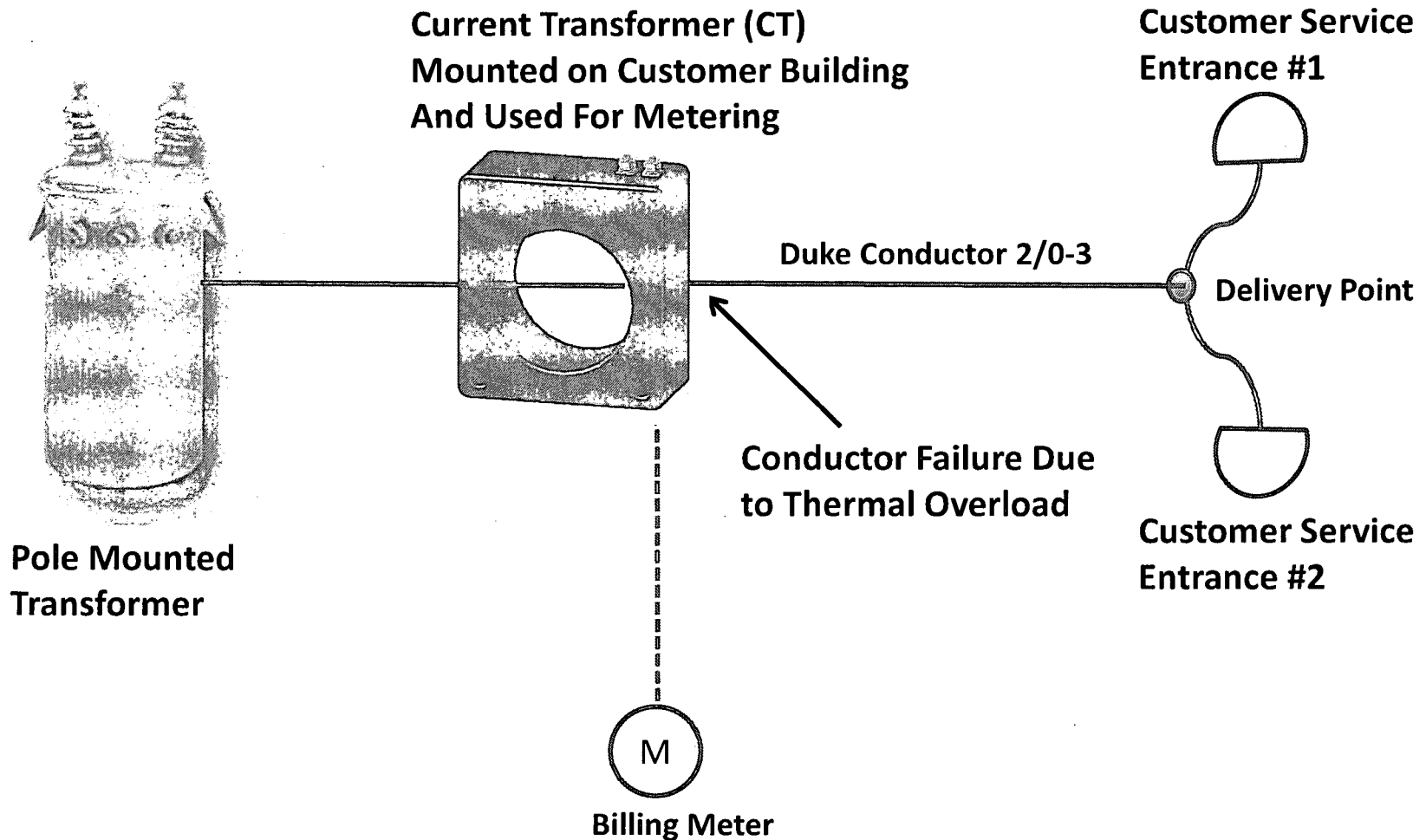
7 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

8 **A** Yes it does.

Year	Total KWH Usage
2000	4,480
2001	15,096
2002	4,320
2003	1,040
2004	3,040
2005	3,360
2006	3,120
2007	4,960
2008	10,080
2009	40,640
2010	43,600
2011	45,360
2012	51,920
2013	50,080
2014	63,360
2015	40,490
2016	50,040



One Line Visual of Electric Service to Greenwood Drive In



Duke Energy Carolinas, LLC
Exhibit B to Testimony of Joel M. Lunsford
Docket No. 2017-32-E

Not to Scale

JML 3-4-17

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
 Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
 Defendant/Respondent.)

**SUPPLEMENTAL TESTIMONY
OF
JOEL M. LUNSFORD
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A My name is Joel M. Lunsford. My business address is 1636 Pearman Dairy Road,
3 Anderson, SC 29625.

4 Q HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

5 A Yes, I filed testimony earlier on March 8, 2017.

6 Q WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?

7 A Additional information came to my attention on March 27, 2017 that is relevant to the
8 issues in this proceeding.

9 Q WHAT IS THAT INFORMATION?

10 A As reflected in the supplemental testimony of Jesse Gonzalez, on June 13, 2015 he replaced
11 the fuse on the pole mounted transformer that serves the Drive-In. He found that the fuse
12 had melted opening the circuit and disconnecting service to the Drive-In.

13 Q WHAT IS THE SIGNIFICANCE OF THE FACT THAT THE FUSE MELTED?

14 A The fact that the fuse melted indicates that the transformer was subject to thermal overload
15 like the service line described in my earlier testimony. A melted fuse indicates that the
16 transformer overheated and that the fuse was not disabled by a sudden surge of electricity.
17 This confirms my opinion as expressed in my earlier testimony that the demand from the
18 Drive-In had overloaded our facilities that were in place to serve it.

19 Q WAS THE TRANSFORMER REPLACED AS PART OF THE UPGRADE OF THE
20 FACILITIES USED TO SERVE THE DRIVE-IN?

21 A Yes. Before the upgrade we had a 25KVA transformer and we replaced it with a 50KVA
22 transformer.

1 Q DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?

2 A Yes, it does.

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2017-32-E

In re:)	
)	
TOMMY MCCUTCHEON,)	
Complainant/Petitioner,	)	AFFIDAVIT AND
	)	PREFILED TESTIMONY
v.	)	OF TOMMY
	)	MCCUTCHEON
Duke Energy Carolinas, LLC,)	
Defendant/Respondent.)	

PERSONALLY appeared before me, Tommy McCutcheon who first being duly sworn states as follows:

1. My name is Tommy McCutcheon and I, together with my wife own and operate a drive-in movie theater located on Highway 25 South in Greenwood County, South Carolina, 3109 Hwy 25 S, LLC, d/b/a 25 Drive-In.
2. Duke Energy Carolinas, LLC, is the entity which provides electrical supply service to the property located at this address (the "Property.")
3. The Property was first developed as a drive-in theater in the late 1940's. In 2008, my wife and I entered into an agreement to purchase the Property in 2008 to revitalize the drive-in movie theater.
4. Upon entering into this agreement to purchase the Property I transferred the existing electrical account, #: _____ into my name personally.
5. At the time of purchase, the Property was served by Duke under the special rate (The "Greenwood Rate") applicable to connections existing upon the sale of the Buzzard's Roost Hydro-electric project by Greenwood County to Defendant/Respondent's predecessor, Duke Power Company, in 1966.

6. From our purchase of the Property in 2008 we received the benefit of the Greenwood Rate and I have paid all invoices in a timely manner since 2008.

7. From our purchase of the Property in 2008 we used the Property only for its historically established uses, as a commercial facility, specifically as a drive-in movie theater with a concession stand.

8. From our purchase of the Property in 2008 we did not change the use of the Property from commercial to residential and did not upgrade the power service from single phase to three phase service.

9. From our purchase of the Property in 2008 we did not significantly increase our use of electricity from the demand from when the Property was first developed. In fact, we have installed modern projection equipment, which is significantly more energy efficient than the old carbon arc or xenon arc lamps formerly used at drive-in movie theaters. When selecting modern digital projection equipment, we considered and rejected a model that operated on three phase power as we knew it would result in loss of the Greenwood Rate.

10. In early June of 2015 Defendant/Respondent's service line malfunctioned causing certain interruptions in our business. The malfunctions were all located on Defendant/Respondent's side of our meter box located on the side of one of the buildings on the Property, known as the projector room.

11. I made service calls to Defendant/Respondent and Defendant/Respondent's agents made service calls to repair Defendant/Respondent's line, restoring electrical service to our business and allowing us to continue projecting movies.

12. On or about June 15, 2015, Defendant/Respondent's agents Tommy Fowler and Theo Lane met with me and advised me that our meter box and other wiring needed to be removed and replaced. They notified me that as a result of this replacement we would lose the Greenwood Rate.

13. I objected to this work being performed and refused to allow Defendant/Respondent to perform said work.

14. On June 16, 2015, Defendant/Respondent's agent Theo Lane notified me that we

had no choice; that the meter box needed to be removed or Defendant/Respondent would cut off power to the business on the following day at noon.

15. On the morning of June 17, 2015, I filed a formal complaint with the Office of Regulatory Staff. Defendant/Respondent's agents were made aware of my filing.

16. Despite the pendency of this complaint, Defendant/Respondent continued to attempt to disconnect our power supply. I notified Defendant/Respondent's agents that they were not to enter the Property to disconnect the power.

17. Defendant/Respondent disregarded these instructions and disconnected the power supply by physically severing the electrical supply line to our Property on June 17, 2015.

18. The month of June is a peak time for the summer drive-in season. As a result of the power interruption all the refrigerated and frozen items in my concession stand spoiled and I was unable to operate on June 17, 2015. Faced with the loss of power, I agreed to meet with Defendant/Respondent's agents Tommy Fowler and Theo Lane on the evening of June 17, 2015.

19. At this meeting Lane and Fowler stated they were aware of the pending ORS complaint and told me that I could continue with my formal complaint and go without electrical service for the next 30 days while awaiting a determination, or I could give up, allow my meter box to be removed, relinquish the Greenwood Rate, and have my power restored the next day.

20. Under duress and at the instruction of Lane and Fowler I was forced to sign a document they had prepared. In this document dated June 17, 2015, I agreed to an "upgrade" of my service and agreed to relinquish the Greenwood Rate. Lane and Fowler witnessed this document.

21. I did not voluntarily sign this document. Defendant/Respondent's agents threatened me with an extended loss of service to my business which would have been a catastrophic loss.

22. Following restoration of electrical service I was assigned account # [REDACTED] and have been billed under Defendant/Respondent's normal rate structure, which is significantly higher than the Greenwood Rate.

23. From the point where Defendant/Respondent's service line attaches to our service

lines, no alterations have been made to our service lines. Our service lines have remained fundamentally unchanged, in the same place, are fully functional, and have remained so since we purchased the property.

FURTHER AFFIANT SAYETH NOT.

Tommy McCutcheon
Tommy McCutcheon

Dated this 5 day of December, 2016

SWORN TO BEFORE ME

This 5 day of December, 2016

Lili Kate Womack (Notary Signature)

Print Notary Name Lili Kate Womack

My Commission Expires 3/25/2019



BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2017-32-E

In re:)	
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and)	
Tommy McCutcheon)	
)	
Complainant/Petitioner,	)	PREFILED REBUTTAL
	)	TESTIMONY OF
v.	)	CAROLYN
	)	MCCUTCHEON
Duke Energy Carolinas, LLC,)	
Defendant/Respondent.)	
<hr/>		

Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Carolyn McCutcheon. My husband and I operate the Drive-In at 3109 Highway 25 South in Greenwood.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I want to discuss the handling of the complaint we filed with the Office of Regulatory Staff and our meeting with Tommy Fowler and Theo Lane on the evening of June 17th, 2015.

Q. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARING THIS TESTIMONY?

A. I reviewed my husband's and Bob Calhoun's prefiled testimony, the testimony of April Sharpe of the Office of Regulatory Staff, and the testimony of Joel Lunsford, Tommy Fowler, and Theo Lane from Duke.

Q. DID YOU FILE A COMPLAINT WITH THE OFFICE OF REGULATORY STAFF?

A. I did. I called their office and spoke with Takishia Anderson. I called on June 16th, 2015. I know my husband's testimony says we filed it on June 17th, 2015 but after looking at the files it must have been on the 16th.

Q. WHY DID YOU FILE A COMPLAINT ON JUNE 16TH, 2015?

A. Because Mr. Lane and Mr. Fowler had told us that our power line needed to be “upgraded” and that as a result we’d lose our Greenwood rate. They said if we didn’t agree to this Duke would cut off our power. We didn’t want to lose the Greenwood rate and didn’t agree to any work being done that would result in the loss of the Greenwood rate.

Q. DID YOU EVER SPEAK TO APRIL SHARPE AT THE OFFICE OF REGULATORY STAFF?

A. Not that I recall. I recall speaking with Takishia Anderson.

Q. WHAT HAD MR. LANE AND MR. FOWLER TOLD YOU WOULD HAPPEN IF YOU WOULDN’T AGREE TO THE UPGRADE?

A. They told us they’d cut off our power.

Q. DID DUKE CUT OFF YOUR POWER?

A. Yes, on June 17th I checked the answering machine at the theater and it didn’t work. We went to the theater and found that the supply line from the power pole had been physically cut.

Q. DID YOU AND YOUR HUSBAND MEET WITH MR. FOWLER AND MR. LANE ON THE 17TH?

A. Yes. At around 5:30 pm Mr. Lane called on my husband’s cell and asked us to meet him at Duke Power’s local office at 6:00 pm.

Q. WHAT DID YOU DISCUSS?

A. The power disconnection and getting the power reconnected. Mr. Lane and Mr. Fowler said that they would not reconnect the power unless we agreed to an upgrade. They said if we agreed, we would lose the Greenwood rate. They said if we would not agree Duke would not reconnect the power.

Q. DID THEY ASK YOU TO SIGN A DOCUMENT?

A. While we were at the office Mr. Lane got on his computer and printed out a document saying that we had voluntarily agreed to this upgrade and that we would lose the Greenwood

rate.

Q. DID YOUR HUSBAND SIGN THE DOCUMENT?

A. Yes. We had discussed the matter that day. We felt we had no choice. However, we didn't think that by signing this agreement we would be dropping the Office of Regulatory Staff complaint. We signed it under duress.

Q. DID DUKE TURN THE POWER BACK ON?

A. They turned the power back on June 18th, 2015.

Q. DID YOU SPEAK TO ANYONE AT THE OFFICE OF REGULATORY STAFF AFTERWARDS?

A. Yes. On June 18th someone from the Office of Regulatory Staff called me to ask if the power was back on. I told her that the power was back on. I never said anything about the matter being resolved or if we were satisfied with the outcome. I thought the Office of Regulatory staff was still working on our complaint. On July 20th I called Takishia Anderson and asked about the status of our complaint. She told me that the matter had been resolved and that the case had been closed.

Q. DID YOU EVER TELL ANYONE AT THE OFFICE OF REGULATORY STAFF THAT THE MATTER HAD BEEN RESOLVED SATISFACTORILY?

A. No. We felt we were forced to sign the agreement or we wouldn't get power back. We never told the Office of Regulatory Staff that we were withdrawing our complaint or that the dispute had been resolved by an agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

Consumer Account & Contact Information

Year	Nbr	Industry	Date Recv	Date Closed	How Recv	Call Type	Note
2015	1066	Electric	6/16/2015	6/18/2015	telephone call	Inquiry	No

Pfx	Contact's First Name	Contact's Last Name	MI Recv By	Asgn To
	Tommy & Carolyn	McCutcheon	TDA	TDA

How To Reply		First Name	MI
Home Phone - No	Mail - No	Mighty Auto	
Mobile Phone - No	Email - No		
Work Phone - No		Last Name/Business Name	
		Drive-In	
Address		Phone	Ext
3109 Hwy 25S		(864) 554-1272	
City	District	Account Number	Type
Greenwood	3	1123402121	Business
State	Zip	Address	
SC	29646	3109 Hwy 25S	
Home Phone	Mobile Phone	City	District
(864) 554-1272		Greenwood	3
Work Phone	Ext	State	Zip
		SC	29646
Email			

Company/Category/Regulations

_____ **Case** _____

Year	Nbr	Industry	Date Recv	Date Closed	How Recv	Call Type	Note
2015	1066	Electric	6/16/2015	6/18/2015	telephone call	Inquiry	No

Pfx	Contact's First Name	Contact's Last Name	MI Recv By	Asgn To
	Tommy & Carolyn	McCutcheon	TDA	TDA

_____ **Company** _____

Provider	Regulated
Duke Energy Carolinas	Y
** Internet Contact ** Provider Consumer Entered	Cnsmr Spoke To Comp
	Yes
	Date
	6/16/2015

_____ **Complaint Classifications** _____

Electric

_____ **Categories/Definitions/Regulations** _____ **In Compliance** _____

Rate

Monthly Rate

Customer Complaints: Complaints Investigated Promptly (103-345.A)

Y

Issue/Findings

Case							
Year	Nbr	Industry	Date Recv	Date Closed	How Recv	Call Type	Note
2015	1066	Electric	6/16/2015	6/18/2015	telephone call	Inquiry	No
Pfx	Contact's First Name	Contact's Last Name	MI Recv By	Asgn To			
	Tommy & Carolyn	McCutcheon	TDA	TDA			

Consumer Issue

1) Customer called to advise that they are being forced off the Greenwood rate. States that the company is not trying to hear them and the fact that they do not want to be removed from the rate. They state that the issues that they once had were caused by DEC not their system. Spoke with Carolyn while Mr. McCutcheon was also present.

3) Spoke with Mrs. McCutcheon who confirmed that there had been fires at the location but that they were not the fault of the customer. While discussing information provided by DEC with Mrs. McCutcheon, Mr. McCutcheon got on the phone and stated that there had not been any fires at the location and he continued to state that he felt he was being forced off the Greenwood rate.

Investigative Findings

2). Pam advised that the customer is overloading their system and causing issues. States that the customer has had 2 fires at their location. States that the customer is scheduled to be disconnected on Thurs.

4) Pam advised that this situation is being handled by Barbara because the situation was a safety issue that had been escalated.

6/17/15

5) Spoke with Barbara Yarborough who advised that the customer is overloading the system and is causing damage to the line. States that the customer was advised that their current situation is causing a safety hazard and if the customer would not agree to the upgrade on the system to prevent future fires they would disconnect the customer on Wedn. Advised that the required upgrade will result in customer, being removed from the Greenwood rate. Advised that there had been 2 instances of

overheating/fire on the system in the last 2 months.

6) Barbara called and spoke directly with Nanette on this customer.
From: Yarbrough, Barbara G [mailto:Barbara.Yarbrough@duke-energy.com]
Sent: Thursday, June 18, 2015 6:58 AM
To: Anderson, Takisha; Edwards, Nanette
Cc: Howze, Pam E; Smith, Heather Shirley
Subject: Mccutcheon

This matter was resolved early last evening in a meeting with Mr and Mrs. Mccutcheon. The customer has agreed to the service upgrade and understands the rate will change. We have a crew scheduled to get the work done and service connected today.

Found company in compliance with the PSC regulations.

6/18/15

7) Spoke with Carolyn over the phone who confirmed that issue was resolved and service restored.

Advised closing of case.

7/20/15

8) Customer called asking for an update, states she was supposed to get something in writing. I advised customer that I never advised that I would be sending anything in writing, that when I called and confirmed that the service was on and that an agreement had been reached between the customers and DEC my case was closed and that I was not involved in the conversation with DEC so I was not aware if DEC had promised something in writing would be provided from DEC.

9) Customer said ok Thanks and hung up.

10) ——Original Message——
From: Anderson, Takisha
Sent: Monday, July 20, 2015 4:12 PM
To: Yarbrough, Barbara G
Subject: RE: Mccutcheon

Barbara,

I just received a call from Mrs. McCutcheon and she is stating that they are still trying to get on the Greenwood rate. I was under the understanding that this issue was resolved when you spoke with them on 6/18. Have you received any further inquiries from them?

-----Original Message-----

From: Yarbrough, Barbara G [mailto:Barbara.Yarbrough@duke-energy.com]

Sent: Monday, July 20, 2015 4:22 PM

To: Anderson, Takisha

Cc: Smith, Heather Shirley

Subject: RE: Mccutcheon

No -- Mr. McCutcheon signed a statement (copy attached) indicating that he requested the upgrade to meet load requirements and he further acknowledged that the account would no longer be on the old Greenwood county rate upon reconnection. This was the basis for us restoring the service after it was cut off for safety reasons. Had he not made the request and affirmed that understanding, the power would still be off. Please note that Mrs. McCutcheon is not the customer of record but was present when the statement was signed after 5 p.m. on June 17, 2015. Our representative stayed after hours that day to accommodate Mr. McCutcheon and Duke Energy Carolinas made extra efforts to perform the work the following day in order for the business to resume in the evening.

Investigation

Case							
Year	Nbr	Industry	Date Recv	Date Closed	How Recv	Call Type	Note
2015	1066	Electric	6/16/2015	6/18/2015	telephone call	Inquiry	No

Pfx	Contact's First Name	Contact's Last Name	MI Recv By	Asgn To
	Tommy & Carolyn	McCutcheon	TDA	TDA

History							
Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs	
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No	
Date	How Cont	Contact Name		Contact Phone	Ext		
7/20/2015	T	Carolyn-8					
Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By	
						TDA	

Comments

8) Customer called asking for an update, states she was supposed to get something in writing. I advised customer that I never advised that I would be sending anything in writing, that when I called and confirmed that the service was on and that an agreement had been reached between the customers and DEC my case was closed and that I was not involved in the conversation with DEC so I was not aware if DEC had promised something in writing would be provided from DEC.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs	
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No	
Date	How Cont	Contact Name		Contact Phone	Ext		
7/20/2015	T	Carolyn-9					
Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By	
						TDA	

Comments

9) Customer said ok Thanks and hung up.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs	
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No	
Date	How Cont	Contact Name		Contact Phone	Ext		
7/20/2015	E	Barbara-10					
Reply	Reply	How	Ext	Ext	How	Adv	

Due Date	Recv Date	Replied	Given	Date	Adv	By
						TDA

Comments

10) -----Original Message-----
 From: Anderson, Takisha
 Sent: Monday, July 20, 2015 4:12 PM
 To: Yarbrough, Barbara G
 Subject: RE: Mccutcheon

Barbara,

I just received a call from Mrs. McCutcheon and she is stating that they are still trying to get on the Greenwood rate. I was under the understanding that this issue was resolved when you spoke with them on 6/18. Have you received any further inquiries from them?

-----Original Message-----

From: Yarbrough, Barbara G [mailto:Barbara.Yarbrough@duke-energy.com]
 Sent: Monday, July 20, 2015 4:22 PM
 To: Anderson, Takisha
 Cc: Smith, Heather Shirley
 Subject: RE: Mccutcheon

No -- Mr. McCutcheon signed a statement (copy attached) indicating that he requested the upgrade to meet load requirements and he further acknowledged that the account would no longer be on the old Greenwood county rate upon reconnection. This was the basis for us restoring the service after it was cut off for safety reasons. Had he not made the request and affirmed that understanding, the power would still be off. Please note that Mrs. McCutcheon is not the customer of record but was present when the statement was signed after 5 p.m. on June 17, 2015. Our representative stayed after hours that day to accommodate Mr. McCutcheon and Duke Energy Carolinas made extra efforts to perform the work the following day in order for the business to resume in the evening.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext		
6/18/2015	T	Carolyn-7				
Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

Spoke with Carolyn who confirmed that issue was resolved and service restored.

Advised closing of case.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext
6/17/2015	T	Pam(DEC)-4		

Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

4) Pam advised that this situation is being handled by Barbara because the situation was a safety issue that had been escalated.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext
6/17/2015	T	Carolyn & Tommy-3		

Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

3) Spoke with Mrs. McCutcheon who confirmed that there had been fires at the location but that they were not the fault of the customer. While discussing information provided by DEC with Mrs. McCutcheon, Mr. McCutcheon got on the phone and stated that there had not been any fires at the location and he continued to state that he felt he was being forced off the Greenwood rate.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext
6/17/2015	T	Barbara(DEC)-5		

Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

Spoke with Barbara Yarbourough who advised that the customer is overloading the system and is causing damage to the line. States that the customer was advised that their current situation is causing a safety hazard and if the customer would not agree to the upgrade on the system to prevent future fires they would disconnect the customer on Wedn. Advised that the required upgrade will result in customer, being removed

from the Greenwood rate.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext		
6/17/2015	T	Barbara & Nanette-6				
Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

Barbara called and spoke directly with Nanette on this customer.
 From: Yarbrough, Barbara G [mailto:Barbara.Yarbrough@duke-energy.com]
 Sent: Thursday, June 18, 2015 6:58 AM
 To: Anderson, Takisha; Edwards, Nanette
 Cc: Howze, Pam E; Smith, Heather Shirley
 Subject: Mccutcheon

This matter was resolved early last evening in a meeting with Mr and Mrs. Mccutcheon. The customer has agreed to the service upgrade and understands the rate will change. We have a crew scheduled to get the work done and service connected today

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext		
6/16/2015	T	Carolyn & Tommy-1				
Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

1) Customer called to advise that they are being forced off the Greenwood rate. States that the company is not trying to hear them and the fact that they do not want to be removed from the Greenwood rate. They state that the issues that they once had were caused by DEC not their system. Spoke with Carolyn while Mr. McCutcheon was also present.

Began	Closed	Closed By	Recov Amt	By	Cnsmr Docs	Comp Docs
6/16/2015	6/18/2015	TDA	\$0.00	N/A	No	No

Date	How Cont	Contact Name	Contact Phone	Ext		
6/16/2015	T	Pam(DEC)-2				
Reply Due Date	Reply Recv Date	How Replied	Ext Given	Ext Date	How Adv	Adv By
						TDA

Comments

2). Pam advised that the customer is overloading their system and causing issues. States that the customer has had 2 fires at their location. States that the customer is scheduled to be disconnected on Thurs.

June 17, 2015

I, Tommy McCutcheon, have met with Theo Lane, District Manager, Duke Energy South Carolina to discuss the overload service safety concern present at my Greenwood County business, located at 3109 Hwy 25 south, Greenwood, SC.

I request that Duke Energy upgrade and restore my electric service at 3109 Hwy 25 south, Auto Drive-In, to create a safe and reliable service delivery, and accommodate the current load requirements of my business.

It has been explained to me, by Theo Lane, that my request to upgrade the service will require that my business be billed in the future at current Duke Energy rates (beginning immediately after service reconnection), and that the ' old Greenwood County rate ' will no longer apply.

Signed Tommy McCutcheon
Tommy McCutcheon *Tommy McCutcheon*

Witnessed *Theo Lane*
Theo L. Lane , District Manager, Duke Energy South Carolina

Witnessed Tommy Fowler
Tommy Fowler, Supervisor, Construction & Maint, Greenwood Operations Center

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. _____

In re:)	
)	
TOMMY MCCUTCHEON,)	
Complainant/Petitioner,)	
)	
v.)	
)	
Duke Energy Carolinas, LLC,)	
Defendant/Respondent.)	
<hr/>		

AFFIDAVIT AND
PREFILED TESTIMONY
OF JAMES R. "BOB"
CALHOUN

PERSONALLY appeared before me, Bob Calhoun who first being duly sworn states as follows:

1. My name is Bob Calhoun and I have been an electrician in the State of South Carolina for the past thirty seven and one-half years.
2. I currently operate Calhoun-McDaniel Electric Co. Inc., and am licensed as a Commercial Contractor by the South Carolina Department of Labor, Licensing and Regulation, classification EL4, License Number 1673. This is the appropriate licensure for an Electrical Contracting company.
3. In the past I also worked for VEPCO (Virginia Electric and Power Company) as well as the Greenwood Commissioner of Public Utilities (CPW). In all these positions my duties related to electrical supply infrastructure.
4. I have known the Complainant/Petitioner, Tommy McCutcheon and his wife since they were children, and I am familiar with the electrical connections on the theater's side of the power service system and on Defendant/Respondent's side of the service system.
5. Before the work that was performed by Defendant/Respondent in June of 2015, on Defendant/Respondent's side there was a single 800 to 5 current transformer. An 800 to 5 current transformer is capable of taking 1200 Amperes of load without failing. The theater's service was only a 400 Ampere system.

6. I am aware that in June of 2015 the theater experienced two power failures.
7. I have inspected the remains of the power line where the failures occurred and in my professional opinion both times fault current caused the line to short out and destroy the 800 to 5 current transformer.
8. I am aware that after the second failure Defendant/Respondent repaired the damage by eliminating the use of the single 800 to 5 current transformer from the circuit and replacing it with two (2) 200 to 5 current transformers.
9. There was no need to install two 200 to 5 current transformers; the system could have been properly repaired with a single new 800 to 5 current transformer. The only reason Defendant/Respondent made this change was for its sole convenience and benefit.
10. There was no safety issue with Complainant/Petitioner's system in June of 2015.
11. Complainant/Petitioner's service on its side is now and has always been a 400 Ampere service, which could not have overloaded Defendant/Respondent's power system.
12. There is no way the failures in June 2015 were caused by need of additional power or an increase in power demand.
13. I have examined the meter box Defendant/Respondent removed and replaced in June 2015. In my professional opinion there is nothing wrong with this meter box and it at no time experienced a failure.
14. I am aware that in 2014 Complainant/Petitioner replaced the theater's xenon arc 35mm projection equipment with modern digital equipment.
15. The xenon arc projectors for each of the theater's screens were served by two 60 Ampere breakers. Following the installation of the digital equipment the theater's screens are each served by a single 40 Ampere breaker. It is my professional opinion that the installation of the digital equipment decreased electrical demand for the theater as a whole.
16. I am aware that when the theater commenced operation in the late 1940's, it was served by carbon arc projection units, which used even more power than the xenon arc systems and considerably more than the modern digital projection systems in use at the theater today.

17. I have examined the electrical equipment on the theater's side of the service connection, and find it to be unchanged from the type of electrical switch and fuse equipment that would have been present when it was first constructed in the late 1940's.

18. I have examined the supply line where it comes off a 50 kva transformer and enters Complainant/Petitioner's property. I am aware that in the past there was a 25 kva transformer in its place, and before that there was a 15 kva transformer. Over the years Defendant/Respondent added load to that transformer as residences were added behind the theater. The 25 kva transformer experienced a failure some time ago and Defendant/Respondent replaced it with a 50 kva transformer. In my professional opinion this had nothing to do with the operation of the theater.

19. In my profession opinion, in June of 2015 the McCutcheon's business premise did not require a new physical connection to Defendant/Respondent's service, and I do not believe that any "professionally licensed electric contractor" could truthfully make such a statement. I do not believe that Defendant/Respondent's staff can truthfully call the repair performed in June of 2015 a "change in the character of the connection" or a "new connection" for the purposes of applicability of the Greenwood Rate.

20. When the power line shorted out, it put a tremendous amount of fault current through the 800 to 5 CT. This, in my opinion, caused the CT to fail, not an overload of service. It builds up a magnetic field from the shorted out wires.

FURTHER AFFIANT SAYETH NOT.



James R. "Bob" Calhoun

Dated this _____ day of January, 2017

SWORN TO BEFORE ME

This 4th day of January, 2017

Renee Timms (Notary Signature)

Print Notary Name Renee Timms

My Commission Expires 10/30/17

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-32-E

IN RE:

3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and)	
Tommy McCutcheon,	)	[Proposed] ORDER
)	
Complainant/Petitioner,)	
)	
v.)	
)	
Duke Energy Carolinas, LLC)	
)	
Defendant/Respondent.)	
<hr/>		

I. INTRODUCTION

This matter is before the Public Service Commission of South Carolina (the “Commission”) on the Complaint of 3109 Hwy 25 S. L.L.C. d/b/a 25 Drive-In and Tommy McCutcheon. (“McCutcheon” or “the Petitioner”) seeking a determination that Duke Energy Carolinas, LLC., (“DEC” or “the Respondent”) wrongly changed his electric rate in violation of S.C. Code Ann. § 58-27-830 and Commission Order E-976, as modified by *Payne v. Duke Power Co.* 304 SC 447 , 405 S.E. 2d 399 (1991), and improperly disconnected his power during the pendency of an ORS investigation. DEC is authorized by this Commission to be the exclusive provider of electric service for all areas previously provided service through the Greenwood County Electric Power Commission.

The Complaint requests that this Commission find that DEC acted in violation of E-976, and requests as relief that he be returned to the Greenwood rate, that he be granted reparations pursuant to S.C. Code Ann. § 58-27-960, and Attorney’s fees pursuant to S.C. Code Ann. § 58-27-2410.

II. JURISDICTION

The Commission has jurisdiction over the Parties. The Complainant is a customer of an electrical utility and has submitted himself to the jurisdiction of the Commission pursuant to S.C. Code Ann. § 58-27-1940 and S.C. Code Ann. Regs 103-824. The Commission has jurisdiction over the Respondent through its actions as an electrical utility pursuant to S.C Code Ann: §§ 58-3-140, 58-27- 140 and S.C. Code Ann. Regs. 103-300.

The subject matter of Petitioner’s Complaint consists of alleged violations of the Greenwood Rate Order E-976 issued July 13, 1966, as modified by the Supreme Court’s holding review in *Payne v. Duke Power Co.* 304 SC 447, 405 S.E. 2d 399 (1991), and wrongful disconnection of his electrical service during the pendency of an ORS investigation, commenced pursuant to R. 103-345(B). The Commission has exclusive jurisdiction over the subject matter of this Complaint pursuant to S.C Code Ann. §§ 58-3-140(A), 58-24-140 (1) and R. 103-303. To the extent Respondent’s policies and practices affected Petitioner’s access to service under the Greenwood Rate, this case also falls within the Commission’s jurisdiction as a “Rate Matter” as defined in S.C Code Ann. Regs. 103-302(9)¹.

III. PROCEDURAL HISTORY

The most recent order addressing eligibility for the Greenwood Rate is Commission Order E-976, which states in pertinent part:

NOW THEREFORE, IT IS ORDERED JUDGED AND DECREED that Schedule A, Schedule B-L, Schedule SL, Industrial Power Rate and Municipal Power Rate, copies of which are attached to and made a part of this Order be, and the same are hereby approved for billing those customers transferred from Greenwood County so long as bills under these rates are lower than bills under approved Duke Power Company Rates; AND

IT IS FURTHER ORDERED, that no new customer shall be billed under the attached rates, and that, whenever a customer is disconnected for any reason, the proper Duke rate shall be applied when the customer is reconnected.

¹ The term “rate” when used in the Commission’s rules and regulations means and includes ... “every compensation, charge, toll, rental and classification, or any of them, demanded, observed, charged, or collected by any electrical utility for any electric current or service offered by it to the public, **and any rules, regulations, practices or contracts affecting any such compensation, charge, toll, rental or classification.**” (emphasis added) S.C. Code Ann. Regs. 103-302(9)

An Order of the Commission remains in force until changed or revoked by the Commission. S.C. Code Ann. §§58-27-2100, 58-27-2120; S.C. Code Ann. Regs.103-3009(A). An Order can also be altered by the Appellate Courts of this state through judicial review pursuant to S.C. Code Ann. § 58-27-2310. (*See Pee Dee Elec. Co-op. v. Public Service Comm'n*, 229 S.C. 155, 92 S.E.2d 171, 174 (S.C., 1956); *Petroleum Transp., Inc. v. Public Service Comm'n*, 255 S.C. 419, 179 S.E.2d 326 (S.C. 1971).

In *Payne*, the Supreme Court was asked to interpret Order E-976 and determine whether a customer on the Greenwood Rate could be transferred to the Standard Duke Rate if the customer's power had been "disconnected for any reason." The Court rejected this interpretation and concluded that an "existing" connection (i.e. a customer connection predating Duke's acquisition of the Greenwood system in 1966) only became a "new" connection if there had been a change in the "character of the connection" (e.g. from single to three phase) or a change in the use of the premises (e.g. from residential to commercial). It held that changes of this sort were sufficient to call what had been an "existing" connection a "new" connection. While the Court's holding listed two situations when an "existing" connection could legally be considered a "new" connection, it did not state that these were the only situations under which a customer could be removed from the Greenwood Rate. As a result, the Commission retains jurisdiction to elaborate on what other types of changes to a connection are sufficient to remove a customer from the Greenwood Rate, as long as those holdings are not inconsistent with *Payne*.

Since the 1991 decision in *Payne*, the Commission has not, of its own volition, instituted proceedings to clarify, modify, or expand the standards for identifying actions, which constitute changes in use of a premise or change in the character of a connection. Nor has the Respondent, DEC, in its Annual Filing² with the Commission and ORS submitted a copy of its policies and practices in transferring customers from the Greenwood Rate to the Duke Rate.³

The Petitioner presented his case at a hearing held in the offices of the Commission on April 5, and April 19, 2017, where it received testimony from the Parties. The Honorable Swain E. Whitfield, Chairman of the Commission, presided. David Stark, Esquire, served as Commission Counsel. The Petitioner was represented by John J. Fantry, Jr., Esquire, and Alexander G. Shissias, Esquire. The Respondent was represented by Frank R. Ellerbe, Esquire.

² SC Code Ann Regs 103-312(A)(2).

³ Late filed Hearing Exhibit 9.

ORS was represented by Jeffrey M. Nelson, Esquire. Tommy McCutcheon and his wife Carolyn McCutcheon testified on behalf of Petitioner along with James R. Calhoun, who testified as an expert witness. Testifying on behalf of Respondent were Douglas T. Fowler, Jr., Supervisor of Construction and Maintenance, Jesse S. Gonzalez, B Class Distribution Lineman, Theo Lane, Government and Communications Relations Manager, and Joel Lunsford, General Manager for Construction and Maintenance, who testified as an expert witness. Testifying on behalf of ORS was April Sharpe, Program Manager, Consumer Management Department.

IV. FINDINGS OF FACT

1. Petitioner's Drive-In is a premise⁴ supplied with electric power by Respondent. The premise has been in existence since the 1950's. The premise originally had one screen, as well as a concession stand with commercial kitchen equipment, using single phase current on the same breaker system and meter on the Greenwood Rate. The premise has two weatherheads for the point of connection⁵ with 400 amp circuit breakers.⁶ In or around 1992, the original owner of the premise ceased showing movies but maintained her Greenwood Rate electric account with Respondent until sale of the property.⁷
2. The Petitioner acquired the theater property in 2008, and moved the account into his name. He started renovating the Drive-In and resumed operation in 2009. From 2009 until June of 2015, Petitioner was under the Greenwood Rate (Tommy McCutcheon Testimony Tr. pp. 28-31).
3. Petitioner's renovations were as follows:
 - a) During the period of 2009 to 2014, he purchased modern kitchen equipment for concession stand. Other than a refrigerator purchased approximately two years ago, the last piece of modern kitchen equipment installed was in 2014. (Tommy McCutcheon Testimony Tr. pp. 32-34, 52-54) The kitchen equipment consisted of fryers, grills, hot dog machines, a popcorn popper, equipment for fountain drinks, and refrigerators. (Tommy McCutcheon Testimony Tr. pp.33-34, 47, 52-54)

⁴ SC Code Ann § 58-27-610(2)

⁵ Hearing Exhibit 8 p. 2

⁶ Calhoun Testimony Tr. p, 94 and Lunsford Testimony Tr. p. 257

⁷ McCutcheon Testimony Tr. p. 46

- b) At the time of purchase, the premises had a single projector. From 2009 to late 2014, the Petitioner used two film projectors using xenon arc technology running on 60-amp breakers. (Tommy McCutcheon Testimony Tr. pp. 42-43) Petitioner added a second screen in 2013. (Tommy McCutcheon Testimony Tr. p. 45) A third screen was added in 2016; but, as this occurred after the incidents which gave rise to this case, that addition is not relevant to this case.
- c) Petitioner went over to digital projectors in 2015, which consume less power than xenon arc technology (Tommy McCutcheon Testimony Tr. pp. 43, 45-46).⁸
- d) From 2009 onward, the character of Petitioner's business and the nature of its power consumption has not materially changed. It operates only after dark; and, during that time, its concession stand is also cooking and serving food (McCutcheon Testimony Tr. p. 32-34). Annual kWh consumption was over 40,000 in 2009, rose in 2010, 2011, and 2012, and during 2012 was over 50,000 kWh. Consumption fell to 50,000 kWh in 2013, then shot up to over 60,000 in 2014. Power use fell in 2015 to just over 40,000 kWh. (Hearing Ex. 6) During this period annual energy use "...pretty much stayed the same, average."⁹ (Lunsford Testimony Tr. p. 264, lines 10-11)

4. The utility provider is required to size the facilities it uses to serve the customer based on the customer's load (Calhoun Testimony Tr. p. 94). When a line is sized for a new connection or repair, Respondent tries to determine the actual load the customer has, and tries to determine what the peak load would be if they have everything running (Fowler Testimony Tr. p. 151). In 2009, Petitioner had an outage which was repaired by putting in a larger fuse and April 9, 2009 DEC replaced the existing 15kVA transformer with a 25kVA transformer to handle the load of Petitioner's Drive-In and two adjacent customers (Fowler Testimony Tr. p. 153). Respondent's work report reflects the transformer was installed without changing the existing service wire from the transformer to the connection point.¹⁰ Respondent had no further problems with the connection until May 30, 2015 (Fowler Testimony Tr. p. 156).

5. On May 30, 2015, the Drive-In experienced a power outage. DEC staff concluded the service cable had melted, and replaced it by splicing in a section of new cable (McCutcheon Testimony

⁸ Each digital projector pulls 40 amps (McCutcheon Testimony Tr. p. 46)

⁹ Hearing Exhibit 8 p. 1

¹⁰ Hearing Exhibit 5 p. 4

Tr. p. 36, Hearing Ex. 5, Fowler Testimony Tr. p. 118). The original cable was a single strand of 2/0 cable (Lunsford Testimony Tr. p. 247). DEC presented no witnesses on how the cable was repaired on May 30; it only presented exhibits discussing its repair (Hearing Ex. 5). Petitioner denies that the wires melted because of changes made on his side of the connection point (McCutcheon Testimony Tr. p. 25). Petitioner's expert denied that the wire's failure was caused by equipment at the Drive-In or the equipment's load (Calhoun Testimony Tr. pp. 84-85). Experts for both Parties testified that the reason for the failure was the cable (Calhoun Testimony Tr. pp. 83-84, 98, Lunsford Testimony Tr. pp. 246-7). However, the experts disagreed over the reason the cable failed. Petitioner's expert testified that the cable had deteriorated over time, and that failures generally occur where connectors are installed. He testified that the connectors on the cable heated up, melted through, and caused the cable to fail (Calhoun Testimony Tr. pp. 98, 104). DEC's expert testified that the cable was overloaded and that "thermal overload" caused the cable to fail (Lunsford Testimony Tr. pp. 246-7).¹¹

6. The Drive-In experienced a power outage two weeks later on June 13, 2015 (Fowler Testimony Tr. p. 112). Jesse Gonzalez testified on the condition of the cable when he worked on it on June 13 (Gonzalez Testimony Tr. pp.161-163). He testified that the cable splice that had been installed on May 30 could have been a 1/0 gauge cable (Gonzalez Testimony Tr. p. 183). He testified that "[M]ost of the time, when 2/0 goes, if we had a splice and had to make it 2/0, we use 1/0 because we don't have 2/0 anymore." (*Id.* at lines 11-13)¹² He repaired the second failure by splicing in a length of 4/0 cable (Gonzalez testimony Tr. pp. 183-4).

7. On Monday, June 15, Tommy Fowler went to the Drive-In, inspected the connection, determined there was a safety issue and that an upgrade was necessary.¹³ He notified Theo Lane of the situation at the Drive-In (Fowler Testimony Tr. pp. 113-4). That same day, Mr. Lane notified Petitioner that a larger line was needed to serve the Drive-In, and that this was an "upgrade." He notified Petitioner that this "upgrade" would result in the Drive-In being removed from the Greenwood Rate and placed on the Standard Duke Power Rate. He notified Petitioner

¹¹ This "thermal overload" did not occur until June of 2015, in spite of the fact that KWH usage in 2014 was much higher than in 2015. (Hearing Ex. 6).

¹² 1/0 cable can only carry up to a 150 amp continuous load, as opposed to 2/0 cable which can carry up to a 185 amp continuous load (Lunsford Testimony Tr. p. 274)

¹³ It was eventually going to melt again behind the 4/0, because you've got the 2/0 there. So the 2/0 was still there; it's just going to melt back a little bit further away from the building. (Fowler Testimony Tr. p. 149)

that if he would not allow DEC to perform this work, DEC would have to disconnect the electric service to the Drive-In (Lane Testimony, Tr. pp. 200-202).

8. Petitioner disagreed, and refused to allow DEC to enter the property to perform work on the connection. (Tommy McCutcheon Testimony Tr. pp. 29-30) Ms. McCutcheon filed a Complaint with ORS on June 16, 2015 complaining that DEC was threatening to disconnect power and attempting to remove Petitioner from the Greenwood Rate (Carolyn McCutcheon Testimony Tr. p. 61). DEC disconnected power to the Drive-In on June 17, 2015 (Lane Testimony pp. 201-2). Mr. Lane testified he was aware of the ORS Complaint on June 17th (Lane Testimony Tr. p. 210). On June 17, DEC's agents required McCutcheon to sign an agreement saying that he voluntarily agreed to the upgrade (Tommy McCutcheon Testimony Tr. p.30, Carolyn McCutcheon Testimony Tr. pp. 62-3, Hearing Ex. 7). Mr. Lane testified Duke would not have reconnected service unless McCutcheon agreed to the upgrade (Lane Testimony Tr. pp. 211-214).

10. Power at the Drive-In was reconnected in the afternoon of June 18, 2015. (Lane Testimony Tr. p. 202) DEC staff concluded that the entire length of cable needed to be replaced with larger cable. DEC staff installed 2 4/0 cables serving the Drive-In,¹⁴ and increased the size of the transformer serving the Drive-In and two adjacent property owners (Lunsford Testimony Tr. pp. 259, 254). As the transformer also serves other customers, the only DEC equipment specific to the Drive-In and to no other customers was the cable.

11. On June 18, DEC provided ORS staff with a copy of the agreement McCutcheon had signed and notified ORS that power to the Drive-In had been restored. That same day ORS staff contacted Ms. McCutcheon about her Complaint and whether DEC had restored power to the Drive-In. Ms. McCutcheon confirmed the power was back on, but she did not state that she was satisfied with the outcome of the Complaint (Carolyn McCutcheon Testimony Tr. p. 63). ORS closed the file that same day (Hearing Ex. 3, Ex. p. 4).

12. On July 29, 2015 Ms. McCutcheon called ORS to check on the status of her Complaint. ORS staff notified her that the file had been closed (Hearing Ex. 3 at p. 4, Carolyn McCutcheon Testimony Tr. p. 63).

¹⁴ Two strands of 4/0 cable can carry a continuous demand load of 350 amps (Lunsford Testimony Tr. p. 259).

13. DEC staff testified that changing a connection to a thicker cable constitutes a change in the service connection, an upgrade, and would result in the customer losing the Greenwood rate (Lane Testimony Tr. pp. 207-208). Mr. Lane testified that DEC has an official policy detailing what circumstances would result in a customer losing the Greenwood rate, though DEC did not present a copy of that policy at the hearing (Lane Testimony Tr. pp. 204-206). Respondent did provide a copy of this document after the hearing (Late Filed Hearing Ex. 9). However, it was not introduced by any witness and there was no testimony concerning the document. There is no indication in the record that DEC ever submitted this policy to the Commission or the Office of Regulatory Staff.

V. EVIDENCE AND CONCLUSIONS

1. Based upon the Findings of Fact in Paragraph 1 above we conclude the 25 Drive-In's connection to the Greenwood County Electric Power Commission's electric lines in the 1950's was through dual weatherheads on a 400 amp breaker system which served equipment common to the Drive-In Theater industry. Respondent took the customer and its energy requirements in an "as is" condition when it purchased the Greenwood County Electric Power System, including annual kilowatt hour need and demand for the equipment as constructed by the customer within the customer's premise.
2. Based upon the Findings of Fact in Paragraph 2 above, we conclude that the Petitioner took the premise in an "as is" condition limited to the load restrictions as determined by the capacity of the breaker system and interior wiring at the time of purchase.
3. Based upon the Findings of Fact in Paragraph 3(a) above, we conclude that the kitchen equipment installed were the normal and customary items installed for Drive-Ins, which operated on single phase current, without requiring Petitioner to increase the size of wiring or breakers within his premise. We further conclude, based upon the Findings of Fact in Paragraph 3(b) above, that Petitioner's operation of two projectors, equipment with xenon arc technology running on 60-amp breakers single phase current rather than the single projector equipment with xenon arc technology running on 60-amp breakers single phase current used by the previous owner did not require Petitioner to increase the size of wiring or breakers within his premise. We conclude, based upon the Findings of Fact in Paragraph 3(c) that the use of three digital projectors running on 40 amp breakers

on single phase current creates a similar electric demand as two projectors using xenon arc technology running on 60-amp breakers on single phase current, which did not require Petitioner to increase the size of the wiring or breakers within his premise.

4. The facts, as set forth in Paragraph 4 above, are in keeping with an electrical utility's duties under S.C. Code Ann. Regs. 103-347. In May of 2009, Respondent estimated the Petitioner's demand load to be similar to the premise Greenwood Electric Power Commission connected in the 1950's and only put in a 25kVA transformer for power needs of the three customers, but left unchanged the wires forming the Petitioner's service drop. The 2/0 wire in the service drop has been in service for over 50 years without failure, from the 1950's until May 30, 2015.
5. Based upon the Findings of Fact in Paragraph 5 above, we conclude that the failure of a wire in the service drop caused the outage on May 30, 2015. We further conclude that the wire, by design, would fail when energy demand exceeded 185 amperes for an extended period of time.
6. Based upon the Findings of Fact in Paragraph 6 above, we conclude that melting of a wire in the service drop caused the outage of June 13, 2015 and was repaired by replacing the melted wire with a piece of 4/0 wire. Based upon the testimony of Mr. Gonzalez, we conclude that the outage on June 13, 2015 could have resulted from DEC's staff replacing the melted 2/0 wire with a piece of thinner 1/0 wire with a lower load rating on May 30, 2015.
7. Based upon the Findings of Fact in Paragraph 7 above, we conclude that on June 15, 2015 DEC determined that Petitioner's service drop needed to be 4/0 wire instead of 2/0 wire. We further conclude that Mr. Fowler and Mr. Lane determined, in accordance with DEC policy, that the installation of larger wire on DEC's side of the weatherhead disqualified the premise from the Greenwood Rate. Mr. Fowler and Mr. Lane determined, based on DEC policy, that service to the Drive-In would be terminated unless Petitioner allowed the work to be done and acquiesced to the rate change. They notified Mr. McCutcheon of DEC's decision.
8. Based upon the Findings of Fact in Paragraph 8 above, we conclude that Petitioner properly exercised his customer rights pursuant to S.C. Code Ann. Regs. 103-345(B) and that Respondent cooperated with ORS's investigation during the pendency of the ORS

inquiry. We further conclude that the customer's act of signing the June 17 agreement does not preclude him from pursuing a complaint with ORS and the Commission. The Commission still retains the authority to determine if the actions of an electrical utility follow an approved rate policy and is consistent with the Commission's prevailing rate Orders.

9. Based upon the Findings of Fact in Paragraph 9 above, we conclude that Respondent installed larger wires to its service drop to comply with Respondent's estimate of electric demand under peak load in conformity with S.C. Code Ann Regs. 103-360. We further conclude that the safety of persons and property alone does not relieve an electrical utility from the responsibility to deliver reliable service in accordance with approved rates and service policies under S.C. Code Ann. §58-27-840 and S.C. Code Ann. Regs.103-303.
10. Based upon the Findings of Fact in Paragraph 10 above, we conclude that in June of 2015 Respondent installed 4/0 wire from the transformer to Petitioner's weatherheads for the benefit of the Drive-In alone and installed the larger transformer for the benefit of the Drive-In as well as two adjacent property owners.
11. Based upon the Findings of Fact in Paragraph 11 above, we conclude that ORS closed the file on June 18, 2015 based upon its receipt of a copy of the June 17 agreement and a call to Ms. McCutcheon where she confirmed electric service had been restored to the Drive-In.
12. Based upon the Findings of Fact in Paragraph 12 above, we conclude that, despite DEC's reconnection of service, Petitioner denied he had voluntarily agreed to the rate change. We further conclude that ORS' determination that a Complaint is settled and the facts supporting ORS' opinion are not binding on the Commission. The Commission is the ultimate fact-finder in a Complaint or a Rate Case. *Utilities Serv. of S.C. Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (S.C. 2011)
13. Based upon the Findings of Fact in Paragraph 13, we conclude that DEC has developed a service policy for disconnection from the Greenwood Rate, based upon a customer's "energy demand" and "peak load." These are two standards never addressed in Order 976 or in *Payne v. Duke Power Co.* We further conclude that DEC failed to bring the service policy before ORS and the Commission prior to making the policy effective in violation

of S.C. Code Ann. Regs. 103-303 B, R. 103-312 (1) and (2)(A), and S.C. Code Ann. §§ 58-27-820, 830.

14. Based upon the record as a whole, we cannot conclude that Respondent disconnected Petitioner's electric service in violation of S.C. Code Ann. Regs. 103-342 under the circumstances. Respondent had concerns over the safety of the connection.
15. We conclude that the act of merely changing of the size of an electric wire on the DEC side of the customer's weatherhead is not a "change in the character of the connection" unless the customer has made changes to the system on the customer's side of the connection in excess of the capacity of the breaker and wiring system that were installed within the premise when the account was first transferred from Greenwood County Electric Power Commission to DEC. In this case, Petitioner's premise had a 400 amp breaker system when it was first connected to DEC and the need for DEC to install a larger wire was not because Petitioner had made a change that can properly be called a "change in the character of the connection."
16. We conclude DEC violated Order 976 in changing Petitioner from the Greenwood Rate to the Standard Duke Rate, based on a change to the service drop from 2/0 wire to 2 4/0 wires, and in utilizing the service policy admitted as Late Filed Hearing Exhibit 9 without first filing it with ORS and without first requesting approval of the policy by the Commission.
17. At the close of the Hearing, DEC offered and the Commission took as information the 1990 circuit court order in the case that upon appeal, resulted in the Supreme Court's issuance of its decision in *Payne v. Duke Power Co.*, 304 SC 447, 405 S.E. 2d 399 (1991). DEC requested that the Commission take "judicial notice" of the findings and conclusions in the circuit court order, over Petitioner's objections. We conclude that the doctrine of judicial notice is inappropriate here. Judicial notice only pertains to facts such as matters of common knowledge or matters capable of certain verification. *McCormick on Evidence*, §§ 329 and 330. It is not appropriate for legal conclusions, as DEC has urged it to be used for. Alternately, it could be presented as a form of persuasive authority, as DEC argued that in *Payne*, on the issue of change of character of connection, the Court held:

...we agree with the trial court that a change in either the character of the connection (e.g. from single to three phase) or use of the premises (e.g. from residential to commercial) constitutes a new connection effectuating a transfer to Duke rates. As stated in the contract, ‘the rates to be charged . . . for connections after the date of the sale shall be the applicable rates of Duke Power Company.’

Payne, 405 S.E.2d at 402-3.

DEC argued that the Commission should look to the circuit court order to determine to what extent the Supreme Court “agreed” with the trial court as to what constitutes a “new” connection for the purposes of interpreting Order 976. However Petitioner noted that while the 43 page circuit court order mentioned a number of situations that constituted a “change of character of the connection” or “change in use of the premises,” the 4 page Supreme Court order only adopted one example noted by the circuit court, namely, the “change in use from residential to commercial.” Oddly, the circuit court order does not mention a change from single to three phase service as a “change in character of the connection” at all; this is only mentioned in the Supreme Court’s order. Petitioner argued that to the extent the Supreme Court only cited one instance constituting a “new” connection that was cited by the circuit court, and noted one that the circuit court had never mentioned, there is nothing that the Commission can glean from the circuit court order. At any rate, to allow the holding of the circuit court to inform the decision of the Commission would be improper, as the Commission has primary jurisdiction over this and other rate matters as the District Court noted in *Wanning v. Duke Energy Carolinas*, C/A No. 8:13-839-TMC (D.S.C. Jun. 5, 2013).

The Supreme Court has distinguished exhaustion of administrative remedies and primary jurisdiction and clarified that primary jurisdiction applies where a claim is originally cognizable in the courts, and comes into play when enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body. *Reiter v. Cooper*, 507 U.S. 258, 268 (1993).

Here the Commission has primary jurisdiction over this and other ratemaking matters. We will not consider the circuit court decision as persuasive authority in this case. Should DEC wish to adopt a policy on when a connection is legally considered a “new” connection it must follow the statutory and regulatory process for doing so.

CONCLUSION

It is hereby Ordered and Decreed:

1. The Claim against DEC for improper disconnection in violation of S.C. Code Ann. Regs. 103-345(B) is dismissed.
2. The Commission finds that DEC violated Order 976 by changing Petitioner's rate without there being a "change in the character of the connection" as per the holding in *Payne*.
3. The Commission finds that DEC violated S.C. Code Ann. Regs. 103-303 B, R. 103-312 (1) and (2)(A), and S.C. Code Ann. §§ 58-27-820, 830 by bringing its service policy into effect without first filing it with ORS and without obtaining approval from the Commission.
4. The Commission finds that DEC overcharged, or charged Petitioner an excessive amount for service, and pursuant to S.C. Code Ann. § 58-27-960 and S.C. Code Ann. Regs. 103-304 DEC is ordered to make reparation or repayment to Petitioner in the amount of the difference between what he would have been charged from June 18, 2015 to the present under the Greenwood Rate versus the rate he has been paying under the Duke Rate. DEC shall, within fifteen (15) days of the effective date of this Order, submit to the Commission an accounting of the amount of its overcharge, which shall upon approval of the Commission be incorporated into this Order.
5. The Commission finds that DEC has failed, omitted or neglected to comply with a lawful Order of the Commission, namely Order 976, and pursuant to S.C. Code Ann § 58-27-2410 assesses a \$100.00 penalty, and awards Petitioner reasonable Attorney's fees and costs of this action. Petitioner shall, within fifteen (15) days of the effective date of this Order, submit to the Commission an accounting of its Attorney's fees and reasonable costs, which shall upon approval of the Commission be incorporated into this Order.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Swain E. Whitfield, Chairman

ATTEST:

Comer H. Randall, Vice Chairman

(SEAL)

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

HEARING #17-11605

APRIL 5, 2017

10:35 A.M.

DOCKET NO. 2017-32-E:

3109 HWY. 25 S., L.L.C., d/b/a 25 DRIVE-IN, AND TOMMY
MCCUTCHEON, Complainant/Petitioner v. DUKE ENERGY CAROLINAS,
LLC, Defendant/Respondent – *Complaint and Petition for Relief*

TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS

VOLUME 1 OF 2

COMMISSION MEMBERS PRESENT: Swain E. WHITFIELD, CHAIRMAN;
Comer H. 'Randy' RANDALL, VICE CHAIRMAN; and
COMMISSIONERS John E. 'Butch' HOWARD, Elliott F. ELAM, Jr.,
Elizabeth B. 'Lib' FLEMING, Nikiya M. 'Nikki' HALL, and G. O'Neal
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STAFF: Joseph Melchers, General Counsel; F. David Butler, Senior
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JEFFREY M. NELSON, ESQUIRE, representing the SOUTH
CAROLINA OFFICE OF REGULATORY STAFF

I N D E X

	<u>PAGE</u>
<u>PRELIMINARY MATTERS</u>	5-14
Mr. Fantry	7
Mr. Ellerbe.....	8
Mr. Nelson	13
<u>TESTIMONY OF TOMMY McCUTCHEON</u>	
Direct Examination by Mr. Shissias.....	14
Hearing Exhibit 1 marked/received [Prefiled "Agreement"]	22
Hearing Exhibit 2 marked/received - <i>CONFIDENTIAL</i> [Prefiled sample bills]	25
Prefiled direct testimony [corrected].....	28-31
Cross Examination by Mr. Ellerbe.....	32
Examination by Commissioner Fleming.....	41
Examination by Commissioner Hall.....	43
Examination by Commissioner Elam.....	45
Examination by Commissioner Hamilton.....	46
Examination by Commissioner Fleming.....	48
Examination by Commissioner Hall.....	49
Examination by Vice Chairman Whitfield.....	50
Redirect Examination by Mr. Shissias.....	54
<u>TESTIMONY OF CAROLYN McCUTCHEON</u>	
Direct Examination by Mr. Shissias.....	56
Prefiled rebuttal testimony.....	61-63
Cross Examination by Mr. Ellerbe.....	64
Hearing Exhibit 3 marked/received [Prefiled Rebuttal Exhibit].....	65
Cross Examination by Mr. Nelson.....	71
Examination by Commissioner Fleming.....	73
Examination by Commissioner Elam.....	76
Hearing Exhibit 4 marked/received [Photo of wire].....	78

	<u>PAGE</u>
<u>TESTIMONY OF JAMES R. CALHOUN</u>	
Direct Examination by Mr. Fantry.....	79
Prefiled direct testimony.....	86-89
Cross Examination by Mr. Ellerbe.....	90
Examination by Commissioner Fleming.....	101
Recross Examination by Mr. Ellerbe.....	106
<u>TESTIMONY OF DOUGLAS T. FOWLER, JR.</u>	
Direct Examination by Mr. Ellerbe.....	109
Hearing Exhibit 5 marked/received [Prefiled Exhs. A ~ C].....	111
Prefiled direct testimony.....	116-121
Cross Examination by Mr. Fantry.....	122
Hearing Exhibit 6 marked/received [Lunsford Prefiled Exh. A].....	150
<u>CLOSING MATTERS</u>	157-158
<u>REPORTER'S CERTIFICATE</u>	159

1
2
3
4
5
6
7
8
9
10
11
12
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14
15
16
17
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P R O C E E D I N G S

CHAIRMAN WHITFIELD: Please be seated.

I'll call this hearing to order and ask our attorney, Mr. Stark, to read the docket.

MR. STARK: Thank you, Mr. Chairman.

Mr. Chairman and other Commissioners, this proceeding before the Public Service Commission of South Carolina, in Docket No. 2017-32-E, concerns the matter of 3109 Hwy. 25 S., L.L.C., doing business as 25 Drive-In, and Tommy McCutcheon, Complainant, versus Duke Energy Carolinas, LLC, the Defendant/Respondent.

This matter has been scheduled for a hearing on April 5th, 2017, in the Commission's hearing room at 101 Executive Center Drive, Columbia, South Carolina 29210.

Mr. Chairman, the docket is in order.

CHAIRMAN WHITFIELD: Thank you, Mr. Stark.

At this time, I'll take appearances from the parties.

MR. FANTRY: Mr. Chairman, my name is John Fantry, and to my right is Alex Shissias. We are going to be representing Hwy. 25 Drive-In and Tommy and Carolyn McCutcheon, the Petitioners in this case.

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CHAIRMAN WHITFIELD: Thank you, Mr. Fantry.

MR. ELLERBE: Mr. Chairman and members of the Commissioners, I am Frank Ellerbe, of the Sowell Gray Robinson law firm, and with me is Rebecca Dulin, of the Duke Energy Legal Department, and we will be representing Duke Energy Carolinas in this proceeding.

CHAIRMAN WHITFIELD: Thank you, Mr. Ellerbe.
ORS?

MR. NELSON: Good morning, Mr. Chairman and Commissioners. I'm Jeff Nelson on behalf of the Office of Regulatory Staff.

CHAIRMAN WHITFIELD: Thank you, Mr. Nelson.
At this time, are there any preliminary matters or would any of the parties like to make any opening remarks?

MR. FANTRY: Your Honor, there are no preliminary matters to settle, but I would like to make short opening remarks before we get into the presentment of the witnesses.

CHAIRMAN WHITFIELD: Thank you, Mr. Fantry.
Let me see, any preliminary matters?

MR. ELLERBE: No preliminary matters. I'd like to make an opening also, Mr. Chairman.

CHAIRMAN WHITFIELD: How about you, Mr.

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Nelson?

MR. NELSON: No preliminary matters on behalf of the ORS, Mr. Chairman.

CHAIRMAN WHITFIELD: Mr. Fantry, go ahead.

MR. FANTRY: Thank you, Mr. Chairman, and I'll move over closer to the Commission, with your permission [indicating].

CHAIRMAN WHITFIELD: If you'll just get to a mic, Mr. Fantry, it will probably be best so that our court reporter and everybody can hear you okay.

MR. FANTRY: I'll try to be clear and distinct, so our court reporter will hear these particular thoughts.

Mr. Chairman and members –

CHAIRMAN WHITFIELD: Wait one second, Mr. –

MR. FANTRY: – of the Commission –

[Brief pause]

Thank you.

CHAIRMAN WHITFIELD: Yes, sir.

MR. FANTRY: Mr. Chairman and members of the Commission, today we're going to take a journey back to 2015 to deal with an electric outage. And in the testimony that we hope to present to you before it's going to be made up of both lay witnesses and experts to sort through the facts of

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this particular case.

The facts that we're going to present to you today are many. We're going to be talking about kilowatt-hours, annual kilowatt-hour usages, transformers, fuses, dynamic loading. We're going to be talking about service drops. We're actually going to be talking about the anatomy of the electric service to a single customer from a power company. And in all of those particular facts which we will be going through today, there's really only one issue that we've come to you to speak about, and that issue is: the changes that have been made on the facilities in 2015 are of such a nature that they disqualify Tommy McCutcheon from the use of the Greenwood Rate, a rate that he has been on since 2009. And I hope that, with the information that we place before you today, that you will be able to solve this difference of opinion as to what is the just rate for the Hwy. 25 Drive-In.

Thank you.

CHAIRMAN WHITFIELD: Thank you, Mr. Fantry.

Mr. Ellerbe?

MR. ELLERBE: Thank you, Mr. Chairman. I appreciate the opportunity to speak to you briefly

1 about the case y'all will be hearing today.

2 Mr. Fantry mentioned the Greenwood Rate, and
3 that is an important backdrop for y'all to
4 understand the issues that are being presented
5 here, and I am not aware of this Commission, in
6 recent years, having to deal with the Greenwood
7 Rate, so I thought I would go back and just go over
8 it with you, just so that we have a basis for
9 understanding the way the issues are being
10 presented.

11 What is referred to as "the Greenwood Rate" by
12 folks – especially folks in Duke Energy and people
13 who live in Greenwood County – is the result of an
14 acquisition by then-Duke Power Company of electric
15 service facilities, distribution facilities, from
16 Greenwood County back in the 1960s. There was a
17 negotiated contract and then there was an Act of
18 the General Assembly that approved the acquisition
19 by the company of the distribution facilities that
20 Greenwood County owned at that time. And one of
21 the elements of that transaction, as approved by
22 the General Assembly, was a promise by the
23 company, Duke, that the rates of the people that
24 were being served at the time of the transaction
25 would not go up. And at that time, the

1 understanding in the industry, widespread
2 understanding in the industry, was that rates for
3 electricity were expected to decrease over time and
4 would not be going up, so the company made that
5 deal.

6 There has been litigation since then, about
7 it. The company, Duke, has tried to get revised
8 arrangements so that those folks wouldn't be
9 getting a lower rate – they're getting a much lower
10 rate; it's maybe a third of what the regular Duke
11 Energy rate is. And when we come in for a rate
12 case, all those customers are not affected by the
13 rate case. Other customers, this Commission has –
14 the policy is other customers do not subsidize
15 these folks; it's the shareholders who make up the
16 difference, who essentially forgo the revenues that
17 come from those people.

18 There are some exceptions that are important
19 to understand, in this case, to the Greenwood Rate.
20 The rate continues – if a house on the Old
21 Greenwood Rate is sold, that house continues to be
22 the beneficiary of the Greenwood Rate. However, if
23 there is a change in the character of the service,
24 then the house comes off the Old Greenwood Rate, or
25 that service, that customer, loses the Old

1 Greenwood Rate and then falls under the new
2 Greenwood Rate. And that's what happened in this
3 case.

4 In our view, when y'all hear the facts, you'll
5 understand that the McCutcheons purchased the old
6 drive-in in 2008 and began improving it. Their
7 business has been successful; they have succeeded.
8 They have increased the usage, the electricity
9 usage, at the location. The old facilities that
10 were there were insufficient to serve the
11 increasing demand for electricity by the new
12 operation that the McCutcheons are running in the
13 drive-in. And in 2015, May 30th and June 13th –
14 and you'll hear about this – there were two
15 incidents where there were outage incidents at the
16 drive-in. The Duke folks were called out to
17 repair, and the repairs were done twice. And our
18 folks found melted cable serving the drive-in.

19 The Duke people determined that the facilities
20 that were there to serve the location were
21 insufficient to handle the demand, that they were
22 overheating, that what was happening was called
23 "thermal overload," and that an upgrade to the
24 facilities needed to be performed in order to
25 safely provide service to the drive-in. And so

1 that's what the company did. The company made the
2 changes, insisted on upgrading the facilities.

3 An agreement was reached with Mr. McCutcheon
4 in which he agreed that, in order to have – the
5 service was discontinued after the second incident.
6 The company turned off the service, disconnected
7 it. It was reconnected on an agreement from Mr.
8 McCutcheon that he would agree to the upgrade – he
9 understood the upgrade and he agreed that that
10 would result in them losing the Old Greenwood Rate
11 and becoming a new – a customer under the standard
12 Duke rates.

13 Now, the allegation in the Complaint is that
14 that agreement by Mr. McCutcheon should be
15 disregarded because it was procured by Duke Energy
16 under duress – that Mr. McCutcheon was under
17 duress. And we don't believe that that is the
18 case, that the law that is cited in the Complaint
19 relating to duress does not apply here, that this
20 was simply an appropriate business transaction and
21 that the company handled it appropriately in the
22 way that it insisted on upgrading the service so
23 that the service could be provided safely, and that
24 Mr. McCutcheon made the appropriate business
25 decision based on the circumstances, and that the

1 Doctrine of Duress should not apply here and Mr.
2 McCutcheon, who is the customer on the account,
3 should be required to comply with his agreement and
4 pay under the Duke rate.

5 So, thanks very much for letting me describe
6 to you what we expect to be shown, and I appreciate
7 it.

8 **CHAIRMAN WHITFIELD:** Mr. Nelson?

9 **MR. NELSON:** I'm going to be very, very brief,
10 Mr. Chairman.

11 ORS did file testimony in this case. We did
12 not withdraw. We're not really taking a position
13 in this case, either supporting the company or
14 supporting the Complainant; we're just stating the
15 facts as far as the Complaint coming to us. But we
16 appreciated the Commission taking this case,
17 because I think the issues here are fairly
18 important. There's clearly a factual dispute
19 between what you're going to hear, I think, from
20 the Complainant and from the company, in this case.
21 So, there's that for the Commission to decide. But
22 even more than that, I think this is an opportunity
23 for the Commission to establish a little more
24 clearly what the standard is, as far as Duke being
25 able to take people off of the Greenwood Rate that

1 Mr. Ellerbe just explained to you. So, for that,
2 we thank the Commission for taking this case, and
3 we hope to participate as best we can. Thank you.

4 **CHAIRMAN WHITFIELD:** Thank you, Mr. Nelson.

5 If there's not any other preliminary matters
6 at this time, Mr. Fantry, you may present your
7 case.

8 **MR. FANTRY:** Thank you, Mr. Chairman. I'm
9 going to yield the floor to Alex Shissias to go
10 ahead and present our witness – first witness.

11 **CHAIRMAN WHITFIELD:** Okay, Mr. Shissias.

12 **MR. SHISSIAS:** At this time, our first witness
13 we're going to call is Mr. Tommy McCutcheon.

14 **CHAIRMAN WHITFIELD:** Come forward, Mr.
15 McCutcheon, up here, and please be sworn in.

16 [Witness sworn]

17 THEREUPON came,

18 **T O M M Y M c C U T C H E O N ,**

19 called as a witness on behalf of the Complainant/Petitioner,
20 who, having been first duly sworn, was examined and testified
21 as follows:

22 **DIRECT EXAMINATION**

23 **BY MR. SHISSIAS:**

24 **Q** All right. Mr. McCutcheon, I'm going to hand up to you
25 what's been prefiled as your prefiled testimony, and I'd

1 like to go over that with you [indicating].

2 **A** [Indicating.]

3 **Q** Mr. McCutcheon, in preparation for this case, did you
4 prepare a four-page summary – four pages of prefiled
5 testimony?

6 **A** I did.

7 **Q** Okay. And that document that I've handed up says
8 "Affidavit and Prefiled Testimony of Tommy McCutcheon."
9 Is that the testimony you prepared?

10 **A** It is.

11 **Q** Now, if you were to be asked the questions that are in
12 here, would you testify the same as to each of these
13 questions or would you need to change anything?

14 **A** Well, the date – it was October 16th –

15 **CHAIRMAN WHITFIELD:** Mr. McCutcheon, excuse
16 me. Could you get a little closer to the
17 microphone or just pull it –

18 **WITNESS:** [Indicating.]

19 **CHAIRMAN WHITFIELD:** There you go.

20 **WITNESS:** We filed a Complaint with ORS on the
21 16th, instead of the 17th.

22 **BY MR. SHISSIAS:**

23 **Q** Okay. Are you referring to paragraph 15?

24 **A** Yes, sir.

25 **Q** Okay. All right. But, other than that –

1 **MR. ELLERBE:** Excuse me. What was the
2 correction? What page was it?

3 **MR. SHISSIAS:** The correction on paragraph 15
4 of his prefiled testimony, in the document it says
5 that he filed a Complaint with ORS on the 17th.
6 Mr. McCutcheon has since realized that that is not
7 correct, that it was filed on the 16th, and he
8 wanted to just correct that.

9 Based on that, I'd like to go ahead and move
10 his testimony into evidence, although I would like
11 to have it summarized.

12 **CHAIRMAN WHITFIELD:** Okay. Mr. McCutcheon's
13 testimony will be entered in the record as if given
14 orally from the stand.

15 **MR. SHISSIAS:** Okay, great.

16 **BY MR. SHISSIAS:**

17 **Q** Mr. McCutcheon, do you own the drive-in movie theater in
18 this case?

19 **A** Yes, sir.

20 **Q** Okay. And who provides you power?

21 **A** Duke Energy.

22 **Q** Okay. And when did you purchase the property?

23 **A** Well, in – well, we signed a contract and purchased it
24 in '08

25 **Q** Okay. All right. And when you did that, did you

1 transfer the existing account into your name?

2 **A** Yes, sir.

3 **Q** And when you bought the property, were you under the
4 Greenwood Rate?

5 **A** I was.

6 **Q** And up until June of 2015, did you have the Greenwood
7 Rate?

8 **A** Yes, sir.

9 **Q** Okay, great. Now, did you use the property for anything
10 other than a drive-through?

11 **A** No, sir.

12 **Q** Okay. Did you change the use of the property to
13 residential or single- to triple-phase?

14 **A** No, sir.

15 **Q** Okay. Now, as far as demand goes, from when you started
16 your operations in 2009, did you significantly increase
17 your use of power?

18 **A** No, sir.

19 **Q** Okay. Now, let's talk about the projection equipment in
20 your testimony. What kind of projection equipment did
21 you all install?

22 **A** We installed a carbon xenon lamp.

23 **Q** A carbon Z?

24 **A** Well, a carbon-arc is what it had to start with. We
25 took that out and put the newer model – xenon lamps,

1 with the film projectors in them.

2 **CHAIRMAN WHITFIELD:** Mr. McCutcheon, I'm
3 sorry, could you pull that mic around just a little
4 bit more?

5 **WITNESS:** [Indicating.] Okay. We installed
6 xenon lamps with the film reels and projectors, and
7 all, in it.

8 **BY MR. SHISSIAS:**

9 **Q** But do you use that equipment, or –

10 **A** No, sir. We have brand-new, energy-efficient Barco
11 projectors.

12 **Q** Okay, Barco projectors. Okay. Now, when you were doing
13 shopping for your digital equipment, did you consider
14 triple-phase equipment?

15 **A** We did, but it would pull more power and we'd have to
16 get a new service and everything, and we'd lose our
17 power rate.

18 **Q** Okay. All right. Now, did you have some power outages
19 around the beginning of June, in 2015?

20 **A** We had one power outage, and they quickly repaired it,
21 and the show went on.

22 **Q** Okay. And that was when?

23 **A** In June – like the 9th or something like that.

24 **Q** All right. Now, the malfunctions, what side of the
25 system – what side of the meter were they on?

1 A Duke Energy's side of the meter.

2 Q Okay. And did you make service calls both times?

3 A I did.

4 Q Okay. All right. Now, I want to talk about after the
5 second repair, and about your meeting with Mr. Fowler
6 and Mr. Lane, and what they told you when they met with
7 you.

8 A Well, the first time, the fellow repaired it. He said
9 that – well, it broke again like two weeks later, so he
10 said he didn't fix it correctly the first time.

11 MR. ELLERBE: Mr. Chairman, this is not in the
12 prefiled testimony. We've had no notice that he
13 was going to quote Duke Energy people out there.
14 We might have had an opportunity to respond.
15 That's not in the affidavit.

16 BY MR. SHISSIAS:

17 Q If I could caution my witness to stick to the four
18 corners of your prefiled testimony, which we're just
19 trying to preview, okay?

20 A Okay.

21 Q So let's look at Paragraph 12 of that prefiled.

22 A Okay [indicating].

23 Q I want to talk about the first time Mr. Fowler and Mr.
24 Lane met with you, and what that discussion was.

25 A Well, they talked that it needed to be removed and

1 replaced with a newer system for measuring the
2 electricity – newer wires.

3 **Q** Okay. And what else did that mean?

4 **A** That I'd lose the old Duke rate.

5 **Q** Okay. Now, did you agree to this?

6 **A** No, sir. I did not. I would not let them touch it.

7 **CHAIRMAN WHITFIELD:** Mr. McCutcheon, I hate to
8 ask you this again. If you could get to somehow
9 turn that mic to you. We're still having trouble
10 on this end, hearing you –

11 **WITNESS:** I got you [indicating].

12 **CHAIRMAN WHITFIELD:** – down here, and I think
13 others are, as well.

14 **WITNESS:** Okay. How's that?

15 **MR. SHISSIAS:** You need to speak into that
16 mic.

17 **CHAIRMAN WHITFIELD:** Yes, sir.

18 **WITNESS:** All right.

19 **BY MR. SHISSIAS:**

20 **Q** Did they say anything about what would happen if you
21 refused to comply?

22 **A** They said I'd lose the old Duke rate.

23 **Q** Well, no, immediately if you said, "I don't agree to the
24 upgrade," what would happen?

25 **A** They would cut my power off.

1 Q They would cut your power off, okay. Now, we're going
2 to Paragraph 15. Did you and your wife file a Complaint
3 with ORS?

4 A We did.

5 Q Okay. Now, did Duke come in and cut your power?

6 A They did.

7 Q Okay. All right. Now, when they cut your power, did
8 you have any business loss? Did you suffer any loss to
9 your supplies?

10 A Well, we had just gotten a lot of frozen goods and ice
11 cream and stuff, in, and, you know -

12 Q So you did?

13 A Yes, sir.

14 Q Okay. All right. Now your power is out, and it's the
15 17th. Did you call Mr. Lane or Mr. Fowler, or did one
16 of them call you on the phone?

17 A They called me, if I remember correctly.

18 Q And what did - did they ask you to come meet with them?

19 A They did.

20 Q Okay. And did you go and meet with them?

21 A Yes, sir.

22 Q Okay. Now, did you tell them you had filed an ORS
23 complaint?

24 A I did.

25 Q Okay. Now, what did they say about the situation? What

1 did they say your options were?

2 **A** I could either go without power for 30 to 90 days, or
3 either I could sign this document and get my power fixed
4 tomorrow morning.

5 **Q** Okay. And, so, did someone prepare a document for you
6 to sign?

7 **A** Yes, sir.

8 **Q** Okay. And is that document what has been prefiled as
9 exhibit – prefiled – I beg your indulgence. I'm going
10 to hand up to you a document and see if you recognize
11 this [indicating].

12 **A** [Indicating.] That's it.

13 **Q** Okay. Is that –

14 **A** That's it.

15 **Q** Is that the agreement?

16 **A** Yes, sir.

17 **MR. SHISSIAS:** Okay. At this point, I'm going
18 to ask that the agreement be moved into evidence.

19 **CHAIRMAN WHITFIELD:** Mr. Shissias, we'll enter
20 the agreement in as Hearing Exhibit No. 1.

21 [WHEREUPON, Hearing Exhibit No. 1 was
22 marked and received in evidence.]

23 **MR. SHISSIAS:** Okay. Great.

24 **BY MR. SHISSIAS:**

25 **Q** Now, by the way, did you feel like you had any choice in

1 signing this document?

2 **A** Of course not.

3 **Q** Now, when you were restored service, were you assigned a
4 different account number?

5 **A** Yes, sir.

6 **Q** Okay. I'm going to hand you up some documents have been
7 prefiled, and we are going to ask that they be admitted
8 under confidentiality, because they do have account
9 numbers, which are confidential. I want you to go
10 through these bills and see if you recognize them.

11 **A** Yes, sir.

12 **Q** Okay. Are those your power bills for the year 2015?

13 **A** Yes, sir.

14 **MR. ELLERBE:** Mr. Chairman, I have an
15 objection. If these exhibits were submitted after
16 the original prefiling – and I don't have an
17 objection to the exhibit, but there's no testimony
18 from Mr. McCutcheon about the exhibit. So this,
19 now, this answer to this question that counsel has
20 just asked is not something that we've been given
21 notice of. It's not in the prefiled testimony.
22 And I object for that reason.

23 **MR. SHISSIAS:** Okay. And I'm prepared to
24 respond to that.

25 In the Complaint that we filed – well, first

1 of all, he mentions a different account was
2 assigned and that higher rate was assigned. In our
3 Complaint, we are alleging that Duke violated the
4 prior order of the PSC by taking them off the
5 Greenwood Rate, and we have requested reparations
6 under the statute in the amount of the difference
7 between what our bill was under the old rate versus
8 what it was under the new rate, and I need to admit
9 this to show what the difference is. So, yes, I
10 have dealt with it.

11 **CHAIRMAN WHITFIELD:** Mr. Ellerbe?

12 **MR. ELLERBE:** Again, I say again, I do not
13 object to the exhibit coming in. What my concern
14 is, I don't know what the testimony is that we're
15 about to hear, so we ask Mr. McCutcheon to talk
16 about the bills. That's my concern, is the
17 testimony.

18 **MR. SHISSIAS:** The testimony is the bills are
19 what they are. They state the amount of
20 electricity used and the rate charged, and that's
21 all. That is all we want out of it.

22 **MR. ELLERBE:** We'll stipulate to that, Mr.
23 Chairman.

24 **MR. SHISSIAS:** Okay.

25 **CHAIRMAN WHITFIELD:** Well, in that regard, I'm

1 going to admit it as Hearing Exhibit No. 2, with
2 confidential treatment, because these do have
3 customer information on them. But Mr. Shissias,
4 I'm going to caution you about your use of it.

5 MR. SHISSIAS: Okay.

6 CHAIRMAN WHITFIELD: As Mr. Ellerbe has
7 stipulated.

8 MR. SHISSIAS: Okay. That'll be fine.

9 [WHEREUPON, Hearing Exhibit No. 2 was
10 marked and received in evidence.]

11 BY MR. SHISSIAS:

12 Q All right. Now, your system on your side of the meter
13 box, since you bought the business, have you made any
14 changes to that system on your side of the meter box?

15 A No, sir.

16 Q Okay. One last thing is, I'm going to hand up what has
17 been prefiled, a photograph prefiled with the
18 Commission, and I've got the wire [indicating]. I've
19 got the actual wire [indicating], and I'd like you to
20 take a look at that. Can you identify that?

21 A [Indicating.] Yes, sir. That's a burned-out splice.

22 Q Okay. And where on your system was that piece of wire
23 taken from? Was it taken from up near the transformer,
24 or was it taken from near the building at the CT?

25 A Duke Energy supply lines.

1 Q But what end? Was it the building end, or was it the
2 transformer end?

3 A The transformer end.

4 Q You mean on the pole?

5 A From the meter box to the pole.

6 Q From the meter box. On the meter box end?

7 A Uh-huh.

8 Q Okay. By the way, what's that silvery thing on the end?

9 A That's a splice.

10 Q That's a splice. Is that the only splice on that
11 system?

12 A Six of them.

13 MR. SHISSIAS: There were six of them, okay.

14 Let me go ahead and just move that actual wire
15 as an exhibit into evidence.

16 MR. ELLERBE: Mr. Chairman, that's - six
17 splices; absolutely the first time we've heard of
18 this. I ask that that testimony be stricken.
19 We've had no opportunity to respond to that. We
20 didn't know that testimony - that's why we have
21 prefiled testimony, is so you don't surprise people
22 at the hearing.

23 CHAIRMAN WHITFIELD: Do you have a response,
24 Mr. Shissias.

25 MR. SHISSIAS: Well, the wire does have a

1 splice, you know, and I think one of our points
2 here as it has to do with splicing versus
3 replacement of the system. But if it needs to come
4 in through another witness, we can do that, too.

5 CHAIRMAN WHITFIELD: I'm going to sustain –

6 MR. SHISSIAS: Okay.

7 CHAIRMAN WHITFIELD: – Mr. Ellerbe's
8 objection.

9 MR. SHISSIAS: That's fine. That's fine.

10 *[See pg. 78 re exhibit admission]*

11 I don't have any other questions for this
12 witness.

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23 [PURSUANT TO PREVIOUS INSTRUCTION, THE
24 PREFILED DIRECT TESTIMONY (W/CORRECTION) OF
25 TOMMY McCUTCHEON FOLLOWS AT PGS 28-31]

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Docket No. 2017-32-E

In re:)	
)	
TOMMY MCCUTCHEON,)	
Complainant/Petitioner,	)	AFFIDAVIT AND
	)	PREFILED TESTIMONY
v.	)	OF TOMMY
	)	MCCUTCHEON
Duke Energy Carolinas, LLC,)	
Defendant/Respondent.)	

PERSONALLY appeared before me, Tommy McCutcheon who first being duly sworn states as follows:

1. My name is Tommy McCutcheon and I, together with my wife own and operate a drive-in movie theater located on Highway 25 South in Greenwood County, South Carolina, 3109 Hwy 25 S LLC, d/b/a 25 Drive-In.
2. Duke Energy Carolinas, LLC, is the entity which provides electrical supply service to the property located at this address (the "Property.")
3. The Property was first developed as a drive-in theater in the late 1940's. In 2008, my wife and I entered into an agreement to purchase the Property in 2008 to revitalize the drive-in movie theater.
4. Upon entering into this agreement to purchase the Property I transferred the existing electrical account, #: _____ into my name personally.
5. At the time of purchase, the Property was served by Duke under the special rate (The "Greenwood Rate") applicable to connections existing upon the sale of the Buzzard's Roost Hydro-electric project by Greenwood County to Defendant/Respondent's predecessor, Duke Power Company, in 1966.

6. From our purchase of the Property in 2008 we received the benefit of the Greenwood Rate and I have paid all invoices in a timely manner since 2008.

7. From our purchase of the Property in 2008 we used the Property only for its historically established uses, as a commercial facility, specifically as a drive-in movie theater with a concession stand.

8. From our purchase of the Property in 2008 we did not change the use of the Property from commercial to residential and did not upgrade the power service from single phase to three phase service.

9. From our purchase of the Property in 2008 we did not significantly increase our use of electricity from the demand from when the Property was first developed. In fact, we have installed modern projection equipment, which is significantly more energy efficient than the old carbon arc or xenon arc lamps formerly used at drive-in movie theaters. When selecting modern digital projection equipment, we considered and rejected a model that operated on three phase power as we knew it would result in loss of the Greenwood Rate.

10. In early June of 2015 Defendant/Respondent's service line malfunctioned causing certain interruptions in our business. The malfunctions were all located on Defendant/Respondent's side of our meter box located on the side of one of the buildings on the Property, known as the projector room.

11. I made service calls to Defendant/Respondent and Defendant/Respondent's agents made service calls to repair Defendant/Respondent's line, restoring electrical service to our business and allowing us to continue projecting movies.

12. On or about June 15, 2015, Defendant/Respondent's agents Tommy Fowler and Theo Lane met with me and advised me that our meter box and other wiring needed to be removed and replaced. They notified me that as a result of this replacement we would lose the Greenwood Rate.

13. I objected to this work being performed and refused to allow Defendant/Respondent to perform said work.

14. On June 16, 2015, Defendant/Respondent's agent Theo Lane notified me that we

had no choice; that the meter box needed to be removed or Defendant/Respondent would cut off power to the business on the following day at noon.

16

15. On the morning of June 17, 2015, I filed a formal complaint with the Office of Regulatory Staff. Defendant/Respondent's agents were made aware of my filing.

16. Despite the pendency of this complaint, Defendant/Respondent continued to attempt to disconnect our power supply. I notified Defendant/Respondent's agents that they were not to enter the Property to disconnect the power.

17. Defendant/Respondent disregarded these instructions and disconnected the power supply by physically severing the electrical supply line to our Property on June 17, 2015.

18. The month of June is a peak time for the summer drive-in season. As a result of the power interruption all the refrigerated and frozen items in my concession stand spoiled and I was unable to operate on June 17, 2015. Faced with the loss of power, I agreed to meet with Defendant/Respondent's agents Tommy Fowler and Theo Lane on the evening of June 17, 2015.

19. At this meeting Lane and Fowler stated they were aware of the pending ORS complaint and told me that I could continue with my formal complaint and go without electrical service for the next 30 days while awaiting a determination, or I could give up, allow my meter box to be removed, relinquish the Greenwood Rate, and have my power restored the next day.

20. Under duress and at the instruction of Lane and Fowler I was forced to sign a document they had prepared. In this document dated June 17, 2015, I agreed to an "upgrade" of my service and agreed to relinquish the Greenwood Rate. Lane and Fowler witnessed this document.

21. I did not voluntarily sign this document. Defendant/Respondent's agents threatened me with an extended loss of service to my business which would have been a catastrophic loss.

22. Following restoration of electrical service I was assigned account # [redacted] and have been billed under Defendant/Respondent's normal rate structure, which is significantly higher than the Greenwood Rate.

23. From the point where Defendant/Respondent's service line attaches to our service

lines, no alterations have been made to our service lines. Our service lines have remained fundamentally unchanged, in the same place, are fully functional, and have remained so since we purchased the property.

FURTHER AFFIANT SAYETH NOT.

Tommy McCutcheon
Tommy McCutcheon

Dated this 5 day of December, 2016

SWORN TO BEFORE ME

This 5 day of December, 2016

Lili Kate Womack (Notary Signature)

Print Notary Name Lili Kate Womack

My Commission Expires 3/25/2019



1 If you would, go ahead and answer any
2 questions Mr. Ellerbe has.

3 **CHAIRMAN WHITFIELD:** Mr. Ellerbe?

4 **MR. ELLERBE:** Thank you, Mr. Chairman.

5 [Indicating.] Excuse me. I shouldn't have
6 moved that, apparently.

7 **CROSS EXAMINATION**

8 **BY MR. ELLERBE:**

9 **Q** All right. Mr. McCutcheon, I've got a few questions.
10 We met earlier today. My name is Frank Ellerbe,
11 representing Duke Energy in this proceeding.

12 Having some technical difficulties getting
13 everything on here [indicating]. Let's talk about your
14 drive-in operation in Greenwood, please, sir. Am I
15 correct that there was one outdoor screen at the time
16 y'all bought it in 2008?

17 **A** Yes, sir.

18 **Q** Okay. And you now have three screens; is that right,
19 sir?

20 **A** Yes, sir.

21 **Q** Okay. And so you've got projection equipment installed
22 now, in order to show three movies at the same time; is
23 that right?

24 **A** Correct.

25 **Q** Okay. And am I right that there were two screens in

1 2015?

2 A That's correct.

3 Q Okay. You've also got facilities there now to serve
4 food to people who come to watch the movies at your
5 drive-in?

6 A Food and popcorn.

7 Q Okay. And you say you've got a popcorn popper that uses
8 electricity, right?

9 A Yes, sir.

10 Q And you've got a grill to cook food?

11 A Yes, sir.

12 Q You've got a – I notice you offer ribeye steaks on your
13 menu; is that right, sir?

14 A Yes.

15 Q And onion rings.

16 A Yes, sir.

17 Q And french fries.

18 A Uh-huh.

19 Q Do you have a deep-fryer for the onion rings?

20 A I do.

21 Q Okay. Now, you've got – you said popcorn. You've got a
22 popcorn popper?

23 A Yes, sir.

24 Q Do you have fountain drinks?

25 A Yes, sir.

1 Q So all of these different appliances, that you use to
2 serve your customers, use electricity; is that right,
3 sir?

4 A Yes, sir.

5 Q Okay. You had a previous experience with an issue with
6 the company in another business that related to the Duke
7 rate. Do you recall that, sir?

8 A No, sir.

9 Q Let me see if I can refresh your recollection. In 2005,
10 I think you and Ms. McCutcheon had a business at 1801
11 Highway 72/221 E.?

12 A Yes, sir.

13 Q Do you recall that business?

14 A I do.

15 Q Could you recall there was an occasion where there was
16 an issue about what electricity rate, whether the Old
17 Greenwood Rate or whether the new Duke rate should apply
18 to that business?

19 A What year would that be?

20 Q In 2005, I believe.

21 A It burned down in 2005.

22 Q Okay. And then, was it rebuilt?

23 A No, sir.

24 Q Okay. Well, prior to that, was there an issue with the
25 rate?

1 A There may have been.

2 Q Okay. Did you have lawyers represent you in connection
3 with that? Bill Garrett and Carson Anderson?

4 A What address was that again?

5 Q 1801 Highway 72 /221 E.

6 A I think that – yes, sir. That one burned, too, before I
7 owned it.

8 Q Okay. But my question is, in connection with – what
9 I've got is a copy. I can't – this is not something I
10 can introduce, but it's the company's file copy on the
11 computer record of a letter from Duke Representative
12 Barbara Yarbrough to Ms. McCutcheon, and talking about
13 dealings Ms. Yarbrough had with Carson Anderson and
14 Billy Garrett, who, as I understand it, were your
15 lawyers?

16 A Yes, sir.

17 Q Okay. So did they help you deal with that? And the
18 result of that issue back in 2005 was that the company
19 went back to the Old Greenwood Rate with respect to that
20 location; do you recall that?

21 A Yes, sir.

22 Q Okay. Let me go back over with you – you went over it,
23 but I'd like to go back to the two incidents.

24 MR. ELLERBE: And we can probably do this, if
25 I use this ELM0 properly. This is – before I put it

1 on here, these are exhibits to Mr. Fowler's
2 testimony. And I'd like to ask Mr. McCutcheon
3 about them, if he knows about it.

4 **MR. ELLERBE:**

5 **Q** You see that, Mr. McCutcheon?

6 **A** Yes, sir.

7 **Q** Okay. And this is the record of an outage call from
8 your location on May 30, 2015? It's up in the top line,
9 do you see where it says "Date"? Right there?

10 **A** Yes, sir, 10 o'clock.

11 **Q** Ten p.m.?

12 **A** Yes, sir.

13 **Q** Movies were still on at 10 p.m.?

14 **A** They were off at that time.

15 **Q** Well, they were off because of the outage?

16 **A** Yes, sir.

17 **Q** Okay. And the grill was still open at that time?

18 **A** No, sir.

19 **Q** Until the outage?

20 **A** Everything went out.

21 **Q** Yes. But before the outage, y'all were – you had people
22 there watching movies and serving them food, as we
23 discussed?

24 **A** Yes, sir.

25 **Q** Okay. And so the outage occurred. And were you there,

1 yourself?

2 **A** I was.

3 **Q** Okay. Were you the one who called Duke Energy?

4 **A** I'm not sure.

5 **Q** Okay. Look down here with me, if you will, to this part

6 [indicating]: "Customer states power out. There was a

7 very bright spark. Cable looks burned from pole to the

8 meter"? Do you see that?

9 **A** Yes, sir.

10 **Q** Is that an accurate description of what happened?

11 **A** That is.

12 **Q** Okay. And who is Mr. Thomas?

13 **A** That's my son.

14 **Q** That's your son? Okay. So you think he's the one who

15 called it in?

16 **A** Probably.

17 **Q** Okay. And then the company sent a crew out that night,

18 right?

19 **A** [Nodding head.]

20 **Q** Is that right?

21 **A** Yes, sir.

22 **Q** The court reporter needs an oral answer. Nodding the

23 head won't really do for a transcript. And they sent a

24 crew out and they got you back on?

25 **A** Yes, sir.

1 Q Okay. They did repairs and restored the service –

2 A Yes, sir.

3 Q – that evening? Were you able to get the movies going
4 again for the folks?

5 A Yes, sir.

6 Q Okay. And I'm going to show you the same document for
7 the second event now, please. I hope everybody is able
8 to see this and follow me. And, again, looking up here
9 at the top, do you see the date and time?

10 A Yes, sir.

11 Q And that's June 13th?

12 A Yes, sir.

13 Q Do you recall that that was a Saturday night?

14 A I think it was.

15 Q Okay. And the previous event was on a Saturday night
16 also; is that right?

17 A Yes, sir.

18 Q Okay. And this one was at 9:40, so a little bit earlier
19 than the first one?

20 A Yes, sir.

21 Q Okay. And on this occasion, the customer remarks:
22 "Customer states the line going from the pole to the
23 building is on fire. Customer contacted FDA," which I
24 take to be "fire department." Do you see that, sir?

25 A Yes, sir.

1 Q Okay. Is that correct?

2 A I didn't call the fire department.

3 Q Did someone else from your place call the fire
4 department?

5 A In – my particular employee, no, sir, he didn't call the
6 fire department.

7 Q Okay.

8 A Maybe somebody – a customer, watching the movie.

9 Q Okay. Do you agree that the line going from the pole to
10 the building was on fire?

11 A The cable – the coating had melted off of it and was
12 smoking.

13 Q Smoking?

14 A Uh-huh.

15 Q And melting?

16 A Uh-huh. That's what I saw.

17 Q Okay. Yes, sir. And, again, y'all were knocked out –
18 your movies were knocked out, your cooking equipment,
19 all of that went out when you had that second outage.

20 A It was the supply line from Duke.

21 Q Yes, sir. We're in agreement on that. It's the
22 powerline coming down from the pole to your building
23 that provided electricity service to all of your
24 equipment.

25 A Correct.

1 Q And I think y'all talked about it and introduced it, but
2 just so the Commission has an opportunity to see it,
3 this [indicating] is the agreement that you testified
4 about? Is that it, Mr. McCutcheon?

5 A That's it.

6 Q Okay. And this was signed by you on June 17th?

7 A Yes, sir.

8 Q And that would be four days after that second incident
9 that we just talked about; right, sir?

10 A Correct.

11 Q And the witnesses are Mr. Lane and Mr. Fowler for Duke
12 Energy?

13 A Correct.

14 Q Okay. And the document says, "I request that Duke
15 Energy upgrade and restore my electric service at the
16 drive-in to create a safe and reliable service delivery
17 and accommodate the current load requirements of my
18 business." Did I read that correctly, sir?

19 A Yes, sir.

20 Q Okay. And then in the last paragraph it says, "It has
21 been explained to me by Theo Lane that my request to
22 upgrade the service will require that my business be
23 billed in the future at current Duke Energy rates,
24 beginning immediately after service reconnection, and
25 that the old Greenwood County rate will no longer

1 apply." Did I read that correctly, sir?

2 **A** Correct.

3 **Q** Did you tell Mr. Lane a couple of days before that, when
4 he called you to tell you that the company was going to
5 – that unless you agreed to an upgrade, the company
6 would disconnect the service, did you tell him that he
7 needed to talk to your lawyer, Billy Garrett?

8 **A** Yes, sir.

9 **MR. ELLERBE:** Mr. Chairman, I have no further
10 questions.

11 **CHAIRMAN WHITFIELD:** Thank you, Mr. Ellerbe.
12 **ORS,** any questions for this witness?

13 **MR. NELSON:** No questions, Mr. Chairman.

14 **CHAIRMAN WHITFIELD:** Commissioners.

15 **COMMISSIONER FLEMING:** I have some.

16 **CHAIRMAN WHITFIELD:** Commissioner Fleming.

17 **EXAMINATION**

18 **BY COMMISSIONER FLEMING:**

19 **Q** It sounds – I guess, restoring an old drive-in theater
20 is quite a challenge these days.

21 **A** Yes, ma'am.

22 **Q** But it seems you've been successful with that.

23 **A** We've tried real hard. Thank you.

24 **Q** Okay. What I wanted to ask is, what will the rate
25 increase – it sounds like you've worked really hard to

1 try to stay on the Greenwood Rate. Going off that rate,
2 does that impact your business?

3 **A** It will make it hard to make the payments on all of the
4 new projection equipment. It is rather expensive.

5 **Q** Okay. But you were aware that you could possibly have a
6 rate increase; that's the reason you stayed with the
7 single-phase unit?

8 **A** Yes, ma'am. These projectors are single-phase and they
9 run on 40 amp breakers. Small breakers.

10 **Q** And you knew, though, that if there was a change, you
11 would have to go off of the Greenwood Rate?

12 **A** [No response.]

13 **Q** What was your understanding of what would take you off
14 the Greenwood Rate, is what I'm wanting to find out.

15 **A** If I upgraded and brought in bigger and heavier wire
16 into the business, that would take me off the rate.

17 **Q** Okay. And during the time that you've been operating –
18 I think since, did you say 2009?

19 **A** Yes, ma'am.

20 **Q** – are you aware of the kilowatt-hour usage during that
21 period of time?

22 **A** Yes, ma'am.

23 **Q** And has it changed during that period of time?

24 **A** According to the records, 2013 and 2014, when I had the
25 big film projectors, they used more power.

1 Q So you've changed film projectors since then?

2 A We put in new digital equipment, all new digital
3 equipment.

4 Q And that has lowered the kilowatt-hours?

5 A They run on smaller breakers and use less power.

6 Q So from 2013, you've lowered the amount of kilowatt-
7 hours?

8 A In 2015, the kilowatt-hours went down when I went all-
9 digital.

10 Q Okay. And you didn't have any problems, previously?

11 A No, ma'am.

12 COMMISSIONER FLEMING: Okay, thank you.

13 CHAIRMAN WHITFIELD: Commissioner Hall?

14 COMMISSIONER HALL: Thank you.

15 EXAMINATION

16 BY COMMISSIONER HALL:

17 Q Good morning, Mr. McCutcheon. Mr. McCutcheon, what are
18 your revenues during your high season?

19 A My revenues? For the movie industry?

20 Q Yeah, I mean - yes.

21 A We probably sell 75 - 35 to 95 cars a night.

22 Q Okay, I don't - I mean numbers.

23 A That's \$10 for adults, \$5 for children. It's all -

24 Q Yeah, I mean, how much do you make in a month, gross?

25 A Gross? It differs. Like, in March or January, I lose

1 money.

2 Q But I mean in the high season.

3 A In the high season. Probably, I would say, \$3-\$5000, in
4 a good season.

5 Q Okay. And that's like June and July?

6 A Yeah.

7 Q Okay. How long is your high season?

8 A When the kids go back to school is like – [indicating].

9 Q Okay. So, May to August?

10 A The problem with the drive-in is, you will never see a
11 movie at the drive-in before dark.

12 Q Okay. So, then, when are your high months?

13 A Well, a lot of people complain about the movie can't
14 start before 9 o'clock, and it's too hot, or either it's
15 too cold, or – but our high months would be May, June –
16 well, June, July, and August.

17 Q Okay. And I see, in some of the testimony, that when
18 y'all first opened, you had some issues? Is that right?

19 A We've had issues all the time.

20 Q Okay.

21 A What issues?

22 Q But when you first opened, did you have problems with
23 power outages when you were first trying to establish
24 that? The service?

25 A No.

1 **COMMISSIONER HALL:** You did not. Okay.

2 All right. Thank you, Mr. Chairman.

3 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
4 Hall.

5 Commissioner Elam.

6 **EXAMINATION**

7 **BY COMMISSIONER ELAM:**

8 **Q** Good morning. When was the second screen installed?

9 **A** 2013.

10 **Q** 2013?

11 **A** [Indicating.]

12 **Q** And you said the digital – that was a digital projector?

13 **A** No, that was a film projector.

14 **Q** That was film. So at that time you were running two
15 film –

16 **A** Projectors.

17 **Q** And how much did each of those pull?

18 **A** They were running on 60-amp breakers.

19 **Q** Okay. And when was the third screen installed?

20 **A** In – 2016?

21 **Q** '16? After –

22 **A** 2016.

23 **Q** After this incident.

24 **A** Yes.

25 **Q** So you've got now a total of three screens?

1 A Yes, sir.

2 Q Pulling what, 40 each?

3 A Yes, on a 200-amp box.

4 Q And you had two projectors pulling 60 each –

5 A Uh-huh.

6 Q – when this occurred?

7 A Yes, sir.

8 Q Thank you.

9 A Thank you.

10 CHAIRMAN WHITFIELD: Thank you, Commissioner
11 Elam.

12 Commissioner Hamilton?

13 EXAMINATION

14 BY COMMISSIONER HAMILTON:

15 Q How are you, Mr. McCutcheon?

16 A Fine, thank you.

17 Q Good to see you, sir. When you purchased the business,
18 was it an operating business?

19 A It had been closed for 25 years, approximately.

20 Q It had been closed for 25 years, And you are able to
21 get the Old Greenwood Rate on a business?

22 A Well, it was still – it had equipment in there. There
23 were refrigerators and freezers –

24 Q It was still consuming electricity during that 25 years
25 it had been closed?

1 A Yes, sir.

2 Q I'm sure the fellow was happy to sell it, then.

3 A Well, she was a really old lady.

4 Q Old lady.

5 A Very old.

6 Q Let me ask you, as you went forward with the business,
7 did you add additional things that had not been under
8 the previous business, as Mr. Ellerbe talked about?
9 Your popcorn popper and all this stuff?

10 A Well, I'm sure they had popcorn. I mean, they had a
11 full kitchen. Of course, I revamped it and rebuilt it,
12 you know, so it would, you know, be cleaner, because
13 we're safe-certified, you know, and there's certain
14 things you have to have.

15 Q Did I understand you correctly when you said when you
16 changed to the digital projectors, that overall you had
17 a reduction in energy usage?

18 A In 2013 and 2014, and then it went down in 2015.

19 Q So, it continued to go down when you add the occurrence
20 that caused you to be here today.

21 A Correct. We're conservative people, though.

22 Q Thank you, very much, sir.

23 A Yes, sir.

24 COMMISSIONER HAMILTON: Thank you, Mr.
25 Chairman.

1 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
2 Hamilton.

3 Commissioner Fleming?

4 **EXAMINATION**

5 **BY COMMISSIONER FLEMING:**

6 **Q** I just wanted to follow up. I didn't – I don't think I
7 got clarity for myself. What was your understanding of
8 what would change you from the Greenwood Rate to the
9 regular rate?

10 **A** Where their lines tie onto our lines, which are provided
11 by us – they go through the weatherhead and into the
12 building – when you take those wires out and you put
13 bigger copper in or something – like you have a copper
14 wire the size of your pinky and you change it to wire
15 the size of your thumb – then you need an upgrade, if
16 that's an upgrade of service. That's what I thought,
17 you know.

18 **Q** And did that happen with the changes that were made?

19 **A** No, ma'am.

20 **Q** Okay. They just changed the transformer and put the two
21 lines in?

22 **A** Yes, ma'am.

23 **Q** Okay. So, they didn't – your understanding was it was
24 the size of the line that would go in?

25 **A** That served my business, from their lines to my line.

1 Q Okay. And that did not change, even –

2 A No, ma'am.

3 Q – even with the –

4 A No, ma'am.

5 Q – upgrades that they did?

6 A [Shaking head.]

7 Q Okay. Thank you.

8 A Thank you.

9 CHAIRMAN WHITFIELD: Thank you, Commissioner
10 Fleming.

11 Commissioner Hall?

12 EXAMINATION

13 BY COMMISSIONER HALL:

14 Q I'm 'sorry, Mr. McCutcheon, I just have one more question
15 about when you signed the agreement, that you understood
16 you were being changed to the regular Duke rate. You
17 went to the office – I mean, what were the circumstances
18 of that? You went to the Duke office; is that right?

19 A Duke Energy's office.

20 Q Okay. They called you there?

21 A Theo Lane.

22 Q Okay. And you had been out – your power had been out,
23 or whatever, for a couple of days?

24 A Six hours, approximately.

25 Q Okay. And then they told you you could either be out

1 for however long, while this was pending, or they could
2 change your rate and you would reopen the next day?

3 **A** Correct.

4 **Q** Did you reopen the next day?

5 **A** Yes, they got our power back up the next morning.

6 **Q** Okay, and –

7 **A** They went –

8 **Q** – then you opened that night?

9 **A** – immediately to work on it.

10 **Q** Did you open that night?

11 **A** I don't recall.

12 **Q** Okay. All right. Thank you.

13 **A** If it was a Friday or Saturday or Sunday.

14 **COMMISSIONER HALL:** Of course.

15 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
16 Hall.

17 Any other – if not, I've got a question or two
18 for you, Mr. McCutcheon.

19 **EXAMINATION**

20 **BY CHAIRMAN WHITFIELD:**

21 **Q** I just want to get my bearings straight a little bit,
22 here. I lived in Greenwood a long time ago and am
23 somewhat familiar with that area. I think you told Mr.
24 Ellerbe that you owned a place on Highway 72/221 E., and
25 that was in '05, 2005, and I think you had another

1 place, you stated, and then this place is – I notice it
2 has a Ninety Six 96 address, and originally I thought it
3 might've been the old Caravan. This is way down 25
4 South, down by Augusta Fields; is that right?

5 **A** The drive-in is located across from Augusta Fields.

6 **Q** Where you are now.

7 **A** Yes, sir.

8 **Q** That's what I – okay. Now, I want to ask you a question
9 that your attorney mentioned, kind of starting off. He
10 talked about your purchase in '08, and I think you say
11 you started kind of operating in '09. I guess you spent
12 some time upgrading or had a place that hadn't been
13 operating in 25 years, and you spent some time before
14 you got things going again, right?

15 **A** It took about a year with my whole crew working on it.

16 **Q** When you purchased this in '09, obviously you had a
17 couple of other places that had been on the Greenwood
18 Rate, so I'm assuming – well, let me not assume; let me
19 ask you. Did your attorney that handled the closing,
20 did he or she explain to you that this would be on the
21 Greenwood Rate and what might trigger you to lose your
22 Greenwood Rate? Did that come up at your purchase, at
23 the time of closing, by your closing attorney? Was that
24 explained to you?

25 **A** The older lady – the really honorable, older lady that

1 owned it, she explained all of that to me in an eye-to-
2 eye situation.

3 **Q** So the previous owner?

4 **A** Yes, sir. She was really strict.

5 **Q** And told – all right. And what you just told
6 Commissioner Fleming, the gist of your conversation with
7 her was the bigger-size wire is what you're saying would
8 trigger it, or in your understanding that's what would
9 trigger it?

10 **A** An upgrade on our side of the meter base.

11 **Q** Okay. So your knowledge from that was basically from
12 the previous seller, not something that your attorney
13 necessarily told you in depth, right?

14 **A** Right.

15 **Q** Just what she volunteered?

16 **A** Right.

17 **Q** Commissioner Hamilton asked you a question about the
18 additional food service equipment being installed, and
19 you went through a pretty good step-by-step with
20 Commissioner Elam about going from one screen to two
21 screens to three outdoor screens. When Commissioner
22 Hamilton asked you that question about food service
23 equipment, you acknowledged it. Can you tell us when,
24 if you can, some of the larger appliances were added,
25 and give us a timeframe of that, possibly?

1 A Well, it had fryers and grills and hotdog machines and
2 stuff in there. You know, it was just antiquated, you
3 know, and hard to keep clean, you know, so I, of course,
4 was able to get newer equipment as soon as possible.

5 Q So you did that initially when you opened in '09, or –

6 A Yes.

7 Q – was some of this done in 2013?

8 A It was initially done '09 so that, you know, I could get
9 a health inspection. They want approval and stuff, you
10 know, on these refrigerators and things, you know.

11 Q So the bulk of it was done right when you first opened
12 '09?

13 A Yes, sir.

14 Q And it's possible that you maybe added something –

15 A Well, yeah.

16 Q – going down the road?

17 A I mean, you have to have room to prepare it and chunk –
18 I mean, you know, buy new things, refrigerators and
19 things. But the building is very, very small.

20 CHAIRMAN WHITFIELD: Well, thank you, Mr.
21 McCutcheon. That's all I have.

22 I don't think any Commissioners have any
23 further questions, so I'm going to turn it back to
24 you, Mr. Shissias, for any redirect

25 MR. SHISSIAS: Thank you, very much.

REDIRECT EXAMINATION

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BY MR. SHISSIAS:

Q Mr. McCutcheon, about your concession items: In your current configuration with all the appliances and fryers and whatnot we've been talking about, what's the most recent one – what's the most recent installed item? When was that?

A It would have to be a refrigerator.

Q A refrigerator, okay. And when did you install that?

A About two years ago.

CHAIRMAN WHITFIELD: Mr. McCutcheon, I'm sorry. Either your mic is off, or –

WITNESS: [Indicating.] About two years ago.

BY MR. SHISSIAS:

Q About two years ago?

A Yes.

Q Okay. And other than that refrigerator, your current complement of appliances, did you have all those appliances in 2014?

A Yes, sir.

Q Okay, with the exception of the fridge?

A Correct.

Q Okay. All right. One quick question: When you bought this business, was there any kind of operation going on there at the time?

1 A No, sir.

2 Q Well, I mean, was there any interruption in service or
3 power?

4 A Before I bought it?

5 Q Before you bought it.

6 A I have no idea.

7 Q You have no idea. Okay. But you were allowed to change
8 over the existing account number?

9 A Yes, sir. I immediately put it into my name.

10 Q Okay. Now, there was some discussion about what's your
11 understanding of what gets your rate changed under the
12 Greenwood Rate. Is your understanding of that, was that
13 based on what the seller told you about the rate?

14 A I've had the old Duke rate since 19- - in my other
15 restaurant for a long time, since 1982.

16 Q But as far as your understanding of what gets you
17 knocked off the Greenwood Rate, I mean, have you ever
18 had a lawyer sit down and talk with you about it, or is
19 it just what people talk about?

20 A It's a common thing, if you live in Greenwood; you know
21 what the rules are.

22 Q But you understand this case is about what are the
23 rules.

24 A Yes, sir.

25 MR. SHISSIAS: Okay.

1 I beg your indulgence.

2 [Brief pause]

3 I don't have anything further.

4 **CHAIRMAN WHITFIELD:** Mr. McCutcheon, you may
5 step down.

6 [WHEREUPON, the witness stood aside.]

7 **MR. SHISSIAS:** Next, we'll call Ms. Carolyn
8 McCutcheon.

9 [Witness sworn]

10 THEREUPON came,

11 **C A R O L Y N M c U T C H E O N ,**

12 called as a witness on behalf of the Complainant/Petitioner,
13 who, having been first duly sworn, was examined and testified
14 as follows:

15 **MR. SHISSIAS:** And just for the members of the
16 Commission, we do have Ms. McCutcheon listed as a
17 rebuttal witness, but we've agreed among the
18 parties it makes more sense to simply take her
19 testimony now.

20 **DIRECT EXAMINATION**

21 **BY MR. SHISSIAS:**

22 **Q** Ms. McCutcheon, I'm going to hand up what's been
23 prefiled as your testimony [indicating] and ask you a
24 couple of questions.

25 **A** [Indicating.]

1 Q In preparation for this hearing, did you prepare these
2 three pages of prefiled testimony questions?

3 A Yes, sir.

4 Q Okay. And if you were to be asked each of these
5 questions on the stand, would your answers be the same?

6 A Oh, yes.

7 Q Would you change anything in your answers to these
8 questions?

9 A I would keep it the same.

10 MR. SHISSIAS: Okay. At this point, I'm going
11 to move that this be admitted as if these questions
12 were asked orally on the stand.

13 CHAIRMAN WHITFIELD: Ms. McCutcheon's
14 testimony will be entered into the record as if
15 given orally from the stand.

16 MR. SHISSIAS: Thank you.

17 BY MR. SHISSIAS:

18 Q Let's just go ahead and summarize this very quickly. I
19 take it that you work with your husband at the drive-in?

20 A Yes, sir. I work with my husband, Tommy McCutcheon, at
21 the drive-in.

22 Q Okay. And I want to talk with your – talk about your
23 discussions with the ORS staff. Did you speak with
24 Takisha Anderson on the 16th?

25 A Yes, sir, I talked to Takisha many times.

1 Q Okay. And were you the person who filed that Complaint?

2 A Yes, sir, I did.

3 Q Okay. And why did you file that Complaint?

4 A Well, I filed the Complaint because we felt that Duke
5 Energy did not have the right to come and take us off
6 the old Duke rate.

7 Q Okay. Do you recall ever speaking with Ms. April Sharpe
8 at ORS?

9 A I don't recall.

10 Q Okay. Do you recall speaking with anybody other than
11 Takisha Anderson?

12 A Other people were on the phone, but I remember talking
13 to Takisha. She's the main person.

14 Q Okay. Now, what did Mr. Lane and Mr. Fowler tell you on
15 the 16th?

16 A They said if we would not sign – no, that was the 17th.

17 Q 17th?

18 A They said they were going to re-build their service
19 lines and take us off the old Duke rate.

20 Q Okay. And did they cut that power off?

21 A Yes, sir, they physically cut it.

22 Q Okay. And did y'all meet with Mr. Lane and Mr. Fowler
23 on the 17th?

24 A After they cut the power line, we met at the Duke Energy
25 office.

1 Q Okay. And what did y'all discuss?

2 A We discussed how to get the energy back on.

3 Q Okay. And what was Duke's position?

4 A They said the only way they would turn it on was if we
5 signed the document.

6 Q Okay. And, otherwise, if you didn't sign it?

7 A If we didn't sign it, we were just going to sit there
8 and lose everything, lose our business.

9 Q Okay. Now, when you are at the office, did a document
10 get created?

11 A Yes, sir. Mr. Theo Lane went out of the room and came
12 back with a document that he had typed up.

13 Q Okay. So you don't know if he – you don't know when he
14 typed it up?

15 A That's correct.

16 Q Okay. All right.

17 A He left the room.

18 Q Now, did your husband sign the document?

19 A Yes, sir, we did. There was no other way we could get
20 the energy on.

21 Q Okay. And did they turn the power back on the next day?

22 A Yes, sir, it was in the afternoon.

23 Q Okay. Now, did you speak to anyone at ORS afterwards?

24 A Someone called a day later, or the next day, and asked
25 me something, and all I said was, yes, we had energy.

1 And I said, "Thank you," and hung up.

2 **Q** Okay. Did you say anything about the problem being
3 resolved to your satisfaction?

4 **A** No, sir.

5 **Q** Okay. Did you say to her, "We're satisfied with the
6 outcome?"

7 **A** I never said anything.

8 **Q** Okay. Now, a month later, did you call Ms. Anderson
9 later?

10 **A** I called – that's Takisha Anderson?

11 **Q** Yes, ma'am.

12 **A** I called Takisha about a month later. I had not
13 received anything written from ORS or the Public Service
14 Commission, and I talked to her and I said, "Well, what
15 about our old rate? I'm not on our old rate yet." And
16 she said – you know, she made me feel like the case was
17 closed, but it wasn't. It had never been acknowledged.

18 **MR. SHISSIAS:** Thank you, very much.

19

20

21

22

23 [PURSUANT TO PREVIOUS INSTRUCTION, THE

24 PREFILED REBUTTAL TESTIMONY OF CAROLYN

25 McCUTCHEON FOLLOWS AT PGS 61-63]

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. 2017-32-E

In re:)	
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and)	
Tommy McCutcheon)	
)	
Complainant/Petitioner,	)	PREFILED REBUTTAL
	)	TESTIMONY OF
v.	)	CAROLYN
	)	MCCUTCHEON
Duke Energy Carolinas, LLC,)	
Defendant/Respondent.)	

Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Carolyn McCutcheon. My husband and I operate the Drive-In at 3109 Highway 25 South in Greenwood.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I want to discuss the handling of the complaint we filed with the Office of Regulatory Staff and our meeting with Tommy Fowler and Theo Lane on the evening of June 17th, 2015.

Q. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARING THIS TESTIMONY?

A. I reviewed my husband's and Bob Calhoun's prefiled testimony, the testimony of April Sharpe of the Office of Regulatory Staff, and the testimony of Joel Lunsford, Tommy Fowler, and Theo Lane from Duke.

Q. DID YOU FILE A COMPLAINT WITH THE OFFICE OF REGULATORY STAFF?

A. I did. I called their office and spoke with Takishia Anderson. I called on June 16th, 2015. I know my husband's testimony says we filed it on June 17th, 2015 but after looking at the files it must have been on the 16th.

Q. WHY DID YOU FILE A COMPLAINT ON JUNE 16TH, 2015?

A. Because Mr. Lane and Mr. Fowler had told us that our power line needed to be “upgraded” and that as a result we’d lose our Greenwood rate. They said if we didn’t agree to this Duke would cut off our power. We didn’t want to lose the Greenwood rate and didn’t agree to any work being done that would result in the loss of the Greenwood rate.

Q. DID YOU EVER SPEAK TO APRIL SHARPE AT THE OFFICE OF REGULATORY STAFF?

A. Not that I recall. I recall speaking with Takishia Anderson.

Q. WHAT HAD MR. LANE AND MR. FOWLER TOLD YOU WOULD HAPPEN IF YOU WOULDN’T AGREE TO THE UPGRADE?

A. They told us they’d cut off our power.

Q. DID DUKE CUT OFF YOUR POWER?

A. Yes, on June 17th I checked the answering machine at the theater and it didn’t work. We went to the theater and found that the supply line from the power pole had been physically cut.

Q. DID YOU AND YOUR HUSBAND MEET WITH MR. FOWLER AND MR. LANE ON THE 17TH?

A. Yes. At around 5:30 pm Mr. Lane called on my husband’s cell and asked us to meet him at Duke Power’s local office at 6:00 pm.

Q. WHAT DID YOU DISCUSS?

A. The power disconnection and getting the power reconnected. Mr. Lane and Mr. Fowler said that they would not reconnect the power unless we agreed to an upgrade. They said if we agreed, we would lose the Greenwood rate. They said if we would not agree Duke would not reconnect the power.

Q. DID THEY ASK YOU TO SIGN A DOCUMENT?

A. While we were at the office Mr. Lane got on his computer and printed out a document saying that we had voluntarily agreed to this upgrade and that we would lose the Greenwood

rate.

Q. DID YOUR HUSBAND SIGN THE DOCUMENT?

A. Yes. We had discussed the matter that day. We felt we had no choice. However, we didn't think that by signing this agreement we would be dropping the Office of Regulatory Staff complaint. We signed it under duress.

Q. DID DUKE TURN THE POWER BACK ON?

A. They turned the power back on June 18th, 2015.

Q. DID YOU SPEAK TO ANYONE AT THE OFFICE OF REGULATORY STAFF AFTERWARDS?

A. Yes. On June 18th someone from the Office of Regulatory Staff called me to ask if the power was back on. I told her that the power was back on. I never said anything about the matter being resolved or if we were satisfied with the outcome. I thought the Office of Regulatory staff was still working on our complaint. On July 20th I called Takishia Anderson and asked about the status of our complaint. She told me that the matter had been resolved and that the case had been closed.

Q. DID YOU EVER TELL ANYONE AT THE OFFICE OF REGULATORY STAFF THAT THE MATTER HAD BEEN RESOLVED SATISFACTORILY?

A. No. We felt we were forced to sign the agreement or we wouldn't get power back. We never told the Office of Regulatory Staff that we were withdrawing our complaint or that the dispute had been resolved by an agreement.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

1 **MR. SHISSIAS:** I don't have anything further,
2 and you go ahead and answer the questions Mr.
3 Ellerbe might have for you.

4 **CHAIRMAN WHITFIELD:** Mr. Ellerbe?

5 **MR. ELLERBE:** Thank you, Mr. Chairman.

6 **CROSS EXAMINATION**

7 **BY MR. ELLERBE:**

8 **Q** Hello, Ms. McCutcheon. Let me – have you got your
9 testimony with you?

10 **A** Yes, sir, it's in front of me.

11 **MR. ELLERBE:** I've got some questions about
12 the exhibit to your testimony – and, Mr. Chairman,
13 I don't know whether that exhibit was actually
14 offered or whether Mr. Shissias intended to, but I
15 think we ought to go ahead and put it into the
16 record.

17 **MR. SHISSIAS:** It – the exhibit was the ORS
18 complaint filed. And if you want to go ahead and
19 move it in now, or if you want to wait until where
20 I actually have an ORS witness, it's entirely up to
21 everyone else. But if you'd like to go ahead and
22 move that in now, that's fine. That's fine.

23 **MR. ELLERBE:** That's what I would like to do.
24 I'd like to ask Ms. McCutcheon about it, since it's
25 her exhibit.

1 **MR. SHISSIAS:** Okay. Then the –

2 **CHAIRMAN WHITFIELD:** Mr. Shissias, if you want
3 to go ahead and do that, since all the parties are
4 in agreement, let's do that now, if you'd like.

5 **MR. SHISSIAS:** Okay. Then I move that the
6 exhibit that was filed at the same time as Ms.
7 McCutcheon's testimony – the case record file – be
8 moved into evidence.

9 **CHAIRMAN WHITFIELD:** We will enter that in as
10 Hearing Exhibit No. 3, the case record file.

11 [WHEREUPON, Hearing Exhibit No. 3 was
12 marked and received in evidence.]

13 **MR. SHISSIAS:** Okay. Sorry about that.

14 **MR. ELLERBE:** Thank you.

15 **BY MR. ELLERBE:**

16 **Q** Ms. McCutcheon, if you would turn, please, to that
17 exhibit that's now been marked as Hearing Exhibit 2 – I
18 think?

19 **CHAIRMAN WHITFIELD:** Exhibit 3.

20 **BY MR. ELLERBE:**

21 **Q** Exhibit 3. And turn to the page marked page two-of-ten.
22 Are you there?

23 **A** I only have three pages. This is my testimony, prefiled
24 testimony.

25 **MR. SHISSIAS:** I'll hand that up [indicating].

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WITNESS: [Indicating.]

MR. ELLERBE: Thank you.

WITNESS: Thanks. What page?

BY MR. ELLERBE:

Q Okay. First of all, are you familiar with this document? It was attached to your testimony – your rebuttal testimony – when your rebuttal testimony was prefilled?

A Yes, sir.

Q And what is the document, Ms. McCutcheon?

A Company – it's a case record.

Q Okay. And this is an ORS document?

A Yes, sir.

Q Okay. Was it provided to you by ORS?

A I have read it.

Q Okay, you aren't sure how it came into your possession?

A I know how it came in my possession, but they didn't hand it to me.

Q Okay. Who provided it to you?

A My attorneys.

Q Your lawyers? Yes, ma'am. Okay. If you'll turn with me to page three-of-ten, and see under the heading "Consumer Issue"? you see that, Ms. McCutcheon?

A Yes, sir.

Q And it is marked three there, that's the paragraph I

1 want to ask you about. Let me just publish it; let me
2 read it and see if – and ask you about it. “Spoke with
3 Mrs. McCutcheon, who confirmed that there had been fires
4 at the location but that they were not the fault of the
5 customer. While discussing information provided by DEC
6 with Mrs. McCutcheon, Mr. McCutcheon got on the phone
7 and stated that there had not been any fires at the
8 location and he continued to state that he felt he was
9 being forced off the Greenwood Rate.” Do you recall
10 that happening, Ms. McCutcheon?

11 **A** Which part, talking to them on the phone?

12 **Q** Yes, ma'am.

13 **A** Yeah, we talked to her on the phone.

14 **Q** And is this correct that you told her that there had
15 been fires at the location, but they weren't the fault
16 of y'all? Is that right?

17 **A** I had said that because we didn't get anybody to get any
18 – we couldn't get any help at our drive-in to fix these
19 lines that had all these breaks in them. There was
20 never a fire.

21 **Q** Okay, so what this says here is wrong. You did not tell
22 Ms. Anderson that there had been fires at the location?

23 **A** I think that's what I'm saying.

24 **Q** This is – ORS records are incorrect on that; you did not
25 tell her that there –

1 A I did –

2 Q – had been fires.

3 A I did say that, because I wanted someone to help us. No
4 one was taking us – no one was – they weren't helping
5 us. We talked to Duke Energy; they wouldn't come fix
6 these lines. Then it happened again.

7 Q Well, now, Ms. McCutcheon; you – this is – I want to
8 make sure I understand. You told Ms. Anderson that
9 there had been fires when there really had not been
10 fires?

11 A Well, people said there were, but when I went and looked
12 they weren't there. In fact, when it went off the
13 second time, I was right by it and didn't see a fire.

14 Q Well, what did – but my question is what you told the
15 ORS representative, Takisha Anderson.

16 A At that time, that was correct.

17 Q You told her there had been fires there.

18 A Yes, because that is what I had heard. When the fire
19 department came, they said there wasn't a fire.

20 Q The fire department was called and came to the location?

21 A Uh-huh, and they looked and said there hadn't been a
22 fire here.

23 Q But somebody thought there was a fire and called the
24 fire department?

25 A Well, you've got these sparks going.

1 Q And the lines melted?

2 A Yes, sir.

3 Q And the electricity went out twice?

4 A Twice.

5 Q Correct? But you told Ms. Anderson, from ORS, that
6 there had been fires there?

7 A That's correct.

8 Q And then, do you recall that Mr. McCutcheon got on the
9 phone and said there hadn't been fires?

10 A That's correct.

11 Q Let me ask you to turn to page four, the next page,
12 four-of-ten, and the item that's marked seven about the
13 middle of the page?

14 A Yes, sir.

15 Q This is an ORS note, "Spoke with Carolyn," and that's
16 your first name?

17 A Yes.

18 Q "Spoke with Carolyn over the phone, who confirmed that
19 issue was resolved and service restored. Advised
20 closing of case"?

21 A No.

22 Q Did that take place, Ms. McCutcheon?

23 A She called - I don't know who called. I said we had
24 power. I said, "Thank you." Because I always say thank
25 you.

1 Q Yes, ma'am. Did she tell you that the case was closed?

2 A No, ma'am – no, sir.

3 Q Okay. And then just below that, on the date of July
4 20th – which is about a month later, right?

5 A Yes, sir.

6 Q – July 20, 2015: “Customer called for an update.” And
7 as I understand it, that was you --

8 A Correct.

9 Q -- asking whether you were going to get something in
10 writing? And then she told you, basically, that it was
11 ORS' understanding that the case was closed? Is that
12 what took place?

13 A I believe that's what she said, it was closed, and I
14 said I never got anything in writing. I never got a
15 response.

16 Q Okay. And then number nine there, “Customer said ok
17 Thanks and hung up.” And we know you always say thanks;
18 is that correct?

19 A Yes. They left out the part where I said, “But I'm not
20 on the old Duke rate yet.”

21 Q And that would've been in July 2015, correct?

22 A Yes, sir.

23 Q Okay. And the Complaint that has led to us being here
24 today was filed in January of 2017, correct?

25 A 2017?

1 Q This year.

2 A Yes, sir.

3 Q Okay. So you've been on the new Duke rate from June of
4 2015 until today.

5 A Yes.

6 Q And the Complaint was filed in January of this year,
7 correct?

8 A Yes, sir.

9 Q Okay. And the business is continuing to do well – well
10 enough, in fact, that y'all have added a third screen
11 since you switched rates; correct, Ms. McCutcheon?

12 A Yes, sir, we did that in 2016.

13 MR. ELLERBE: Yes, ma'am.. Okay.

14 Thank you. Nothing further, Mr. Chairman.

15 CHAIRMAN WHITFIELD: Thank you, Mr. Ellerbe.

16 ORS?

17 MR. NELSON: I just have one or two questions.

18 CROSS EXAMINATION

19 BY MR. NELSON:

20 Q Ms. McCutcheon, you had testified from the witness
21 stand, you said when you talked to Takisha on the 20th
22 of July, that she made you think that the case had been
23 closed? Did she tell you that the case had been closed?

24 A I think she said it had been closed, and I said, "Well,
25 I haven't received anything the whole time."

1 Q Doesn't, in fact, your written statement, your written
2 testimony, say that she told you that the matter had
3 been resolved and the case had been closed?
4 A And that's on page -
5 Q Page three. I don't have a line number.
6 A Is that on page four?
7 Q Page three. It only had three pages. Page three of
8 your testimony, ma'am.
9 A Oh [indicating]. Oh. Oh, did I speak to anyone at the
10 Office of Regular Staff afterwards?
11 Q No, ma'am. On July 20th, your statement here in your
12 prefiled testimony is that Ms. Anderson had told you the
13 matter had been resolved and the case had been closed;
14 is that correct?
15 A Where is it on this [indicating]?
16 MR. NELSON: May I approach the witness?
17 CHAIRMAN WHITFIELD: Yes.
18 BY MR. NELSON:
19 Q [Indicating.]
20 A [Indicating.]
21 Q Would you just read that sentence for us?
22 A Oh, yeah. "On July 20th, I talked to Takisha Anderson
23 and asked about the status of our Complaint. She told
24 me the matter been resolved and that the case was
25 closed."

1 Q Thank you. That's all I have. Thank you.

2 A Yes, sir.

3 CHAIRMAN WHITFIELD: Is that it for ORS, Mr.
4 Nelson?

5 MR. NELSON: Yes, ma'am – I mean, yes, sir.

6 CHAIRMAN WHITFIELD: Commissioners.
7 Commissioner Fleming.

8 EXAMINATION

9 BY COMMISSIONER FLEMING:

10 Q Good morning, Ms. McCutcheon.

11 A Good morning.

12 Q Were you with Mr. McCutcheon when he – when you signed
13 the agreement that you would go on the regular rates?

14 A Yes, sir, I was.

15 Q And could you describe what happened before you went
16 there and during your meeting at the office?

17 A From about what time before?

18 Q Well, when you started dealing with this issue, when you
19 had to go to the office, the Duke Energy offices?

20 A Well, we realized that we didn't have power at the
21 drive-in about 2 o'clock or so, when we called the
22 answering machine and it didn't come on. And then we
23 went to the drive-in and saw we were out of – everything
24 was black. And so we started calling numbers, Duke
25 Energy -POWER-ON. And then you go through this – I

1 talked to a whole bunch of people then. And probably at
2 about 4 o'clock, there was nothing we could – 4:30 –
3 yeah, about 4:30, we left and then Theo Lane called us
4 up, probably around 5:30, and asked us to meet him at
5 the Duke Energy office at 6 o'clock. And we went there,
6 we went to an office. There's this one office, and it
7 was Theo Lane and Tommy Fowler were there. And Theo was
8 sitting in the chair, right here [indicating]. There
9 was a table. And Theo Lane was going back and forth,
10 and we talked about how to restore the energy at the
11 drive-in. And they said they weren't going to touch it
12 unless we let them do the upgrade from their side and
13 that we signed away the old Duke rate. We wouldn't have
14 power for, you know, 30 or 60 days. With the drive-in,
15 you know, you have people coming three or four hours;
16 they plan their vacations around it. That's death to
17 us.

18 **Q** Why would it take 30 to 60 days for the lights to come
19 back on?

20 **A** Because we had filed a Complaint with ORS or the PSC.

21 **Q** Okay. And were the lights off because of the problem
22 with the line melting?

23 **A** No, ma'am. The lights were off because they physically
24 severed it with cutters, from the telephone pole.

25 **Q** Because the lines had melted? Or were they back in

1 working order?

2 **A** Well, they had – when the lines melted the last time,
3 the man came in there and put new lines in, and he said,
4 “They won’t melt. You won’t have any trouble out of it
5 again.” And we were able to turn the projectors back
6 on, and they finished out the night.

7 **Q** So the lights were working when they severed them –

8 **A** Yes, sir – yes, ma’am.

9 **Q** – and they called you into the office?

10 **A** Yes, ma’am.

11 **Q** Okay. And was there an issue discussed with the safety
12 concerns?

13 **A** They brought it up, but we said, “They fixed it Saturday
14 night. You don’t need to come back in and do all this
15 stuff. It’s been fixed.” All the splices were taken
16 out.

17 **Q** And your husband stated that your high season was like
18 June, July, August, I guess?

19 **A** Yes, ma’am. Middle of May to middle of July.

20 **Q** Okay. So, this was – and what was the date of this that
21 you signed it?

22 **A** I think was the 17th.

23 **Q** Of?

24 **A** July – May, June. June. June 17th.

25 **Q** Thank you. That was during your high season?

1 A Yes, ma'am.

2 COMMISSIONER FLEMING: Thank you.

3 CHAIRMAN WHITFIELD: Thank you, Commissioner
4 Fleming.

5 Commissioner Elam.

6 EXAMINATION

7 BY COMMISSIONER ELAM:

8 Q Good morning, still.

9 A Good morning.

10 Q On June 15th, when the problem occurred again, the
11 second time, did you call Duke or did your husband call
12 Duke?

13 A Neither one of us, I believe. We were busy. It was
14 dark. I had all – you know, people were on the field.
15 I was walking around with flashlights making sure nobody
16 was in the bathroom. He was in the kitchen.

17 Q Right.

18 A It was black. It was dark.

19 Q Did you have any other employees?

20 A My son was there, and I had other people working.

21 Q I'm looking back at the daily report, and I believe your
22 husband said something similar, as far as that he didn't
23 call. And this is in Exhibit 1, the second Duke Daily
24 All Report, for May 11. It says, "Customer states the
25 line going from the pole to the building is on fire.

1 Customer contacted FD." Possible that your son or
2 someone else called about that?

3 **A** My son might have called it in. He would've been down
4 at the box office when it happened. And what we do,
5 when some things happen, we lock all the doors and then
6 he takes off where he's needed.

7 **Q** Uh-huh? Okay.

8 **A** But when he got there, all you have are people telling
9 you what's happened.

10 **Q** Right. You didn't see it, yourself.

11 **A** No, sir. I just saw it the second time.

12 **Q** But you're saying your son probably would've been able
13 to see it, himself?

14 **A** Maybe.

15 **Q** Okay. Thank you.

16 **A** He - well.

17 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
18 Elam.

19 Any other questions from Commissioners?

20 [No response]

21 Hearing none, Mr. Shissias, do you have any
22 redirect?

23 **MR. SHISSIAS:** I don't believe I have any
24 redirect. Thank you, very much.

25 **CHAIRMAN WHITFIELD:** Thank you.

1 Ms. McCutcheon, you may step down at this
2 time, and we're going to take a brief five-minute
3 recess at this time.

4 [WHEREUPON, the witness stood aside.]

5 [WHEREUPON, a recess was taken from 11:55
6 a.m. to 12:14 p.m.]

7 **CHAIRMAN WHITFIELD:** Please be seated. I'm
8 going to call this hearing back to order. We do
9 have an administrative item I need to take care of
10 for just a second, first, before we resume.

11 The wire that the Complainant wanted to enter
12 in, I didn't identify that, and I'm now going to
13 identify the wire. I'd like to use the photo, to
14 make it easier administratively, to enter a photo
15 of the wire as Hearing Exhibit 4. I would, however
16 – in entering this, I would caution the Complainant
17 and their attorneys that questions are not to be
18 asked about the splices on the wires Mr. Ellerbe
19 had objected to and I had sustained his objection.
20 So we will enter it in as Hearing Exhibit No. 4.

21 [WHEREUPON, Hearing Exhibit No. 4 was
22 marked and received in evidence.]

23 **MR. FANTRY:** Thank you Mr. Chairman. I would
24 like to call, as Petitioner's next witness, James
25 R. Calhoun.

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[Witness sworn]

THEREUPON came,

J A M E S R . C A L H O U N ,

called as a witness on behalf of the Complainant/Petitioner,
who, having been first duly sworn, was examined and testified
as follows:

MR. FANTRY: May I approach the witness?

CHAIRMAN WHITFIELD: Yes.

MR. FANTRY: All right. [Indicating.]

WITNESS: [Indicating.]

MR. FANTRY: I'm hoping standing over here
will make my voice a little louder and help Mr.
Calhoun in paying his attention to both myself and
the Commission, who's interested in his answers.

CHAIRMAN WHITFIELD: Thank you. You're very
audible, Mr. Fantry.

MR. FANTRY: Thank you.

DIRECT EXAMINATION

BY MR. FANTRY:

Q Mr. Calhoun, are you appearing today at the request of
myself and the Petitioners as an expert witness?

A Yes, sir.

Q All right. And, as an expert witness, would you share
with the Commission your work history and your licenses
and the reasons why you have the ability to talk about

1 some of the mechanical and equipment issues that are in
2 this case?

3 **A** Yes, sir. I've worked 37-1/2 years with the power
4 company. I worked with VEPCO in Virginia for three
5 years, starting in 1958, and I moved back to Greenwood
6 in 1960 and was employed by the CPW of Greenwood, and I
7 started out as a lineman, and the last eight years I was
8 there I was head of the Electrical Division of CPW.

9 **Q** Okay. Thank you, very much. And so, for that
10 particular reason, you have experience in both the
11 customer side, in electrical contracting –

12 **A** Yeah, I also have an electrical contracting company that
13 I'm a part-owner in, in Calhoun-McDaniel Electric
14 Company, Incorporated, and I've had this for many years.
15 It was incorporated like it is now in 1986. And to this
16 day it's still running and I'm still employed there.

17 **MR. FANTRY:** Thank you, very much.

18 Mr. Chairman, I'd like to introduce Mr.
19 Calhoun as an expert witness. I've qualified him
20 and I'm asking if there's any objection from the
21 other parties in this case as his appearing as an
22 expert.

23 **CHAIRMAN WHITFIELD:** Any objection?

24 **MR. ELLERBE:** Mr. Chairman, we don't object to
25 the opinions that he has offered in his prefiled

1 testimony. I assume we're limiting – his testimony
2 is going to be limited to what is in his prefiled
3 testimony, and, with that understanding, we don't
4 have any objection.

5 **CHAIRMAN WHITFIELD:** Mr. Nelson?

6 **MR. NELSON:** None from ORS, Mr. Chairman.

7 **MR. FANTRY:** Thank you, very much.

8 **BY MR. FANTRY:**

9 **Q** Mr. Calhoun, would you please – I've given you a four-
10 page document. Do you recognize that particular
11 document?

12 **A** Yes, sir.

13 **Q** Okay. And this is, supposedly, your prefiled testimony,
14 the opinions and observations that you desire to share
15 with this Commission today?

16 **A** Yes, sir.

17 **MR. FANTRY:** Okay. Mr. Chairman, I would ask
18 that the prefiled testimony be filed and placed on
19 the record as if the questions were asked verbatim.

20 **CHAIRMAN WHITFIELD:** Mr. Calhoun's prefiled
21 testimony will be entered into the record as if
22 given orally from the stand.

23 **MR. FANTRY:** Thank you, very much, Mr.
24 Chairman.

25 **BY MR. FANTRY:**

1 Q Just in summary of your particular testimony, would it
2 be accurate to say that you have examined the movie
3 facility and the equipment that is used, from the
4 customer side of this particular account?

5 A Yes, sir.

6 Q Have you also had an opportunity to examine the repairs
7 that were performed on the movie-theater service
8 connection after June 18th of 2015?

9 A Yes, sir.

10 Q Okay. And in preparing your testimony, did you also
11 review any particular information that was supplied to
12 the plaintiffs in regard to the cause of the outage on
13 May 30th and June 13th of 2015?

14 A Yes, sir.

15 Q Okay. Do you have an opinion as to what was the cause
16 of outages in 2015?

17 A I think it was a failed -

18 CHAIRMAN WHITFIELD: Mr. Calhoun, I'm sorry.

19 Could you get just a little closer to that mic?

20 Seems like we're having a little trouble -

21 WITNESS: [Indicating.] Can you hear me now?

22 CHAIRMAN WHITFIELD: I think so.

23 WITNESS: Okay. Now, could you give me the
24 question again. I'm 81 years old; don't interrupt
25 me.

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[Laughter]

My mind don't stay on track too long.

MR. FANTRY: Yes.

BY MR. FANTRY:

Q Mr. Calhoun, what I was asking for was –

CHAIRMAN WHITFIELD: I'm sorry.

BY MR. FANTRY:

Q – your observations on what may have caused the outages
in June and – actually, May and June of 2013_[sic].

A Yes, sir. I went down – Tommy called me, and I went
down there. And I've known Tommy since he was a little
boy, and I knew his dad and his granddad. He asked me
to come down and look, and I went down and inspected his
facility. And I think all of that was put in in 1945,
my recollection. It's still as good today as it was the
date it was put in.

In my looking at this, I think the cause of the
failure was the cable. And I can't say nothing about
the connections, but I would say that I think the cable
had deteriorated. I think it was maybe a small fire.
And I testified in here about the CT, but they've said
the CT is good but they didn't change it. And I know
that the few days it run, it didn't use but a little bit
of power. But, anyway, they changed the CTs out, and my
thing is that the heat come – it caused an extra amount

1 of current going through the CT and that's where the
2 failure occurred.

3 **Q** Right. Mr. Calhoun, see if I understand the observation
4 and make sure that I've understood your statement.

5 **A** Okay.

6 **Q** And that basically is that, having examined the – you've
7 seen the equipment that's used at the movie theater;
8 it's not your belief that it's the equipment at the
9 movie theater or the loads that are on the equipment in
10 the movie theater that have caused the outage problem
11 experienced in May 2015.

12 **A** No, sir.

13 **Q** All right. Then, if the movie theater's electrical load
14 and equipment didn't cause that outage, am I correct in
15 understanding that it was the facilities that were on
16 the –

17 **MR. ELLERBE:** Mr. Chairman, this is not direct
18 examination; this is leading, testifying by Mr.
19 Fantry. He can't – he's got to ask the witness
20 questions and get testimony from the witness, not
21 leading like that.

22 **CHAIRMAN WHITFIELD:** Mr. Fantry, try to stick
23 to the questions.

24 **MR. FANTRY:** I will restrain that and simply
25 say –

1 **BY MR. FANTRY:**

2 **Q** Mr. Calhoun, the fault was not – was it or was it not
3 the fault of the customer's equipment that caused the
4 failure in 2015?

5 **A** No, sir. The customer had no problem.

6 **MR. FANTRY:** Thank you. That's my last
7 question.

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23 [PURSUANT TO PREVIOUS INSTRUCTION, THE

24 PREFILED DIRECT TESTIMONY OF JAMES R.

25 CALHOUN FOLLOWS AT PGS 86-89]

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. _____

In re:)
)
 TOMMY MCCUTCHEON,)
 Complainant/Petitioner,)
)
 v.)
)
 Duke Energy Carolinas, LLC,)
 Defendant/Respondent.)

AFFIDAVIT AND
PREFILED TESTIMONY
OF JAMES R. "BOB"
CALHOUN

PERSONALLY appeared before me, Bob Calhoun who first being duly sworn states as follows:

1. My name is Bob Calhoun and I have been an electrician in the State of South Carolina for the past thirty seven and one-half years.
2. I currently operate Calhoun-McDaniel Electric Co. Inc., and am licensed as a Commercial Contractor by the South Carolina Department of Labor, Licensing and Regulation, classification EL4, License Number 1673. This is the appropriate licensure for an Electrical Contracting company.
3. In the past I also worked for VEPCO (Virginia Electric and Power Company) as well as the Greenwood Commissioner of Public Utilities (CPW). In all these positions my duties related to electrical supply infrastructure.
4. I have known the Complainant/Petitioner, Tommy McCutcheon and his wife since they were children, and I am familiar with the electrical connections on the theater's side of the power service system and on Defendant/Respondent's side of the service system.
5. Before the work that was performed by Defendant/Respondent in June of 2015, on Defendant/Respondent's side there was a single 800 to 5 current transformer. An 800 to 5 current transformer is capable of taking 1200 Amperes of load without failing. The theater's service was only a 400 Ampere system.

6. I am aware that in June of 2015 the theater experienced two power failures.
7. I have inspected the remains of the power line where the failures occurred and in my professional opinion both times fault current caused the line to short out and destroy the 800 to 5 current transformer.
8. I am aware that after the second failure Defendant/Respondent repaired the damage by eliminating the use of the single 800 to 5 current transformer from the circuit and replacing it with two (2) 200 to 5 current transformers.
9. There was no need to install two 200 to 5 current transformers; the system could have been properly repaired with a single new 800 to 5 current transformer. The only reason Defendant/Respondent made this change was for its sole convenience and benefit.
10. There was no safety issue with Complainant/Petitioner's system in June of 2015.
11. Complainant/Petitioner's service on its side is now and has always been a 400 Ampere service, which could not have overloaded Defendant/Respondent's power system.
12. There is no way the failures in June 2015 were caused by need of additional power or an increase in power demand.
13. I have examined the meter box Defendant/Respondent removed and replaced in June 2015. In my professional opinion there is nothing wrong with this meter box and it at no time experienced a failure.
14. I am aware that in 2014 Complainant/Petitioner replaced the theater's xenon arc 35mm projection equipment with modern digital equipment.
15. The xenon arc projectors for each of the theater's screens were served by two 60 Ampere breakers. Following the installation of the digital equipment the theater's screens are each served by a single 40 Ampere breaker. It is my professional opinion that the installation of the digital equipment decreased electrical demand for the theater as a whole.
16. I am aware that when the theater commenced operation in the late 1940's, it was served by carbon arc projection units, which used even more power than the xenon arc systems and considerably more than the modern digital projection systems in use at the theater today.

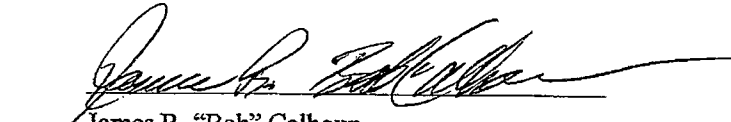
17. I have examined the electrical equipment on the theater's side of the service connection, and find it to be unchanged from the type of electrical switch and fuse equipment that would have been present when it was first constructed in the late 1940's.

18. I have examined the supply line where it comes off a 50 kva transformer and enters Complainant/Petitioner's property. I am aware that in the past there was a 25 kva transformer in its place, and before that there was a 15 kva transformer. Over the years Defendant/Respondent added load to that transformer as residences were added behind the theater. The 25 kva transformer experienced a failure some time ago and Defendant/Respondent replaced it with a 50 kva transformer. In my professional opinion this had nothing to do with the operation of the theater.

19. In my profession opinion, in June of 2015 the McCutcheon's business premise did not require a new physical connection to Defendant/Respondent's service, and I do not believe that any "professionally licensed electric contractor" could truthfully make such a statement. I do not believe that Defendant/Respondent's staff can truthfully call the repair performed in June of 2015 a "change in the character of the connection" or a "new connection" for the purposes of applicability of the Greenwood Rate.

20. When the power line shorted out, it put a tremendous amount of fault current through the 800 to 5 CT. This, in my opinion, caused the CT to fail, not an overload of service. It builds up a magnetic field from the shorted out wires.

FURTHER AFFIANT SAYETH NOT.


James R. "Bob" Calhoun
Dated this _____ day of January, 2017

SWORN TO BEFORE ME
This 4th day of January, 2017

Renee Timms (Notary Signature)

Print Notary Name Renee Timms

My Commission Expires 10/30/17

1 **CHAIRMAN WHITFIELD:** You're done Mr. Fantry?

2 **MR. FANTRY:** I'm sorry.

3 **CHAIRMAN WHITFIELD:** You done?

4 **MR. FANTRY:** I am done.

5 **CHAIRMAN WHITFIELD:** Okay.

6 Mr. Ellerbe, you're up now, sir.

7 **MR. ELLERBE:** Thank you, Mr. Chairman.

8 **CROSS EXAMINATION**

9 **BY MR. ELLERBE:**

10 **Q** Good afternoon, Mr. Calhoun.

11 **A** How are you, sir?

12 **Q** I'm going to show you – it sounds like you've seen the
13 exhibits that we filed in response, with our testimony;
14 is that right, sir?

15 **A** Yes, sir.

16 **Q** Okay. I'm going to show you one now, just so we can
17 maybe see what we can agree on.

18 **A** Okay.

19 **Q** This is a document that was attached at Mr. Lunsford's
20 testimony. I'll zoom out a little bit.

21 **A** I can see it.

22 **Q** I want everybody to be able to see it. All right. So
23 what this diagram shows is, over here, there's a pole-
24 mounted transformer. There was a pole-mounted
25 transformer that the service line that came down to the

1 movie theater went through a pole-mounted transformer –
2 came from a pole-mounted transformer; is that right,
3 sir?

4 **A** That's correct.

5 **Q** Okay. Are you aware that, on June 18th, that
6 transformer was changed from a 25 kVA to a 50 kVA
7 transformer?

8 **A** Yes, sir.

9 **Q** Okay. And you know that because you read it in our
10 testimony?

11 **A** I also saw it.

12 **Q** Okay. But you didn't know – based on your testimony,
13 you didn't know when that 50 kVA transformer was
14 installed, did you?

15 **A** Yes, sir.

16 **Q** How did you know that?

17 **A** Well, I've been there before, and I knew it was
18 installed when I went back – when they called me back
19 down.

20 **Q** Have you done work for the McCutcheons at this location?

21 **A** I have been there before, yes, sir.

22 **Q** Well, working?

23 **A** I've not done any work there; I've just advised him on
24 some things.

25 **Q** You've been there to see movies?

1 A No, sir.

2 Q Okay.

3 A I live in Spartanburg.

4 Q Okay. When was the first time you saw that transformer
5 – the new transformer, the 50 kVA transformer?

6 A After y'all had reinstalled the service and it was back
7 up and running.

8 Q Do you know how long after that it was?

9 A Just a couple of days.

10 Q Okay. So, Mr. –

11 A It was the first of the following week.

12 Q Mr. McCutcheon called you and asked you to come take a
13 look?

14 A Yes, sir.

15 Q Let's finish down through the – now, as I understand the
16 orange line going across here in the middle, that's a
17 representation of the wires that would go from the pole-
18 mounted transformer down to deliver the service down to
19 the drive-in? Is that right, sir?

20 A That's one of your lines went to the CT. It was looped
21 through it –

22 Q Okay.

23 A – and you double that, to make for the two.

24 Q Now, when you describe that, you've told us about being
25 at the location to examine the work, the upgrade work,

1 the following week after it was done. Is that what
2 you're talking about?

3 A Yes, sir.

4 Q So when you talk about the wire going through the CT,
5 you're talking about what you found when you were there
6 the following week, the week of June –

7 A No, sir, I'm talking about before the fire, before the
8 event happened, before you took the service down.

9 Q When were you at the location –

10 A I couldn't tell you, if I had to, exactly when it was,
11 but I had been there.

12 Q Was it in 2015?

13 A Probably so, yes, sir.

14 Q Was it before the outages?

15 A Yes, sir.

16 Q Okay. So you weren't there to look at – on that visit,
17 you weren't there to look at outages or anything like
18 that.

19 A No, sir.

20 Q Okay. So, this CT in the middle here, there's been some
21 talk about that, and you mentioned it in your testimony.
22 Is it your understanding that that current transformer
23 is there to measure the power?

24 A Yes, sir.

25 Q And it is part of the metering – the apparatus that's

1 used to meter the power?

2 **A** Yes, sir.

3 **Q** You agree with that?

4 **A** Yes, sir.

5 **Q** Okay. And then, as we move on over here, the delivery
6 point is where the power actually goes. I think Mr.
7 McCutcheon referred to it as the weatherhead? Is that
8 the same thing as the weatherhead?

9 **A** Yes, sir.

10 **Q** Is that where the Duke lines are connected to the
11 customer's lines?

12 **A** Yes, sir.

13 **Q** Okay. And going back to your testimony a few minutes
14 ago to Mr. Fantry, do you agree that the facilities that
15 Duke – the company – uses to deliver service to the
16 customer have to be sized appropriately for the load of
17 the customer?

18 **A** Yes, sir. Did it for many years.

19 **Q** Okay. And if they're not properly sized for the load of
20 the customer, one of the things that can happen is the
21 lines can overheat?

22 **A** Yes, sir. There's other factors, too.

23 **Q** Yes, sir. And the fuse can overheat, also; is that
24 right, sir?

25 **A** Yes, sir.

1 Q Okay. It doesn't sound like you got to take a look at
2 the current transformer, the CT, after the two outage
3 incidents.

4 A No, sir, it was gone.

5 Q It had been removed and replaced?

6 A Yes, sir.

7 Q Okay.

8 A Can I go back to the fuse thing?

9 Q Yes, sir.

10 A It's two other houses been added to that transformer,
11 also.

12 Q Yes, sir.

13 A And it's two 200-amp services pulling off that same
14 transformer.

15 Q Yes, sir.

16 A So you can't, you know – not saying all the load that
17 loads the fuse was coming from the drive-in.

18 Q But my question was, if your facilities aren't sized
19 properly to serve the load, one of the things that can
20 happen is your fuse can melt, because it gets overloaded
21 with heat and it can actually melt. Is that right? Do
22 you agree with that?

23 A It can, if you load it too much, yes, sir.

24 Q Okay. The current transfer, the CT –

25 A Yes, sir.

1 Q – you didn't get a chance to see that. The company – it
2 had been removed by the time you got there the following
3 week?

4 A Yes, sir.

5 Q Your opinion in your prefiled testimony was that the
6 failure occurred when the CT transformer was damaged.

7 You –

8 A That's correct.

9 Q – recall that?

10 A Yes, sir.

11 Q Are you changing your testimony now?

12 A No, sir.

13 Q But you understand that the CT transformer was not
14 destroyed?

15 A I don't know that. I never saw it damaged.

16 Q But it was your opinion that it was destroyed.

17 A Yes, sir, I did. I thought – they told me that's where
18 the fire was, around the CT. That's where it was burnt
19 up around the ceiling, where the CT was.

20 Q Okay. But you know the CT – but you never got to see
21 the CT?

22 A No, sir.

23 Q Okay.

24 A Do you have it?

25 Q No, sir, I don't have it.

1 A It's gone, ain't it?

2 Q The Complaint was filed 18 months after the incident.
3 That might explain it.

4 A You still got the wire, though.

5 Q No, sir. Mr. McCutcheon had the wire.

6 A Okay. Okay.

7 Q But you want to tell this Commission that the outages
8 occurred both times because the CT was destroyed, when
9 you didn't get to see the CT.

10 A No, sir, I didn't say that. I said when the fire – when
11 the heating and the melting of the wire occurred, it
12 caused the CT to disintegrate there. Have you ever seen
13 a CT blow up?

14 Q No, sir.

15 A I have.

16 Q Okay.

17 A Makes a big fire.

18 Q But you didn't see these CTs –

19 A No, sir.

20 Q – blown up.

21 A I didn't see it. I mean, they disappeared.

22 Q Okay. But the initial – see, I misunderstood your
23 testimony. I thought you thought that the failure
24 occurred when the CTs were destroyed, but you're now –
25 now, your testimony's what happened was that the wires

1 failed, melted, and caused the outage; is that right?

2 **A** I would say that the heating up at the connections on
3 the wire, at the service, where it's connected to the
4 service, heated up, yes, sir, that's what I'm saying.

5 **A** Okay.

6 **Q** And that caused – I would assume that it made a failure
7 to the CT. But the CT's gone; I don't know that for
8 sure.

9 **Q** Right. Okay.

10 **A** I assume that.

11 **Q** But the initial cause was the wires overheating and
12 melting, and that's what caused the outage.

13 **A** Well, sir, in my professional opinion, I think that the
14 connectors heated up, where they're being connected to
15 the service, and in all my years, most of the time when
16 you had a failure, that's where the failure was, where
17 the service was connected to the – it's not in the wire;
18 it's not in the other, but that will cause aluminum wire
19 to heat up. Aluminum wire won't carry the load that the
20 copper wire will.

21 **Q** Yes, sir. Are you familiar with the term – and by the
22 way, are you aware that, prior to these incidents, there
23 was 2/0 wire and it was replaced? What you saw the
24 following week was 4/0 wire?

25 **A** Yes, sir.

1 Q Okay. And we've got some examples; we'll talk about
2 that in a little while. So what you saw when you went
3 there the following week was 4/0 wire?

4 A Two 4/0 wires.

5 Q Two 4/0 wires.

6 A Yes, sir.

7 Q And that's heavier than what had been there before.

8 A Yes, sir. A whole lot heavier.

9 Q Yes, sir. And, of course, the transformer that was
10 replaced, the 25 with the 50, is a significantly
11 heavier-duty transformer, also, right?

12 A Yes, sir, but I think that was probably – you know, it's
13 not been loaded – been added beside the theater. The
14 theater hadn't increased that load.

15 Q Are you familiar with a term that we talk about sometime
16 in cost studies, in connection with rate cases, about
17 which customer class adds the cost or how we should
18 allocate cost when we talk about load shape?

19 A Absolutely.

20 Q Okay. And you know that some customers, say a
21 manufacturing plant, may have a fairly level load shape
22 because they're using the same equipment maybe around-
23 the-clock, if they've got three shifts running, and that
24 would be a good, flat load shape?

25 A Yes, sir.

1 Q Okay. And then other customers, residential customers,
2 tend to have bumpy load shapes, right, sir? And they
3 would have – for that type of customer, they add to the
4 peak because they all come home and turn on their
5 appliances late in the day.

6 A Absolutely.

7 Q And the air-conditioning equipment. Right?

8 A Yes, sir.

9 Q Okay. And would you agree with me that a drive-in
10 theater that is open for business on Friday, Saturday,
11 and Sunday nights, and when they are open and they're
12 running their screens and their equipment to cook
13 things, they're going to have a high peak demand when
14 they're operating?

15 A Yes, sir. Same as a church.

16 Q Yeah, a church would be another good example.

17 A Yes, sir.

18 Q And the utility's responsibility for delivering power to
19 that customer that has that steep peak demand is to have
20 facilities in place that will serve that customer when
21 that customer is having that peak demand; isn't that
22 right, sir?

23 A That's correct.

24 MR. ELLERBE: Okay. Thank you, Mr. Calhoun.

25 Nothing further.

1 **CHAIRMAN WHITFIELD:** Mr. Nelson?

2 **MR. NELSON:** No questions. Thank you, Mr.
3 Chairman.

4 **CHAIRMAN WHITFIELD:** Commissioners.
5 Commissioner Fleming.

6 **EXAMINATION**

7 **BY COMMISSIONER FLEMING:**

8 **Q** Good afternoon.

9 **A** How are you, ma'am?

10 **Q** Fine.

11 **A** Good.

12 **Q** I wanted to ask you, I believe I understood you to say
13 two additional houses –

14 **A** Yes, ma'am.

15 **Q** – had been placed on that same –

16 **A** Yes, ma'am.

17 **Q** – pole transformer?

18 **A** Yes, ma'am.

19 **Q** Okay. What was your point, with that?

20 **A** Well, I mean, those two houses have 200-amp services
21 coming off that same transformer, so that's equivalent
22 to the same amount of load that the drive-in has.

23 **Q** Okay. Let me ask you a question.

24 **A** Okay.

25 **Q** You're from Greenwood –

1 A Yes, ma'am.

2 Q – but you live in Spartanburg?

3 A Yes, ma'am.

4 Q Are you familiar with the settlement that Duke had when
5 they purchased the Greenwood company?

6 A Yes, ma'am, very – I'm very familiar with it.

7 Q Okay. So, if, indeed, those houses did take additional
8 energy that was used on the transformer that could've
9 added to over-service, I guess, how does that – if that
10 was the cause of the additional increase, how does that
11 determine who gets to – obviously, those two houses
12 couldn't be on the Greenwood Rate.

13 A No, they're on new rate – I would think they are. They
14 would be –

15 Q Because they were new.

16 A Yes, ma'am.

17 Q How does that – how is that determined if that's what
18 caused the additional usage that caused the drive-in to
19 have the damage that they had because of overheating?

20 A Well, I mean, it's –

21 Q So, I mean, how does that affect the Greenwood Rate?

22 A Okay.

23 Q Who gets what?

24 A Let me tell you this.

25 Q Okay.

1 A All right. You've got a line coming in. So you build
2 two houses back here, and they're pulling – at the same
3 time all the other people are using their power, it's
4 high usage time for them.

5 Q Right.

6 A Okay. And it starts pulling on the transformer, it
7 starts overloading the transformer. But not necessarily
8 the drive-in. I mean, the two houses would have a big
9 to -d was, how much their peak demand was at the time –
10 at the same time. This is the same kind of service as
11 the houses: single-phase service. It's not a three-
12 phase service; it's a single-phase service. And if
13 those houses, both of them are single-phase services,
14 they could be pulling peak demand at the same time, and
15 that would make the voltage lower coming through those
16 cables. That would increase the load; if it was lower
17 voltage, it would make it higher amperage on the cable,
18 and could cause it to melt.

19 Q Okay. So that's my question. So, if they're the ones
20 at fault for the overuse of the line, and there needs to
21 be an upgrade, but it's not because of an existing
22 business but because of what's added on, how does that
23 Greenwood Rate – does that mean that the drive-in should
24 still retain their rate, if you can –

25 A you know, my understanding of the – and I was there when

1 the people of Greenwood voted to sell the old REA, and
2 my dad was on the old rate, and he was an elderly man at
3 the time, and he was part of the money that was paid to
4 the lawyer to go to the Supreme Court with it, to keep
5 that old rate. They agreed to keep it. They had a
6 choice to stay on that rate or go to another rate, and
7 they were told it would never be changed. And the only
8 way it would be changed is if they changed the design of
9 their service, moved their service as much as 18 inches,
10 increase the load where they had to – it was nothing in
11 it, to my knowledge, as far as those customers were
12 concerned, about Duke Power furnishing the line, you
13 know, putting line to the building. A line
14 disintegrates over the years. I mean, I had a case less
15 than two months ago: There's a lady that lives in a
16 subdivision in Greenwood and I went out, and her lights
17 were blinking on and off. And I could see that the
18 cable – you could see through it. You could see through
19 the insulation; it was all cracked. And Duke Power was
20 called; they come out and they said, "We're going to
21 change this." It was old #4 aluminum cable. And they
22 changed it. I said, "Well, you can't go up on – you
23 can't change this lady's rate, now. She'll have a fit."
24 They said, "It won't change the rate." And they put a
25 bigger cable in, and it didn't change her rate. They

1 put a #2 cable at her house. It didn't change her rate.
2 And that's what they did. I mean, their line was old.
3 And he don't want to talk about the splices, but the
4 splices make a difference, ma'am, in how much
5 electricity goes through that line. It makes a
6 difference.

7 **Q** Did you see the splices?

8 **A** Yes, ma'am, I've seen the pictures of them.

9 **Q** How many splices can you put on the line without
10 damaging –

11 **A** When you put the first one in, you've already taken part
12 of the amperage that that line will carry.

13 **Q** But you're saying – but your contention is it was the
14 addition of the two other houses, that path?

15 **A** I think they played a part in it. I don't know for sure
16 that's what it was, but I think it should be brought
17 into consideration.

18 **Q** But you don't think the Greenwood Rate should change –

19 **A** No, ma'am.

20 **Q** – because they didn't change where the lines went?

21 **A** And I'm different from everybody, actually. I'm not
22 being paid to be here. I come out of the goodness of my
23 heart. I think they've been done wrong.

24 **Q** Okay. Thank you.

25 **A** Yes, ma'am.

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CHAIRMAN WHITFIELD: Any redirect?

MR. FANTRY: No redirect for this witness.

CHAIRMAN WHITFIELD: Mr. Ellerbe.

MR. ELLERBE: Mr. Chairman, I know it's unusual, but I would like to ask some redirect questions in response to the testimony from Mr. Calhoun in responding to questions from Commissioner Fleming.

CHAIRMAN WHITFIELD: Mr. Ellerbe, I'll allow it.

MR. ELLERBE: Thank you, Mr. Chairman. I'll be brief.

REXCROSS EXAMINATION

BY MR. ELLERBE:

Q Mr. Calhoun, the additional two houses that you talked about with Commissioner Fleming –

A Yes, sir.

Q – there wasn't anything about these two houses in your prefiled testimony, was there?

A No, she asked the question and I answered.

Q Yes, sir, but you mentioned the two houses earlier in response to a question I had asked you, right?

A Yes, sir.

Q But there wasn't anything in your prefiled testimony –

A No, sir.

1 **Q** – about those two houses. So, to the extent that we
2 were responding to the case that was presented to us,
3 our witnesses wouldn't have had an opportunity to put in
4 their prefiled testimony anything responding to your
5 theory about the two houses.

6 **A** I don't guess so.

7 **MR. ELLERBE:** Thank you.

8 **MR. SHISSIAS:** At this point, I'm going to
9 object to that, and I would simply direct counsel
10 for DEC to paragraph 18 of Mr. Calhoun's prefiled:
11 "Over the years, Defendant/Respondent added load to
12 that transformer as residences were added..."

13 **CHAIRMAN WHITFIELD:** Mr. Ellerbe?

14 **MR. ELLERBE:** Thank you. I appreciate that.
15 What I – should've been more precise.

16 **BY MR. ELLERBE:**

17 **Q** That prefiled testimony mentioned that, in relation to
18 explaining why the transformer was changed, but you
19 never connected that to the incidents that occurred at
20 the drive-in.

21 **A** No, sir. She asked me how that could affect it, and
22 that's why I answered her.

23 **Q** Yes. But your –

24 **A** She asked me the question.

25 **Q** Yes. But your prefiled testimony did not connect the

1 houses being added to the outage incidents at the drive-
2 in.

3 **A** Well, I did have it on here.

4 **Q** Well, you mentioned it -

5 **A** Yes, sir.

6 **Q** - in connection with the transformer.

7 **A** Yes, sir.

8 **Q** But not in connection with explaining why we had the
9 outages at the drive-in?

10 **A** Maybe not, I don't know.

11 **MR. ELLERBE:** Okay. Thank you, sir. Nothing
12 further.

13 **MR. FANTRY:** Mr. Chairman, we have presented
14 all of our potential witnesses in this matter.

15 **CHAIRMAN WHITFIELD:** Thank you, Mr. Fantry.
16 Mr. Calhoun, you may step down. Thank you,
17 sir.

18 **WITNESS:** Thank you.

19 [WHEREUPON, the witness stood aside.]

20 **CHAIRMAN WHITFIELD:** Mr. Ellerbe, we're in a
21 little bit of a dilemma up here. As you know, we
22 have the Commission Meeting at 2. I'm prone to let
23 you bring your first witness on and get started,
24 but I want to caution you that we're going to break
25 at some point pretty soon, to get lunch and get

1 back in here and have the Commission Meeting, and
2 of course we'll have to resume what we don't finish
3 after the Commission Meeting.

4 MR. ELLERBE: Yes, sir. We'll get started,
5 then.

6 CHAIRMAN WHITFIELD: Well, okay, then call
7 your first witness, sir.

8 MR. ELLERBE: We'd call Tommy Fowler, please.

9 [Witness sworn]

10 THEREUPON came,

11 DOUGLAS T. FOWLER, JR.,
12 called as a witness on behalf of the Defendant/Respondent,
13 who, having been first duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. ELLERBE:

17 Q Mr. Fowler, would you state your name for the record,
18 please, sir?

19 A Douglas T. Fowler, Jr.

20 Q And by whom are you employed and in what capacity?

21 A I'm employed by Duke Energy Company.

22 Q You'd better get close to that microphone – closer to
23 it, please, sir, so we can all hear you.

24 A [Indicating.]

25 Q Thank you.

1 **A** I'm employed by Duke Energy Company. I'm the C&M
2 supervisor for the Greenwood Operation Center.

3 **Q** What was that acronym you used?

4 **A** Construction and Maintenance supervisor.

5 **Q** Okay. Thank you. Did you cause to be prepared six
6 pages of testimony, which was filed in this docket, Mr.
7 McCutcheon_[sic]?

8 **A** Yes, sir.

9 **Q** If I were to ask you the questions contained in your
10 testimony today, would your answers be the same?

11 **A** Yes, sir.

12 **MR. ELLERBE:** Okay. And then there were three
13 exhibits – A, B, and C. Mr. Chairman, we'd ask
14 that the exhibits attached to Mr. McCutcheon's_[sic]
15 testimony be entered into the record as the next
16 hearing exhibit.

17 **CHAIRMAN WHITFIELD:** I think you've got your –

18 **MR. ELLERBE:** Did I say "McCutcheon"?

19 **CHAIRMAN WHITFIELD:** I think you've got your
20 witnesses mixed up.

21 **MR. ELLERBE:** I apologize, Mr. Fowler.

22 **WITNESS:** No problem.

23 **CHAIRMAN WHITFIELD:** I think you've got one
24 for the other side there.

25 **MR. ELLERBE:** I hope that that will be the

1 last time that I do that.

2 CHAIRMAN WHITFIELD: We're going to enter Mr.
3 Fowler's three exhibits as one composite exhibit,
4 Hearing Exhibit No. 5.

5 [WHEREUPON, Exhibit No. 5 was marked and
6 received in evidence.]

7 BY MR. ELLERBE:

8 Q Mr. Fowler, I'm going to go through your testimony and
9 ask you some questions to get you to summarize your
10 testimony. It certainly would be inappropriate for me
11 to try to take you outside of your prefiled testimony,
12 given the position I've taken earlier, and so I would
13 caution you, let's stick to what's in the prefiled
14 testimony, okay? Thank you, sir.

15 Tell the Commission about your background working
16 for the company – your educational background and your
17 background working for the company.

18 A I obtained an Associate's Degree in Industrial
19 Electronics from Greenville Tech. I went to work for
20 the company in 1987. I started out as an engineer,
21 designing and engineering jobs for customers,
22 residential and commercial services. And I did that for
23 a while and then become C&M supervisor in Greenwood, and
24 I've been there the last 13 years. I've got –

25 Q Okay.

1 A – total service of 29 years.

2 Q Would you tell the Commission about the first power
3 failure that occurred at the drive-in on May 30, 2015?

4 A Yes, sir. Jimmy Brown, my employee, went out to the
5 site when he got a call on an order that stated there
6 was arcing and a fire. Jimmy went out there, found that
7 the wire was melting – just one of the wires of the
8 three was melting, so he cut that piece out, put a new
9 piece in, and we got the drive-in back on, so they could
10 continue showing the movies that night.

11 Q Okay. And would you tell the Commission about the
12 second incident, power-failure incident, at the drive-
13 in?

14 A The second time I believe was June 13th, and I think it
15 was real close to the other time. I think the first
16 time was 10 and I think this time was 9:30-something, or
17 something like that. The same wire had melted again and
18 had caught on fire.

19 This time, on our ticket that we normally get, it
20 stated that the wire was burning from the pole to the
21 service, or to the weatherhead, and that the fire
22 department was called. Jimmy got out there, seen the
23 wire was melted and that the fuse was blown on the – or,
24 melted on the transformer, and then ended up replacing
25 the wire and got them going again, so they could show

1 their movie that night.

2 **Q** And you mentioned the tickets. Are those the documents
3 that are marked Exhibit A and Exhibit B?

4 **A** Yes, sir, we call them an outage ticket.

5 **Q** Yes, sir. Did you actually go to the site following
6 that second incident, yourself?

7 **A** Yeah. Monday morning, Jimmy and Jesse come to me
8 telling me what had happened, and had told me about when
9 Jimmy was out there prior to that, on May 30th. And I
10 decided I needed to go out to the site and look at it.
11 It sounded like we had an issue that kept happening, and
12 I was worried about the safety of something burning
13 down.

14 When I went out to the site, the side of the
15 building was smoked up. You know, I don't know if it
16 was from the first or second, or both, but it was smoked
17 up. And at that point, I decided that, if we didn't do
18 something, we was liable to burn the customer's building
19 down, so I decided we needed to disconnect the power
20 before we ended up having something bad happen there.

21 **Q** Did you call Mr. Lane?

22 **A** Yes, sir.

23 **Q** Would you just explain that to the Commission, please?

24 **A** Yeah. I contacted Theo Lane and asked him to please get
25 in touch with Mr. McCutcheon and let him know what we

1 was going to need to do.

2 Q Okay. Mr. Lane is going to testify in a few minutes –
3 or, sometime later today, right?

4 A Yes, sir.

5 Q Okay. At a later time, did the company disconnect the
6 service to the drive-in?

7 A Yes, sir.

8 Q Was it that same week?

9 A Yes, sir, I believe it was on Wednesday, I believe.

10 Q Okay. And were you involved in that effort?

11 A Yes.

12 Q Okay. Tell – summarize that part of your testimony
13 where you explained what the company did to upgrade the
14 service to the drive-in, Mr. Fowler.

15 A Okay. There was a 25 kVa transformer that was currently
16 there. We upgraded the 25 kVa transformer to a 50.
17 There was one run of 2/0 cable, which is –

18 Q Would this be a good time to let you –

19 A Yes, sir.

20 Q I think we mentioned this in your testimony, that we
21 planned to do this. If you would like to use these
22 [indicating].

23 A [Indicating.]

24 MR. ELLERBE: And, Mr. Chairman, we're not
25 planning on introducing them; we're just using them

1 as demonstrative exhibits, so he can explain.

2 WITNESS: This is [indicating] the wire that
3 was serving the drive-in, with the 25 kVa
4 transformer. And when we come back to upgrade it,
5 we installed a 50 kVa transformer, and we installed
6 two runs of 4/0 to the customer's service.

7 BY MR. ELLERBE:

8 Q And, Mr. Fowler, why did the company – did the company
9 insist on the upgrade?

10 A Yes, because we felt like it was a dangerous situation
11 and that it was going to end up, instead of just burning
12 the wires, it would end up catching the building on fire
13 and burning the building down.

14 Q Okay. Mr. Fowler, that concludes my questions for you,
15 summarizing your testimony. Please answer any questions
16 from counsel or the Commissioners.

17 A Yes, sir.

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23 [PURSUANT TO SUBSEQUENT INSTRUCTION, THE

24 PREFILED DIRECT TESTIMONY OF DOUGLAS T.

25 FOWLER FOLLOWS AT PGS 116-121]

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
Defendant/Respondent.)

**DIRECT TESTIMONY
OF
DOUGLAS T. FOWLER, JR.
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME, CURRENT POSITION, AND BUSINESS**
2 **ADDRESS.**

3 A Douglas T. Fowler, Jr., Supervisor of Construction and Maintenance, Duke Energy
4 Carolinas, LLC, 763 SC-72, Greenwood, South Carolina 29649.

5 **Q PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **BACKGROUND.**

7 A After receiving an Associates Degree in Industrial Electronics from Greenville Tech., I
8 went to work for DEC in 1987. I started as an engineer designing projects to provide
9 service to customers. I then moved to a position working on major projects which again
10 involved designing and constructing facilities to provide service to customers. In 2003 I
11 assumed my current position supervising construction and maintenance projects. In all of
12 the positions I have held in DEC I have been involved in construction of new facilities to
13 serve customers and in maintaining existing facilities to serve customers.

14 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A The purpose of my testimony is to describe the facts and circumstances surrounding the
16 two power failures that occurred in May and June of 2015 at the drive-in movie theater
17 owned by Petitioner Tommy McCutcheon ("McCutcheon") and located at 3109 Hwy 25
18 South in Greenwood County, South Carolina (the "Drive-In") and to describe the actions
19 Duke Energy Carolinas, LLC ("DEC") took in response to those power failures.

20 **Q PLEASE STATE WHAT ACTIONS YOU HAVE TAKEN IN ORDER TO**
21 **PREPARE YOUR TESTIMONY IN THIS CASE.**

1 A I have reviewed the Complaint, the Affidavit and Pre-filed Testimony of McCutcheon, the
2 Affidavit and Pre-Filed Testimony of James R. Calhoun, and the exhibits filed on behalf
3 of McCutcheon. I have also reviewed DEC's records relating to the Drive-In and spoken
4 with the DEC individuals who addressed the electrical failures at the Drive-In.

5 **Q PLEASE STATE YOUR UNDERSTANDING OF THE POWER FAILURE THAT**
6 **OCCURRED AT THE DRIVE-IN IN MAY OF 2015.**

7 A The first power failure occurred at the Drive-In on May 30, 2015. Jimmy Brown, a DEC
8 lineman who works for me, responded to the report. We received a call from the customer
9 reporting electrical arcing and that there had been a flash at the rear of the building. DEC
10 determined that a fuse had blown on the pole mounted transformer that serves the Drive-
11 In and the electrical wire that runs from the pole to the Drive-In had melted near its
12 intersection with the current transformer, which is located adjacent to the meter for the
13 Drive-In. We replaced the section of wire that had melted and were able to restore power
14 to the Drive-In.

15 **Q PLEASE STATE YOUR UNDERSTANDING OF THE POWER FAILURE THAT**
16 **OCCURRED AT THE DRIVE-IN IN JUNE OF 2015.**

17 A The second power failure at the Drive-In occurred on June 13, 2015. Mr. Brown returned
18 to the Drive-In and found that the electrical wire had melted in the same location. It was
19 again determined that a fuse had blown on the pole mounted transformer. Our crew was
20 able to replace the line that had melted and restore power.

21 **Q DID YOU VISIT THE SITE?**

1 A Yes. I went to the Drive-In on the morning of Monday June 15th following the second
2 incident. I observed smoke damage on the back of the building near where our metering
3 equipment is located. It was clear to me at that point that the existing 2/0-3 al service
4 connection did not have sufficient thermal capacity and wasn't strong enough to safely
5 provide service to the Drive-In, as shown by the fact that the line had melted on two
6 occasions.

7 **Q DOES DEC HAVE RECORDS OF THE CALLS THAT CAME INTO THE**
8 **COMPANY RELATING TO THESE INCIDENTS?**

9 A Yes. We have call records that are business records of the company, that are created at the
10 time of the events described and that are maintained by DEC in the regular course of its
11 business. **Exhibit A** is our record of the report that was phoned in on the first incident on
12 Saturday, May 30, 2015. It includes the following: "cust states power out, there was a very
13 bright spark, cable looks burned from pole to meter." **Exhibit B** is our record of the report
14 that was phoned in on the second incident on Saturday, June 13, 2015. It includes the
15 following: "Cust states the line going from the pole to the building is on fire, cust contacted
16 FD."

17 **Q DID DEC MAKE ANY DETERMINATIONS IN RESPONSE TO THE MAY AND**
18 **JUNE 2015 POWER FAILURES AT THE DRIVE-IN?**

19 A Yes. After the June 13, 2015 power failure, Mr. Brown, Mr. Gonzalez, and I determined
20 that the power failures that had occurred at the Drive-In were the result of thermal overload.
21 It was our opinion that there was a dangerous situation at the Drive-In and that something
22 needed to be done. Based on DEC's determination that the electrical system failures were

1 caused by thermal overload and because of the concern that there was a significant risk of
2 fire at the Drive-In, DEC made the determination that it was necessary to upgrade the
3 facilities providing McCutcheon's electrical supply. I communicated with Theo Lane who
4 handles Government and Community Relations for DEC in Greenwood and brought him
5 up to date on the situation. He then took over communications with Mr. McCutcheon who
6 was concerned that the upgrade would cause him to lose the Greenwood Rate.

7 **Q DID DEC DISCONNECT THE SERVICE TO THE DRIVE-IN?**

8 A Yes. Mr. Lane can explain the details but, when Mr. McCutcheon wouldn't agree to the
9 upgrade we proposed, we had a crew disconnect the service. The disconnection took place
10 on Wednesday, June 17.

11 **Q DID MR. MCCUTCHEON CHANGE HIS MIND ABOUT AGREEING TO THE**
12 **UPGRADE?**

13 A Yes, Mr. Lane and I met with him later on June 17th when he and his wife came into our
14 office and he signed an agreement consenting to the upgrade.

15 **Q WHAT ACTION DID DEC TAKE TO UPGRADE THE ELECTRICAL SUPPLY**
16 **AT THE DRIVE-IN?**

17 A DEC replaced the service lines serving the Drive-In and changed the transformer from a
18 25 KVA transformer to a 50 KVA transformer. The line serving the Drive-In before the
19 upgrade was one run of 2/0-3 al triplex wire. The lines we installed as part of the upgrade
20 are two runs of 4/0-3 al triplex wire. I have brought samples of the 2/0 and 4/0 wires to
21 show the difference. DEC made the decision to insist on an upgrade based upon the belief

1 that the Drive-In's thermal load had increased to an extent that additional facilities were
2 necessary to ensure safety.

3 **Q WAS DEC ABLE TO PERFORM THE UPGRADE WORK AT THE DRIVE-IN**
4 **FACILITY?**

5 A Yes. DEC was able to get the work done in time for the Drive-In to be open on Thursday,
6 June 18th so that Mr. McCutcheon did not lose revenues.

7 **Q DOES DEC HAVE RECORDS OF PREVIOUS OUTAGES OR INQUIRIES**
8 **RELATING TO THE DRIVE-IN?**

9 A Yes. Records of four outage reports in 2009 and one work request in 2008 are attached as
10 **Exhibit C** to my testimony.

11 **Q ARE THESE RECORDS CREATED AT OR NEAR THE TIME THAT THE**
12 **EVENTS OCCURRED AND ARE THEY MAINTAINED BY DEC IN THE**
13 **ORDINARY COURSE OF ITS BUSINESS?**

14 A Yes.

15 **Q DO THESE RECORDS SHED ANY LIGHT ON THE MATTERS BEING**
16 **CONSIDERED IN THIS PROCEEDING?**

17 A I was not directly involved so I can only interpret the documents, but they appear to show
18 that there had previously been issues relating to the ability of our facilities to serve the
19 greater load that was required by the Drive-In beginning in 2008.

20 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A Yes, it does.

CHAIRMAN WHITFIELD: Mr. Fantry.

MR. FANTRY: Yes. Thank you, very much, Mr.
Chairman.

CROSS EXAMINATION

BY MR. FANTRY:

Q Good afternoon, Mr. Fowler. You and I have not met before, but I appreciate the testimony that you've given and the opportunity to speak with you today. I'm going to ask some questions to make sure my understanding of electrical equipment is in accordance with what you've represented in your testimony. I understand that you are the supervisor of Construction and Maintenance for Duke Power?

A Yes, sir.

Q And you've been in that situation since 2003, if I recall?

A Yes, sir.

Q So that, for the span of time of 2009 to the present, you've been involved in maintenance and care of the particular system and are familiar with what I'm going to call the Greenwood portion of the system, and other lines that have been built by Duke since the acquisition of the Greenwood System. Am I correct on that?

A Yes, sir, I'm familiar with what I have seen. I have not seen everything, but what I have seen.

Q Okay. And you made your testimony, based on your observations of records as to repairs that had been done in and around the movie theater?

A No, just the movie theater.

Q Well, I'm -

A The transformer.

Q - talking about the - I call it the movie theater, but the drive-in. I'm sorry. The drive-in.

A The drive-in, and the transformer that serves the drive-in.

Q Right. So, you would be aware of how many persons are on that particular transformer that existed in June of 2015?

A Yes, sir.

Q And how many were there?

A There's three.

Q There were three. So, there were three other customers?

A No, not three other. Two other, three total.

Q There were three customers, okay. And the other customers, were they on the Duke rate?

A No, sir.

Q They were also on the Greenwood Rate?

A I'm sorry. They're not on the Greenwood Rate; they're on the standard rate.

Q On the standard rate. And might I ask this? As a

result of the changes – which I understand to be the placing of the transformer, the changing of the wire, and also putting in a fuse – did they have their rates changed? Did the other customers have to have their rates changed because of the changes that were made to the system?

A No, sir. They had no reason to have a rate change.

Q They had no – and can you explain to me what the reason was, from your understanding, as to why the changes were of such nature as to change the characteristic of the connection?

A What we go by is, if the wire is overloaded, if our wire is overloaded and ends up failing – melts, whatever – then we have to replace our wire due to a safety concern.

Q Okay.

A And when we do that, then we take them off of the Old Greenwood Rate due to load. Load has been added. One of the stipulations in the rate is that, you know, the rate supposedly happened in the mid-'60s, so if you have added load since the mid-'60s to a residence and the line that feeds that residence can no longer withstand that load, then we have to upgrade our facilities which means you come off the rate.

Q Okay. All right. Is that company policy?

A That is what we go by, yes, sir.

Q Is it written? Could we get it, what's the list of events or repairs that would take place to me, as a customer, that would justify removing me from the Greenwood Rate? Do you have a manual that says that, or a guide letter, or is it just your understanding?

A Well, as far as I know, it was filed when we purchased the company.

Q Yeah, okay, so –

A It's a record.

Q So we would be able to – as a customer, if I were a new customer, I would be able to get a listing and how I can maintain being on the Greenwood Rate?

A It's a public record.

Q Okay. All right. Now, I talked about single-phase lines. And does a single-phase line carry all the electricity that the customers need, in the area where it serves? In other words, does it have a maximum – 60,000 kWh or a million kWh? The energy that it's actually carrying, how much energy does a single-phase line carry?

A Are you talking about secondary or – is that what you're talking about.

Q Well, I'm trying to do it – I'm thinking this way. We have energy that we produce, and it carries my load on a

single phase, which is different from a three-phase, because a two- — a transformer, if I am correct, the purpose of the transformer is to step down, isn't it, to step down —

A Oh, yeah, you're talking about primary.

Q — the power moving on that line.

A Yeah, you're talking about primary.

Q So there's power moving along that line which serves hundreds of customers, and then the transformer steps that down to, say, the energy that's used for those customers, on a transformer?

A That's a general theme. You know, it depends on how long the line is, where it taps from, depends on how many customers.

Q Right.

A There's not 100 customers on that tap, but —

Q Sure, there's only three.

A Right.

Q All right. Now, what's the useful life of a transformer?

A I've seen them up — they've been up there since the mid-'30s and still up, still working.

Q But are there some businesses, as to when you start thinking that transformer may not be working 100 percent?

A Usually when we get calls from the customer.

Q Okay. So you get calls from the customer, okay. Now I understand that there are different sizes of transformers.

A Yes, sir.

Q Is there a thing called a 15 K transformer?

A That's correct.

Q Okay. And there's a 25 K transformer?

A Yes, sir.

Q And there's a 50 K transformer?

A Yeah, there's many more sizes, but –

Q Many more, and goes up to – is there a 1000 kVa?

A Not single-phase.

Q Not quite that high, okay. So would it be correct for me to say that, when you hook up a customer, that you put equipment in there that's based on what your estimate is of the size of the load is? And so you don't use a 50 KV transformer if the customer is using, you know, 100 kWh a month. Am I basically correct? I know I'm –

A You can't use kilowatt-hours to determine load.

Q Oh, you can't. Okay. So what is the relationship between kilowatt-hours and amperes? Because I guess amperes is really what determines a load?

A Yeah, kilowatt-hours is the amount of energy that's used

over time.

Q Okay.

A It does not tell you when the peak was or what the peak was; it just tells you this amount of energy was used over time.

Q So the amount of energy, okay. So it is what's being drawn by the equipment that will give us load and will determine the amperage – am I correct when I say the amperage of the pole?

A Yeah, I don't – you would not be able to figure out the amperage pulled just by kilowatt-hours.

Q All right. Help me with the gauge of the wire, the 2/0 and the 4/0.

A Okay.

Q What – you know, I'm guessing from reading the testimony that that wire is designed to take a certain amount of current coming through it, based on amperage resistance, and that when it exceeds that amount of current, the wire starts to melt and the fuse blows on the transformer. So, am I kind of generally correct with what happens?

A Yes, generally. A lot of times the fuse will melt, instead of blow. It will melt because of load.

Q It will – okay, it will melt because of load.

A Yeah. Typically, they blow because of a fault.

CHAIRMAN WHITFIELD: Mr. Fantry?

MR. FANTRY: Yes.

CHAIRMAN WHITFIELD: If I could stop you there just a minute, this witness can certainly be back on the stand, but we do need to break now. And you still can finish your cross-examination when we return, and I would remind Mr. Fowler that he'll still be under oath when we come back. We are going to need to break right now, and we'll resume this after the Commission meeting.

There is one item – Mr. Ellerbe, I don't think you requested to enter Mr. Fowler's testimony into the record. If we did, maybe it slipped my mind, and I think we probably need to do that before we break.

MR. ELLERBE: Or I may have called him the wrong name.

[Laughter]

CHAIRMAN WHITFIELD: Well, I think I got so hung up on that, that I –

MR. ELLERBE: I could tell by the look on your face that I did something. But we would like to ask that his prefiled testimony be copied in the record as if given orally from the stand.

CHAIRMAN WHITFIELD: So ordered. Mr. Fowler's

prefiled testimony will be entered into the record
as if given orally from the stand.

And we are in recess and will resume this
immediately following the Commission Meeting.

Thank you.

[WHEREUPON, the witness stood aside.]

[WHEREUPON, a recess was taken from 1:07
to 2:38 p.m.]

FURTHER PROCEEDINGS

CHAIRMAN WHITFIELD: Please be seated. We will resume our hearing.

THEREUPON came

DOUGLAS T. FOWLER, JR.,
recalled as a witness, who, having been previously duly sworn, was examined and testified as follows:

CHAIRMAN WHITFIELD: And, Mr. Fowler, I'll remind you you're under oath, and, Mr. Fantry, you're still at the helm.

MR. FANTRY: Thank you, very much, Mr. Chairman.

FURTHER CROSS EXAMINATION

BY MR. FANTRY:

Q Mr. Fowler, I think where we left off is that I had asked you a question regarding what was, or did you have a policy in regard to the type of work or type of repair that would be used to disqualify someone from the Greenville_[sic] Rate. Is my recollection correct that you said that if you moved, if you increased the size of a line, that would be considered as a change sufficient to go ahead and change that person from the Greenwood Rate?

A That is one of the options.

Q One of the options, all right. What are some of the other options? If you don't pay your bill, is that an

option?

A No.

Q You get cut off or – you know, you get cut off for not paying your bill in a timely manner.

A No.

Q That's not an option, okay. Of course, the one that if you move from a single-phase to a triple-phase, that's a significant change?

A Yes.

Q If you simply change a transformer and go from a 25 to a 50, is that, again, by itself, a reason that you would no longer qualify for the Duke rate?

A I don't know that I could answer that. I'd have to know the whole circumstance, but there could be possibly a reason.

Q Okay. Does that mean that there are circumstances where a change in transformers is not considered a new – an upgrade; it's involved in the general maintenance of your line?

A The transformer could be changed just because it's leaking, or something like that.

Q Could be changed. So if it were changed because it was leaking, that wouldn't, of course, be a customer's concern, right?

A That's correct.

- Q Okay. And do you have a general maintenance sort of review, where you look at aged equipment and/or equipment that has been out there for a number of years and may not be functioning at 100 percent of its capacity?
- A Yeah, I don't handle anything like that. That's handled completely by another department.
- Q So that's a different department, so you simply are new construction and actual maintenance, field maintenance?
- A [Nodding head.]
- Q Does that mean you make a recommendation when you remove somebody from the Duke rate? In other words, based on your work, do you make a decision that that person should be told that they need to be on a new rate?
- A Yeah, we consult with the Rate and Regulatory Department in our company.
- Q So it's another department that makes that – you simply deal with the facts on the ground, with regard to what was replaced in the system.
- A That's correct.
- Q And based on the facts on the ground in the system, did you make a recommendation as to what to be done at the movie theater?
- A Yes, I did.
- Q And what was that recommendation?

A I think that's why we're here.

Q Okay. So the recommendation was to take them off the rate – to take them off the rate. To do the repair and take them off the rate.

A Yeah, but they don't do it just on my recommendation.

Q In preparing for this hearing today, did you go through all the exhibits that might've been introduced in regard to Duke's testimony, its prefiled testimony?

A I have seen some of them. I made sure I went through everything in mine.

Q All right. And what I'd like to do is to know if – to check and see if you have seen this exhibit, if this is part of your understanding of what's taken place. And pardon my running back and forth [indicating].

All right. And I'm going to be referring to one thing that is in the record – I believe it is Hearing Exhibit 2 – which is your testimony reports, repair reports.

A Okay.

Q And I have one dated for May 30th and one dated for June 13th. Those would be the dates of the outages.

A Yes, sir, I've got those.

Q All right. Can the Commissioners see – it needs to at least be larger, and rotate it? Mechanical things kind of drive me crazy, and I apologize for not being as

proficient on that. I'm going to get a tech person to help me.

Just a couple of questions about this report. You had talked about it earlier. This was the incident on May 31st_[sic]. It's saying it was a call in the evening, and I'm not going to contest what the records say in regard to the purpose of the call. What I'm interested in is the actual work that was done to restore the electric service there. And if I'm reading the event appropriately, that on the 31st_[sic], that the repair was brought about by changing the line, the service drop that had burned, by placing a new one there, by bringing it in, cutting it into the system. And that was all that was necessary to bring the current back in. Is that correct?

A That is from the 30th, not the 31st.

Q Oh, on the 30th. Yes, I'm sorry.

A Yes.

Q So it was a service drop line that was 2/0 size that was replaced?

A It was a small section [indicating] that was replaced near the —

Q Just a small section.

A Yeah, it wasn't a whole lot.

Q Okay. And how did you connect —

A We've got the wire, right here. This is it
[indicating].

Q Okay. You just connected – did you splice the existing
line and put it in? Is that the way – what you call
that? You kind of splice the line and put in a good
piece?

A We cut this out, and put in another piece [indicating].

Q And you've got a clamp that's on it and it holds it
together, and the current runs through it?

A Yeah.

Q All right. Now, when you splice a line, does that
affect the efficiency of a line?

A According to what all of our specifications are, as long
as you have a good connection, there is no difference.
Minimal difference.

Q Minimal?

A [Nodding head.]

Q Would that – well, did you go to the site on the 30th?

A No, sir.

Q No. So you couldn't tell my, by observing the line, how
many splices might've been already on that line?

A On the 30th?

Q Yeah, on the 30th?

A I can't tell you because I seen it; I can tell you what
my employee told me.

Q All right. Will the employee be here to testify today that has seen it?

A Not the one that was at the first one.

Q Not the one? Well, it may not be the total number or not, but what is your understanding? How's that? What did you understand as to the number of splices?

A Right. My understanding is that each wire had one splice, and there are six wires that goes to that service: three coming out of one weatherhead and three coming out another weatherhead. And before we was ever there, there was six splices. After we made the first repair on May 30th and cut this wire out [indicating], it was a whole piece of wire. So where he cut it right here, he had to put a splice right here [indicating], and that made seven. But each wire had one splice, except for this one wire [indicating] that had melted and it had two after we left. Had one before we got there.

Q Okay. And I've got to repeat what I heard, to make sure I understood your testimony, and that was that there was a splice used to reconnect it; that, in your understanding, there's minimal reduction in the efficiency of a wire when you're splicing the connections. That's one thing. But there is some reduction of its efficiency.

A Yeah, according to our company spec's, you know, we splice wire a lot, and mainly on our primary, too – not only secondary but primary, too. And it's very minimal.

Q Okay. All right. Now is there anything else that might also limit the efficiency of that wire? For example, the age of it, how long it's been used? Do they stay efficient? Do they carry the same amount of energy and handle the same amount of power, if they're five years old, it's been up there for five years, or ten years? Is there some time when it's simply age that causes a concern with the service of electricity?

A From what I've seen as I have been in the industry, is, most of the time it lasts until something else goes wrong. It's usually not the wire that fails because it's deteriorated; it's usually something else that causes it. A tree might come down and break the wire, so we end up replacing the wire. A car might hit a pole and we have to replace the wire, you know. I don't really know many cases at all that we've had to replace because the wire just completely falls apart.

Q Yeah. And would another reason for replacing the wire be that there's been growth in the area and you've added more customers to that line, and the wire is undersized for the work it has to do now?

A Well, that would be true, but that would not be true

when the service goes from a transformer to a customer's service, because that line is only for that customer's service.

Q Okay. And when we talk about that customer's service line, and that's the – I'm going to call it the "wellhead"; that may not be the right term, but when I say the wellhead, that's outside of what is the meter on the customer's facility, and it's a wire that reaches the transformer that they're connected to.

A It goes from the weatherhead – that might be what you're –

Q Weatherhead, okay.

A From the weatherhead, it comes out of the weatherhead about three feet, and that's the customer's wire. Then we connect from the transformer to the customer's wire that comes out of the weatherhead.

Q All right. So, and the burnt section of the line was not on the customer's wire but it was on the wire that ran from the customer's wire to the transformer, right?

A Yeah, it was our wire. Yes, sir.

Q It was your wire. Okay. Now, your wire, was it also connected to a fuse before the transformer, or in the transformer? I don't know where those fuses go.

A Yeah, the fuse is separate from the transformer.

Q It's inside –

A It's right above the transformer.

Q Right above it, okay. Now, is Mr. McCutcheon the only service on that fuse?

A No, sir.

Q Okay. So there's more customers on that fuse?

A Yes, sir. There's two more residents – it's not residents. Two more. One of them is a garage where a gentleman stores old cars, and the other one is also partially a garage where he stores old cars, and then it has like a 500-700 square foot – he called it a mother-in-law place. His mother-in-law used to live there. All that was in there was a living room and a bedroom, and maybe a refrigerator and air conditioner.

Q So would it be fair to say that the electricity – that when that fuse blew, that there were three people off, the night that the drive-in had the outage; is that right?

A That would be accurate. Yes, sir.

Q And that fuse which blew – and what does a fuse do, at a transformer?

A Well, sometimes it completely blows, as in a fault situation. And then sometimes it melts out, as in a load situation.

Q Okay. And in the reports that were – excuse me just for a moment [indicating]. So it blows out or it melts out?

A [Nodding head.]

Q And is that blowing out or melting out a result of all the power that's going through that fuse at one time? In other words, the power that's going to the residential house and the mother-in-law's house and to my client's house?

A That fuse supports that transformer.

Q It supports that transformer. Okay. In your opinion, when you reconnected the power on the 30th – okay? – and the report indicates that you restored the wire, that was the 2/0 wire, a similar type wire that was there, on that?

A [Nodding head.]

Q And it was in your technician's mind and I guess in your mind that, once that was done, it was safe to turn the current back on?

A Oh, yeah, because, I –

Q Because it was safe?

A – mean, that's why we go out to repair.

Q Right. And I'm not disagreeing with that. Okay. So we move to the night of the 13th.

A Okay.

Q And I believe your testimony indicated that it was the same area that a wire melted.

A Yes, sir, that's true.

Q And a fuse blew, if I remember correctly.

A Yes. We – usually when they put it in the report, they just say a fuse blew. It's just a common term.

Q Yeah.

A I mean, it might've melted, it might have blew. You've really got to actually talk to the guy that was out there, to know whether it blew or whether it melted. But when we call it in, we always just say the fuse blew or tripped.

Q It means it's tripped. It means it's tripped, the transformer's off because the fuse –

A It went off. It went off.

Q And that's a safety thing, isn't it?

A Yes, sir.

Q All right. That's a safety thing.

A It's a safety thing, and it also tends to let you know that it's either the transformer, the line had a fault, or that it was overloaded, depending on whether the fuse is blown or melted.

Q So there's more than one possibility with that, if –

A The fuse blew – [nodding head.]

Q – the fuse blew, all right. If you would help me read the report on the 13th as to the repair itself, I'll try this again and see if I can do it right [indicating]. Can everybody see that, or do I need to do the same

thing? Is that legible for everybody?

And I have just a limited question about this night's report, and that is, it indicates that a new wire was placed in. And, apparently, at this time, the wire that was put in to fix it was a 4/0 -

A [Nodding head.]

Q - drop line, as compared to the 2/0 that had burned.

A That's correct.

Q Okay. And did you splice a small piece of that, or did you run the entire length of the connection, the 4/0 wire?

A Okay. I, personally, didn't do it.

Q Oh, yeah.

A But my technician that was out there stated that he spliced the same wire that he had spliced before. But this time, they actually went back to the shop, because they didn't have any 4/0 wire on the truck. So he went back to the shop, which is just 10 minutes away, and got a bigger piece of wire and put it in there to try to keep it from catching back on fire.

Q All right. Now let me see if I understand that right, because you said he spliced it in. He spliced the four-inch wire?

A Four-aught wire.

Q Four-aught. All right, 4/0. And he spliced that into

the system.

A Yeah, he would've done it the same way that this was done [indicating]; he would've cut it behind the connector –

Q Okay.

A – and then added the piece in. And when he got through, there'd still just be one splice here [indicating], and then the six that it takes to connect our wire to the customer's wire.

Q Okay. Now, my understanding of splicing is when you splice it, you join it with something. Is that correct?

A Yeah, the connector like this.

Q So he's joined a 4-inch – not four-inch, I'm sorry – a 4/0?

A Yes, sir.

Q The line, which was the preferred line, and he spliced it onto something. Did he splice it onto a 2-inch line or did he –

A Well, the 4/0 is not the preferred line. The preferred line would've been a 2/0, which was there originally. But since we'd done had it burned twice, they knew that the 2/0 wouldn't stay again; it would burn again. So they went back to the shop and got a 4/0 piece of wire that is bigger, to try to keep it from melting or catching fire again.

Q Apparently –

A But, yes, they hooked it to the 2/0, if that's what you're asking.

Q Yes.

A They hooked the 4/0 to the 2/0.

Q So what was the stronger, or the wire that could carry more load, was only a short span and only where it had burnt out before?

A Yes.

Q And then connected to the 2/0, which was the preferred, that ran the rest of the way from that splice to the customer, to the customer's meter.

A Well, that was at the customer's meter. It ran back to the transformer. All this work was done over next to the customer's weatherhead.

Q Oh, next to his weatherhead. So, the burn that had taken place up close to the meter –

A No, not the meter.

Q I mean, up close to the transformer. Excuse me.

A Right.

Q That was still on 2/0?

A That's correct, which was what the original service was.

Q Okay. All right. And when you did that – and I'm not trying to put words in your mouth – you felt that that dealt with the possibility of fire and it was safe to

turn the power on again.

A Yes. They were showing a movie. The guys was just trying to get it back on, so that they could finish showing their movies. It was a Saturday night, and we know that they don't run on Monday, Tuesday, Wednesday, and Thursday; they just run on Friday, Saturday, and Sunday.

Q Okay. So you said it was safe, that the possibility of fire from the activity that was going to be done now was fine, and we can leave and they can show the movie; that's your –

A Yes. Temporarily, that's correct.

Q Would it be correct to say that, after that was done, later on on Monday –

A Yes, sir.

Q – that somebody called up my client and say, "You know, you have to get off – you need this upgrade. We need to change your line and you're going to be off – to do that, you're going to be off the Greenwood Rate"?

A I had no conversations. That'll have to be answered by someone else.

Q You did not do that, okay.

A No.

Q And I'm not going to ask you something that you were not involved in. Okay. Did you plan the activity that was

going to be done at the site, the customer's meter, after there was an agreement to turn the power back on, having been cut, on the 15th?

A I don't know that you would call that I planned it. My guys, you know, do go out and do the work. So we determined that we needed to do the work, so we went out and done the work. We do plan to make sure if we need any locates or something like that, and you know, I guess you could consider it we planned what we would do that day, yes.

Q Under your understanding, was there any safety reason – no, let me rephrase this question. Other than the fact that the McCutcheons had not signed an agreement for the upgrades that were planned for that site, was there any other reason to turn off or cut the power before that question about upgrade and what is the contested rate, before that question was addressed by the customer?

A Can you repeat the question again?

Q I'm saying this: If it was a regular Duke customer, someone on the regular rate, and you did that work and you spliced it there and the same thing happen, burnt out, same thing, but you left saying – you left saying that was safe for operation, to turn back on again –

A For temporarily, yes.

Q All right. – and there are no circumstances, no change

in the demand or the use that was being made at that connection – how often it was on, and so forth – between the 13th and the day that you sent a crew out and required the power to be cut off. In other words, it wasn't –

A Yeah, I assume they –

Q – because it was a fire hazard, it wasn't anything that – it was because there was a dispute between my client –

CHAIRMAN WHITFIELD: Mr. Fantry, could I get you back to the microphone a little closer?

MR. FANTRY: I'm sorry. I apologize.

[Indicating.]

BY MR. FANTRY:

Q – because there was a disagreement as to what the fix would be.

A No, sir. The reason it was cut off was purely a safety reason, because it had melted on the 30th; it had melted again on the 13th. And on the 13th, it smoked up the side of the building, and when I was there on Monday I seen the building smoked up. And I checked into what all the records showed, and I decided at that time that it was too great a risk that it was going to catch on fire again. So we went ahead and disconnected it, which we would've done on anyone's service, no matter what rate they're on.

Q So, but their – I appreciate that testimony on the decision. So you're saying that it was still – that when you left on the night of the 13th, there was still a fire hazard that you didn't address? Why didn't you just leave it off?

A We put the 4/0 in there, that I mentioned to you, to try to get it by, so they could finish showing their show through Sunday. We put the big wire in there.

Q So the 4/0 saved the problem and took out of your mind the –

A It was eventually going to melt again behind the 4/0, because you've got the 2/0 there. So the 2/0 was still there; it's just going to melt back a little bit further away from the building.

Q Okay. All right. I'm going to have to ask you if you have seen an exhibit, to comment on it. This exhibit is with Mr. Lunsford's testimony, and it talks about – remember when I asked about kilowatt-hour usage, annual kilowatt-hour usage?

MR. FANTRY: If there's no objection, I'd like to go ahead and put this exhibit into the record.

CHAIRMAN WHITFIELD: You mean, Mr. Lunsford's –

MR. FANTRY: Mr. Lunsford's exhibit dealing with annual kilowatt-hour usage from the year 2000 and 2016.

CHAIRMAN WHITFIELD: Mr. Ellerbe, is there any objection? I know he's your witness and you're going to bring him up in a little bit.

MR. ELLERBE: I don't have any objection. It's Exhibit A to the Lunsford prefiled direct testimony, just for the record.

CHAIRMAN WHITFIELD: Exhibit A.

MR. FANTRY: And, Mr. Chairman, I'd just ask if he was aware of the exhibit and could –

CHAIRMAN WHITFIELD: Mr. Fantry, if you could get back, one more time. We do have a Lavalier, if you want to walk around. A lot of them use it.

MR. FANTRY: I think that I will chain myself to this position.

CHAIRMAN WHITFIELD: Well, we have many attorneys that use Lavaliers. If you want one, we can sure mic you up.

So, you're requesting Mr. Lunsford's Exhibit A to be entered in, and we'll enter that in as Hearing Exhibit No. 6, Mr. Fantry.

[WHEREUPON, Hearing Exhibit No. 6 was marked and received in evidence.]

MR. FANTRY: I will write that down as Hearing Exhibit No. 6, Mr. Lunsford's testimony number A. Let me turn it sideways [indicating].

BY MR. FANTRY:

Q Mr. Fowler, what I'd like to have is your insight and impression on the kilowatt-hour usage that was at that site between 2009 and 2016. First of all, have you seen this exhibit? Are you aware of its existence?

A Yes.

Q All right. Okay. And when you size and do construction work, either for a new customer coming in or for repairs, you kind of make an estimate of what their annual usage would be and how it fits into your system, to size the transformer and safely connect the customer?

A No, sir, we don't really use the annual usage. We try to determine the actual load that they have, and then we try to determine what the peak load would be, you know, if they have everything running.

Q Okay.

A And we try to size the service to that. You cannot size the service to kilowatt-hours.

Q So this really is a useless – the annual usage is really useless for our discussion that we're having today in regard to the size of the meter or the service drop or what? Is it useless?

A It shows that it looks like there was a continuous growth in the kilowatt-hours.

Q Growth in kilowatt, in hours. Okay. Would it be fair

to say, well, if you divide this by 12, you kind of get what the average kilowatt-hour usage load is for that on a monthly basis?

A No, I'm – you couldn't get what the load is. You know, people in the wintertime, summertime, spring, and fall, the usages is different. I'm not – that is really handled by the other people. I don't really deal with that that much. I have no use to use that.

Q Okay. I don't want to take you out of your comfort zone in what you understand. You have a very specialized area and I'm trying to talk about things I don't do every day. But I'm going to ask, in this particular relationship, on it, I've noted when I looked at that in 2014, that's the big finger in the air. That's like 61,000 kWh being used, usage. And then the year before that, 2013, that's up there close to 50, and in – am I reading these things? 2013, I've got to get this [indicating] – looking at it, I'm trying to handle it. But you see that kind of grouping in there that's higher than what occurred in 2015. So my question is, gee, if they were using more power during those earlier years than they were using in 2015, why was there no problems in those years? I've looked at – I haven't seen any outage report for 2009 – excuse me, I have 2009. But from 2009 to the present, I haven't seen an outage

report, yet the power that was used at the movie theater was higher in all those years than the year that we had the two outages.

A Yeah, I do not use information like this. The first time I've seen a bar graph like that was when we were getting ready for the trial. They use it in other departments, but I'm not using that. Now, the outage you spoke to in 2009, you know, that's when they first opened up. And there was a 15 kVA transformer there, and we had to change that transformer to a 25. They called and said that the power was out, and I believe in the exhibit that was submitted, it happened on 4/9 of 2009, and he changed the transformer out from a 15 to a 25 kVA.

Q Fifteen to twenty-five.

A Yes, sir.

Q Okay. And so you did that -

A We did that because of the drive-in opening up, getting ready to get started, and when you add two other houses on it - so there's nothing been on that service for a long time; I think Mr. McCutcheon's testimony was 25 years, or something like that? So we upped the size of the transformer to take care of all the load that was served by that transformer, those two houses and his drive-in.

Q All right. So I hear your testimony that in 2009, the two houses that are now on that circuit were just coming on in 2009?

A No, the drive-in was just coming back on.

Q Okay.

A The houses, that was already there, and the other service was already there.

Q Do I recall that in that 2009 report, there was a comment that said the transformer may be breaking down or being old?

A No.

Q Okay. Which could be – could we look at that?

A Yeah. I didn't see that.

MR. FANTRY: This may be a document that's not in.

MR. ELLERBE: It's Exhibit C to Mr. Fowler's testimony, and it was entered in when he was – part of the direct examination. It's a three-page exhibit, I think, or maybe more than that.

MR. FANTRY: So it's in.

BY MR. FANTRY:

Q The part of the exhibit I'm looking to is the outage report dated 5/31/2009, and the customer remark there was: TX needed to be changed, and I – the size of the TX0H – is that the transformer? Is that your code for a

transformer?

A Yeah. Could – right under “Outage Report,” there’s a little thing called “Outage ID”?

Q Okay.

A Can you give me that number underneath there, so I can make sure I’m looking at the correct one?

Q Okay. And I’m –

A Okay. There you go. There you go. Got it.

Q Okay. Does that do it for you?

A Yeah, I got it right here, now. I can see what it is.

CHAIRMAN WHITFIELD: Mr. Fantry.

MR. FANTRY: Yes, sir.

CHAIRMAN WHITFIELD: Do you have any idea how much longer you might be with this witness? I’m not trying to rush you.

MR. FANTRY: I would say about maybe three minutes, at the most.

CHAIRMAN WHITFIELD: If you’ve got three minutes – if that’s all, let’s go ahead and let you finish that, and then I’ve got to announce something else after that, okay?

MR. FANTRY: Thank you, sir.

BY MR. FANTRY:

Q My question, basically, on that exhibit was that there was indication on that outage report that there might be

a transformer problem that caused the outage, and am I correct? Is that what that reported?

A That says that the transformer needed to be changed. That one is on the 31st, which is the day we actually changed the transformer.

Q Okay.

A We was out there, actually, on the 30th.

Q Got it.

A And that's when the crew went out and re-fused the 3D fuse, and it didn't hold, so they put a 5D fuse in, which is a larger fuse, and it held. And they made a note to come back and change the transformer out the next day. Typically, when you up the size of the fuse to get the transformer to hold, we'll do that in situations where the load is too much that it can't hold it. So we put a bigger fuse in to try to buy us two to three days until we could get out there and change it.

Q Okay. Thank you. And as a result, the transformer was changed on the 31st or a few days after that?

A It was changed the next day.

Q Okay. And as a result of that –

A As a result of this change on the next day, on May 31, 2009, we had no more issues with that transformer until May 30th of 2015.

A And over that period, it's been safe. All right. Thank

you. Thank you, very much. That actually ends my particular questions, and I appreciate your patience with me.

A No problem.

CHAIRMAN WHITFIELD: Thank you, Mr. Fantry.

ORS, any questions?

MR. NELSON: No questions, Mr. Chair.

CHAIRMAN WHITFIELD: And I'm assuming none – or do you have any redirect? Or you don't know until Commissioners ask questions, right?

MR. ELLERBE: Yes. Yes, sir, Mr. Chairman.

MR. MELCHERS: Mr. Chairman?

CHAIRMAN WHITFIELD: Yes, Joseph.

MR. MELCHERS: Can we interrupt you for just a moment?

CHAIRMAN WHITFIELD: Yes, we need –

MR. MELCHERS: The State website has just been updated, and Lexington offices are supposed to be closing at 2 o'clock.

CHAIRMAN WHITFIELD: Right. We are going to hold Commissioner questions – excuse me, just a minute.

[Brief pause]

I was hoping to get through this witness. I'm going to confirm just what Mr. Stark and Mr.

Melchers have both said. Now the administrative offices in this county are under orders to close, effective immediately. In fact, it's already past. So we weren't able to get access to the EMD website to find that out until just now.

So we're going to stop the proceedings. Mr. Fowler will still be on the stand. And I would ask that all the parties get with Commission staff, with Ms. Boyd, Mr. Stark, Mr. Melchers, Mr. Butler, and others, to determine a date and time to conclude this hearing. I realize Duke has several more witnesses, and I realize ORS has a witness, so we have a good bit more to go, and we realize that, so I would ask all the parties to please get with our staff. We do have a busy next two weeks, so it may be some time, and we realize that. So I ask that you work with staff and we'll coordinate a new date and time to resume this hearing.

So, the hearing is in recess at this time.

[WHEREUPON, the witness stood aside.]

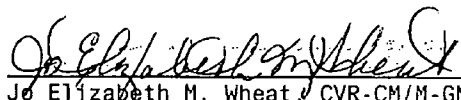
[WHEREUPON, at 3:20 p.m., the hearing in the above-entitled matter was adjourned, to reconvene upon such date and at such time as is determined.]

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of proceedings had and testimony adduced in a hearing held in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

That the witnesses appearing during said hearing were sworn or affirmed by me to state the truth, the whole truth, and nothing but the truth;

IN WITNESS WHEREOF, I have hereunto set my hand and seal, on this the 19th day of June, 2017.


Jo Elizabeth M. Wheat, CVR-CM/M-GNSC
Hearings Reporter, PSC/SC
My Commission Expires: January 27, 2021.

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA

HEARING #17-11605

APRIL 19, 2017

10:35 A.M.

DOCKET NO. 2017-32-E:

3109 HWY. 25 S., L.L.C., d/b/a 25 DRIVE-IN, AND TOMMY
MCCUTCHEON, Complainant/Petitioner v. DUKE ENERGY CAROLINAS,
LLC, Defendant/Respondent – *Complaint and Petition for Relief*

**TRANSCRIPT OF TESTIMONY
AND PROCEEDINGS**

VOLUME 2 OF 2

COMMISSION MEMBERS PRESENT: Swain E. WHITFIELD, CHAIRMAN;
Comer H. 'Randy' RANDALL, VICE CHAIRMAN; and
COMMISSIONERS John E. 'Butch' HOWARD, Elliott F. ELAM, Jr.,
Elizabeth B. 'Lib' FLEMING, Nikiya M. 'Nikki' HALL, and G. O'Neal
HAMILTON

ADVISOR TO COMMISSION: David W. Stark, III, Esq.
Legal Advisory Staff

STAFF: Joseph Melchers, General Counsel; James Spearman, Ph.D.,
Executive Assistant to Commissioners; Douglas Pratt, Thomas
Ellison, and John Powers, Advisory Staff; Jo Elizabeth M. Wheat,
CVR-CM/M-GNSC, Court Reporter; and Calvin Woods, Hearing Room
Assistant

APPEARANCES:

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CAROLINA OFFICE OF REGULATORY STAFF

I N D E X

PAGE

TESTIMONY OF DOUGLAS T. FOWLER, JR. (RECALLED)

Examination by Commissioner Fleming.....	164
Examination by Commissioner Hall.....	168
Examination by Commissioner Fleming.....	170
Examination by Commissioner Howard.....	171
Redirect Examination by Mr. Ellerbe.....	174
Recross Examination by Mr. Fantry.....	177

TESTIMONY OF JESSE S. GONZALEZ

Direct Examination by Mr. Ellerbe.....	179
Cross Examination by Mr. Shissias.....	181

TESTIMONY OF THEO L. LANE

Direct Examination by Mr. Ellerbe.....	189
Hearing Exhibit 7 marked/received [Prefiled Exh. A].....	191
<i>Prefiled direct testimony</i>	199-203
Cross Examination by Mr. Shissias.....	204
Examination by Chairman Whitfield.....	217
Examination by Commissioner Fleming.....	218
Examination by Commissioner Howard.....	224
Examination by Commissioner Elam.....	224
Examination by Commissioner Hall.....	227
Examination by Commissioner Hamilton.....	229
Examination by Vice Chairman Randall.....	231

TESTIMONY OF JOEL M. LUNSFORD

Direct Examination by Mr. Ellerbe.....	233
Hearing Exhibit 8 marked/received [Prefiled Exh. A ~ B].....	234
<i>Prefiled direct testimony</i>	244-251
<i>Prefiled supplemental testimony</i>	253-255
Cross Examination by Mr. Fantry.....	256
Examination by Commissioner Fleming.....	267
Late-filed Hearing Exhibit 9 marked/received....	326
[See pgs 270-273 for discussion]	
Examination by Chairman Whitfield.....	274

	<u>PAGE</u>
<u>TESTIMONY OF APRIL B. SHARPE</u>	
Direct Examination by Mr. Nelson.....	287
Summary of prefiled testimony.....	288
<i>Prefiled direct testimony</i>	291-295
Cross Examination by Mr. Ellerbe.....	298
Examination by Commissioner Elam.....	301
Examination by Commissioner Fleming.....	302
Examination by Commissioner Howard.....	306
Examination by Commissioner Hamilton.....	308
Examination by Commissioner Fleming.....	309
Examination by Chairman Whitfield.....	310
<u>CLOSING MATTERS</u>	31-326
Mr. Fantry.....	313
Mr. Ellerbe.....	318
Mr. Nelson.....	323
<u>REPORTER'S CERTIFICATE</u>	327

P R O C E E D I N G S

1
2 **CHAIRMAN WHITFIELD:** Please be seated. We'll
3 resume this hearing, call it back to order. And I
4 believe we had Mr. Fowler on the stand. So, Mr.
5 Fowler, if you would come forward, and I would
6 remind you that you are still under oath.

7 THEREUPON came,

8 **D O U G L A S T . F O W L E R ,**

9 recalled as a witness, who, having been previously duly
10 sworn, was examined and testified further as follows:

11 **CHAIRMAN WHITFIELD:** If memory serves me right
12 I believe we're done with cross-examination and we
13 are down to Commissioner questions.

14 **MR. FANTRY:** That's correct. I concluded my
15 cross-examination just before we broke.

16 **CHAIRMAN WHITFIELD:** Okay. So our memories
17 match, I guess. Okay. So we will go into
18 Commissioner questions for Mr. Fowler.

19 Commissioners. Commissioner Fleming.

20 **EXAMINATION**

21 **BY COMMISSIONER FLEMING:**

22 **Q** Good morning. Nice to have you back again

23 **VICE CHAIRMAN RANDALL:** No tornadoes.

24 **COMMISSIONER FLEMING:** Yeah, except it's still
25 raining, isn't it?

1 **BY COMMISSIONER FLEMING:**

2 **Q** I'm just trying to get a little clarity on what is going
3 on here, and it has been several days since we were last
4 together. But, I'm –

5 **CHAIRMAN WHITFIELD:** Could you get a little
6 closer to the mic?

7 **COMMISSIONER FLEMING:** Okay. All right
8 [indicating].

9 **BY COMMISSIONER FLEMING:**

10 **Q** As I understand it, a repair was made – a kind of an
11 emergency repair – so that the show could go on that
12 night, and then the next day that repair was cut so
13 service went off?

14 **A** No, ma'am.

15 **Q** The line was cut.

16 **A** On, I believe it was May 30th, the power went out to the
17 drive-in. We had to go out there and repair a piece of
18 wire that had melted and was dripping off and catching
19 fire. Then, back on June 13th –

20 **Q** Okay.

21 **A** – we was back out there, again, two weeks later. And it
22 was the same issue with the same – you know, same phase
23 that was going on. Wire melted again. This time they
24 went back into the office and got a larger piece of
25 wire, about this long [indicating] that they put in

1 there. And then, Monday morning, they told me about it
2 and told me what was going on. I knew that had been the
3 second time that had happened. When I went out and
4 looked at it Monday morning, the side of the building
5 was smoked up, and I decided it needed to be
6 disconnected for safety reasons due to it was going to
7 burn down again until we done something, until we
8 upgraded the service and made a new connection.

9 **Q** Okay. So the 4/0 splice, then, that you put in, you did
10 not feel that it was acceptable as a long-term solution.

11 **A** No, it was just temporary.

12 **Q** And it was – you felt it was a safety hazard?

13 **A** I felt that it was just going to burn down again. Even
14 though the 4/0 section wouldn't melt, the piece of wire
15 wasn't that long, so right behind it the 2/0 would've
16 started melting again.

17 **Q** Okay.

18 **A** Over time. It's like probably, you know, it seemed to
19 take two weeks for it to start getting hot and getting
20 melted.

21 **Q** Okay. And then, as we've heard from the other side,
22 they felt like the two additional structures that had
23 been added was causing – the usage for that was what
24 affected the service line to the theater.

25 **A** Yeah, the – you're talking about the two other residents

1 on the same transformer.

2 **Q** Well, garages, I think.

3 **A** Yeah, that's right. One of them was a garage, and the
4 other one was a garage/mother-in-law place where his
5 mother-in-law stayed. The line that run from the
6 transformer to his business is the one that was melting.
7 It wouldn't have mattered if we had 10 houses on that
8 transformer. The line running from that transformer to
9 his building is not going to be affected by nothing but
10 his load. Now, the transformer fuse might give way, but
11 the line is not going to melt, going to his business,
12 because of the other people on the transformer.

13 And if you'll recall, in some documentation that we
14 shared with y'all, 2009 is when he opened the drive-in
15 back up, and at that point we upgraded the transformer
16 from a 15 to a 25, and that was to take care of the
17 drive-in and the new houses.

18 **Q** Okay. So just for clarification, so you're saying the
19 voltage – as I understand it, if the voltage is drawn
20 down, I guess, by all three components or customers, the
21 amps go up? Is that correct?

22 **A** No.

23 **Q** Okay.

24 **A** You connect them straight to the terminals on the
25 transformer, so it's coming straight from the

1 transformer to each house. They're not all on one wire.

2 **Q** Okay.

3 **A** They're on separate wires. The drive-in had its
4 separate wire and both residences each had their own
5 wire. So, they're not connected together anywhere where
6 the situation you're talking about would happen.
7 They're separate.

8 **Q** Okay. So you're saying, because of the way it was
9 connected to the transformer, that the other two,
10 absolutely, no matter what amount of electricity they
11 were drawing off, wouldn't impact the line from the
12 transformer to the drive-in.

13 **A** To the drive-in. That is absolutely correct.

14 **Q** Okay, thank you. I just needed that clarification.

15 **A** Thank you.

16 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
17 Fleming.

18 Commissioner Hall.

19 **COMMISSIONER HALL:** Thank you.

20 **EXAMINATION**

21 **BY COMMISSIONER HALL:**

22 **Q** Good morning, again, Mr. Fowler. I'm sorry, I just
23 don't understand, though, if you can explain it to me
24 please, how did – if they didn't – it seems like the
25 trouble was just all of a sudden, and you said you

1 upgraded the transformer in 2009. So what was the
2 impetus for the fire if there hadn't been any problems
3 up until whenever that was, 2013 or 2015 or whenever it
4 was?

5 **A** I don't know that I can answer that for you. There had
6 to obviously be load added somewhere on the customer
7 side. I can't speculate why there was a fire. I mean,
8 there was load because it was melting the wire. When
9 you see the insulation, the black insulation around the
10 wire, start melting and dripping –

11 **Q** Uh-huh.

12 **A** – and catching ablaze, then that means there's too much
13 load coming from somewhere, to melt that wire; it gets
14 so hot over a period of time. They had added another
15 screen. I don't know what else they had added. We
16 don't, you know, regulate what the customer adds.

17 **Q** Okay. So it was, perhaps, something that they added
18 that increased their load, that exceeded the capacity of
19 that.

20 **A** Uh-huh.

21 **Q** Okay. And they – were you aware of any problems that
22 they had before then, between 2009 when they opened and
23 this incident?

24 **A** No. No, that was – I think it was the first time we had
25 something, was –

1 Q Okay.

2 A – May 30th.

3 COMMISSIONER HALL: Okay. Thank you.

4 Thank you, Mr. Chairman.

5 CHAIRMAN WHITFIELD: Thank you, Commissioner

6 Hall.

7 I believe Commissioner Fleming has a follow-up
8 for you, Mr. Fowler

9 EXAMINATION

10 BY COMMISSIONER FLEMING:

11 Q Well, it's just a question I wanted to ask. How many
12 people are still on the Greenwood Rates?

13 A I don't really know. The Rates and Regulatory people
14 probably can tell you that, but I don't really know.

15 COMMISSIONER FLEMING: Is someone coming up
16 who would have an answer today?

17 CHAIRMAN WHITFIELD: We've got three more Duke
18 witnesses, I believe, so three of you will get a
19 shot at it.

20 MR. ELLERBE: We do have a witness. Mr. Lane
21 has that information.

22 COMMISSIONER FLEMING: Okay, very good. Thank
23 you.

24 CHAIRMAN WHITFIELD: Thank you, Mr. Ellerbe.
25 Thank you, Commissioner Fleming.

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Commissioner Howard.

EXAMINATION

BY COMMISSIONER HOWARD:

Q Good morning.

A Good morning.

Q Just a couple of thought processes in my mind. I always thought, and I'm sure this has been addressed, but if it was I've forgotten, because we've been gone for more than two days. I always – under the responsibility of this and other utilities, it's your responsibility to the meter box, so this is before the meter box.

A Yeah, this residence – this service is a little bit different than your residential house. You know, your residential house, our line does come straight to the meter box.

Q Right.

A And then it comes out of your meter box and goes inside to your breaker box.

Q Correct.

A But in this type situation at the drive-in, we meter it with what we call CTs. So the wire goes through the CT – it's a round donut-looking thing – and it measures the current. He has two weatherheads up here and he's got six wires coming out, and we connect to those. The meter, all the meter does is there's three or four or

1 five wires that come off them CTs, that comes to the
2 meter box; that's the only thing in that meter box on
3 that type of installation. The wires do not meet in the
4 meter box. Our wires and the customer's wires meet up
5 here at the weatherhead. And when it comes off that CT,
6 they're taking – you know the size cable that's in a
7 drop cord?

8 **Q** Yeah.

9 **A** The little – the three wires inside there, they ain't no
10 bigger than that. And it comes off of there, and runs
11 down to that meter and that's what determines, you know,
12 how it is. In the meter box it's not our wire and his
13 wire. There is, on normal residential houses, but not
14 on this commercial service.

15 **Q** Okay.

16 **A** This is a commercial service.

17 **Q** Right.

18 **A** Well, a general rate probably. Call it general rate.

19 **Q** Let me see how to word this. It seems to me like y'all
20 had them over a barrel. And I was under the impression
21 that Duke – I mean, they either had it fixed – they had
22 to change the service or go out of business,
23 practically. So they don't have any kind of [word
24 indiscernible]. I was under the impression that, once someone
25 filed a complaint with the PSC, that it would stay like

1 it is until the complaint was resolved. Tell me your
2 thoughts on – is that fair to the customer, just to say,
3 “Okay, you’ve got to fix this, and by fixing this,
4 you’re going off the rate,” or you don’t have another
5 choice?

6 **A** Well, that’s not my call.

7 **Q** Whose call is that?

8 **A** I try to keep the lights on and make sure we’ve got safe
9 operation of the service.

10 I – the customer, you know, has added a lot of
11 load. You know, back when that drive-in first started
12 in the ‘60s or whatever, there had to be load added
13 between then and now, you know. And they added an extra
14 screen. Now they’ve got a third screen. And I couldn’t
15 allow the power to go on, because I was afraid that it
16 was going to catch on fire again and then we’re going to
17 be buying that building with the two projectors.

18 **Q** I understand that, and you probably did the right thing.
19 My point is the options, that they didn’t have any
20 options. My point is, you could’ve gone ahead and fixed
21 it and just said, “Okay, then we’ll file a complaint
22 with the PSC so you’ve got so many days.” But that’s,
23 like you said, that’s not your call.

24 **A** But it – I mean, we fixed it one time, and it happened
25 14 days later. So I figured, we fix it again, it’s

1 going to happen 14 days later, or less. So I felt like
2 it was a drastic enough situation that I had to do
3 something.

4 **Q** Mr. Calhoun, I believe, in his testimony, said that the
5 new equipment would probably be more efficient, and
6 that's the way I'm thinking. I'm thinking about a
7 drive-in back in '60s with all kind of wire laying
8 across the floor, with all kind of splices and
9 everything going on. The new equipment would be more
10 efficient as far as pulling amps or whatever, you know?

11 **A** Well, it might be, but if you add one – so you've added
12 load. I mean, one machine might be more efficient, but
13 when you add two, the load goes up.

14 **COMMISSIONER HOWARD:** Okay. Thank you.

15 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
16 Howard.

17 Commissioners? Any other questions of this
18 witness?

19 [No response]

20 If not, Mr. Ellerbe?

21 **MR. ELLERBE:** Thank you, Mr. Chairman. I have
22 a few questions on redirect.

23 **REDIRECT EXAMINATION**

24 **BY MR. ELLERBE:**

25 **Q** Mr. Fowler, let me ask you, you mentioned the connection

1 at the weatherhead, and Commissioner Howard asked you
2 about isn't it the company's responsibility to maintain
3 the facilities up to the point where you connect with
4 the customer's - the customer's wires, in this case.
5 And is that the reason that the company thought, because
6 it had the responsibility for that part of the
7 connection and that's where the problem was occurring,
8 those wires, is that why the company thought it had to
9 upgrade the facilities in order to make the delivery of
10 the service safe?

11 **A** Yes, sir. It was just going to melt down, again, if we
12 didn't. I was concerned it would catch that building on
13 fire with them two projectors in it.

14 **Q** Okay. And how many - how many wires did you say were
15 coming out of the customer's building, the customer's
16 wires that connect with the Duke wires?

17 **A** They've got six wires. They've got two weatherheads,
18 three coming out of one and three coming out of another
19 one.

20 **Q** Okay. And how do you connect the Duke wires to those
21 six wires that are coming out of those two weatherheads?

22 **A** You make a splice for each wire.

23 **Q** Okay. And would that explain if there was testimony
24 earlier and then questions about the splices and their
25 being six splices, would that explain why there were six

1 splices, Mr. Fowler?

2 **A** Yes, it would be one for each wire that the customer
3 had, to put our wire to it.

4 **Q** And I think this morning that, in response to
5 Commissioner Fleming's questions, you answered the issue
6 about whether the other two houses being served by that
7 same transformer could have had any causal relationship
8 to the failure of the wire coming from that same
9 transformer into the drive-in. But just for my
10 satisfaction, would you explain that again, please?

11 **A** Okay. The reason it wouldn't have anything to do with
12 it is because the service from the drive-in goes
13 straight to the transformer spades. And, you know, the
14 other services come off the transformer spades and go
15 straight to the house. So, you know, if the wire melts,
16 it's got nothing to do but with the drive-in because
17 it's not connected to anything else but the transformer.

18 **Q** So, the fact that it's the connection going to the
19 drive-in suggests it's the drive-in's load that's
20 causing the issue?

21 **A** That's correct.

22 **MR. ELLERBE:** Thank you.

23 Nothing further, Mr. Chairman.

24 **CHAIRMAN WHITFIELD:** Thank you, Mr. Ellerbe.
25 Mr. Fantry.

1 Commissioners or from me about a breaker box inside
2 the building, or –

3 CHAIRMAN WHITFIELD: Mr. Fantry, I believe you
4 said, when we started back up, you'd finished your
5 cross and I don't know of any questions
6 Commissioners had –

7 MR. FANTRY: I will –

8 CHAIRMAN WHITFIELD: – about that.

9 MR. FANTRY: I will – it is in relation to
10 fuses, but I will not have any further questions
11 for this particular witness, okay?

12 CHAIRMAN WHITFIELD: All right. Thank you,
13 Mr. Fantry.

14 If no further questions for this witness, Mr.
15 Fowler, you may step down.

16 WITNESS: Thank you.

17 [WHEREUPON, the witness stood aside.]

18 MR. ELLERBE: We would call Jesse Gonzalez as
19 our next witness.

20 CHAIRMAN WHITFIELD: Come forward, Mr.
21 Gonzalez.

22 [Witness sworn]

23 THEREUPON came,

24 J E S S E S . G O N Z A L E Z ,

25 called as a witness on behalf of the Defendant/Respondent,

1 who, having been first duly sworn, was examined and testified
2 as follows:

3 **MR. ELLERBE:** Mr. Chairman, Mr. Gonzalez'
4 testimony is so short, about a page and a third,
5 that rather than – we're just going to read it into
6 the record, if y'all will bear with us.

7 **DIRECT EXAMINATION**

8 **BY MR. ELLERBE:**

9 **Q** You got your copy?

10 **A** Yes, sir, I got it.

11 **Q** Okay. Please state your name and business address.

12 **A** My name is Jesse Gonzalez. Business address is 72 –
13 South Carolina 72 at Greenwood, South Carolina 29649.

14 **CHAIRMAN WHITFIELD:** Mr. Gonzalez, I hate to
15 stop you already. Can you get a little closer to
16 that mic? We've got some folks in the back –

17 **WITNESS:** Yes [indicating]. There we go.

18 **CHAIRMAN WHITFIELD:** Yes, sir.

19 **BY MR. ELLERBE:**

20 **Q** By whom and in what capacity are you employed?

21 **A** I'm employed at Duke Energy, LLC, as a distribution
22 lineman, B Class. I work with Mr. Fowler.

23 **Q** Okay. That's Mr. Fowler, who just testified?

24 **A** Yes, sir.

25 **Q** Please describe your work experience for DEC.

1 A I've been a distribution lineman for six years. I
2 started as a lineman helper and I progressed up to a B
3 Class now, and I've been a B class for three – two,
4 three years.

5 Q Okay. Were you involved in responding to the outage
6 call at the Hwy. 25 Drive-In on 6/13/2015, the second
7 outage?

8 A Yes, sir, I was involved in that.

9 Q Would you read the rest of that answer, please?

10 A Oh, yes, sir. I responded to the call and helped to
11 restore power to the drive-in.

12 Q Did you replace the fuse on the pole-mounted transformer
13 that served the drive-in at that time?

14 A Yes, sir.

15 Q Please describe the condition of the fuse when you
16 examined it that night.

17 A The fuse had melted out, which caused it to open and
18 stop the flow of electricity to the drive-in that night.

19 Q What did you do?

20 A Pulled the fuse down and replaced the melted fuse.

21 Q Okay. Was part of the line running from the pole-
22 mounted transformer to the drive-in replaced?

23 A Yes, sir. It had melted out and had to be replaced in
24 order to get power back on.

25 Q Was service to the drive-in restored?

1 A Yes, sir, we was able to get power back on that night.

2 Q And the next sentence, please, Mr. Gonzalez?

3 A Oh. Yes, we were able to get – able to restore power
4 that night, and –

5 Q Does it say, "...this enabled the drive-in to continue
6 showing movies that night"?

7 A No, sir, not to my knowledge.

8 Q Okay. I think that'll do fine. I think maybe you have
9 an earlier version of the testimony, so, that's fine.
10 Does this conclude your testimony?

11 A Yes, sir, it does.

12 Q Okay. Please answer any questions that counsel for the
13 drive-in may have, or the Commissioners.

14 A Yes, sir.

15 CHAIRMAN WHITFIELD: Mr. Fantry or Mr.
16 Shissias?

17 MR. SHISSIAS: Thank you, sir.

18 CHAIRMAN WHITFIELD: All right, sir. You're
19 up.

20 MR. SHISSIAS: Just let me get my act together
21 here.

22 CROSS EXAMINATION

23 BY MR. SHISSIAS:

24 Q Just got some cross-examination questions. Now, you
25 testified you responded to the outage on the evening of

1 the 13th. Were you also there on May 30th, as well?

2 **A** No, sir. We had a single lineman out there on the first
3 incidence, the May 30th incidence, and actually the same
4 lineman that was out there the first night on call, was
5 on the second, as well, but I as on call with him on the
6 13th.

7 **Q** Okay. Well, you, at least – when you went out to the
8 site on the 13th, you did at least see the repair that
9 was done on the 30th, right?

10 **A** I did.

11 **Q** Okay. And did you inspect the wire, look at the wire
12 that had been installed on the 30th?

13 **A** I mean, I seen it. I didn't physically, you know, touch
14 it or look at it. Brian had worked the bucket, and the
15 same piece had melted out that he replaced that first
16 night, so, you know, which was one with the bigger-size
17 wire.

18 **Q** One other question: That wire that was spliced in on the
19 30th, was that 2/0 wire or was that possibly a 1/0 wire?

20 **A** I ain't for sure what he had put in there the first
21 night. I mean, I wasn't there. I didn't put it in.

22 **Q** Well, you removed it?

23 **A** No, he removed it.

24 **Q** Well, y'all working together removed it.

25 **A** Well, he had already been working on it. I got called.

1 Q Uh-huh.

2 A I went and got the 4/0 that we put back in there the
3 second time. So by that time, he had done had
4 everything, you know, already loose and ready to make
5 the splice with the new wire, trying to get power back
6 on as quick as we could.

7 Q And so you don't know what gauge wire they spliced in on
8 the 30th?

9 A It could've been the 1/0.

10 Q It could have been the –

11 A You know, yeah, or 2/0. Most of the time, when 2/0
12 goes, you know, if we had a splice and had to make it
13 2/0, we use 1/0 because we don't have 2/0 anymore.

14 Q Okay. Now, you said on the 13th that you didn't have
15 any 4/0 wire.

16 A I didn't. He did. I mean, I wasn't out there on the
17 30th – I mean, on May – the 13th, he didn't have any
18 4/0, that's right.

19 Q And so, what, you went down to get some?

20 A Yeah, he called me and he said he didn't have any bigger
21 wire than the 4/0 on the truck, so I went to the office
22 – which is like a 10-minute ride from there – and went
23 straight to the office, got the wire, and brought it out
24 there.

25 Q Okay. And how long a piece of 4/0 did you stick in

1 there? Show me –

2 **A** Probably no more – about like that [indicating].

3 **Q** About three –

4 **A** About three foot, three or four foot.

5 **Q** Three or four foot.

6 **A** So he can put it back in there. Same as he replaced the

7 first time.

8 **Q** All right. Now, I'm going to go get Exhibit B to Mr.

9 Fowler's testimony [indicating]. Is that right? Is

10 that good? Can you see that?

11 **A** Yeah, I can see it.

12 **Q** Okay, good. All right. By the way, when you did that

13 work, when you did this work on the 13th, did you notice

14 the number of splices that were in that line before you

15 did your work?

16 **A** Well, like I said, another lineman had did the work, the

17 actual physical work, you know,

18 **Q** Right.

19 **A** My more-or-less thing was, I brought the wire. Jimmy

20 squeezed everything up. I went out to the pole, pulled

21 the barrel down, and re-fused it, you know. So, I mean,

22 I didn't physically do the work to the drive-in.

23 **Q** Is Mr. Brown here today? Is he going to testify?

24 **A** No, sir. Mr. Brown is not here.

25 **Q** Okay. All right. Did you or maybe do you recall Mr.

1 Jimmy Brown telling Tommy or Carolyn McCutcheon, during
2 the 13th outage repair, "I got the right wire now," or
3 "I fixed it right this time"? Do you remember one of
4 y'all saying anything like that?

5 **A** No, sir.

6 **Q** Nothing like that.

7 **A** No.

8 **Q** Okay. All right. Now, you and Mr. Brown did this work
9 together, this report. Who wrote up this Daily All
10 Report?

11 **A** Well, Jimmy cleared it out on the computer, and then, I
12 mean, I guess from there, it goes to whoever it goes to
13 have the report made out. We've got a device that we
14 work off, a computer.

15 **Q** Okay.

16 **A** So whenever we complete the order, we'll complete what
17 we did and any other comments that we feel need to be
18 put in, and just complete it out.

19 **Q** Okay. I want to look at these on the "Crew Comments."
20 Down here it says "RMK"; does that mean "remark"?

21 **A** I would guess so.

22 **Q** Okay.

23 **A** It says reworked service going through the CTs with 4/0?

24 **Q** Right.

25 **A** And then 541 is the truck number, and 545 is my truck

1 number, and it's Jimmy Brown and Jesse Gonzalez.

2 **Q** Okay. All right. And, now, when you went out this
3 second time, did – were you instructed by somebody to
4 put in a temporary fix, or to just get it going, or to
5 fix it?

6 **A** No, it was mine and Brown's decision. We had to get it
7 going, for business. You know, people's sitting out
8 there waiting for the movie to come on, and, you know,
9 Brown said he'd already repaired it one time. We went
10 with bigger wire, you know. It would pacify, you know,
11 until something was done – because we said we'd tell
12 Tommy Monday, because something needed to be addressed.
13 I mean, you can't keep having this happen every other
14 week.

15 **Q** What – I'm sorry to interrupt you. Why didn't you go
16 and put in 4/0 all the way to the transformer?

17 **A** Well, we could put 4/0 all the way to the transformer,
18 but, I mean, it'd still be upgrading the service, so the
19 customer's still in the same predicament.

20 **Q** Well, I mean, that's Duke's position.

21 **A** And you ain't going to replace, you know, unless you –
22 you know, that night he would've had to shut down and,
23 you know, we would have to make more calls to replace
24 all the way to the transformer. I mean, it ain't just
25 like it's a 30-minute job.

1 Q Okay. All right. But, I mean, when –

2 A That's not our protocol, to change it all the way back
3 to the transformer, you know, unless we have a job card
4 or a supervisor approves it. I mean, that just – that
5 ain't what we do on an outage repair. We're just trying
6 to get the lights on for them, to be able to finish out
7 his movies that night, and then we was going to address
8 the issue Monday morning when we told the supervisor.

9 Q Okay. Now, was it your opinion when you left the drive-
10 in that the electric power could safely be delivered
11 with what you'd done to the system?

12 A My personal opinion, yes. I mean, temporarily. I
13 wouldn't have left it like that long-term.

14 Q Okay. You wouldn't have left it like that long-term?

15 A No, sir.

16 Q Can you help me find on the daily work report a
17 statement identifying the repair as a temporary fix
18 requiring a return visit or additional wire or
19 equipment? Is there anything like that saying this is a
20 temporary fix?

21 A No. I mean, we normally don't put that on there. We'll
22 complete the order out, like I said, and then, you know,
23 we'll tell the supervisor if we think the issue needs to
24 be addressed, and they'll handle it from there.

25 Q Okay. So you told the supervisor you thought something

1 needed to be done about it?

2 **A** We told him that we thought he needed to look at it.
3 You know, like I said, you've got a two-week span that
4 the same wire burned down, and you're taking a chance of
5 a building catching on fire, and you got pedestrians and
6 all out there.

7 **Q** Okay. And does he write up a report?

8 **A** I'm not sure what they do. I mean, he goes out there
9 and looks at it, and sees what needs to be done, and if
10 he feels it's a safety concern or something needs to be
11 upgraded, then he goes through the proper channels and
12 makes it happen.

13 **MR. SHISSIAS:** I understand.

14 Beg your indulgence.

15 [Brief pause]

16 Okay. I don't have anything further. Thank
17 you, very much.

18 **WITNESS:** Yes, sir.

19 **CHAIRMAN WHITFIELD:** Thank you, Mr. Shissias.

20 ORS?

21 **MR. NELSON:** No questions, Mr. Chairman.

22 **CHAIRMAN WHITFIELD:** Commissioners? Any
23 questions from the Commissioners for Mr. Gonzalez?

24 [No response]

25 Okay. If not, Mr. Ellerbe, any redirect?

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MR. ELLERBE: No redirect, Mr. Chairman.

CHAIRMAN WHITFIELD: Thank you.

MR. ELLERBE: And, Mr. Chairman, Mr. Gonzalez has a doctor's appointment this afternoon in Greenwood, so we would ask that he be excused, if that's acceptable to the Chair and other parties.

MR. FANTRY: No problem.

CHAIRMAN WHITFIELD: Mr. Gonzalez, you may be excused. Thank you for your testimony.

WITNESS: I appreciate it, Your Honor.

[WHEREUPON, the witness was excused.]

CHAIRMAN WHITFIELD: Mr. Ellerbe?

MR. ELLERBE: The next witness is Theo Lane.

CHAIRMAN WHITFIELD: Come forward, Mr. Lane.

[Witness sworn]

THEREUPON came,

T H E O L . L A N E ,

called as a witness on behalf of the Defendant/Respondent, who, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ELLERBE:

Q Mr. Lane, would you state your name for the record, please.

A Theo L. Lane.

1 Q And by whom are you employed and in what capacity, sir?

2 A I'm employed by Duke Energy as Government and Community
3 Relations representative.

4 Q Where's your office?

5 A I have two: one in Greenwood, South Carolina, and one in
6 Sumter.

7 Q Okay. Mr. Lane, did you cause to be prepared five pages
8 of testimony which has been prefiled in this docket?

9 A Yes, sir, I did.

10 Q Any changes to that testimony?

11 A No, sir.

12 Q Okay. If I were to ask you the questions contained in
13 your prefiled testimony today, would your answers be the
14 same?

15 A Yes, sir, they would.

16 MR. ELLERBE: Okay. Mr. Chairman, we'd ask
17 that Mr. Lane's prefiled testimony be copied in the
18 record as if given from the stand.

19 CHAIRMAN WHITFIELD: Mr. Lane's testimony will
20 be entered into the record as if given orally from
21 the stand, Mr. Ellerbe.

22 BY MR. ELLERBE:

23 Q And, Mr. Lane, is there – did you have one exhibit that
24 was attached to your prefiled testimony?

25 A Yes, sir, I did.

1 **MR. ELLERBE:** Mr. Chairman, we would ask that
2 the exhibit that was marked Exhibit A to Mr. Lane's
3 testimony be entered into the record as the next
4 hearing exhibit.

5 **CHAIRMAN WHITFIELD:** Mr. Lane's exhibit will
6 be entered in as Hearing Exhibit No. 7.

7 **MR. ELLERBE:** Thank you, Mr. Chairman.

8 **CHAIRMAN WHITFIELD:** I'm sorry, that's Exhibit
9 A. I didn't note it, but Exhibit A will be entered
10 in as Hearing Exhibit No. 7.

11 [WHEREUPON, Hearing Exhibit No. 7 was
12 marked and received in evidence.]

13 **MR. ELLERBE:** Thank you.

14 **BY MR. ELLERBE:**

15 **Q** Mr. Lane, I'm going to take you through your direct
16 testimony and have you summarize it for the Commission.
17 So, but I do not want you to go outside of your direct
18 testimony. We're going to try to follow the rule and
19 stay within the testimony. So, first of all, would you
20 describe your education and your professional background
21 for the Commission, please.

22 **A** Certainly. I was educated in South Carolina public
23 schools. My undergraduate education was at The Citadel
24 and University of South Carolina. I earned my Master's
25 degree from Columbia College.

1 I joined Duke Energy in 1989. I was recruited
2 there through what they call their Protective Services
3 Division, which is kind of like a private police
4 department. Created an Executive Protection Program
5 there in the mid-'90s. I served in that capacity until
6 2009 when I was then given the opportunity to work in
7 Government and Community Relations, and I've done this
8 job ever since. I serve a nine-county district of South
9 Carolina, basically geographically, from Abbeville to
10 the Georgetown County line.

11 **Q** And what is the purpose of your testimony today in this
12 proceeding?

13 **A** The purpose of my testimony is just to relay to the
14 Commission the activities between June 15 of 2015 and
15 the 18th, and the reason that we felt required to
16 discontinue service at the auto drive-in. It simply –
17 it was solely directed around the ability to provide
18 safe and reliable service to the customer.

19 **Q** And now, if you will describe the events leading up to
20 the – well, just describe the events leading up to the
21 disconnection on, I guess that would've been the 17th?
22 If Monday was the 15th –

23 **A** Yeah, correct. Yes, sir, Mr. Ellerbe, that's correct,
24 the 17th.

25 **Q** When did you first get involved?

1 **A** I first became involved – and let me say that, in my job
2 capacity, I don't keep up with every project going in
3 the field. I only become involved when our supervision
4 believes there might be a need to communicate directly,
5 personally, with a customer, if it's a more significant
6 issue. And, certainly, I think the Commission is fully
7 aware that the Greenwood Rate in Greenwood County is
8 always a significant issue.

9 So, because it was the auto drive-in, Mr. Fowler –
10 who you've heard testimony from today – had made me
11 aware that we had had an outage there two weeks prior.
12 So when it occurred again two weeks later, we had
13 discussion about it. My recollection is that we
14 discussed it after our linemen had talked with him about
15 it being an unsafe condition, on that Monday morning
16 which would've been 15th.

17 Because of my community relations role, I know the
18 McCutcheons very well. So I called Tommy to talk
19 personally to him about that, and what we felt needed to
20 be done out there. And in that conversation, which was
21 – I called Tommy on his cell phone, Mr. McCutcheon on
22 his cell phone, and we talked about it, and I told them
23 that if we did what we believed had to be done, that it
24 would place the Greenwood Rate in jeopardy. In fact, I
25 told him he would lose the Greenwood Rate.

1 Q Okay. And what was his – let's see, I don't want to get
2 outside – was the company able to disconnect the
3 service, Mr. Lane?

4 A We did disconnect the service. Between the 15th, the
5 morning of the 15th, when I – my recollection is – I
6 first talked to Mr. McCutcheon, certainly he wasn't
7 happy with the fact that the Greenwood Rate would go
8 away, but we had several conversations. There came a
9 point in time when Tommy stopped taking my calls when I
10 would try to call him, so –

11 Q In your prefiled testimony, you said – I'd like to get
12 you to focus on this. Did he tell you at some point
13 that you needed to talk to his lawyer?

14 A Yeah, that was our last telephone conversation, when we
15 were trying to discuss when we needed to do the service
16 connection. I want to make the context of this clear.
17 My goal in this regard was not whether or not we were
18 going to have to disconnect that service or rebuild that
19 service. I knew that we were. I was trying to
20 facilitate that happening in a manner that would be the
21 most convenient to our customer as it could be.

22 As I said, you know, Mr. McCutcheon wasn't happy
23 about the fact that the rate would be lost, and that's
24 the point in time when Tommy told me he didn't want us
25 on his property and that I should talk to his attorney,

1 Billy Garrett. Billy Garrett was the attorney I was
2 directed to.

3 **Q** Okay. Was the company able to disconnect the service on
4 that Wednesday?

5 **A** We did. We did. We made a first attempt to disconnect
6 it and the drive-in was blocked. The entrances were
7 blocked. There was vehicles -- I think a tractor maybe
8 with a bucket on it or something. There was equipment
9 blocking our entrances. We had to go behind the
10 property and go through a neighboring trailer park to
11 access the property from the rear, to get to our
12 service.

13 **Q** And did Mr. McCutcheon subsequently agree to upgrade the
14 service?

15 **A** He did.

16 **Q** Would you tell the Commission about that?

17 **A** Certainly.

18 **Q** Summarize your testimony about that.

19 **A** Well, as I said, you know, my communications with Mr.
20 McCutcheon had been blocked, because he wouldn't take my
21 calls. So on Tuesday afternoon, Tuesday evening maybe,
22 I called his cell phone and I basically left this
23 message: "We've got to provide a safe and reliable
24 delivery. You have an unsafe condition there. We're
25 going to have to either disconnect your service or

1 rebuild that service." And I said to Tommy, in that
2 message, I said, "I know that you have perishable foods,
3 frozen foods, as part of your food service at the drive-
4 in, so I'm giving you notice now that sometime tomorrow
5 between early morning and early afternoon, we're going
6 to disconnect your service."

7 Never heard back from him. That would have been on
8 — that would've been on the 16th. On the 17th — I told
9 you about not being able to get access to the drive-in —
10 we did disconnect that service. I don't know the exact
11 time. I'm sure that's a matter of record. When we
12 disconnected the service, within a very short period of
13 time — I would say several hours — Tommy then called me,
14 and he basically said to me —

15 **Q** Mr. Lane, let me interrupt you.

16 **A** Excuse me.

17 **Q** We've got two Tommys in this case.

18 **A** I'm sorry. Tommy —

19 **Q** Who was it that called you?

20 **A** Tommy McCutcheon. Mr. McCutcheon.

21 **Q** Okay.

22 **A** I should say Mr. McCutcheon. Carolyn and Mr. McCutcheon
23 are my friends. I call them by their first names. I'll
24 try to refrain from that for the remainder of this
25 testimony.

1 **Q** Please continue summarizing what happened on that
2 Wednesday afternoon, the 17th.

3 **A** Certainly. Mr. McCutcheon called me and he said, "Theo,
4 I can't believe you turned my service off." I said,
5 "I've been trying to talk to you about this for the past
6 48 hours. I didn't have any choice but to do that." He
7 said to me, "I've got to have power. I'm scheduled to
8 open up tomorrow evening." The drive-in shows on
9 Thursday, Friday, and Saturday, you know, through the
10 weekend. I told him that he needed to come into the
11 office and talk with me about it.

12 And so, later that afternoon – it was afterhours,
13 5:30 or 6 o'clock; it seems to me that I may have not
14 even been in Greenwood at that time. But Mr. Fowler and
15 I met with Ms. McCutcheon and Mr. McCutcheon at our
16 Operations Center. We discussed the situation, I
17 explained, again, clearly that this is only about being
18 able to provide safe and reliable delivery, explained
19 the rebuild of that service and increased demand would
20 disqualify them from the Greenwood Rate, and told them
21 that if they would allow us to restore that service that
22 I would do everything humanly possible to get that
23 service reconnected the following day, which would allow
24 them, then, to open for business that next evening,
25 which would've been Thursday. And they agreed, and

1 that's what we did.

2 My recollection is that we were able to restore
3 that service by about 2:30 in the afternoon. I
4 personally went out there and looked at it, looked at
5 the work, thanked our crews for making that a priority
6 and getting it done.

7 **Q** And did Mr. McCutcheon sign the agreement that was the
8 exhibit to your testimony and has also been discussed by
9 Mr. McCutcheon when he testified?

10 **A** Yes, sir.

11 **MR. ELLERBE:** Okay. Thank you Mr. Lane.

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23 [PURSUANT TO PREVIOUS INSTRUCTION, THE

24 PREFILED DIRECT TESTIMONY OF THEO L.

25 LANE FOLLOWS AT PGS 199-203]

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
 Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
 Defendant/Respondent.)

**DIRECT TESTIMONY
OF
THEO L. LANE
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME, CURRENT POSITION, AND BUSINESS**
2 **ADDRESS.**

3 A Theo L. Lane, Government & Communications Relations Manager II, Duke Energy
4 Carolinas, LLC, 763 SC-72, Greenwood, South Carolina 29649.

5 **Q PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
6 **BACKGROUND.**

7 A I was educated in the South Carolina public school system before continuing my
8 undergraduate education at the Citadel and University of South Carolina where I earned
9 both AS and BS degrees, then later earned my Masters in Education (MEd) from
10 Columbia College.

11 After a 12 year career in SC law enforcement, I was recruited to then Duke Power
12 Company in 1989 - serving for the next 20 years as a Senior Regional (SC and western
13 NC) Coordinator for the Protective Services Division, overseeing internal investigations,
14 physical asset security programs, and senior level Executive Protection.

15 In 2009, I accepted my current position as a SC District Manager for Government &
16 Community Relations. In this capacity, I oversee local elected official liaison activities;
17 community relations; critical issues management; and philanthropic support to a nine
18 county region of this State. I am now in my 28th year of service with Duke Energy.

19 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A The purpose of my testimony is to discuss the facts and circumstances leading to the June
21 17, 2015 agreement executed by Tommy McCutcheon ("McCutcheon"), me, and Tommy
22 Fowler pursuant to which McCutcheon requested that Duke Energy Carolinas, LLC

1 (“DEC”) restore electric service at his drive-in movie theater located at 3109 Hwy 25 South
2 in Greenwood, South Carolina (the “Drive-In”) to accommodate the current load
3 requirements of the Drive-In.

4 **Q PLEASE STATE WHAT ACTIONS YOU HAVE TAKEN IN ORDER TO**
5 **PREPARE YOUR TESTIMONY IN THIS CASE.**

6 A I have reviewed the Complaint, the Affidavit and Pre-filed Testimony of McCutcheon, the
7 Affidavit and Pre-Filed Testimony of James R. Calhoun, and the exhibits filed on behalf
8 of McCutcheon. I have also reviewed DEC’s records relating to the Drive-In.

9 **Q FOLLOWING THE POWER FAILURES AT THE DRIVE-IN ON MAY 30TH AND**
10 **JUNE 13TH OF 2015, DID DEC DISCONNECT THE POWER AT THE DRIVE-IN?**

11 A Yes, it did.

12 **Q PLEASE EXPLAIN THE EVENTS LEADING UP TO THE DISCONNECTION.**

13 A After the second power failure, DEC determined that in order to safely supply power to the
14 Drive-In, it was necessary to upgrade the electrical system. I informed Mr. McCutcheon
15 that it would be necessary to upgrade the system. During that discussion Mr. McCutcheon
16 brought up the effect that the upgrade would have on his continuing to receive service on
17 the Greenwood rate. I confirmed to him that the upgrade would disqualify him for the
18 Greenwood rate. McCutcheon objected. I told him that DEC considered the existing service
19 to be dangerous because of the risk of fire. I told him that if he would not agree to an
20 upgrade we would have to disconnect service. We had several conversations during the
21 early part of the week of June 15th, 2015. Our conversations came to a close when Mr.
22 McCutcheon told me that I should direct my discussions to his lawyer, Billy Garrett. I told

1 Mr. McCutcheon that we would be moving forward with the disconnection and I
2 specifically told him that we would delay the disconnection until Wednesday, June 17 so
3 that he would have time to protect perishable food.

4 **Q WAS DEC ABLE TO DISCONNECT SERVICE?**

5 A Yes, but not with any cooperation from Mr. McCutcheon. When our crew reached the
6 Drive-In we found the entrances blocked with trucks and a backhoe. However, our trucks
7 were able to access our facilities through neighboring property and the disconnection was
8 completed on Wednesday, June 17th.

9 **Q DID MCCUTCHEON SUBSEQUENTLY AGREE TO ALLOW DEC TO
10 UPGRADE THE ELECTRICAL SYSTEM AT THE DRIVE-IN AND TO BILL
11 MCCUTCHEON AT THE CURRENT DEC RATES?**

12 A Yes, he did. Mr. McCutcheon got back in touch with me on June 17th and told me he would
13 agree to the upgrade. Tommy Fowler and I met with him at our offices on June 17th to
14 discuss the upgrade and its impact on the Greenwood Rate. During that meeting Mr.
15 McCutcheon signed the agreement that is attached to my testimony as **Exhibit A**. Also
16 during that meeting Mr. McCutcheon told us that he was worried about losing business if
17 the Drive-In could not open on Thursday, June 18th. I told him that we would make every
18 effort to complete the upgrade so that he could open on Thursday the 18th.

19 **Q WAS DEC ABLE TO ACCOMPLISH THE UPGRADE ON THURSDAY JUNE
20 18TH?**

21 A Yes. We had a crew on site early on the morning of the 18th and the work was completed
22 by the middle of the afternoon on the 18th. I went by the Drive-In myself to check on the

1 progress of the work and to thank our crew for getting our customer back on in time to
2 serve his customers on Thursday evening.

3 **Q DID YOU IN ANY WAY THREATEN OR COERCE MCCUTCHEON INTO**
4 **SIGNING THE JUNE 17, 2015 AGREEMENT?**

5 A No. Neither I nor Tommy Fowler in any way threatened or coerced Mr. McCutcheon. We
6 simply explained to McCutcheon that, in order for DEC to provide safe electrical service
7 to the Drive-In, it was necessary to upgrade the electrical service and that upgrading the
8 electrical service would result in an increase in rates. McCutcheon freely and voluntarily
9 signed the agreement and did so without any threats, coercion, or duress.

10 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A Yes, it does.

1 **MR. ELLERBE:** No further questions from me. I
2 appreciate your summarizing your testimony, and
3 please answer any questions that counsel or the
4 Commissioners would have.

5 **MR. SHISSIAS:** All right, then.

6 **CROSS EXAMINATION**

7 **BY MR. SHISSIAS:**

8 **Q** Mr. Lane, which people – who were the people or person,
9 if there was only one person, who made the decision to
10 cut the power to the drive-in on the 17th? Who was
11 that?

12 **A** That was probably two people, probably myself and Mr.
13 Fowler.

14 **Q** You and Mr. Fowler. Okay. Now, did you consult Duke
15 attorneys on this issue?

16 **A** No, sir.

17 **Q** Okay. Do you have – is there an official Duke policy on
18 when somebody can be forced off the Greenwood Rate, or
19 is there a written policy?

20 **A** We consulted that, at times –

21 **Q** Well, hang on.

22 **A** Sure.

23 **Q** Is there a written Duke policy on whether somebody –
24 when somebody can be forced off the Greenwood Rate?,
25 written on a piece of paper?

1 **A** My belief is that there is policy in regard to not just
2 the Greenwood Rate but any Duke service that, when an
3 unsafe condition exists, it's not just policy but our
4 responsibility to cut it off.

5 **Q** Okay. Now, what I asked you was, is there an official,
6 written Duke policy on when somebody can be moved from
7 the Greenwood Rate? I didn't ask about cut-off power; I
8 said "rate."

9 **A** Policy would be, counselor, in my view, the Greenwood
10 Rate regulations, which are, generally speaking, that if
11 there's a change in service connection or an increase –
12 significant increase in demand, or an unsafe condition.

13 **Q** Okay. So that's the Duke – that is the Duke policy?

14 **A** I would say that is the Duke policy.

15 **Q** Okay. And do you have it written down on a piece of
16 Duke paper someplace, or are you simply relying on – are
17 you relying on what it says in the PSC Order and the
18 case law?

19 **A** Well, we would always rely on what the PSC orders say,
20 but –

21 **Q** But what I'm asking is do you have your own?

22 **A** Do I have my own?

23 **Q** Yes.

24 **A** No, sir.

25 **Q** Okay. All right. Now –

- 1 **A** But let me – let me clarify that. I'm a Government and
2 Community Relations representative. I only get involved
3 in operational issues when we believe that they are
4 significant issues or have – you know, or might create
5 exactly what we're in the midst of here today. So, our
6 Operations people – our Construction and Maintenance,
7 Transmission, all of our Operations people – I'm quite
8 sure have exactly the documents that you just asked me
9 for. If you ask me if I personally do, I do not.
- 10 **Q** Well, I mean, you don't have that document, but you were
11 one of the two people that made the decision to cut the
12 power, right?
- 13 **A** Well, Operations made the decision. They made it with
14 my concurrence –
- 15 **Q** So Operations –
- 16 **A** – because I was going to be the person – I manage
17 Community Relations. Our relationship with our
18 customers, how our company is perceived, the reputation
19 of our company is my responsibility.
- 20 **Q** Now, a second ago, you said that – you said that two
21 people made the decision to cut the power: It was you
22 and Tommy Fowler.
- 23 **A** Correct.
- 24 **Q** Okay. And now you're talking about Operations.
- 25 **A** Tommy Fowler's part of Operations.

1 Q Anybody else in –

2 A C&M –

3 Q – Operations?

4 A – supervisor.

5 Q Is any –

6 A Locally, he's the senior Operations officer, locally, at
7 Greenwood.

8 Q So, Operations, specifically Tommy Fowler? Okay.

9 A Yes, sir.

10 Q All right. What work, in your understanding, is
11 sufficient to constitute an upgrade?

12 A If we – an upgrade would be a change to the – in my
13 opinion again; not an operations guy. But an upgrade
14 would be a significant change in service. In this case,
15 it was created by increased demand, we believe. So when
16 you changed out the line – I mean, in layman's terms,
17 when the line was changed out from the transformer to
18 this customer service connection, that would be an
19 upgrade.

20 Q So fatter wire would –

21 A That would be a change in the service connection, and an
22 upgrade.

23 Q So, thicker wire is an upgrade, okay.

24 A Did you say is or is not?

25 Q Are you saying that thicker wire is an upgrade?

1 A Could be.

2 Q Well, when is it not an upgrade?

3 A Well, in this case –

4 Q Well, in –

5 A I'm going to speak specifically to this case, counselor.

6 In this case, it certainly was an upgrade.

7 Q Okay, well –

8 A We were trying to meet demand.

9 Q So how do you differentiate – you said in some cases.

10 So how do you differentiate this case, where it clearly

11 was, you say, from another case where it clearly would

12 not be, or maybe less clearly would not be?

13 A Well, there would be dozens of situations in which that
14 might be the case.

15 Q Well, name some.

16 A Okay. On the customer side, let's just say that – let's

17 just say that there was – that there was a failure of

18 equipment on the customer side that required a

19 significant change on their part, and that did not

20 concur or that didn't meet with the standards for the

21 Old Greenwood Rate. Let's just say, for example, that

22 they had to put a meter base in that was in excess of

23 200 amps. That would remove you from the Greenwood

24 Rate.

25 Q All right. Another – I'm going to move along to another

1 question. Does Duke perform routine maintenance and
2 equipment repair and replacement and wire replacement
3 for people who are on the Duke rate versus Greenwood
4 Rate in a different manner?

5 A I don't think I'm qualified to answer that.

6 Q You don't know.

7 A I don't know.

8 Q Okay. Anybody else here who does?

9 A We have two people here would be qualified to answer
10 that question.

11 Q And who would those two people be?

12 A Mr. Fowler, who has given testimony, and the gentleman,
13 his supervisor, who's with him, who will give testimony
14 later.

15 Q That would be Mr. Lunsford?

16 A Yes, sir.

17 Q Okay. All right. Now, Mr. McCutcheon called you on the
18 17th about the power situation.

19 A No, sir, I called him.

20 Q You called -

21 A Excuse me. On - correct - well, yeah, on the 17th he
22 called me. He called me.

23 Q Somebody called - somebody called someone.

24 A He called me.

25 Q Okay.

1 A He called me on the afternoon of the 17th. Excuse me.

2 Q Okay. And you said you met with him on that evening?

3 A Correct.

4 Q Now, at that time, were you aware of the PSC Complaint
5 that had been filed?

6 MR. ELLERBE: Objection, Mr. Chairman. There
7 was no PSC Complaint; there was a call made to the
8 Office of Regulatory Staff.

9 MR. SHISSIAS: I apologize. I will rephrase.

10 BY MR. SHISSIAS:

11 Q Were you aware of the ORS complaint?

12 A My recollection, on the 17th, between the time of the
13 disconnection and the time that I met with the
14 McCutcheons, my recollection is that Ms. Barbara
15 Yarborough, who was at that time our Rates director in
16 Charlotte, I can't tell you – because we're talking
17 almost three years ago now – I can't tell you if she
18 spoke directly with me or if she spoke with someone in
19 Greenwood, but my recollection to you is that, before I
20 met with the McCutcheons, I knew there had been a call
21 made to the ORS.

22 Q Okay. And you got that information – either somebody
23 called you, or an e-mail, somebody within Duke?

24 A I can't specifically remember how I came about that
25 information. My best guess sitting here talking to you

1 today is that when I got back to my office, there was
2 probably either an e-mail or a phone message, or it
3 could've simply been that someone in the office was
4 aware of that and made mention of that to me.

5 **Q** Okay. So, now, when you met with them, that powerline
6 had been cut, right?

7 **A** The service had been disconnected when I met with them.

8 **Q** Okay. Well, I mean, you know that the powerline was
9 severed physically with a pair of shears, right?

10 **A** I don't know that.

11 **Q** Okay. You hadn't been to the site after it happened?

12 **A** That day?

13 **Q** Right.

14 **A** No, sir.

15 **Q** Okay. All right. Now, you –

16 **A** My belief would be that we disabled that service from
17 the transformer. But, again, you have folks here who
18 can provide direct testimony and answer that question.

19 **Q** And is it your testimony that you weren't going to
20 reconnect that powerline unless our clients agreed to
21 this upgrade?

22 **A** We could not restore that service at that time unless
23 the McCutcheons agreed and gave us permission to upgrade
24 that service.

25 **Q** Okay. And I'm going to put up on the projector here

1 this exhibit to your testimony [indicating]. Okay. And
2 that's Exhibit A to your testimony. Now, who drafted up
3 that agreement?

4 **A** I did.

5 **Q** You did.

6 **A** Yes, sir.

7 **Q** Okay. Did you write it up on your computer that
8 afternoon?

9 **A** Typed it up on my computer and printed it on our
10 printer.

11 **Q** Okay. Did you consult with Duke Legal on this?

12 **A** I did not.

13 **Q** You did not. Okay. It's not on Duke letterhead, is it?

14 **A** It is not.

15 **Q** Now, if Mr. McCutcheon refused to agree to that upgrade
16 and wanted to go forward with the ORS complaint, in the
17 meantime would they have power?

18 **A** No.

19 **Q** No. Okay. And how long – did you tell them how long
20 sorting out a complaint like that might take, when you
21 met with them?

22 **A** I don't know that I knew how long it might take to sort
23 out the Complaint.

24 **Q** Well, how long might it take?

25 **A** I think it might take weeks or a month.

1 Q Did you tell them that it –

2 A We talked about that.

3 Q You talked about how long it would take to resolve an
4 ORS complaint?

5 A Yes. And let me put that into the context in which that
6 conversation occurred, if you will.

7 Q No, let's move on.

8 MR. ELLERBE: Mr. Chairman, the witness ought
9 to be able to explain his answer.

10 MR. SHISSIAS: This is cross- – I'm cross-
11 examining him, and it's not that he's explaining
12 his answer; he's elaborating on stuff that he
13 should've put in his direct.

14 CHAIRMAN WHITFIELD: Mr. Shissias, if you
15 could let him finish his answer.

16 MR. SHISSIAS: I'm sorry.

17 BY MR. SHISSIAS:

18 Q Please.

19 A The conclusion of my answer, counselor, is this: The
20 reason I drew the affidavit that we're looking at now
21 was because my relationship over the past 48 hours with
22 Tommy McCutcheon had taken a dramatic turn from what my
23 relationship had been with him before. When he told me,
24 "Don't come on my property, don't call me anymore. Talk
25 to Billy Garrett," that was a drastic change in the

1 relationship that I had had with my customer and wanted
2 to have with my customer.

3 The reason you have that affidavit before you today
4 was to clearly demonstrate to anyone, going forward,
5 that there was a clear understanding that we were
6 restoring that service with the permission of the
7 customer, with the understanding of the customer as to
8 why we had had to disrupt service. And, quite frankly,
9 the conversation about the ORS and the call to the ORS
10 was my making the McCutcheons aware that my effort as a
11 Community Relations officer for Duke Energy was to work
12 beyond anything that I could, to get their business
13 turned back on and put them back in the situation they
14 wanted to be. The conversation was not, in any way, to
15 say, "Well, if you don't deal with me on my terms, you
16 may be out for a long time." My goal was to get them on
17 as quickly as I could, and that's what we did.

18 **Q** Did you consider the idea of performing the upgrade and
19 then going forward—

20 **A** No, sir.

21 **Q** — with the Complaint?

22 **A** Because the upgrade — to have performed the upgrade
23 without that clear understanding with them, I thought,
24 was really going to muddy the water in this issue, going
25 forward.

1 Q Okay. Well, muddying the water is one thing, okay, but
2 there's an ORS complaint filed, right?

3 A There had been a call to the ORS.

4 Q Been a call to the ORS, okay. And could you not still
5 fight this out while they had the power on?

6 A Repeat that question?

7 Q Could you not still fight out an ORS complaint with the
8 power turned back on?

9 A Not without the service being rebuilt.

10 Q Well –

11 A We weren't going to restore – we weren't going to
12 restore an unsafe condition.

13 Q I understand that. And I understand that it's your
14 position that the work that you did justifies taking
15 someone off the Greenwood Rate, and that's a
16 disagreement in this case.

17 A Correct.

18 Q But couldn't that – could not – couldn't that
19 disagreement be resolved with the power on and the
20 system upgraded and then fight about it later?

21 A Well, we didn't want to fight about it at all, but, if
22 we did the work that we felt we had to do –

23 Q Right?

24 A – I knew, clearly, that that work was going to
25 disqualify the Greenwood Rate. Why would I sit and talk

1 with them and pretend that it wasn't?

2 **Q** But if you knew that you'd be –

3 **A** Or pretend that that was up for discussion?

4 **Q** But if you knew that you'd be vindicated at ORS, it
5 shouldn't matter one way or the other, right?

6 **A** I would disagree with that.

7 **Q** Okay, all right. By the way, after Mr. McCutcheon
8 signed that agreement, did you report the agreement had
9 been signed back to somebody at Duke? Did you –

10 **A** I recall making Ms. Barbara Yarborough aware that he had
11 signed an agreement and requested we restore his
12 service.

13 **Q** And you mentioned, in your earlier testimony, Ms.
14 Barbara Yarborough. And who – what was her function?

15 **A** At that – she's retired now, but at that time she was
16 the Rates director for Duke Energy. She worked out of
17 Charlotte.

18 **Q** Did you possibly report it back also to Pam House_[phonetic]?
19 Am I saying her last name properly?

20 **A** I'm not familiar with that name.

21 **Q** Okay. All right. And did you tell either – did you
22 tell Ms. Yarbrough that Mr. McCutcheon had voluntarily
23 agreed to give up the Greenwood Rate?

24 **A** I told Ms. Yarbrough that – I faxed or scan-copied that
25 document to Charlotte, so they would clearly see what

1 the understanding was, so they saw the same document
2 that you've got on the screen.

3 MR. SHISSIAS: All right.

4 Beg your indulgence.

5 [Brief pause]

6 I have nothing further. Thank you, very much.

7 WITNESS: Thank you.

8 CHAIRMAN WHITFIELD: Thank you, Mr. Shissias.

9 ORS? Mr. Nelson?

10 MR. NELSON: No questions. Thank you, Mr.
11 Chairman.

12 CHAIRMAN WHITFIELD: Commissioners – before we
13 go too much further, I just want to get a little
14 clarity.

15 EXAMINATION

16 BY CHAIRMAN WHITFIELD:

17 Q I think we've got a lot of Tommys here, as has been
18 pointed out. I just want to clarify, Mr. Fowler that
19 was just up here before you, is his middle name Tommy?

20 A Yeah, I apologize, Chairman.

21 Q Okay.

22 A Tommy Fowler is Thomas Douglas Fowler.

23 Q Douglas T. Fowler?

24 A Douglas T. Fowler.

25 Q That's the same person?

1 A Yes, sir.

2 Q All right, sir.

3 A And I will try hard to –

4 Q All right, sir.

5 A – use last names, going forward.

6 CHAIRMAN WHITFIELD: I know Mr. Ellerbe
7 clarified the Tommys, but I wanted to clarify the –
8 with Mr. Fowler.

9 Commissioner Fleming.

10 EXAMINATION

11 BY COMMISSIONER FLEMING:

12 Q Good morning.

13 A Good morning, Commissioner.

14 Q I wonder if I asked you – I believe you're the one that
15 knows how many rates are still on the Greenwood Rate?

16 A Yes, sir.

17 Q And how many?

18 A Twenty-five hundred and forty [2540].

19 Q Twenty-five hundred forty [2540]?

20 A Yes, ma'am. And if I may elaborate on that,
21 Commissioner –

22 Q Uh-huh?

23 A – when I tell you there are 2540 Duke Energy facilities
24 that the Greenwood Rate still applies to, that doesn't
25 mean houses or apartments or anything. That could be a

1 well pump in a farmer's field; it could be a barn light;
2 it could be a residence. We have no industrial
3 customers that remain on the Greenwood Rate in Greenwood
4 County, and not a lot – and I can't give you the exact
5 number of commercial accounts. But there are a total of
6 2540, as of last week, facilities on the Old Greenwood
7 Rate in Greenwood County.

8 **Q** And are you actively looking to get as many customers on
9 the regular rate, as opposed to the Greenwood Rate,
10 because of the – well, I'm sure those lines have been in
11 use a long time, that are under the Greenwood Rate.

12 **A** They have. They have, Commissioner. Some of them
13 probably since the '60s. However, lines last a long,
14 long time. Service lines last a long time. I will tell
15 you that there is no effort by our company to remove
16 people from the Greenwood Rate. You all, more familiar
17 than anyone else, know the terms of that agreement. I
18 would also tell you that I believe, in my capacity with
19 the company, that we, candidly, go to great lengths
20 sometimes not to have to remove people. As I said, in
21 my job capacity as a Community Relations person, if you
22 take somebody off the Greenwood Rate, they're not going
23 to be happy. We clearly understand that. But to give
24 you an example, you know, I think back in the early days
25 of the rate agreement, if you look at the – and I've

1 read the language; it would lead you to believe that if
2 an Act of God occurred, a tree falling or a storm, and
3 it tore the service off the house, that that Greenwood
4 Rate could be disqualified. We've never done that, not
5 in 50-plus years. So I just want to make it clear that
6 there's absolutely no effort on the part of Duke Energy
7 to try to remove people from Greenwood Rate.

8 **Q** And the shareholders absorb the expense of staying on
9 the Greenwood Rate?

10 **A** Yes, ma'am. I'm told that it's around a \$2 million a
11 year revenue loss, cost to the company. As you said,
12 it's absorbed by the shareholders, not by the
13 ratepayers.

14 **Q** Okay. Now, going back to that conversation, can you
15 just state again when the first phone call was made to
16 Mr. McCutcheon?

17 **A** Well, I became – I think the –

18 **Q** The first phone call that you made.

19 **A** Yes, ma'am. Again, we're going back three years now.
20 Been a lot of water under the bridge since then. But I
21 believe that I was aware of the first outage, because it
22 was the auto drive-in theater. Their customers are our
23 customers. So when the lights go out and you're sitting
24 in your car watching the movie, you know, and it's
25 obvious that all the lights are out, people are going to

1 think, "Well, that's on Duke. That's on Duke." So my
2 recollection is that I was aware of the first outage,
3 and then was made aware, on that Monday morning,
4 probably by Tommy – I can't tell you, exactly, but I
5 think by Tommy Fowler – that we had a second outage. So
6 that would've been on the morning of the 15th. And
7 because it was the auto drive-in theater and because the
8 McCutcheons, you know, I'm acquainted with them, I made
9 a call to Mr. McCutcheon to say we've got a problem out
10 there and we've got to fix it.

11 **Q** And you said there were several calls back and forth.

12 **A** He and I –

13 **Q** – between then –

14 **A** – talked back and forth –

15 **Q** – and the –

16 **A** – several times.

17 **Q** – 17th.

18 **A** You know, on – I was getting Mr. McCutcheon on his cell
19 phone. We talked back and forth several times, yes,
20 ma'am.

21 **Q** And what was his perspective on this, from what you
22 recall?

23 **A** Well, he wasn't happy. As I recall, in my initial call
24 to him, he basically said, "Theo, I'll just have my
25 electrician take care of this," and I said, "Tommy,

1 that's not going to resolve this. Mr. McCutcheon,
2 that's not to resolve this. This is – the service is
3 overloaded. You know, our line will not handle the
4 demand.” That's what the issue was, and in my mind it
5 was a very clear-cut issue. So we had those
6 conversations. Mr. McCutcheon didn't want to lose the
7 rate, I understand that. And so, after a couple of
8 those phone calls, that's when Tommy – Mr. McCutcheon,
9 excuse me – stopped talking to me and told me to talk to
10 Billy Garrett, who is a local attorney in Greenwood.

11 **Q** And was there a discussion about the economic impact
12 that could have on the business?

13 **A** I don't think – Commissioner Fleming, I don't think,
14 beyond Mr. McCutcheon probably saying to me, “Theo, this
15 is going to cause my power bill to go up, you know,
16 dramatically,” which it certainly would.

17 **Q** Okay. So you did have – so there was a period there
18 with lots of discussions before the meeting, so they
19 were aware of what the meeting was about when they came
20 to the office?

21 **A** Well, the meeting was – I don't want to say “lots.”
22 There were several conversations, until the point in
23 time that Mr. McCutcheon broke off contact with me.
24 Then after the service was disconnected, which would've
25 been on the 17th, Mr. McCutcheon called me on the

1 afternoon of the 17th and I said, "Come in and let's sit
2 down and talk about this," and we did. That's when I
3 had him to sign that agreement. That's when I notified
4 Ms. Yarbrough that we wanted – "we," Operations and
5 myself – wanted to restore his service as soon as
6 possible, because I knew he was set up to open up for
7 business the next night. This was all about trying to
8 facilitate making this as painless for this customer as
9 possible. But that document that you saw was only about
10 assuring that there was a crystal-clear understanding of
11 what we were doing and why we were doing it.

12 Q And did he ask to bring his attorney to that meeting?

13 A No.

14 Q Was there discussion?

15 A No.

16 Q Okay. So he and Ms. McCutcheon came to the meeting –

17 A Yes, ma'am.

18 Q – and met with you and Mr. –

19 A Yes, ma'am.

20 Q – Fowler.

21 A At our offices, yes, ma'am.

22 Q Okay. All right. Thank you.

23 A Thank you.

24 CHAIRMAN WHITFIELD: Thank you, Commissioner
25 Fleming.

1 Commissioner Howard.

2 **EXAMINATION**

3 **BY COMMISSIONER HOWARD:**

4 **Q** When the Greenville^[sic] Rate went into effect, how many
5 people immediately did that include?

6 **A** Initially, Commissioner?

7 **Q** Yeah.

8 **A** Commissioner, I'm not sure. I think I've been told
9 that, initially, it was over 4000.

10 **Q** And it's only 2500 now?

11 **A** Twenty-five hundred and forty [2540].

12 **Q** Thank you.

13 **A** Yes, sir.

14 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
15 Howard.

16 Commissioner Elam.

17 **COMMISSIONER ELAM:** Thank you.

18 **EXAMINATION**

19 **BY COMMISSIONER ELAM:**

20 **Q** Good morning.

21 **A** Good morning, Commissioner.

22 **Q** You said it dropped from over maybe 4000 to around 2500
23 now? What has been the reason for the other changes?

24 **A** Since the mid-'60s?

25 **Q** Right.

1 A Yes, sir. And, Commissioner, I want to make this clear.
2 That's information that has been told to me. I don't
3 have firsthand information of what that number might've
4 been at its height. As I said, you know, if you lived
5 in a house that you purchased, say a house that was
6 constructed in the late '60s or maybe even early '70s,
7 and the rate applied, and your family grew, and
8 technology – as we all know, everything runs off
9 electricity. As your demand increased at your home, at
10 your residence, you might start having internal
11 electrical problems as a result of that service
12 connection not being adequate. And in those cases,
13 those customers, although they had a cheaper rate, might
14 simply decide this is no longer safe. There could be a
15 potential that if people wanted to afford themselves the
16 different energy efficiency programs that we offer, you
17 couldn't do that if you're on the old Duke rate. So I
18 think there are any number of reasons: some natural
19 causes, some simply transfers of ownership even though
20 ownership, as you know, doesn't remove the rate. I
21 think there are any number of reasons over decades that
22 have caused those. There are homes that have burned
23 down; there are homes that have been torn down. There
24 are businesses that have closed and then been repurposed
25 as something else, where that service just was not

1 adequate, as the case I believe came to be with the auto
2 drive-in theater. So there are numbers of situations
3 that could cause the Greenwood Rate to go away.

4 **Q** For cases that you are familiar with, personally –

5 **A** Yes, sir.

6 **Q** – as far as a commercial rate, what has been generally
7 the reason why a commercial customer, voluntarily or
8 involuntarily, has been taken off the old rate?

9 **A** Honestly, Commissioner, in the 10 years I've been in
10 this job in Greenwood County, this is the first
11 commercial customer that I'm aware of where the service
12 burned up. I can't tell you from just my recollection,
13 sitting here today, that I can tell you of another
14 commercial customer. Rarely, Commissioner, do they
15 voluntarily go off if they believe there's a business
16 option for them, certainly.

17 **Q** Okay. The agreement that was signed, is that in any way
18 standard language for a customer leaving, being taken
19 off, the old rate, or you just drafted that on the spot
20 for them?

21 **A** Well, on the spot was the only time this has ever
22 occurred. And as I said, this is the only time that I'd
23 had to work through this scenario.

24 **Q** So you didn't have any kind of a template that you could
25 use for that?

1 **A** Oh, no, sir. No, sir. My goal was purely and simply,
2 Commissioner, honestly, to have that document if there
3 was anything, going forward, where I had to clearly
4 articulate to anyone that wanted to look, what our
5 intention was, why we did what we did, and that we did
6 it with the customer's full knowledge and consent. That
7 was it.

8 **Q** Have you taken any heat from General Counsel's office
9 for drafting an agreement?

10 **A** No, sir.

11 **Q** Okay.

12 **A** Have not.

13 **Q** All right. Thank you. I have nothing further.

14 **A** Thank you, very much.

15 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
16 Elam.

17 Commissioner Hall.

18 **COMMISSIONER HALL:** Thank you.

19 **EXAMINATION**

20 **BY COMMISSIONER HALL:**

21 **Q** Good morning, sir. I just want to ask you a few more
22 questions about the agreement. I'm sorry we're focusing
23 on it so much, but I just want to be clear about it.
24 Mr. McCutcheon's testimony was that "I did not
25 voluntarily sign this document. Defendant/Respondent's

1 agents threatened me with an extended loss of service to
2 my business, which would have been a catastrophic loss.”
3 I know this was two years ago, now, but can you remember
4 kind of the dialogue surrounding the agreement?

5 **A** I can remember exactly, and I appreciate you asking that
6 question, because that is exactly the testimony that I
7 wanted to give when I was just being questioned by the
8 counselor. There was conversation that day and, quite
9 frankly and honestly, I was frustrated that that
10 situation had gone to the point in which it had gone. I
11 really pride myself on working for the benefit of our
12 customers and trying to always work to a mutually
13 satisfactory conclusion. So, at the point in time when
14 Mr. McCutcheon wouldn't talk to me, who I considered to
15 be a community friend, I didn't like that. That's not
16 the kind of dialogue I wanted to be having with a
17 customer in Greenwood County.

18 The conversation about that time that might amass
19 if we were pushed into a hearing in regard to this, or
20 some kind of judicial decision, my comments about that
21 were solely this: “Why did you not work with me to
22 resolve this before we got to this point?” That was my
23 frustration. The customer-focused and customer-
24 friendly, if you want to call it, side of that was, my
25 comments to the McCutcheons was, “I'm going to do

1 everything in my power..." – and I, frankly, called Ms.
2 Yarbrough to basically get her consent – "I'm going to
3 do everything in my power to get your service restored
4 and back on as quickly as possible, up to and including
5 trying to make sure that you are able to open for
6 business tomorrow evening." And they were.

7 **Q** Thank you.

8 **A** Yes, ma'am.

9 **COMMISSIONER HALL:** Thank you, Mr. Chairman.

10 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
11 Hall.

12 Commissioner Hamilton.

13 **COMMISSIONER HAMILTON:** Thank you, Mr.
14 Chairman.

15 **EXAMINATION**

16 **BY COMMISSIONER HAMILTON:**

17 **Q** Mr. Lane, happy to have you with us, sir.

18 **A** Thank you, sir.

19 **Q** Mr. Lane, in your earlier –

20 **CHAIRMAN WHITFIELD:** Commissioner Hamilton,
21 can you get a little closer to your mic?

22 **COMMISSIONER HAMILTON:** Yes, sir [indicating].
23 We all got a bad habit, don't we?

24 **BY COMMISSIONER HAMILTON:**

25 **Q** Mr. Lane, earlier in your testimony you mentioned at one

1 time that Mr. McCutcheon had advised you not to call him
2 again, and to call an attorney, Mr. Garrett?

3 **A** Mr. Billy Garrett, yes, sir.

4 **Q** Yeah. Did you call Mr. Billy Garrett?

5 **A** No, sir.

6 **Q** And then you just bypassed his attorney?

7 **A** I didn't have business with his attorney, Commissioner.

8 **Q** I thought Mr. McCutcheon directed you to have business
9 with him, in his behalf.

10 **A** He said, "Don't come on my property, don't talk to me.
11 If you need to talk to me, talk to Billy Garrett."

12 **Q** Okay.

13 **A** Well, at that point in time – and just for clarity,
14 Commissioner – when Mr. McCutcheon ceased communication
15 with me, then my position was, then, I've got an unsafe
16 condition out there; I'm going to have to turn that
17 service off.

18 **Q** So your purpose after that last conversation was to turn
19 his service off?

20 **A** My purpose?

21 **Q** Yes, sir.

22 **A** Yes, sir, it was my purpose until we could bring it to a
23 safe condition.

24 **Q** All right. And you called Mr. McCutcheon, I think you
25 said, the next day and –

1 A No, sir.

2 Q Same day?

3 A No, sir. The next day – we restored on the 18th, turned
4 it off on the 17th, so that conversation would've been
5 on the 16th. On the 17th after the service was
6 disconnected, Mr. McCutcheon called me, within hours of
7 the disconnection.

8 Q Okay. All right. Thank you, sir, very much.

9 A Yes, sir. Thank you.

10 CHAIRMAN WHITFIELD: Thank you, Commissioner
11 Hamilton.

12 Commissioner Randall.

13 VICE CHAIRMAN RANDALL: Thank you, Mr.
14 Chairman.

15 EXAMINATION

16 BY VICE CHAIRMAN RANDALL:

17 Q Just one quick question on the service. You were
18 talking about 4000 meters down to 2500 meters. Four
19 thousand's about the size of Clinton, South Carolina, I
20 think. But is your service area – is there a Greenwood
21 CPW service there, and some co-op area around you?

22 A The Greenwood CPW, Commissioner, basically has service
23 inside the City limits.

24 Q Right.

25 A We have some limited customers inside the city limits,

1 but, by and large, Greenwood CPW serves customers within
2 the City.

3 **Q** Okay. So yours is mostly outside the City?

4 **A** Yes, sir, in the County.

5 **Q** Okay. Thank you.

6 **A** Yes, sir.

7 **VICE CHAIRMAN RANDALL:** Thank you, Mr.
8 Chairman.

9 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
10 Randall.

11 Any other Commissioner questions?

12 [No response]

13 If not, Mr. Ellerbe?

14 **MR. ELLERBE:** We have no redirect for this
15 witness, Mr. Chairman.

16 **CHAIRMAN WHITFIELD:** All right. Thank you.
17 And, Mr. Lane, you may step down.

18 **WITNESS:** Thank you, Chairman.

19 [WHEREUPON, the witness stood aside.]

20 **CHAIRMAN WHITFIELD:** Mr. Ellerbe, your next
21 witness, sir.

22 **MR. ELLERBE:** We'll call Joel Lunsford,
23 please.

24 **CHAIRMAN WHITFIELD:** Come forward, Mr.
25 Lunsford.

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[Witness sworn]

THEREUPON came,

J O E L M . L U N S F O R D ,

called as a witness on behalf of the Defendant/Respondent,
who, having been first duly sworn, was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. ELLERBE:

Q Mr. Lunsford, would you state your name for the record,
please, sir?

A Yes, sir. My name is Joel Lunsford.

Q And by whom are you employed and in what capacity?

A I work for Duke Energy. I'm the general manager for C&M
for the Upstate of South Carolina. The best way for me
to describe that, I'm responsible for the powerlines in
the Upstate of South Carolina, which includes Greenwood,
South Carolina.

Q And did you cause to be prepared eight pages of direct
testimony which has been prefiled in this docket?

A Yes, sir.

Q Do you have any changes to that testimony?

A I do not.

Q If I were to ask you the questions contained in the
prefiled testimony today, would your answers be the
same?

1 **A** They'd be the same, yes, sir.

2 **MR. ELLERBE:** Okay. Mr. Chairman, we'd ask
3 that Mr. Lunsford's direct testimony be copied in
4 the record as if given from the stand.

5 **CHAIRMAN WHITFIELD:** Mr. Lunsford's direct
6 testimony will be entered into the record as if
7 given orally from the stand.

8 **BY MR. ELLERBE:**

9 **Q** And, Mr. Lunsford, were there two exhibits attached to
10 your direct testimony?

11 **A** Yes, sir.

12 **MR. ELLERBE:** Okay. Mr. Chairman, I think
13 both of them have already been – may have already
14 been introduced, but just in an abundance of
15 caution – I know they've been discussed – I'd like
16 to move into the record Exhibits A and B attached
17 to Mr. Lunsford's direct testimony.

18 **CHAIRMAN WHITFIELD:** Mr. Lunsford's Exhibits A
19 and B will be entered into the record as Hearing
20 Exhibit No. 8.

21 [WHEREUPON, Hearing Exhibit No. 8 was
22 marked and received in evidence.]

23 **BY MR. ELLERBE:**

24 **Q** And, Mr. Lunsford, did you also –

25 **MR. ELLERBE:** Thank you, Mr. Chairman.

1 **BY MR. ELLERBE:**

2 **Q** Mr. Lunsford, did you also cause to be prepared
3 supplemental testimony that's been prefiled in this
4 docket?

5 **A** Yes, I did.

6 **Q** If I were to ask you the questions contained in your
7 supplemental testimony today, would your answers be the
8 same?

9 **A** They would.

10 **MR. ELLERBE:** Okay. Mr. Chairman, we'd ask
11 that Mr. Lunsford's supplemental testimony be
12 copied in the record as if given from the stand.

13 **CHAIRMAN WHITFIELD:** Mr. Lunsford's
14 supplemental testimony will be entered into the
15 record as if given orally from the stand, Mr.
16 Ellerbe.

17 **MR. ELLERBE:** Thank you, Mr. Chairman.

18 **BY MR. ELLERBE:**

19 **Q** Mr. Lunsford, you mentioned your position, and you
20 described that. I appreciate that. Would you give the
21 Commission a brief summary of your educational and
22 professional background?

23 **A** I will. I have a wide and varied professional
24 background. Starting with my education, I have a four-
25 year Electrical Engineering degree from Clemson

1 University. I'm a licensed professional engineer. With
2 Duke Energy, I've been with Duke Energy 35 years as an
3 engineer.. I design infrastructure and services that
4 would feed residential, commercial, and industrial
5 services. I also was the Engineering manager for a
6 group of engineers in Charlotte, North Carolina, that
7 did the same.

8 I also spent some time as a standards engineer,
9 where I was a subject matter expert on cables,
10 overloading of cables, and loading of cables, okay? I
11 also was a subject matter expert on overload protection,
12 when it comes to fuses, transformers, and cables. I was
13 the expert there, subject matter expert. I also have
14 spent time in the Safety Department, where I understand
15 and helped co-author many of the safety rules we operate
16 today. Furthermore, I'm a subject matter expert on
17 safety, when it comes to OSHA 1910.269; that's the
18 regulations that govern the safety around electric
19 utility operations. I'm also a subject matter expert on
20 the National Electric Safety Code; that's the code that
21 governs all utilities in the United States, as far as
22 how we design and operate our system. To a lesser
23 extent, I'm an expert on the National Electric Code –
24 but to a lesser extent.

25 **Q** Mr. Lunsford, when you talk about "subject matter

1 expert," that's within the company?

2 **A** Within the company and, in some cases, nationally, I'd
3 say.

4 **Q** Yes, sir. What is the purpose of – just briefly, what
5 is the purpose of your testimony in this proceeding?

6 **A** I think, as a subject matter expert, I'm here to testify
7 that I've done calculations, engineering calculations,
8 and have verified those calculations that the service
9 was overloaded.

10 **Q** Okay. Would you explain what is meant by the term
11 "thermal overload"?

12 **A** Thermal overload is literally what it means: thermal
13 heat. Right? And when we say that the cable overloads
14 or melts, it literally does that. It overloads and
15 melts. And when you run too much amperage through a
16 cable, it heats up and literally melts the insulation.
17 And I gave an example in my testimony that you may could
18 relate to: An extension cord. You know, you go to Home
19 Depot and you can spend \$30 for an extension cord or you
20 can spend \$100 for an extension cord. I always buy the
21 \$50 one. But if you hook that smaller extension cord,
22 the cheaper extension cord, up to, say, an air
23 conditioner, it becomes overloaded and it literally –
24 you can feel the heat from that extension cord,
25 sometimes so hot that you can't touch it. That's what's

1 meant by "thermal overload." When I say "thermal
2 overload," it's the heat that damages the cable and the
3 insulation of the cable, and literally causes the
4 insulation to melt and catch fire.

5 **Q** Mr. Lunsford, are you familiar with the two outage
6 incidents that we've been talking about in this case,
7 that occurred on May 30, 2015, and June 13, 2015?

8 **A** Yes, sir, I am.

9 **Q** Do you have an opinion about the cause of those outage
10 incidents, please, sir?

11 **A** Yes, sir, I do have an opinion. Based on my
12 calculations, we know what the load is –

13 **Q** Mr. Lunsford, I'm going to ask you the basis for your
14 opinion. Just, first, so were clear and the record will
15 be clear, what is your opinion about what was the cause
16 of those two outage incidents?

17 **A** The cable. Our infrastructure was overloaded.

18 **Q** Was that thermal overload you've just been talking
19 about?

20 **A** Yes, sir. Thermal overload.

21 **Q** Now, explain the basis for your opinion that the cables
22 were overloaded with too much load.

23 **A** It's very simple. We know what the load is from, the
24 drive-in. That's from our meter, our revenue meter. We
25 can take that load and calculate that into amperage.

1 Okay? We know what the capability of the wire that was
2 serving the drive-in; it was 185 amps. That's how many
3 amps it can carry, continuously. We know from our
4 calculations that the load was actually 225, right? So
5 225 was the actual load; the wire is capable of carrying
6 185 amps. That's about a 22 percent overload, okay?
7 That's based on calculations. So to verify that –

8 **Q** Mr. Lunsford, we're getting beyond the testimony, so we
9 can't talk about that verification.

10 **A** My bad.

11 **Q** Let me ask you – because we did put this in the direct
12 testimony. I want you to explain, a little bit more
13 slowly, how you did the calculation that led you to
14 conclude that the demand from the drive-in was 225 amps.

15 **A** It's pretty simple. We have a meter that meters the
16 usage.

17 **Q** Now, is that the meter that was put in after the
18 upgrade?

19 **A** After the upgrade. And that meter registers the energy
20 usage, the kilowatt-hours; it also registers the
21 kilowatt demand. It's the demand, is what overloads the
22 cable. And it's the demand that's what we size the
23 system to, not the energy. It's the demand, right? So
24 we take that demand, the kilowatt-hour demand, and we
25 calculate that into amperage by engineering

1 calculations. Right? And so that's the load, the
2 amperage load, that the drive-in is pulling, if you
3 will. And then you compare that to the capacity of the
4 wire, how much can the wire take. It's that simple.
5 It's not hard.

6 **Q** And that was the basis of your calculation that there
7 was an overload?

8 **A** Absolutely.

9 **Q** Okay. There was also – I want to ask you, because it
10 was in Mr. Calhoun's original testimony that he offered
11 the opinion that the current transformer was destroyed
12 and that was the explanation for the outage, or played
13 some role in the outage. Would you summarize your
14 testimony about any role of the current transformer in
15 these two outage incidents?

16 **A** Yes, sir. The current transformer had nothing to do
17 with the outage. That current transformer measures the
18 current for a metering standpoint, right? That was not
19 damaged. We continued to register through that meter.
20 I also verified that by talking to the technician who
21 changed that CT out. When we went back to a larger
22 service, we upgraded our metering to our new standard,
23 right? Simply an upgrade to new standards. I asked him
24 and he told me, "No, sir. That meter was intact." That
25 current meter. It was intact, not damaged. So I

1 respect Mr. Calhoun's opinion, but he's wrong. The CT
2 had nothing to do with the overload or the outage, at
3 all.

4 **Q** Mr. Lunsford, in your – let me direct your attention to
5 your supplemental testimony. What was the purpose of
6 your supplemental testimony?

7 **A** To verify what Mr. Gonzalez testified, was, he had to
8 replace a fuse on a transformer. When the cable
9 overloaded, the service was automatically disconnected,
10 as designed by that fuse on the transformer blowing, if
11 you will. There's two ways that fuse opens up. There's
12 one by fault, and you can tell when a fuse opens up by
13 fault; it is very much fragmented and almost destroyed.
14 What Mr. Gonzalez saw, and I can collaborate that, it
15 was actually melted out, which is a forensics telltale
16 sign that it was an overload and not a fault. So that
17 just helps verify the situation that we think that the
18 cable, the service, was overloaded. It's just another
19 way to verify and validate our calculations.

20 **Q** Mr. Lunsford, just to – I wanted to clarify which
21 transformer was which, because we've got two different
22 kinds of transformers. And I put up on the screen the
23 Exhibit B to your testimony. If I could just ask you,
24 is this the pole-mounted transformer?

25 **A** So that's a pole-mounted transformer we keep talk about.

1 That's on the pole and that steps the high voltage down
2 to a voltage that the customer uses.

3 **Q** Is that where the fuse was that melted, you were just
4 talking about?

5 **A** Yes, sir. We have a fuse, a high-voltage fuse, that
6 protects that transformer from overload.

7 **Q** And this thing in the middle of the diagram, here –

8 **A** Now, that's the current transformer. That's what
9 meters, right? That has nothing to do with the service,
10 and it's actually literally a donut. The wire passes
11 through that without even making any electrical
12 connection, as you can see right ther. And they
13 actually call that a donut CT, right? So our wire
14 passes directly through that and then connects to the
15 weatherhead, as Mr. Fowler talked about. I tried to
16 draw those up there. It connects directly to the
17 weatherheads, to the customer's service entrance.

18 **Q** And the current transformer I asked you about and you
19 talked just a minute ago about disagreeing with Mr.
20 Calhoun that the current transformer had failed, that's
21 this transformer here that's for metering purposes; is
22 that right?

23 **A** Yes, sir. He alluded that it had failed but, in
24 reality, it had not.

25 **MR. ELLERBE:** Yes, sir. I'm just trying to

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clarify which one is which. Thank you for
summarizing testimony for my Mr. Lunsford.

[PURSUANT TO PREVIOUS INSTRUCTION, THE
PREFILED DIRECT TESTIMONY OF JOEL M.
LUNSFORD FOLLOWS AT PGS 244-251]

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In)
and Tommy McCutcheon,)
)
 Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
 Defendant/Respondent.)

**DIRECT TESTIMONY
OF
JOEL M. LUNSFORD
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME, CURRENT POSITION, AND BUSINESS**
2 **ADDRESS.**

3 A My name is Joel M. Lunsford. I am the General Manager, Construction and Maintenance,
4 for Duke Energy Carolinas ("DEC"). In my current position as General Manager of
5 Construction and Maintenance, I am responsible for the distribution grid in the Upstate of
6 South Carolina. My business address is 1636 Pearman Dairy Road, Anderson, SC 29625.

7 **Q PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
8 **BACKGROUND.**

9 A I graduated from Clemson University in 1982 with a B.S. in Electrical and Computer
10 Engineering. After graduating from Clemson, I began my career with Duke Energy and
11 have been employed by DEC for approximately thirty-five years. I am a licensed
12 professional engineer, having first obtained my license in 1986. My license has been active
13 at all times since I first obtained it. Throughout my career as a licensed professional
14 engineer, I have experience in the areas of transmission, distribution, underground network,
15 training, safety, and standards. On numerous occasions during my work for DEC I have
16 been involved in determinations of the proper equipment and facilities that were necessary
17 to provide service to various customers in a safe and efficient way. That type of analysis
18 is very similar to the subject of my testimony in this case.

19 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A The purpose of my testimony is to respond to allegations made in the Complaint filed by
21 Petitioner Tommy McCutcheon ("McCutcheon"), to respond to the opinions offered on
22 behalf of McCutcheon by James R. Calhoun ("Calhoun"), and to state my opinions

1 concerning the electrical failures that occurred at McCutcheon's drive-in movie theater
2 located at 3109 Hwy 25 South in Greenwood County, South Carolina (the "Drive-In").

3 **Q PLEASE STATE WHAT ACTIONS YOU HAVE TAKEN IN ORDER TO**
4 **PREPARE YOUR TESTIMONY IN THIS CASE.**

5 A I have reviewed the Complaint, the Affidavit and Pre-filed Testimony of McCutcheon, the
6 Affidavit and Pre-Filed Testimony of Calhoun, and the exhibits filed on behalf of
7 McCutcheon. I have also reviewed DEC's records relating to the Drive-In and spoken with
8 the DEC individuals who addressed the electrical failures at the Drive-In and I have visited
9 the Drive-In. I am familiar with the facilities and equipment that were in place to serve the
10 Drive-In prior to June, 2015 and with the facilities and equipment that were installed as
11 part of the June 2015 upgrade.

12 **Q IS IT YOUR UNDERSTANDING THAT THE DRIVE-IN EXPERIENCED TWO**
13 **POWER FAILURES IN MAY AND JUNE OF 2015?**

14 A Yes.

15 **Q DO YOU HAVE AN OPINION CONCERNING THE CAUSE OF THE MAY AND**
16 **JUNE 2015 POWER FAILURES AT THE DRIVE-IN?**

17 A Yes. In my professional opinion, the power failures were caused by thermal overload.

18 **Q EXPLAIN WHAT YOU MEAN BY THERMAL OVERLOAD.**

19 A Any conductor used to deliver electricity from one point to another is designed to safely
20 carry a certain maximum load. If the conductor is used to try to carry a load in excess of
21 what it is designed to carry it will heat up. Eventually the insulation can melt and even
22 cause a fire.

1 Q CAN YOU GIVE AN EXAMPLE OF THERMAL OVERLOAD THAT MIGHT BE
2 EXPERIENCED BY NON-ELECTRICIANS?

3 A Yes. Any hardware store will carry various types of extension cords that are designed for
4 different applications, from a basic thin extension cord that you might use to plug in a lamp
5 to a heavy duty cord designed to safely conduct sufficient power to operate something like
6 a power tool. Anyone who has used a small extension cord to try to operate an appliance
7 that requires a significant load has probably felt the cord get hot. That is thermal overload.

8 Q WHAT IS THE BASIS FOR YOUR OPINION THAT THE MAY AND JUNE 2015
9 POWER FAILURES AT THE DRIVE-IN WERE CAUSED BY THERMAL
10 OVERLOAD?

11 A At the time of the power failures, the Drive-In was served by a single triplex overhead 2/0-
12 3 conductor with polyethylene insulation rated at 75 degrees Celsius. The continuous
13 amperage rating for this type cable is 185 amperes. I believe that in June 2015 the Drive-
14 In had a demand load of at least 225 amperes, significantly higher than the capacity of the
15 conductor. It is my opinion that the overloaded line overheated and melted the insulation
16 causing the fires and the power outage.

17 Q WHAT IS THE BASIS FOR YOUR OPINION THAT THE DEMAND LOAD OF
18 THE DRIVE-IN WAS AT LEAST 225 AMPERES?

19 A. Prior to June 2015 there was no demand meter in place serving the Drive-In so we don't
20 have a direct record of the demand load at the time of the fires. However, when the
21 facilities were upgraded a kilowatt demand meter was installed at the Drive-In. Based on
22 what we know about operations of the Drive-In, I think the demand readings following the

1 upgrade are indicative of the peak demand during the period leading up to the fires.
2 Readings from June of 2015 show that the Drive-In's maximum load was 49.4 kilowatts.
3 This equates to 225 amperes of demand load which is the figure I used in reaching my
4 conclusion that the overhead service line to the Drive-In was loaded at 122% of its rating.

5 **Q ARE THERE OTHER RECORDS OF DEC THAT SUPPORT YOUR**
6 **CONCLUSION?**

7 A Yes. The spreadsheet attached as **Exhibit A** shows the annual usage for the Drive-In from
8 2004 through 2016. The spreadsheet was compiled from the business records of DEC that
9 are created continuously as we deliver service and then maintained by the company. The
10 values given in the chart are in Kilowatt Hours which shows total annual usage and doesn't
11 directly show what the demand was at any given point. However, the overall usage
12 increased significantly after 2008 and continued to increase leading up to the problems that
13 were experienced in 2015. These DEC records show an increase in the overall load in the
14 operation of the Drive-In. Given what we know about the typical demand of an operation
15 like a drive-in theater, with most of the demand for projection, cooking and cooling all
16 occurring at about the same time of day, I would expect the overall increased power usage
17 of the Drive-In to result in the type of increased peak demand that I think caused the thermal
18 overload.

19 **Q DO YOU HAVE A DIAGRAM THAT ILLUSTRATES THE ELECTRICAL**
20 **SERVICE PROVIDED TO THE DRIVE-IN IN MAY AND JUNE OF 2015?**

1 A Yes. The diagram attached as **Exhibit B** does that. The diagram shows the current
2 transformer, the 2/0-3 conductor, and the delivery point. The diagram also shows the
3 approximate location of the conductor failure due to thermal overload.

4 **Q IS IT YOUR UNDERSTANDING THAT DURING BOTH OUTAGES A FUSE WAS**
5 **BLOWN ON THE POLE MOUNTED TRANSFORMER THAT SERVES THE**
6 **DRIVE-IN?**

7 A Yes.

8 **Q IS THAT FACT CONSISTENT WITH YOUR EXPLANATION OF HOW THE**
9 **TWO INCIDENTS OCCURRED?**

10 A Yes. One of the reasons that there is a fuse in the transformer is to stop the delivery of
11 electricity to a service line that is overloaded. In both incidents the fuse worked as it was
12 intended, shutting down the flow of electricity to a service line that was being damaged as
13 a result of thermal overload.

14 **Q EXPLAIN THE FUNCTION OF THE CURRENT TRANSFORMER THAT IS**
15 **SHOWN ON THE DIAGRAM.**

16 A The current transformer metered the electricity usage of the Drive-In.

17 **Q DO YOU AGREE WITH MR. CALHOUN'S OPINION THAT THE ELECTRICAL**
18 **FAILURE DESTROYED THE 800/5 CURRENT TRANSFORMER?**

19 A No, I do not.

20 **Q WHAT IS THE BASIS FOR YOUR OPINION?**

21 A The 800/5 current transformer was not destroyed. I have confirmed with the DEC
22 employees that it was not destroyed but was replaced as part of the upgrade. Additional

1 proof that the old current transformer was not destroyed is that if it had been destroyed, it
2 would have stopped metering. It did not stop metering – we have metering readings from
3 May 30th through June 17th. If the meter had been destroyed during either of the outage
4 events it would have stopped functioning. Therefore, we know that the current transformer
5 was not destroyed.

6 **Q DID DEC REPAIR THE METERING INFRASTRUCTURE AT THE DRIVE-IN?**

7 A No. The metering infrastructure was never damaged. DEC simply upgraded the meter
8 installation to a new metering standard that provides more accurate meter readings.

9 **Q IN YOUR OPINION, DID THE EXISTING ELECTRICAL SYSTEM AT THE**
10 **DRIVE-IN IN MAY AND JUNE OF 2015 POSE A SAFETY HAZARD?**

11 A Absolutely. The existing electrical cables were insufficient to handle the thermal load at
12 the Drive-In and posed a fire risk. This is evidenced by the fact that on two separate
13 occasions in May and June of 2015, the Drive-In suffered loss of electrical power as a result
14 of a melted electrical cable.

15 **Q DO YOU AGREE WITH MR. CALHOUN'S STATEMENT THAT THE DRIVE-**
16 **IN'S "SERVICE ON ITS SIDE IS NOW AND HAS ALWAYS BEEN A 400**
17 **AMPERE SERVICE, WHICH COULD NOT HAVE OVERLOADED [DEC'S]**
18 **POWER SYSTEM?**

19 A No. Service size, as described by an electrician, is a function of the amperage of the main
20 breaker and has no influence on the load demand of the customer's electric system. The
21 electrical failures in this matter were caused by thermal overload.

1 Q AFTER THE MAY AND JUNE 2015 POWER FAILURES AT THE DRIVE-IN,
2 WAS IT NECESSARY FOR DEC TO CHANGE THE CHARACTER OF THE
3 CONNECTION AT THE DRIVE-IN?

4 A Yes. The overhead service conductors were thermally overloaded and posed a risk of fire.
5 It was necessary to upgrade the customer to ensure that electricity was supplied to the
6 Drive-In in a manner that was safe.

7 Q DOES THIS CONCLUDE YOUR TESTIMONY?

8 A Yes it does.

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[PURSUANT TO PREVIOUS INSTRUCTION, THE
PREFILED SUPPLEMENTAL TESTIMONY OF JOEL M.
LUNSFORD FOLLOWS AT PGS 253-255]

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2017-32-E

In Re:)
)
3109 Hwy. 25 S. L.L.C. d/b/a 25 Drive-In and Tommy McCutcheon,)
)
Complainant/Petitioner,)
)
v.)
)
Duke Energy Carolinas, LLC)
)
Defendant/Respondent.)

**SUPPLEMENTAL TESTIMONY
OF
JOEL M. LUNSFORD
ON BEHALF OF DUKE ENERGY CAROLINAS, LLC**

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A My name is Joel M. Lunsford. My business address is 1636 Pearman Dairy Road,
3 Anderson, SC 29625.

4 **Q HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?**

5 A Yes, I filed testimony earlier on March 8, 2017.

6 **Q WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

7 A Additional information came to my attention on March 27, 2017 that is relevant to the
8 issues in this proceeding.

9 **Q WHAT IS THAT INFORMATION?**

10 A As reflected in the supplemental testimony of Jesse Gonzalez, on June 13, 2015 he replaced
11 the fuse on the pole mounted transformer that serves the Drive-In. He found that the fuse
12 had melted opening the circuit and disconnecting service to the Drive-In.

13 **Q WHAT IS THE SIGNIFICANCE OF THE FACT THAT THE FUSE MELTED?**

14 A The fact that the fuse melted indicates that the transformer was subject to thermal overload
15 like the service line described in my earlier testimony. A melted fuse indicates that the
16 transformer overheated and that the fuse was not disabled by a sudden surge of electricity.
17 This confirms my opinion as expressed in my earlier testimony that the demand from the
18 Drive-In had overloaded our facilities that were in place to serve it.

19 **Q WAS THE TRANSFORMER REPLACED AS PART OF THE UPGRADE OF THE
20 FACILITIES USED TO SERVE THE DRIVE-IN?**

21 A Yes. Before the upgrade we had a 25KVA transformer and we replaced it with a 50KVA
22 transformer.

1 Q DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?

2 A Yes, it does.

1 **MR. ELLERBE:** Please answer any questions
2 counsel or the Commissioners may have.

3 **CHAIRMAN WHITFIELD:** Mr. Fantry.

4 **MR. FANTRY:** Thank you, Mr. Chairman. I'm
5 going to move over [indicating]. I think I have
6 this on correctly now.

7 Could I approach the bench, Mr. Chairman? I
8 have Mr. Calhoun's affidavit and I would like to
9 give Mr. Lunsford that affidavit for a moment, so
10 we can look at some of the documents.

11 **CHAIRMAN WHITFIELD:** I don't see any objection
12 from the other counsel, so, go ahead, Mr. Fantry.

13 **MR. FANTRY:** Thank you, so much.

14 **CROSS EXAMINATION**

15 **BY MR. FANTRY:**

16 **Q** [Indicating.]

17 **A** [Indicating.] Thank you sir.

18 **Q** Mr. Lunsford, I understand that we disagree about the
19 cause of the particular outage on the night of the 30th
20 and 15th. But I was wondering if we could at least
21 agree upon the load or the fuses that this particular
22 facility had – and, for the Commission, I'll put back
23 Exhibit B [indicating] to use for some points of
24 clarification.

25 **A** Okay.

1 Q Mr. Calhoun had talked in terms of a single – question
2 number five is what I'm referring to.

3 A Yes, sir.

4 Q – I had referred to a single 500_[sic]-to-5 current
5 transformer, and an 800-to-5 current transformer is
6 capable of 1200 amps without failing. And the service
7 for the facility had a 400 amp. Is his description of
8 the transformer and the service of the facility correct?
9 Can we agree that there was a 400 amp facility that the
10 transformer was attached to?

11 A He is correct. He had a 400 amp main breaker. I think
12 that's what Mr. Calhoun was referring to.

13 Q Okay.

14 A He's also correct that the CT, the old CT before we made
15 the upgrade, was an 800-to-5. I'll point out that has
16 zero to do with the load.

17 Q In your particular testimony, in your analysis, you talk
18 in terms of 228 amperes as the load and kind of the fire
19 – we'll call it the fire point of those particular – is
20 that amperage –

21 A That is the customer's peak demand amperage, 228, okay?
22 So that's his peak load, peak load, 228.

23 Q All right. When we look at your Exhibit B and look at
24 the transformer, itself, am I correct that, you know, if
25 we kind of opened up that 25 K transformer or we looked

1 into it, we would find a wire, a certain gauge of
2 particular wire, around a core, we would find a fuse
3 either inside or on the side of the particular item, and
4 the rest of that inner area is fluid?

5 A It's oil, yes, sir.

6 Q It's oil. So, is the size and the construction of a 50
7 kV transformer, is that two times the 25?

8 A Yes, sir. So if you have a 25 kVA transformer –

9 Q Right.

10 A – and you have a 50 kVA transformer, it's pretty simple
11 math. The 50 is twice as big as the 25.

12 Q Okay. All right. But – as far as capacity, but is
13 there twice as much wire in it? You know, it's a bigger
14 core, it's a different type of entity?

15 A I would say approximately twice. It's got more wire,
16 more core, more capacity.

17 Q And more oil.

18 A Yes, sir.

19 Q Okay. Now, earlier on, when I was talking with Mr.
20 Fowler, I was trying to understand, in a simple way,
21 taking care of an electrical system. You know,
22 basically it's wire, service drops, transformers of
23 different sizes, fuses of different sizes. That's
24 pretty standard. That's standard equipment, nothing
25 special. Doesn't have to be specially designed, does

1 it?

2 **A** It's pretty simple; it's not complicated.

3 **Q** It's not complicated. So the material that we used to
4 do the repair both on the 30th and then the wires and
5 things that were done after the 17th of June, that's
6 pretty standard equipment that you had; it was just a
7 matter of getting the right gauge wire to do it.

8 **A** I think you're correct, yes, sir.

9 **Q** All right, sir. And the change that we talked about
10 would be going from a 2/0 wire to a 4/0 wire.

11 **A** That's exactly right. The existing service was 2/0
12 wire, right? And so when Mr. Fowler decided we needed
13 to upgrade, a new connection – he actually installed two
14 4/0 wires. So he went from a capacity of, basically,
15 185 amps, to probably a 350 amp capacity, somewhere in
16 that neighborhood. So it is actually two 4/0 wires we
17 put back, to replace the one 2/0 wire.

18 **Q** But the meter on the wall that we had talked about, was
19 it still a 400 amp meter that was on the wall?

20 **A** No, that meter's not rated 400 amps. The meter – we
21 upgraded everything, right? And so we went – from a
22 metering infrastructure, we went from one 800-to-5 CT to
23 two 200-to-5 CTs, and put in a new meter. Simply an
24 upgrade – while we had the outage, simply an upgrade to
25 upgrade our meter to a 2017 standard, as opposed to a

1 1965 standard.

2 **Q** But all of that work was done on the service drop – I'll
3 call it the service drop area of your side of the meter?

4 **A** Absolutely, the Duke Energy side.

5 **Q** Yeah, okay. And at no time in the repairs had there
6 ever been the blowing up or the melting of the master
7 breaker on the facility, itself? The homeowner's
8 breaker, the businessman's breaker?

9 **A** I can't tell you one way or another what goes on inside
10 of the customer's building. I don't have knowledge of
11 that.

12 **Q** Would you say that the testimony that Mr. Calhoun gave
13 said that there wasn't anything that went on inside that
14 building, that –

15 **MR. ELLERBE:** Mr. Chairman, I think that's
16 improper cross-examination. This witness says he
17 doesn't know. Mr. Calhoun's testimony is in the
18 record; whatever it is, it is. It's not
19 appropriate to pit one witness against another.

20 **MR. FANTRY:** Your Honor, I was not pitting one
21 witness against the other on that. I simply, in
22 looking at the facts – and I had asked was it a 400
23 amp system, and would you, you know, would you
24 agree – I think I might've used that term – would
25 you agree that there had not been any claim that

1 the electric fryer in the movie, or the air
2 conditioner, or whatever was touched to this system
3 inside, once you got past the weatherhead and the
4 six connections where electricity went all over the
5 place, that you were not aware there had been any
6 change in the amount of electricity that that
7 building could take.

8 **WITNESS:** I'm not understanding your question.

9 **CHAIRMAN WHITFIELD:** Mr. Fantry, I think the
10 witness can only testify to his knowledge that he
11 has, personally. That being said, do you have any
12 knowledge or were you in the room when this witness
13 testified? Do you have any knowledge that you can
14 answer, regarding this witness' testimony?

15 **WITNESS:** You're talking about Mr. Calhoun's.

16 **CHAIRMAN WHITFIELD:** Yes.

17 **WITNESS:** Yes, sir, I heard Mr. Calhoun's
18 testimony and I have read his testimony. And so I
19 can speak to that.

20 So, can you rephrase the question?

21 **CHAIRMAN WHITFIELD:** Mr. Fantry, could you
22 rephrase?

23 **BY MR. FANTRY:**

24 **Q** Rephrasing the question: Your examination of the
25 testimony, that is a 400 ampere breaker system for the

1 owner, would you –

2 **A** So I guess you're referring to question number – or,
3 statement number 11 for Mr. Calhoun. You got it
4 started. And what it says here is the customer's
5 service, 400 amp service, has always been a 400 amp
6 service. But I'll say this: That has nothing to do with
7 load. Right? That has to do with the National Electric
8 Code, 400 amp service. That's the size of his main
9 breaker. It has nothing to do with size of the service;
10 it has to do with the size of his main breaker. Has
11 nothing to do with the load and the amperage and the
12 kilowatt demand. Zero.

13 **Q** Thank you. I'm going to – I'd like to refer to your
14 power exhibit, Exhibit A [indicating]. And I'd like you
15 to help me clarify my understanding what I see here and
16 what I can take from that particular exhibit. I have
17 noted in there that you talked about annual kilowatt-
18 hour usage.

19 **A** Yes, sir. Kilowatt-hours is the energy, so what this is
20 is a graphical representation of the customer's energy
21 usage. His power bill, if you will. He has added load,
22 and he has grown since he opened in 2008-2009; we can
23 see that. So it's just a graphical visual
24 representation that he's added load; he's increased his
25 energy usage.

1 Q Okay. And so I can assume from that, that, as I look
2 from 2009 to 2016, that the load during those periods
3 have not substantially changed, except for 2014 when it
4 seemed to peak. I think that's the word that I would
5 say – that I would use. That hasn't substantially
6 changed. And, in fact, in 2015, it dropped well below
7 what was – slightly below, I'll do that, also slightly
8 below what was in 2009. Am I correct?

9 A Yes, sir. I'll make a point here, that this is energy
10 usage, kilowatt-hours. Kilowatts are the actual
11 kilowatt demand, the amperage, is what burns the wire
12 up, if you will, not kilowatt-hours, not the revenue
13 meter. This is simply a visual, a graphical visual that
14 his energy usage has gone up. Now, there's not a direct
15 correlation between energy usage and kilowatts, but,
16 generally, as energy usage goes up, the kilowatts go up,
17 too. And we do know what his kilowatt demand was, from
18 metering.

19 Q Okay. But I can say from this exhibit and the reports,
20 the accident reports, that have been filed in this
21 particular case, that from the year 2009 to the year
22 2015, there hadn't been an outage, and the power usage
23 and demand seem very similar year-to-year for that time
24 period, and even the peak year when demand would have
25 been higher.

1 **CHAIRMAN WHITFIELD:** Mr. Fantry, I believe we
2 need a question in there somewhere.

3 **MR. FANTRY:** Oh. I was –

4 **BY MR. FANTRY:**

5 **Q** My question is have I read this particular – can I read
6 that chart saying that is an accurate analysis of the
7 picture, what I can take from it?

8 **A** Yes. His energy usage, which is – this is what a
9 representation of kilowatt-hours, his energy usage,
10 grew. And I would say, yeah, pretty much stayed the
11 same, average. He had a couple of peak years. I will
12 draw your attention to: Has nothing to do with the
13 overload. Nothing. Just a general representation that
14 he has increased his energy usage, added more facilities
15 and increased energy usage.

16 **Q** Mr. Fowler^[sic], you observed some of the maintenance that
17 takes place over the system during the year.

18 **A** Yes, sir.

19 **Q** In your capacity, is the maintenance schedule, the
20 maintenance procedure for persons or parts of the system
21 that are on the Greenwood Rate different from what's
22 provided all of the Duke customers?

23 **A** No, sir. We maintain our facilities regardless of what
24 rate they're on. We maintain them the same.

25 **Q** You were involved in the decision to disconnect Mr.

1 McCutcheon.

2 **A** No, sir, I was not involved in that decision. No, sir.

3 **Q** Okay. Were you involved in the analysis as to whether
4 or not Mr. McCutcheon should have been removed from –

5 **A** No.

6 **Q** – the Greenwood Rate?

7 **A** No, sir, I wasn't.

8 **Q** You were not?

9 **A** No, sir.

10 **MR. FANTRY:** Excuse me, Your Honor. May I
11 just take a moment?

12 **CHAIRMAN WHITFIELD:** Sure.

13 [Brief pause]

14 Mr. Fantry, we're probably going to take, in
15 about – just a couple of minutes, we're probably
16 going to take a lunch break, and we'll come back in
17 and resume, what little bit of time we may have
18 before the Commission Meeting. And, if necessary,
19 we'll finish up after the Commission Meeting. So,
20 we can either take a minute or two, now, or –

21 **MR. FANTRY:** Mr. Commissioner if it would be
22 appropriate, if we could break – if we could break
23 now, if it's an appropriate time, or if – are you
24 asking for 10 minutes – I have about 10 minutes
25 more.

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CHAIRMAN WHITFIELD: Well, let's go ahead – in that case, let's go ahead and take our lunch break. I'd like to try to get everyone to return back in an hour from now, and we won't have long but we'll be able to get in some time between when we resume and we'll have to stop again a few minutes prior to the meeting to take a break and come back for our meeting. If not finished, we'll have to come back after the Commission meeting. So at this time, we're going to take a one-hour recess for lunch.

[WHEREUPON, the witness stood aside.]

[WHEREUPON, a lunch recess was taken from 12:20 to 1:25 p.m.]

1 A F T E R N O O N P R O C E E D I N G S

2 **CHAIRMAN WHITFIELD:** Please be seated. I'll
3 call this hearing back to order.

4 THEREUPON came,

5 **J O E L M . L U N S F O R D ,**
6 recalled as a witness, who, having been previously duly
7 sworn, was examined and testified further as follows:

8 **CHAIRMAN WHITFIELD:** And we still have Witness
9 Lunsford on the stand. I'll remind you, Mr.
10 Lunsford, you're still under oath. And, Mr.
11 Fantry, you're still up.

12 **MR. FANTRY:** Thank you, Mr. Chairman. The
13 first thing I'd like to do is remove this exhibit
14 from the table [indicating] and say that I have no
15 further questions of this witness. We have
16 concluded our cross-examination.

17 **CHAIRMAN WHITFIELD:** Well, okay. All right.
18 **ORS,** any questions of this witness?

19 **MR. NELSON:** No questions of this witness.
20 Thank you, Mr. Chairman.

21 **CHAIRMAN WHITFIELD:** Okay. Commissioners.
22 Commissioner Fleming.

23 **EXAMINATION**

24 **BY COMMISSIONER FLEMING:**

25 **Q** Good afternoon. One of the earlier witnesses for Duke,

1 as I understood it, said that on one of the repairs they
2 replaced the two-aught-one with the one? Aught-one?

3 **A** I think I remember that.

4 **Q** Would that have any relevance to the load?

5 **A** No, ma'am. The load's consistent with what the customer
6 is pulling, so —

7 **Q** But I meant as far as overheating the line.

8 **A** It still would've — it would've overloaded the 2/0 or a
9 1/0. No matter what it was, that service would have
10 been over- —

11 **Q** It wouldn't have been overloaded more, as he was saying.

12 **A** No, ma'am. But it still — and that was evident. It did
13 fail a second time. That was evident.

14 **Q** Okay. Now, and the other question I want to ask, is
15 there a written policy that's available that Duke uses
16 and that's available to customers about what determines
17 a change in the rates?

18 **A** I'm not an expert on that. I'm going to answer you,
19 yes, there is, but I don't have one and I'm not aware of
20 one.

21 **Q** So you don't have one in your hand —

22 **A** No, ma'am, I do not.

23 **Q** — available to you?

24 **A** I do not. Myself and Mr. Fowler, we operate and
25 maintain the electric system. Then when we make a

1 change of connection, we notify Regulatory and Rates –
2 right? – that this is what we did, and then they'll
3 handle that situation as far as change of rate.

4 **Q** But, I mean, but you do decide whether there's a change
5 of service or whatever meets the requirements?

6 **A** We would, yes, ma'am. We are responsible for
7 determining if there's a change or if there's an upgrade
8 or a change of connection. Yes, ma'am, we're
9 responsible for that.

10 **Q** Right.

11 **A** Yes, sir.

12 **Q** But you don't have that as a written policy?

13 **A** Now, as far as upgrading services and change of service
14 when things are overloaded? Absolutely, we do. That's
15 just a matter of engineering practice.

16 **Q** That would happen no matter whether you're in Greenwood
17 Rates –

18 **A** That has nothing to do with the rate.

19 **Q** Okay.

20 **A** We do that from an operating and safety standpoint. Has
21 nothing to do with the rate. The rate is after-the-
22 fact, right?

23 **Q** The rate is determined by a different entity.

24 **A** Yes, ma'am. That's exactly right.

25 **Q** Okay. And Ms. Yarbrough was that entity, at the time of

1 this.

2 **A** Yes, ma'am. It was Rates and Regulatory.

3 **Q** Okay. So we would need to ask somebody in that division
4 if there's a written policy?

5 **A** Yes, ma'am. I'm sure we can provide it.

6 **COMMISSIONER FLEMING:** Okay, thank you.

7 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
8 Fleming.

9 Any other Commissioner questions?

10 **COMMISSIONER ELAM:** I was just wondering –

11 **CHAIRMAN WHITFIELD:** Commissioner Elam.

12 **COMMISSIONER ELAM:** – if you want to reserve
13 an exhibit for that? He just said they could
14 provide it. I don't know whether he will, or not.

15 **MR. ELLERBE:** Well, Mr. Chairman and
16 Commissioner, Mr. Lunsford said he didn't know
17 about it, and it's not in his area. I think that
18 was – I mean, we – I'm not sure there is something
19 – it's my understanding that there's not something
20 that, as Commissioner Fleming asked, is available
21 to customers. So we will be briefing the issue in
22 this case. We think this is, you know, a specific
23 set of facts. But getting into a general
24 discussion of all the rules for all of the myriad
25 situations in the Greenwood Rate, we think is

1 beyond the scope of this proceeding, but something
2 that maybe we need to look at outside the context
3 of this proceeding.

4 **CHAIRMAN WHITFIELD:** Commissioner Fleming.

5 **COMMISSIONER FLEMING:** Mr. Chairman, may I ask
6 the attorney a question?

7 **CHAIRMAN WHITFIELD:** Sure.

8 **COMMISSIONER FLEMING:** I guess what I'm
9 concerned with, is this issue so complicated and
10 complex to determine, that there's a myriad – that
11 it's that extensive a policy?

12 **MR. ELLERBE:** Well, the case – the facts that
13 are before you in this complaint case, in our view,
14 are not at all complicated and very
15 straightforward. And the 1966 Act addresses it,
16 the case law addresses it, Commission precedent
17 addresses it.

18 **COMMISSIONER FLEMING:** So is it written?

19 **MR. ELLERBE:** Is what written? I was just
20 talking about the application of the Act. The Act
21 is certainly written, the cases that have been
22 decided – the couple of Supreme Court cases – are
23 certainly written. There's Commission precedent.

24 **COMMISSIONER FLEMING:** But do you have it
25 available when there's a question that comes up

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with a customer?

MR. ELLERBE: There are several documents that are used as internal guidance, that address various situations. But those are not something that has been approved by this Commission. We believe it's consistent with all of the authority that I've discussed, and we don't think that it's something that would be relevant to the issues in this proceeding.

CHAIRMAN WHITFIELD: Mr. Ellerbe, is it perhaps possible that you could address this maybe in a late-filed exhibit? And I know – you're talking about your post-hearing brief, but is it possible you could address that in a late-filed exhibit?

Commissioner Fleming, would that work for you to have a late-filed exhibit, or is there something else you would like to pursue?

COMMISSIONER FLEMING: That would be informative.

CHAIRMAN WHITFIELD: Mr. Ellerbe, I think Commissioner Fleming says that, if you could file –

MR. ELLERBE: We'll do that. We'll file a late-filed exhibit that has the written guidelines that the company has, that it uses internally.

1 We'll be glad to do that. I just didn't want there
2 to be confusion about whether – we – that's not
3 what we're relying on; we're relying on the Act and
4 the cases and the authorities that I've talked
5 about.

6 **COMMISSIONER FLEMING:** But I think what I'm
7 concerned about, is there something available to
8 the customer so that they understand. It's more –
9 I mean, I think the other would be informative, as
10 well, but I'm thinking more of the customer, from
11 their perspective and understanding.

12 **MR. ELLERBE:** Yes, ma'am. And we'll file the
13 late-filed exhibit, and then we will follow up with
14 that issue –

15 **CHAIRMAN WHITFIELD:** Could you address that,
16 as well?

17 **MR. ELLERBE:** – as we move forward.

18 **CHAIRMAN WHITFIELD:** All right. Thank you,
19 Mr. Ellerbe.

20 Commissioners, any other questions for Mr.
21 Lunsford?

22 [No response]

23 I've got a couple, if there are no other
24 Commissioner questions for you.

25 And Mr. Ellerbe, we're going to reserve that

1 as Hearing Exhibit No. 9 for your late-filed
2 exhibit and for your response to Commissioner
3 Fleming's inquiry about the information available
4 for the customer, is Hearing Exhibit No. 9.

5 MR. ELLERBE: Thank you, Mr. Chairman.

6 CHAIRMAN WHITFIELD: Mr. Lunsford, if there's
7 nothing further from other Commissioners – I don't
8 see that there is – I've got a couple of questions
9 for you.

10 EXAMINATION

11 BY CHAIRMAN WHITFIELD:

12 Q One of the questions Commissioner Fleming asked you,
13 about the 2/0 line and the 4/0 line, my question to you:
14 Does the 1/0 line carry 185 amps?

15 A No, I believe it carries somewhat less. I would – I
16 don't have it in front of me.

17 Q Not 225, but less than 185?

18 A I would say about 140, 150.

19 Q Okay. And one other question for you that I've got, if
20 you could – I think perhaps we may have been down this
21 path with another witness; I don't think we got quite
22 this far with you. But with your expertise, I'd hate to
23 let you get off the stand without going down this path,
24 just for my own knowledge. Your exhibit – I think it's
25 Exhibit B –

1 **CHAIRMAN WHITFIELD:** Could you put that back
2 up there for me?

3 **MR. ELLERBE:** [Indicating.]

4 **CHAIRMAN WHITFIELD:** That's it, yes, sir.

5 **BY CHAIRMAN WHITFIELD:**

6 **Q** Okay. Can you see that okay, Mr. Lunsford?

7 **A** Yes, sir, I do.

8 **Q** You did a pretty good job of explaining from the pole-
9 mounted transformer through the CT, the current
10 transformer, and you explained a lot of that, coming
11 through. But if you could, walk me on past the donut
12 transformer, as you call it –

13 **A** Okay.

14 **Q** – and when you get to delivery – I got two questions
15 there, just to preface you a little bit. I certainly
16 welcome your explanation of the remainder of it, but the
17 two questions that I want to hone in on the delivery
18 point, is that also known as the weatherhead?

19 **A** No, sir. So, first of all, you need to understand this
20 is a one-line diagram, what we commonly call a one-line
21 diagram. So the red line that represents the Duke
22 conductor, that's actually three wires, okay? But for
23 illustrative purposes, we make it one wire so it's not
24 real crowded. And then on the customer's Service
25 Entrance 1, you see the little half-moon? That

1 represents the weatherhead. It comes out of the
2 building and the wires – it's basically a conduit.
3 Wires come out of that, and so in Service Entrance 1,
4 the customer's blue wire there, that's actually, in
5 reality, three wires.

6 **Q** So you've got two weatherheads in that diagram?

7 **A** He's got two weatherheads and two service entrances,
8 yes, sir. So he's got three wires – he's got three
9 wires, we got three wires, so you can make all those
10 connections, and that's where Mr. Calhoun was referring
11 to as six splices. Those are six splices in a row,
12 right? He might've misled everybody with that. It's
13 three splices – one, two, three – for his Weatherhead 1,
14 and then one, two, three, for his Weatherhead 2. That's
15 where the six splices come in.

16 **Q** Okay. Well, that answers that. Do you have another
17 name – is there another name or term that you use for
18 the delivery point where it's separated there?

19 **A** So, at the delivery point, that's where Duke conductors
20 meet the customer's conductors. That's the actual
21 connections. So that's the differentiating point
22 between what is Duke-owned and what the customers own.

23 **Q** Okay.

24 **A** Right? So we just call that the service point or the
25 delivery point.

1 Q Service point, okay.

2 A That is another phrase for it, yes, sir.

3 Q Okay. I just wanted to make sure of the term. And in
4 this particular instance, this particular case with the
5 McCutcheon service – and this is where I think we've
6 been over it with another witness – after the service
7 point or delivery point, there is another customer –
8 wasn't there a trailer or – not a trailer park.

9 A No, sir.

10 Q But some other housing –

11 A Yes, sir.

12 Q – that was tied on –

13 A You're exactly right. You remember, we had two
14 apartments. One was a garage and – a garage/mother-in-
15 law apartment.

16 Q Right. I guess that's what I'm thinking of.

17 A That has nothing to do with the service to the drive-in.
18 Those are fed from the transformer. So the common point
19 there is the transformer, not anything to do with the
20 service that failed. They're served off the same
21 transformer. That has nothing to do with anything, with
22 the red conductor in this illustration that failed.
23 Just nothing.

24 Q So both weatherheads in this diagram belong to Mr.
25 McCutcheon.

1 **A** Absolutely.

2 **Q** Is that correct?

3 **A** Yes, sir. Absolutely.

4 **Q** Okay. And anything that was referred to about the
5 mother-in-law apartment, any of that, is another
6 delivery point or service point?

7 **A** [Indicating.] Yes, sir. It's fed off that transformer,
8 pole-mounted transformer. They're fed off of that
9 transformer. But as far as the wire, the service
10 conductor going to the drive-in, they have nothing to do
11 with that. No commonality. No commonality at all.

12 **CHAIRMAN WHITFIELD:** All right, sir. I
13 believe you answered my questions.

14 If there are no other Commissioner questions,
15 Mr. Ellerbe, any redirect?

16 **MR. ELLERBE:** No redirect_[sic], Mr. Chairman.

17 **CHAIRMAN WHITFIELD:** Okay, Mr. Lunsford.

18 **WITNESS:** Thank you.

19 **MR. FANTRY:** And no redirect, Mr. Chairman.

20 **CHAIRMAN WHITFIELD:** You may step down.

21 [WHEREUPON, the witness stood aside.]

22 **MR. ELLERBE:** Mr. Chairman, to conclude our
23 case, there are two things I wanted to do. One is,
24 I want to clarify our position, the company's
25 position, regarding the June 17, 2015, document

1 that is an exhibit in the case. We do not contend
2 that this document precludes the Commission from
3 determining whether the drive-in should be on the
4 Greenwood Rate or on the regular Duke rate. We do
5 not contend that, by signing this, Mr. McCutcheon
6 is legally bound to have agreed to the Duke rate.
7 To the extent that my Answer that I filed in this
8 case suggests otherwise by raising some affirmative
9 defenses, those defenses are withdrawn. The point
10 of this document from the company's standpoint is,
11 it's an acknowledgment by the McCutcheons that they
12 acknowledged that, by upgrading, the company was –
13 the company's belief and intention was that that
14 upgrade would result in the drive-in being served
15 on the regular Duke rate, but we are not contending
16 that this is a legal barrier to y'all considering
17 the question of whether the service should be on
18 the Old Greenwood Rate or the current correct Duke
19 rate. So that's one thing. That's just by
20 way of clarification and stipulation on behalf of
21 Duke Energy Carolinas.

22 The other thing I'd like to do, Mr. Chairman
23 and members of the Commission, is to ask that the
24 Commission take judicial notice of a Circuit Court
25 opinion that was issued in 1990, and this is a

1 class action that was brought in Greenwood County
2 on behalf of people who had been taken off of the
3 Greenwood Rate. This case was appealed to the
4 South Carolina Supreme Court and affirmed by the
5 South Carolina Supreme Court, in the case Payne
6 versus Duke Power Company, which was decided in
7 1991. What is not – and this case, of course, is a
8 reported decision of the South Carolina Supreme
9 Court, affirming the Circuit Court decision on the
10 this class action. What is not readily available
11 is the Circuit Court opinion. It's a 40-page
12 opinion; it's got a lot of background on the
13 Greenwood Rate issues. They tried the case, I
14 think, in 1985, and they had testimony from four
15 different general counsels of this Commission,
16 talking about how the Commission approached the
17 Greenwood Rate. So we think this Circuit Court
18 opinion is something that – we want to submit it
19 not as evidence in the case, but as part of the
20 record, so that we can refer to it in our proposed
21 order that we'd like to – or brief, or proposed
22 order, and the Commission can have it for
23 consideration as it addresses the issue in the
24 case.

25 And I understand that the Complainants oppose

1 the request to take judicial notice of this, so I
2 will let them speak to that at this point.

3 **CHAIRMAN WHITFIELD:** Mr. Shissias.

4 **MR. SHISSIAS:** Mr. Ellerbe is correct; we do
5 object to this. First of all, the Doctrine of
6 Judicial Notice is for matters of common knowledge
7 or things that can be readily calculated. Things
8 that are not argued about or things that anyone can
9 calculate, like what day of the week was New Year's
10 this past year. You do not take judicial notice of
11 the way a Circuit Court judge decided the case.
12 That's called precedent, and what you'll find in
13 this order from the Circuit Court is – I believe
14 it's 43 pages of findings of fact and conclusions
15 of law, but the case that is precedent, the only
16 case that is precedent, is the Supreme Court case,
17 which is – I believe it's 4-1/2 pages. And one of
18 the things you'll find is that all of these
19 findings that were in the Circuit Court case, none
20 of them get picked up by the Supreme Court. What
21 the Supreme Court says, and I'm going to allude to
22 this more closely in my closing, is about what
23 constitutes a new connection, and they deal with it
24 in one paragraph. So rather than having a
25 nonprecedential decision, they're really asking you

1 to consider this to be like the law of the case.
2 We need to stick to, we believe, what the court of
3 precedent has ruled on in this matter, and that's
4 why we object to it.

5 **CHAIRMAN WHITFIELD:** Mr. Ellerbe, do you have
6 a response to that?

7 **MR. ELLERBE:** Mr. Chairman, I would suggest
8 that we submit a copy of the order to the
9 Commission, and we – I would propose that y'all
10 deal with how you want to treat that proposed order
11 in your final order. We can address those issues
12 in the proposed orders that we submit, and y'all
13 can decide what weight you want to give it.

14 I do not agree that, simply because the
15 Supreme Court decided – affirmed that opinion, that
16 you can't look at the Circuit Court opinion as
17 precedent that guides you as you address the issues
18 in this case.

19 **MR. SHISSIAS:** I'm –

20 **CHAIRMAN WHITFIELD:** Mr. Shissias?

21 **MR. SHISSIAS:** I'm sorry.

22 **CHAIRMAN WHITFIELD:** No, no, you've got your
23 turn. Go ahead.

24 **MR. SHISSIAS:** If I may, this is not – he says
25 you can accord it what weight you'd like. It's not

1 a matter of weight; it's a matter of whether or not
2 this is law. And I would submit to you that if the
3 Supreme Court had intended that the findings of
4 fact were to carry precedent in their decision,
5 they would've adopted them. And, guess what, the
6 only – the only finding of fact that they adopted
7 in their decision was the finding of fact that
8 changed in use of property that that's a new
9 connection. None of the other ones. Now, you'll
10 note in Payne, the Supreme Court mentioned changing
11 the nature of service from single-phase to triple-
12 phase. Well, guess what, that is not in the
13 Circuit Court decision, at all. So it's clear that
14 the Supreme Court, they did not intend that you be
15 bound by what Circuit Court Judge Bristow said in
16 1990. We're on clear ground with the Supreme
17 Court's 1991 decision. They're trying to tell you
18 the law and get you to adopt what the Circuit Court
19 said, not what the Supreme Court said. They said
20 something completely different.

21 **CHAIRMAN WHITFIELD:** Each of you have had two
22 bites at the apple, so to speak, and I appreciate
23 both of your arguments and opinions. However,
24 rather than keep going back and forth; we're not
25 going to decide now; we'll decide in the final

1 order. And we'll issue our decision in the final
2 order, and I propose that both of you address it in
3 the proposed orders, as well.

4 **MR. ELLERBE:** Mr. Chairman, may I – I've got
5 an extra copy. I provided this a couple of days
6 ago, by e-mail, to the other parties. I would like
7 to submit this so that the Commission staff will
8 have a copy of this proposed order. It's not
9 readily available. It's from 1985, or – well, I
10 think it's 1985, maybe 1990. Just so y'all will
11 have it so you can take a look at it and decide for
12 yourselves.

13 **CHAIRMAN WHITFIELD:** Any objection to that,
14 Mr. Shissias?

15 **MR. SHISSIAS:** My main problem with this is,
16 are you going to admit it as an exhibit, which we
17 would vehemently object to. But there is
18 discussion in the Circuit Court decision that
19 states about when something becomes a new
20 connection that is very different from what the
21 Supreme Court says, and it provides a roadmap that
22 the Supreme Court didn't take. I believe the
23 important language is on page 18. And we do – we
24 still have serious reservations about findings that
25 the Supreme Court declined to adopt.

1 **CHAIRMAN WHITFIELD:** Mr. Shissias, I note your
2 objection. We're not going to enter it in as a
3 hearing exhibit. We will take it as information
4 and, again, rule on it in the final order.

5 **MR. ELLERBE:** This is similar to a proffer,
6 Mr. Chairman, and I'm not asking that it be made an
7 exhibit. I simply want the Commission to have a
8 copy of it available so that you can consider our
9 arguments.

10 **CHAIRMAN WHITFIELD:** And that's what we're
11 going to do; we're going to take it as information.
12 It will not be moved in as a hearing exhibit. And
13 we will address that in the final order, as well.

14 **MR. ELLERBE:** [Indicating.]

15 **COURT REPORTER:** [Indicating.]

16 **CHAIRMAN WHITFIELD:** At this time – and when
17 we come back, you two can have some further say
18 about any other matters pertaining to this case,
19 but we're going to break right now for just a few
20 minutes and then come back and go into our
21 Commission Meeting, and come back and conclude the
22 case probably within five minutes of the ending of
23 the Commission Meeting.

24 So right now, we're in recess until after the
25 Commission meeting.

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[WHEREUPON, a recess was taken from 1:50
to 2:21 p.m.]

CHAIRMAN WHITFIELD: Mr. Ellerbe, we're going
to resume this hearing, Mr. Ellerbe and Mr.
Shissias. I believe we kind of finished up with
the discussion, for lack of a better word, you two
were having. Before I call on ORS, do either one
of you two have any further business?

MR. ELLERBE: Mr. Chairman, we have concluded
our case. The only thing I would ask is that Mr.
Lane be excused. He has a community meeting that
he would like to attend, and he can make it if he's
able to leave now. So, we'd ask that Theo Lane be
excused.

CHAIRMAN WHITFIELD: Any objection from any of
the parties for excusing Mr. Lane?

MR. FANTRY: No objection.

MR. NELSON: No, sir.

CHAIRMAN WHITFIELD: Mr. Lane, you're excused,
and you can get to your community meeting over in
the western part of the State, I guess.

[WHEREUPON, Witness Lane was excused.]

Thank you, Mr. Ellerbe.

MR. ELLERBE: Mr. Chairman, we rest our case.

CHAIRMAN WHITFIELD: All right. At this time,

1 I'll call on the Office of Regulatory Staff. Mr.
2 Nelson?

3 MR. NELSON: Thank you, Mr. Chairman. ORS
4 would call its one witness: Ms. April Sharpe.

5 CHAIRMAN WHITFIELD: Come forward, Ms. Sharpe.

6 [Witness sworn]

7 THEREUPON came,

8 A P R I L B . S H A R P E ,

9 called as a witness on behalf of the South Carolina Office of
10 Regulatory Staff, who, having been first duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. NELSON:

14 Q Good afternoon, Ms. Sharpe. Please state your name and
15 occupation.

16 A My name is on April Sharpe, and I'm employed as the
17 program manager of Consumer Services at the South
18 Carolina Office of Regulatory Staff.

19 Q Ms. Sharpe, did you prepare four pages of direct
20 testimony which were prefiled with this Commission on
21 March 7th of this year?

22 A Yes.

23 Q Do you have any changes, edits, or corrections to your
24 prefiled direct testimony?

25 A No.

1 **MR. NELSON:** Mr. Chairman, ORS would ask that
2 the prefiled direct testimony of April Sharpe be
3 read into the record as if given orally from the
4 stand.

5 **CHAIRMAN WHITFIELD:** The prefiled direct
6 testimony of Ms. April Sharpe will be entered into
7 the record as if given orally from the stand.

8 **MR. NELSON:** Thank you, Mr. Chairman.

9 **BY MR. NELSON:**

10 **Q** Ms. Sharpe, did you prepare a summary of your direct
11 testimony?

12 **A** Yes.

13 **Q** Would you please read it for the Commission?

14 **A** Good afternoon, Mr. Chairman, and members of the
15 Commission. The purpose of my testimony is to provide
16 information for the Commission regarding ORS'
17 investigation of a complaint received from Mr. and Ms.
18 McCutcheon against Duke Energy Carolinas on June 16,
19 2015.

20 On that date, the ORS received a verbal complaint
21 from Mr. and Ms. McCutcheon regarding their business
22 located in Greenwood, South Carolina, about a dispute
23 involving a change in rate for the electric service.
24 ORS called Duke Energy on June 16th to discuss the
25 complaint. Duke Energy informed ORS the business

1 customer was overloading the company's system which
2 caused a safety hazard requiring a service upgrade,
3 which would result in a rate change to the customer.
4 Duke advised that the customer had refused to authorize
5 the service upgrade, and that Duke had scheduled
6 disconnection of the service, citing PSC Regulation 103-
7 342(a). On June 17th, ORS called Mr. and Ms.
8 McCutcheon and provided this information.

9 On June 18th, Duke informed ORS the matter was
10 resolved in a meeting the prior evening with Mr. and Ms.
11 McCutcheon. The company advised that the customer
12 agreed to the service upgrade and that the customer
13 understood the rate would change. Based on the
14 information received from Duke, ORS called Mr. and Ms.
15 McCutcheon on June 18th, and after confirming with Ms.
16 McCutcheon that the issue was resolved, the ORS verbally
17 advised that the complaint was closed. On July 20th,
18 2015, Ms. McCutcheon called the ORS and requested an
19 update on the June 2015 complaint. ORS advised Ms.
20 McCutcheon the complaint was closed. ORS contacted Duke
21 on July 20th to confirm the complaint was resolved and
22 no further issues had arisen on the business account. A
23 Duke representative confirmed that the complaint was
24 resolved and the service had been restored. Duke
25 provided ORS a copy of a statement signed by Mr.

1 McCutcheon, in which he requested the service upgrade
2 and acknowledged the change in the rate to the business
3 account. This concludes my summary.

4 **MR. NELSON:** Thank you, Ms. Sharpe.

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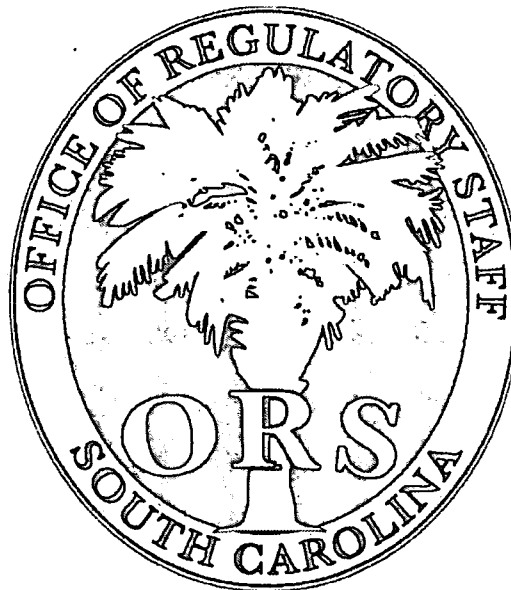
[PURSUANT TO PREVIOUS INSTRUCTION, THE
PREFILED DIRECT TESTIMONY OF APRIL B.
SHARPE FOLLOWS AT PGS 291-295]

**THE OFFICE OF REGULATORY STAFF
DIRECT TESTIMONY & EXHIBIT**

OF

APRIL B. SHARPE

March 7, 2017



DOCKET NO. 2017-32-E

**3109 Hwy. 25 S., L.L.C. d/b/a 25 Drive-in and Tommy
McCutcheon, Complainant/Petitioner v. Duke Energy
Carolinas, LLC, Defendant/Respondent**

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DIRECT TESTIMONY AND EXHIBIT
OF
APRIL B. SHARPE
ON BEHALF OF
THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF
DOCKET NO. 2017-32-E
IN RE: 3109 HWY. 25 S., L.L.C. D/B/A 25 DRIVE-IN AND TOMMY
MCCUTCHEON, COMPLAINANT/PETITIONER V. DUKE ENERGY
CAROLINAS, LLC, DEFENDANT/RESPONDENT

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is April B. Sharpe. My business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina as a Program Manager, in the Consumer Services Department of the South Carolina Office of Regulatory Staff (“ORS”).

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A. I have a Bachelor’s Degree from the University of South Carolina. I have been the program manager of the ORS’s Consumer Services Department since 2004. Prior to that, I was employed by the Public Service Commission (“PSC”) as the program manager of Consumer Services from 1991 to 2004.

Q. WHAT ARE YOUR DUTIES AS THE PROGRAM MANAGER WITH THE OFFICE OF REGULATORY STAFF’S CONSUMER SERVICES DEPARTMENT?

THE OFFICE OF REGULATORY STAFF
1401 Main Street, Suite 900
Columbia, SC 29201

1 A. I manage the day-to-day operations of the Consumer Services Department. This
2 includes the management and retention of records of customer complaints and inquiries
3 involving regulated utilities received, recorded and investigated by the ORS Consumer
4 Services staff in the regular course of business.

5 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THE PUBLIC SERVICE**
6 **COMMISSION OF SOUTH CAROLINA?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

9 A. The purpose of my testimony is to provide information regarding the ORS
10 investigation of a complaint received June 16, 2015 from Mr. and Mrs. McCutcheon
11 against Duke Energy Carolinas, LLC (“DEC” or “Company”).

12 **Q. PLEASE SUMMARIZE THE COMPLAINT ORS RECEIVED FROM MR. AND**
13 **MRS. MCCUTCHEON?**

14 A. On June 16, 2015, the ORS Consumer Services staff received a verbal complaint
15 from Mr. and Mrs. McCutcheon related to electric service for a drive-in movie theater
16 business located at 3109 Highway 25 South in Greenwood, South Carolina. In the
17 complaint, Mr. and Mrs. McCutcheon dispute a change in the rate for electric service for
18 the drive-in movie theater.

19 **Q. WHAT ACTION DID ORS TAKE AFTER RECEIVING THE COMPLAINT**
20 **FROM MR. AND MRS. MCCUTCHEON ON JUNE 16, 2015?**

21 A. ORS Consumer Services staff contacted DEC via phone on June 16, 2015, to
22 discuss the complaint and review DEC’s version of the facts concerning the complaint.

23 **Q. DID ORS RECEIVE A RESPONSE FROM DUKE ENERGY CAROLINAS, LLC?**

1 **A.** Yes. On June 16, 2015, the DEC regulatory complaint analyst verbally informed
2 ORS that the business customer was overloading the Company's system which caused a
3 safety hazard. DEC indicated there were two (2) fires at the service location. In addition,
4 DEC confirmed the business account for the drive-in received service under the rate
5 schedule authorized by the South Carolina General Assembly under Act 1293, commonly
6 known as "the Greenwood rate."

7 **Q. DID DUKE ENERGY CAROLINAS, LLC PROVIDE ADDITIONAL**
8 **INFORMATION TO ORS RELATED TO THE COMPLAINT ON JUNE 17, 2015?**

9 **A.** Yes. DEC stated the business had been informed an upgrade was required to
10 mitigate the safety hazard and the upgrade to the service would result in a rate change to
11 the customer. The Company's representative indicated that Mr. and Mrs. McCutcheon
12 had refused to authorize the service upgrade and DEC had scheduled the disconnection of
13 service citing S.C. Code Ann. Regs 103-342(a).

14 **Q. DID DUKE ENERGY CAROLINAS, LLC PROVIDE ADDITIONAL**
15 **INFORMATION TO ORS RELATED TO THE COMPLAINT ON JUNE 18, 2015?**

16 **A.** Yes. DEC informed ORS that it had discussed with Mr. and Mrs. McCutcheon
17 the service upgrade and rate change on the evening of June 17, 2015. Based on
18 information received from DEC, ORS understands the McCutcheon's agreed to a service
19 upgrade and the subsequent rate change.

20 **Q. DID DUKE ENERGY CAROLINAS, LLC AND MR. AND MRS. MCCUTCHEON**
21 **REACH AGREEMENT TO RESOLVE THE COMPLAINT?**

1 A. Yes. ORS was informed that DEC and Mr. and Mrs. McCutcheon had resolved
2 the complaint on June 17, 2015. Subsequently, ORS closed the complaint on June 18,
3 2015, after talking with Mr. and Mrs. McCutcheon.

4 **Q. DID MRS. MCCUTCHEON CONTACT ORS AFTER JUNE 18, 2015?**

5 A. Yes. Mrs. McCutcheon contacted the ORS Consumer Services department on
6 July 20, 2015 and requested an update on the June 2015 complaint. ORS Consumer
7 Services staff advised Mrs. McCutcheon the complaint was closed. ORS contacted DEC
8 on July 20, 2015 to confirm the complaint was resolved and no further issues had arisen
9 on the business account. A DEC representative confirmed the complaint was resolved,
10 service had been restored and provided ORS with a statement signed by Mr. McCutcheon
11 in which he requested the service upgrades and acknowledged the change in rate schedule
12 related to the business account. DEC informed ORS as a result of the service upgrade,
13 Mr. and Mrs. McCutcheon's business account would no longer receive service under the
14 Greenwood rates. A copy of the signed statement provided to ORS by DEC is attached
15 as Exhibit ABS-1.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes, it does.

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MR. NELSON: Ms. Sharpe is available for questions from either the parties or the Commission.

CHAIRMAN WHITFIELD: Thank you, Mr. Nelson. Mr. Fantry.

MR. FANTRY: Thank you, Mr. Chairman. In light of Duke's statement that it is withdrawing the agreement as an enforceable document from the particular cases of defense in this case, and leaving it as just the issue as to what was done with the line and how it relates to –

CHAIRMAN WHITFIELD: Mr. Fantry, can you get your mic on? I'm not sure if it's on.

MR. FANTRY: I'm sorry. I thought I had it on [indicating]. The battery's low.

CHAIRMAN WHITFIELD: Now we're getting you.

MR. FANTRY: Okay.

CHAIRMAN WHITFIELD: Maybe slide it up just a little bit.

MR. FANTRY: [Indicating.] Thank you. I think the shortest thing that I would like to say is that I was going to raise that in rebuttal against the letter being an enforceable document, which Duke has said they're not submitting that for the purposes of this case as an agreement between the

1 parties. So I have no questions of this witness.

2 **CHAIRMAN WHITFIELD:** You have no questions,
3 Mr. Fantry?

4 **MR. FANTRY:** Yes, Your Honor, because we were
5 challenging the enforceability of the letter, which
6 would have been the basis of what this testimony
7 was – my cross-examination was about.

8 **CHAIRMAN WHITFIELD:** Okay.

9 **MR. FANTRY:** Therefore, I have – since that is
10 no longer an issue in the case, I would not
11 question this witness any further, and allow what
12 she has put in the record to stand.

13 **CHAIRMAN WHITFIELD:** You're aware – and, Mr.
14 Nelson, you're also aware – Ms. Sharpe's exhibit,
15 that letter that he's referring to, was not entered
16 in as a hearing exhibit.

17 **MR. ELLERBE:** It's already in.

18 **MR. NELSON:** Yes, it is; it's an exhibit.

19 **MR. ELLERBE:** It's already in.

20 **CHAIRMAN WHITFIELD:** Okay, not – not under
21 her, as her exhibit.

22 **MR. NELSON:** Yeah, we're –

23 **MR. FANTRY:** It would be the agreement that
24 has been placed into the record, that we're no
25 longer arguing as to whether it is enforceable or

1 not. Duke, it's my understanding, has withdrawn
2 its contention in this matter, and, therefore, I
3 have no reason to further cross-examine this
4 witness for that purpose.

5 **CHAIRMAN WHITFIELD:** Mr. Ellerbe?

6 **MR. ELLERBE:** I have no response to that, Mr.
7 Chairman. I have some questions of Ms. Sharpe.

8 **CHAIRMAN WHITFIELD:** But you're in agreement
9 with Mr. Fantry. You don't have any response to
10 that, correct?

11 **MR. ELLERBE:** I stand by what we said earlier
12 regarding our position regarding the contract. I
13 think it was clear. I'm not disagreeing with what
14 he said; I'm just –

15 **CHAIRMAN WHITFIELD:** Well, if that's the case,
16 then he's declining to ask any questions, and
17 you're up.

18 **MR. ELLERBE:** Thank you, Mr. Chairman.

19 **CROSS EXAMINATION**

20 **BY MR. ELLERBE:**

21 **Q** Ms., Sharpe, may I show you – get you to look at this
22 exhibit, please? This is Hearing Exhibit 3, Ms. Sharpe,
23 and that's already been admitted into the record in the
24 case. Can you identify that for us? You probably can
25 clarify exactly what it is, for us.

1 **A** This is the ORS Consumer Services Complaint Record that
2 was created when the McCutcheons contacted us.

3 **Q** And is this a document that ORS maintains regarding –
4 this says "Call Type: Inquiry." Is this an inquiry?

5 **A** It was recorded as an inquiry.

6 **Q** Okay. And –

7 **CHAIRMAN WHITFIELD:** Mr. Ellerbe, if you don't
8 mind, if you could put that on the screen, that
9 might help everybody, I think.

10 **MR. ELLERBE:** Well, I wanted to ask her some
11 questions about it, and she has a copy and I have a
12 copy. It's – I can tell y'all where you can find
13 it; it's an exhibit – it is the exhibit to Carolyn
14 McCutcheon's testimony, if y'all have that in front
15 of you.

16 And Mr. Nelson has come to the rescue with a
17 copy that I can put on the screen [indicating].

18 **CHAIRMAN WHITFIELD:** That's helpful.

19 **MR. ELLERBE:** I think it was the only exhibit
20 of Ms. McCutcheon's testimony.

21 **BY MR. ELLERBE:**

22 **Q** Ms. Sharpe, is this case record something that ORS
23 maintains or creates at the same time that these calls
24 are going back and forth?

25 **A** Yes.

1 Q If you could turn with me, please, to page four-of-ten,
2 this was something you covered in your summary of your
3 testimony. This is a note – it's number six at the top
4 of that page, and it's reflecting a call that was made
5 from Duke into ORS? Is that right, Ms. Sharpe?

6 A Yes.

7 Q And this is where it was reported to ORS that the matter
8 had been resolved; is that right?

9 A This is information that Barbara Yarborough had provided
10 to the ORS, that the issue was resolved.

11 Q Okay. And then, right below that – down here
12 [indicating] – the ORS notes say, “Found company in
13 compliance with PSC regulations”?

14 A Yes.

15 Q You see that, Ms. Sharpe?

16 A Yes.

17 Q What does that mean?

18 A That means that the regulation that Duke Energy provided
19 to ORS with its response to the actions that it was
20 taking, that the ORS found that the company complied
21 with the requirements in the Regulations.

22 Q And – let me – hold on just a minute. Do you know what
23 regulation is referred to there?

24 A The company advised ORS that it was disconnecting
25 service per Regulation 103-342(a) “Reasons for denial or

1 discontinuance of service," when the company had
2 determined that a hazardous condition existed.

3 **Q** Okay. And so the company informed ORS that it had made
4 a determination there was a dangerous situation and they
5 were going to disconnect service for that reason?

6 **A** Yes.

7 **Q** Under that regulation that you cited?

8 **A** That's the Regulation the company cited.

9 **Q** Okay. And, so, that's what's referred to when the note
10 there in the ORS record says, "Found company in
11 compliance with PSC Regulations"? That's what ORS was
12 talking about?

13 **A** Yes.

14 **MR. ELLERBE:** Thank you. No further
15 questions.

16 **CHAIRMAN WHITFIELD:** Thank you, Mr. Ellerbe.
17 Commissioners. Commissioner Elam.

18 **EXAMINATION**

19 **BY COMMISSIONER ELAM:**

20 **Q** Good afternoon, Ms. Sharpe. Who found the company in
21 compliance? I mean, I see the e-mail has Ms. Anderson
22 and Ms. Edwards. When it says, "Found company in
23 compliance with PSC Regulations," who did?

24 **A** The investigator that took this complaint, Takisha
25 Anderson, noted in the case record that she found the

1 company in compliance with the PSC Regulation that they
2 cited in providing an answer.

3 **Q** Okay. And that would've been just about whether they
4 followed proper procedures on disconnecting?

5 **A** Yes.

6 **Q** It wouldn't have anything to do with whether the
7 Greenwood Rate were proper, or not, or would it?

8 **A** It did not have anything to do with the Greenwood Rate.

9 **COMMISSIONER ELAM:** Okay. Thank you.

10 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
11 Elam.

12 Commissioner Fleming.

13 **COMMISSIONER FLEMING:** Yes.

14 **EXAMINATION**

15 **BY COMMISSIONER FLEMING:**

16 **Q** Could you clarify for me the Regulation – when a person
17 makes a complaint, like about when there's a complaint
18 about the billing process or late payments or whatever,
19 what is the Regulation that goes into effect when that
20 happens?

21 **A** Well, the complaint that we've got in front of us is
22 regarding a change in rate. And this is a complaint
23 that we took verbally, an informal complaint, that we
24 investigated verbally and contacted the company and
25 responded back to the consumer. So you are asking me

1 about PSC's Regulations that apply when a customer files
2 a complaint?

3 **Q** Yes, about their bill.

4 **A** A billing complaint.

5 **Q** Yes. Exactly – I mean, the bill is held in abeyance
6 until it's resolved, right?

7 **A** If we are working a billing complaint?

8 **Q** Uh-huh.

9 **A** Okay. So that I understand what you're asking me, what
10 PSC Rules and Regulations we would use regarding billing
11 complaints. This was a rate-change complaint that we
12 looked at.

13 **Q** Okay. So even with a rate-change complaint, it is not –
14 you do not consider it a billing complaint; it's a
15 different set of rulings?

16 **A** We looked at the issue that the consumer brought to us,
17 being a rate change. And so we went back to the company
18 and got their answer as to the reason that the
19 McCutcheons would experience a rate change. And the
20 information that the company had given us was that the
21 customer was overloading the company's system, causing a
22 hazardous situation to exist on service lines, and that
23 the company would be disconnecting the service because
24 they had determined that a hazardous situation existed,
25 and they were applying the Public Service Commission's

1 Rule and Regulation 103-342(a), which is "Reasons for
2 denial or discontinuation of service," involving a
3 hazardous condition. And that is a disconnection that
4 can occur without notice to the customer.

5 **Q** And, so, then Duke called you again and said that the
6 issue had been resolved.

7 **A** Duke advised the ORS that the issue had been resolved
8 with Mr. McCutcheon signing the agreement for a service
9 upgrade, and that he understood the rate would change.

10 **Q** Okay. So Duke has – now that they have withdrawn that
11 agreement as being a legal, binding document, as I
12 understand, what does that do to the information they
13 gave to you? You said that they had signed this
14 agreement.

15 **A** If the consumer chooses to exercise coming before the
16 Public Service Commission, that's their right after they
17 come to the ORS. The ORS received their complaint, we
18 looked into it with the customer and the company, and we
19 were advised and confirmed that the issue was resolved.
20 So we closed our case. And then, after that, if a
21 consumer chooses to exercise their right, they then come
22 before the Public Service Commission, which the
23 McCutcheons have.

24 **Q** Okay, but my question is, in the interim, if that paper
25 is not a legal document, why would their rate have gone

1 up? Do you see what I'm saying? Because usually when
2 we're in this type of situation – I know it's a billing
3 situation – the billing is held in abeyance. I guess
4 I'm maybe not using the correct language, but,
5 basically, it seems to me that there's a question about,
6 until it's resolved, is what they've been billed in the
7 meantime legally binding on the new rate, since the
8 paper that they signed they've now decided is not
9 legally binding?

10 **A** Well, I'm not an attorney, so I can't answer the part on
11 the "legally binding."

12 **Q** I'm asking it from your position, not from an attorney's
13 position.

14 **A** The ORS uses the Public Service Commission's Order that
15 was issued in 1966 on the rates for Greenwood customers
16 that were transferred per the purchase. And that Order
17 states that, if a customer is disconnected for any
18 reason, when they are reconnected they would be
19 reconnected at the Duke rate.

20 **Q** Okay.

21 **A** Does that answer your question?

22 **Q** Not really, but thank you. I don't think you were
23 answering my question in relationship to what was
24 changed at the end, with Duke's attorney's comments
25 about the document not being legally binding. But,

1 thank you.

2 **A** [Nodding head.]

3 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
4 Fleming.

5 Commissioner Howard.

6 **EXAMINATION**

7 **BY COMMISSIONER HOWARD:**

8 **Q** Ms. Sharpe, good afternoon.

9 **A** Good afternoon.

10 **Q** Let me put it in my way of thinking. I was under the
11 impression that once a customer submitted a complaint
12 with you, then you weren't allowed, or the utility
13 wasn't allowed to disconnect their service until the
14 complaint was resolved, and it went through you and, if
15 there were no resolution reached, then they had the
16 right to appeal to the PSC for a final decision. And
17 during this whole process, I don't know if there's a
18 time limit, but I was under the impression during this
19 whole process that service could not be terminated until
20 that complaint was resolved. Is that not right? I
21 don't know, but that's what I have heard. That's what I
22 remember from years gone by.

23 **A** The PSC's Regulation 103-342(a) allows the company to
24 disconnect service if they determine that a hazardous
25 condition exists, and that's a disconnection without

1 notice.

2 **Q** Okay, I understand. I'm with you. But they didn't have
3 a choice – I guess my point is, they don't have a
4 choice. The company came and made the service safe,
5 let's just say, so at that point on, then, they're going
6 to have to go under the Greenwood – I understand they
7 have to go under Greenwood Rate, but it seems to me like
8 we're missing a point there or a link there for the
9 disconnect. I mean, they really – even though they say
10 it's not – I mean, they really don't have a choice. I
11 mean, they cut the wire, they cut the power off, and
12 they don't pay because of the safety hazard, or whatever
13 have you. But yet, until they reapply and go on the
14 regular Duke rates, then, they're out of business.

15 **A** The ORS relies on the PSC's Rules and Regulations in
16 giving an answer to the customer.

17 **Q** Okay.

18 **A** Oh – excuse me.

19 **COMMISSIONER FLEMING:** I'm –

20 **CHAIRMAN WHITFIELD:** Let me go to Commissioner
21 Hamilton, okay?

22 **COMMISSIONER FLEMING:** Okay.

23 **CHAIRMAN WHITFIELD:** Thank you, Commissioner
24 Howard.

25 Commissioner Hamilton.

EXAMINATION

BY COMMISSIONER HAMILTON:

Q Hey, Ms. Sharpe. How are you today?

A I'm fine.

Q Good. Now I'm a little confused. Earlier when we started your testimony concerning the paragraph that the attorneys had put up, you said that – I thought – I misunderstood you; I thought you said that the change – that what you had didn't have anything to do with the Greenwood Rate. But then I think you quoted the 1966 Order that it did have to do with the Greenwood Rate.

A That Order indicates that if a service is disconnected for any reason, that when it's reconnected it would go back on the Duke rate.

Q And so I misunderstood you before, when you said that it didn't have anything to do with the Greenwood Rate.

A "It" being the complaint?

Q The complaint.

A The complaint was regarding a rate change.

COMMISSIONER HAMILTON: Okay. Thank you, ma'am.

CHAIRMAN WHITFIELD: Thank you, Commissioner Hamilton.

Commissioner Fleming, did you have anything else?

EXAMINATION

BY COMMISSIONER FLEMING:

Q Well, my – you keep saying it's up to us to make a decision, and we certainly understand that and we will be making a decision with this trial. But the decision you made that the case was closed was not our decision, and I just wanted to clarify that, that we understand, but that's why I was trying to understand how you made your decision, especially in light of a letter that, at the time, I think you considered binding, and we – I considered the information as binding until the end of their case before us. So I – that was what I was trying to get to.

A Exactly.

Q So –

A And when the ORS contacted Ms. McCutcheon to confirm what the company had told us, that the matter was resolved on the evening of June 17th, Ms. McCutcheon confirmed that it was resolved. And, with that, the ORS closed the case.

Q Okay. I think –

A Does that clear it up?

Q I guess I'm getting confused – Ms. McCutcheon related, as I remember the call, differently from the way you're presenting it. So that's – I think that's part of the

1 confusion, as well. We'll just have to look at the
2 transcripts. Thank you.

3 **A** [Nodding head.]

4 **CHAIRMAN WHITFIELD:** Any other Commissioner
5 questions?

6 [No response]

7 **EXAMINATION**

8 **BY CHAIRMAN WHITFIELD:**

9 **Q** Ms. Sharpe, I want to follow up just a little bit about
10 what some of the other Commissioners have asked you. I
11 think, according to your testimony here and your
12 prefiled testimony, and also your testimony here on the
13 stand today, the complaint you received was on June
14 16th, and two days later, by June 18th, I guess – if I'm
15 reading your testimony and hearing you correctly – it
16 was closed?

17 **A** That's correct?

18 **Q** So you had an open complaint for roughly 48 hours,
19 maybe, give or take a little bit. Two business days, or
20 so.

21 **A** [Nodding head.]

22 **Q** Then, later in your testimony, you come back and say
23 that – last question – "Did Ms. McCutcheon contact you
24 after June 18, 2015?" And you say, "Yes, Ms. McCutcheon
25 contacted ORS again on July 20th, wanting to know an

1 update on the June 2015 Complaint.” And at that time,
2 not you, but somebody from ORS advised Ms. McCutcheon
3 the complaint was closed. But didn't you just – didn't
4 you say that on the 18th, that she was informed it was
5 closed?

6 **A** That's correct.

7 **Q** So, two months later – or, excuse me. A month later, a
8 little over a month later, she's somehow still thinking
9 that it's still open, correct?

10 **A** That's what the record indicates.

11 **Q** Okay. Well, somehow, apparently, she didn't get the
12 message on the 18th that it was closed. Or maybe didn't
13 understand that. Is that right, or –

14 **A** The record indicates that she was spoken to on June
15 18th, and that she confirmed that the matter was
16 resolved.

17 **Q** Okay. But then, again, on July 20th, she calls in
18 wanting to know the status of it. I guess she was
19 explained to, then, you say in your testimony that she
20 was informed then, again, on July 20th, that the matter
21 was closed; is that correct?

22 **A** Yes.

23 **Q** Was there any other further contact from her, regarding
24 the status of her case, after July 20th?

25 **A** The case does not show any further contact after the

1 July 20th – July 2015 contact to the ORS.

2 **Q** All right. And also, in your records on the 18th, you
3 have on the screen there, "Found company in compliance
4 with PSC Regulations," correct?

5 **A** Yes.

6 **Q** In your mind, this complaint was filed because of a
7 discrepancy in the rate, correct? Because of not being
8 allowed to be on the Old Greenwood Rate versus the
9 current Duke rate?

10 **A** It was a rate-change complaint, yes, sir.

11 **Q** The way you viewed it, it was a rate-change complaint.
12 But when you say, "Found company in compliance with PSC
13 Regulations," were you going on the word or the – for
14 lack of better word – word, or whatever you want to say,
15 of the Duke technicians or Duke staff? Or did someone
16 from the ORS staff, other than your Consumer Services
17 Division, somebody maybe in your electrical – I don't
18 know if it would be Mr. James, or who, but somebody in
19 your electrical staff – did they investigate this or did
20 it just stay within your department as a rate
21 discrepancy? Was it ever – did any of your technical
22 engineering, electrical engineering, people ever
23 investigate this or have any knowledge of it or any
24 input into it, that you know of, from ORS?

25 **A** There's no indication in this record, no.

1 **CHAIRMAN WHITFIELD:** Okay, thank you. That's
2 all I have.

3 Any other Commissioner questions?

4 [No response]

5 If not, Mr. Nelson, any redirect?

6 **MR. NELSON:** No redirect, Mr. Chairman. Thank
7 you.

8 **CHAIRMAN WHITFIELD:** Ms. Sharpe, if there's no
9 other questions, you may step down. And thank you
10 for your testimony.

11 **WITNESS:** Thank you.

12 [WHEREUPON, the witness stood aside.]

13 **CHAIRMAN WHITFIELD:** At this time, as Ms.
14 Sharpe steps down, I'm going to go to the parties
15 for closing statements, if any. Any closing
16 statement from any of the parties?

17 **MR. SHISSIAS:** We do have a closing statement
18 we'd like to -

19 **CHAIRMAN WHITFIELD:** Mr. Shissias, come
20 forward. You're going to be the one to do that.

21 **MR. SHISSIAS:** Thank you.

22 Mr. Chairman and members of the committee, as
23 we've alluded to earlier, this case here is about
24 what sort of change is necessary to force a
25 customer off the Greenwood Rate and onto the Duke

1 rate, under the PSC Order and, most particularly,
2 the Supreme Court's decision in the Payne versus
3 PSC case from 1991, which I submit to you is the
4 only reported case that squarely addresses this
5 issue.

6 You've heard a lot about upgrades and about
7 thermal loading and amperage and transformers, but
8 this case is really about the law, which we've
9 heard very little about. The Rule about when
10 someone gets knocked off the rate is when a
11 connection becomes a "new connection." The term
12 "upgrade" is a red herring. Now, some witnesses
13 testified it's about load, saying that that term is
14 in the record, in the law, and it isn't. Some
15 folks have testified, I think, that if you move the
16 physical connection a certain number of inches,
17 that knocks you off the rate. The real problem is,
18 is that all of these interpretations – which don't
19 even appear to be written down – fall short of the
20 mark, and we really need some guidance here.

21 So let's look at what is in the law – strictly
22 what is in the law.

23 So let's start with the agreement involving
24 the sale of the system to Duke, which was cited in
25 Payne. It says, quote, "The rates to be charged

1 for connections after the date of the sale shall be
2 the applicable rates of Duke Power Company," after
3 the date of the sale. So this means connections
4 before the date of sale stay on the Greenwood Rate.
5 This account has been in existence since before the
6 date of the sale, so what justifies a change? And
7 the Supreme Court has said, quoting again, "A
8 change in either the character of the connection,"
9 and they use the words e.g. "from single- to three-
10 phase, or use of a premises, e.g. from residential
11 to commercial, constitutes a new connection
12 effectuating a transfer to Duke rates." So we're
13 not talking about a change in the use of premises
14 here. We're not worried about that. So the only
15 way this can be a "new connection" is if there's a
16 change in the "character" of the connection, such
17 as single- to triple-phase. So that's a legal
18 question. It's whether there's been a change in
19 the character, a change in the characteristics of
20 the connection. Has there been, dare I say it, a
21 qualitative, or a change in quality of the
22 connection, versus a quantitative change, a change
23 in quantity? In my mind, qualitative versus
24 quantitative, that's what the word "character" has
25 to mean, or it means nothing. And all we're seeing

1 here is more power use. The biggest year of the
2 usage was actually 2014. For some reason, nothing
3 happened then. But that's it. Nobody disputes
4 anything, just using more power. That's a
5 quantitative change, not a qualitative change. And
6 the words "upgrade" and "load" can hide a multitude
7 of sins, I submit to you. Equipment does get old
8 and has to be replaced. Although we may fight over
9 how long a powerline – what its useful life is,
10 lines do fall into disrepair. That, I submit to
11 you, is nothing more than Duke's duty under R. 103-
12 360 to maintain and operate its system properly.

13 To accept Duke's reading of the law, that
14 would mean a utility could let service lines of
15 Greenwood Rate payers fall into disrepair or wait
16 until those people needed more power – say, you
17 need an upgrade, you need bigger lines – and knock
18 them off the rate. And I submit, if that were
19 allowed, that the number of Greenwood Rate payers
20 would diminish even more rapidly than it has
21 already. And I'll also submit to you that,
22 considering how much money Duke is losing on this,
23 that's the way they'd prefer to have it. But I
24 don't think the law can mean that. An existing
25 connection carries with it, I would submit to you,

1 the duty to maintain, to maintain that connection.
2 And, by the way, as technology marches along, and
3 we all know it, we all know power demand grows.
4 But Duke is expecting a business or a residence in
5 2015 to be operating with equipment sized for 1962
6 power usage and to keep limping along with that
7 same system. And when you need a change, need a
8 bigger system, you're off the rate. I submit to
9 you that the law can't mean that.

10 But even if you accept Duke's reading of the
11 law, they're still going to lose on the facts.
12 Their position is that line repair was necessary in
13 2015, even though there was more power used in
14 2014, and that an upgrade consisting of replacing a
15 2/0 gauge line with 4/0 gauge lines and increasing
16 a 25 kVA transformer to a 50 was needed. That is
17 not sufficient, by itself, to change the rate. The
18 testimony shows the transformer was changed once
19 already; that didn't result in anything different.
20 And there are other people on that transformer.
21 When that transformer – when the fuse blew, it
22 interrupted power to a number of customers. So
23 what's the only thing that is only ours? That only
24 pertains to us? That service line. That piece of
25 equipment, that service line that serves us, and

1 only us. And they said we needed bigger wire.
2 Just needing a bigger wire for the same kind of
3 service is not a change in the character of the
4 connection. Thank you.

5 **CHAIRMAN WHITFIELD:** Mr. Ellerbe?

6 **MR. ELLERBE:** Thank you, Mr. Chairman. It's
7 interesting that we have a dramatically different
8 position taken by the Complainant today, at the end
9 of this case, from where they started. When they
10 filed this case in January, they supported the
11 Complaint with affidavits of Mr. McCutcheon and Mr.
12 Calhoun, their expert witness. And Mr. Calhoun,
13 who testified to y'all, had an elaborate theory as
14 to the cause of the two outages. And his theory
15 had to do with the fault being Duke's operation of
16 its facilities and the current transformer failing,
17 and that that caused the outages, and it didn't
18 have anything to do with the operation of the
19 drive-in. You may have noticed when Mr. Calhoun
20 was on the witness stand, he abandoned that theory,
21 and did not attempt to persuade this Commission, as
22 far as I could tell, of any explanation for why the
23 outages occurred. The only coherent, logical
24 explanation that y'all heard, and you heard it
25 repeatedly, for why the outages occurred, was that

1 there was an increase in demand by the drive-in as
2 a result of a successful operation of the drive-in
3 in Greenwood. They've added cooking facilities,
4 air conditioning; added screens. They're doing
5 well. Their facilities, their demand for
6 electricity, is growing. And the demand is real
7 important. The overall kilowatt-hours on an annual
8 use – which we had an exhibit that we presented,
9 that showed kilowatt-hour growth over an extended
10 period of time, on an annual basis, which is a
11 relevant thing for y'all to consider: The fact that
12 the drive-in is expanding its use of electricity.
13 But it's not – the annual use is not what causes an
14 outage. What causes an outage is the demand put on
15 those facilities that come from the pole
16 transformer down to the drive-in, to the
17 weatherhead, at any given point in time. And Mr.
18 McCutcheon and Mr. Calhoun both agreed with me
19 that, when you have a drive-in operation, you're
20 going to have a high peak – that most of their
21 usage is going to come on a Friday night, Saturday
22 night, Sunday night. That's when they're going to
23 have their screens running, their projectors
24 running, their air conditioners running, they're
25 going to have their cooking equipment, all of that

1 comes – and that's the demand placed on those
2 facilities at that point in time that causes it to
3 overheat, that causes the connection to fail, and
4 caused, in this case, the company to logically and
5 reasonably conclude a new connection was needed.
6 New facilities. A new connection from the pole
7 transformer down to the drive-in. That's what
8 triggers, under Act 1293 – excuse me. Yes, 1293 of
9 1966 states the rates to be charged for electric
10 power for connections after the date of the sale,
11 sale of the Greenwood system to Duke Power –
12 connections after the date of the sale shall be the
13 applicable rates of Duke Power Company. This is a
14 new connection. This demand, because the business
15 upgraded, put in new facilities, put greater demand
16 on those facilities, new, more robust facilities –
17 two 4/0 connections were replaced, replaced the old
18 ones, and that carried a much greater demand
19 safely. The transformer was changed – the only
20 reliable evidence is that the reason that the
21 transformer had to be changed was because of the
22 growth of the demand by the drive-in. The other
23 two residential-usage garages were not placing –
24 there is no evidence from which y'all could
25 conclude that they were the ones who caused that

1 transformer to need to be replaced. So the
2 transformer and the lines – only reasonable
3 inference from the evidence is the transformer and
4 the lines had to be replaced because of the growth
5 in demand by the drive-in. And that growth and
6 demand necessitated a new connection.

7 And the Payne case that counsel referred to,
8 we believe, absolutely supports our position in
9 this case. What the Supreme Court said was, with
10 reference to customers in subclasses B and C – and
11 subclass B is transferred to the Duke rate as a
12 result of a change in the character of the
13 connection – “We agree with the trial court that a
14 change in either the character of the connection,
15 e.g.,” as in for example, “from single- to three-
16 phase,” or the use will necessitate the new rate.
17 We believe the Supreme Court absolutely decided the
18 case consistent with our view of it, which is
19 growth in demand overtaxed the existing facilities;
20 you need a new connection; this is a new
21 connection. I’m not going to go into the details
22 on the trial court’s order that the Supreme Court
23 affirmed on that specific holding, but in our
24 proposed order, we will address that, and y’all
25 will see that the trial court went into much

1 greater detail on that issue, and absolutely
2 supports our position.

3 Just to sort of round out a couple of things
4 here, when this thing began way back in 2015, the
5 McCutcheons knew very well what was going on with
6 the Greenwood Rate. The ORS notes say – and I
7 talked to Ms. McCutcheon about this – “Spoke with
8 Ms. McCutcheon, who confirmed that there had been
9 fires at the location but they were not the fault
10 of the customer. While discussing information
11 provided by DEC with Ms. McCutcheon, Mr. McCutcheon
12 got on the phone and stated that there had not been
13 any fires at the location, and he continued to
14 state that he felt he was being forced off the
15 Greenwood Rate.” I submit to y’all – and these are
16 notes taken by an ORS employee at the time; they’re
17 not trying to see who wins this case, they’re just
18 trying to take down what’s going on. I submit to
19 y’all that Mr. McCutcheon knew, then, that if his
20 facility was putting such a strain on the
21 connection that fires were being caused twice, that
22 he was going to lose the Greenwood Rate. That’s
23 known up there. And that is the appropriate
24 result, because this is a new connection,
25 successful business, new connection, and so this

1 Complaint should be dismissed and the drive-in
2 should continue to pay the Duke rate. That's what
3 was intended by the General Assembly back in 1966,
4 and we urge y'all to reach that conclusion in this
5 matter. Thank you, very much.

6 **CHAIRMAN WHITFIELD:** Mr. Nelson?

7 **MR. NELSON:** I'm going to be real quick,
8 because I think – you've heard arguments from both
9 sides here. I think, if nothing else, this
10 explains maybe part of the reason why our Consumer
11 Services has a difficult time when it comes to the
12 issues like the Greenwood Rate in this case here.
13 I think there have been very good arguments put
14 forth on both sides, and I think, if nothing else,
15 this shows that we really would like to get some
16 guidance from the Commission on this.

17 Generally, April and her group rely on a 1966
18 Commission Order. Now they also, of course, look
19 at the Payne case, but, primarily, it's that 1966
20 Commission Order. So, we're talking about a 50-
21 year-old order – 50-plus-year-old order here. So
22 some more guidance – especially when it comes to
23 something specific like we have here, which is in
24 this case that these folks had a great increase of
25 load that they're putting on the system.

1 And Mr. Ellerbe makes a good argument on
2 behalf of Duke, but I think there's a question
3 about whether or not this is something that comes
4 under the guidance that we have. We need to look
5 at this. And I think with the way the world is
6 changing with the increase in electric usage,
7 generally, in households and businesses, that this
8 is the kind of thing that we would like to really
9 see some kind of guidance on.

10 From our standpoint, when we get involved in a
11 case like this – we've got four investigators; we
12 handle over 200-plus consumer complaints a month.
13 And when we receive evidence from the companies
14 that we deal with, that show us that a complaint
15 has been resolved, as we did in this case, both
16 verbally at first and then in writing, seeing an
17 agreement between the parties, we back out. And we
18 back out, one, because we don't have the man-power
19 to do much more, and, secondly, because when people
20 say it's over, it's over. We back out of that, and
21 that's why we didn't continue the investigation
22 further. We stayed in this case, though, because,
23 rather than getting out as we do in a lot of
24 consumer cases, we have an interest in seeing this
25 resolved in some manner and some guidance being

1 given both the consumers, as well as to the
2 companies, as well as our staff in Consumer
3 Services as far as what the standard is that the
4 Commission wants to see on when somebody should or
5 should not be taken off the Greenwood Rate. Thank
6 you.

7 **CHAIRMAN WHITFIELD:** At this time, I'm going
8 to ask Mr. Stark, our attorney, to go over the
9 exhibit list and do a little housekeeping before we
10 adjourn this hearing. Mr. Stark?

11 **MR. STARK:** Thank you, Mr. Chairman. I'd like
12 to go through the exhibit list to be sure that
13 we're all in agreement. I have, as Hearing Exhibit
14 No. 1, the June 17, 2015, agreement. Hearing
15 Exhibit No. 2 were the consumer bills with
16 confidential treatment afforded. Hearing Exhibit
17 No. 3 was the ORS case records. Hearing Exhibit 4
18 was the photo of a wire. Hearing Exhibit 5 was Mr.
19 Fowler's Exhibit A, B, and C, as a composite
20 exhibit. Hearing Exhibit 6 was Mr. Lunsford's
21 Exhibit A. Exhibit 7 was Mr. Lane's Exhibit A.
22 Hearing Exhibit 8 was Mr. Lunsford's Exhibits A and
23 B, as a composite exhibit. Hearing Exhibit 9 was
24 reserved for our late-filed exhibit from Duke. And
25 that's the complete list.

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CHAIRMAN WHITFIELD: Does anyone else have housekeeping matters, now that Mr. Stark has read the exhibit list?

[No response]

If not, I would like to thank all the participants in this case, thank all the parties. I would like to ask that – rather than giving you a proposed order date, I would like to ask that the attorneys representing the parties reach out to Mr. Stark for proposed order dates, so that we have time to – that you have time to go over the transcript and prepare your proposed orders. And I'll let Mr. Stark, as our attorney in this matter, work with the parties in setting proposed order dates for when they're due.

And, with that, if nothing further, hearing adjourned.

[Witness(es) excused.]

[WHEREUPON, at 3:15 p.m., the hearing in the above-entitled matter was adjourned.]

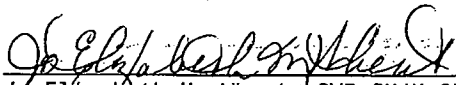
[WHEREUPON, Hearing Exhibit No. 9 was marked and received in evidence upon receipt thereof: April 21, 2017]

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of proceedings had and testimony adduced in a hearing held in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

That the witnesses appearing during said hearing were sworn or affirmed by me to state the truth, the whole truth, and nothing but the truth;

IN WITNESS WHEREOF, I have hereunto set my hand and seal, on this the 19th day of June, 2017.


Jo Elizabeth M. Wheat, CVR-CM/M-GNSC
Hearings Reporter, PSC/SC
My Commission Expires: January 27, 2021.

such time, upon such terms and at such premiums as shall be prescribed by the board. The bonds shall be of such denomination, shall bear such rate or rates of interest as the board may determine, payable semiannually or on such occasion as the board shall determine. The bonds shall bear such date and be payable at such place as the board may determine. The bonds may be issued with the privilege to the holder of having them registered as to principal on the books of the Treasurer of Greenwood County, and the principal thus made payable to the registered holder, unless the last registered transfer shall have been to bear upon such conditions as the board may prescribe."

SECTION 3. Paragraph (4) of Section 4 of Act 633 amended—
Paragraph (4) of Section 4 of Act No. 633 is amended by striking the paragraph and inserting in lieu thereof the following:

"(4) Bonds shall be paid out on vouchers or warrants signed by the Supervisor and the Clerk of the Finance Board, and in the case of the incapacity of either the County Supervisor or the Clerk of the Finance Board, the County Treasurer shall sign in the place and stead of the Supervisor or Clerk, as the case may be."

SECTION 4. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 16th day of February, 1966.

(R847, H2092)

No. 1293

An Act To Provide For The Sale Of Certain Property Of Greenwood County Controlled By The Greenwood County Electric Power Commission, To Provide For The Lease Of The Lake Greenwood Reservoir And Power Facilities Of Buzzard's Roost Dam If An Election Results Favorably Thereto, To Create An Advisory Board To Advise The Governing Body Of Greenwood County On The Investment Of Certain Funds And To Create The Lake Greenwood Recreation Commission.

Whereas, Duke Power Company, an electrical utility doing business in Greenwood County and surrounding counties in South Carolina, has made an offer in writing dated May 28, 1965, to purchase

the properties of the Greenwood County Electric Power Commission which offer is incorporated by reference into this act; and

Whereas, the properties of the Greenwood Electric Power Commission are owned by the people of Greenwood County who should decide for themselves whether the offer of Duke Power Company should be accepted or rejected. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Referendum on sale of Greenwood County Electric Power Commission property to Duke Power Company.—The Greenwood County Commissioners of Election shall conduct a referendum on April 12, 1966, during the hours provided for special elections, to ascertain the wishes of the qualified electors of Greenwood County on the question of whether they favor the sale of the property of Greenwood County controlled by the Greenwood County Electric Power Commission to Duke Power Company, excluding the reservoir known as Lake Greenwood and the hydro-electric generating facilities at Buzzard's Roost. The commissioners of election shall publish the information relating to the referendum once a week for two consecutive weeks in a newspaper having general circulation in the area within thirty days of the date of the referendum.

SECTION 2. Election—conduct of.—The commissioners of election shall have printed a sufficient number of ballots and have them distributed at the voting places. The ballots shall read as follows:

"Do you favor the sale of the property of Greenwood County controlled by the Greenwood County Electric Power Commission exclusive of the Lake Greenwood Reservoir and the hydro-electric generating facilities at Buzzard's Roost to Duke Power Company?

In favor of

Opposed to

Those voting in favor of the question shall deposit a ballot with a check or cross mark in the square after the words 'In favor of' and those voting against the question shall deposit a ballot with a check or cross mark in the square after the words 'Opposed to.'"

The officials responsible for canvassing the results of the election shall, within ten days, certify such results to the clerk of court of the county and to the Secretary of State.

SECTION 3. Sale of property if referendum favorable.—If in the referendum provided herein more than one-half of the total number of voters voting in the special election vote in favor of the

sale, the Greenwood County Finance Board shall sell and convey all properties of Greenwood County controlled by the Greenwood County Electric Power Commission, excluding the reservoir which is formed by the dam at Buzzard's Roost on the Saluda River and the hydro-electric plant and further excluding all real estate under the control of the Electric Power Commission which is not devoted to or used in the normal operations of the business of the Commission and which is not a part of the basin or reservoir of Lake Greenwood, to Duke Power Company and shall execute all legal instruments necessary thereto. If the referendum results in a majority vote opposed to the sale, then the Greenwood County Electric Power Commission shall be deemed fully authorized to proceed with the necessary expansion of its facilities to meet the power production and distribution needs of its system, as the commission determines such needs, and the Finance Board of Greenwood County shall be deemed fully authorized to execute revenue bonds to finance such expansions, as may be requested by the commission (none of which bonds shall pledge the tax obligation of Greenwood County) and to take such other action as may be necessary to proceed with the expansion program, all as may be requested by the commission.

SECTION 4. Terms and conditions of sale.—The terms and conditions of the sale are as follows:

1. Duke Power Company shall pay to Greenwood County the sum of twelve million nine hundred eighteen thousand one hundred seventy-six dollars. The purchase price shall be adjusted to the date of closing to reflect additions to and retirements of plant, as well as changes in other asset and liability values from December 31, 1964, for the Greenwood County Electric Power System and June 30, 1964, for the Greenwood County Rural Electric System. Final asset and liability values at the closing date shall be certified by independent certified public accountants selected by the Finance Board. The proceeds of this sale shall be invested by the Finance Board for a period of twenty-five years, during which time the principal shall not be used for any purpose. In no event shall any portion of the principal be expended without first submitting the proposed expenditure by referendum to the qualified electors of Greenwood County and securing a majority vote in such referendum favorable to the expenditure. The income from the investment of the principal shall be used by the Governing Body of Greenwood County for the payment of principal and interest of general county bond indebtedness and for general county purposes.

2. Duke Power Company shall lease the above-described reservoir and hydro-electric generating facilities from Greenwood County for an annual rental of two hundred fifty thousand dollars per year for a term of forty years payable annually in advance. The dam and hydro-electric facilities shall be maintained and operated by Duke Power Company and the cost of replacements or improvements during the term of the lease shall be borne by Duke Power Company. The lessee shall further bear any cost involved in the renewal of the Federal Power Commission license for operation of the hydro-electric facility, including the cost of any legal requirements regarding features of the lake or dam operation imposed by the licensing agency. The lease shall provide that Duke Power Company shall operate the hydro-electric facilities in regard to the level of water within the reservoir in general conformity with the pattern of operation of water levels during each season of the year established by the county commission during its operation of the facilities and in such a manner as not to cause the water level to go below the lowest draw down mark maintained at that season of the year by the county commission. The lease shall further provide that all recreation and fishing in the lake and any other allied endeavor shall be controlled by the governing body of Greenwood County. The lease shall further provide that malaria control and other allied endeavors previously performed by the commission shall be performed by Duke Power Company. Expenses incurred therein shall be borne by Duke Power Company.

3. The rates to be charged for electric power for all connections which exist at the consummation of the sale shall be the lower of the rates charged by the Greenwood County Electric Power Commission and Duke Power Company and the same shall not be grounds for any claim alleging discrimination. The rates to be charged for electric power for connections after the date of the sale shall be the applicable rates of Duke Power Company. As used herein the word "connections" shall be deemed to mean the physical connection of a residence or business establishment and shall have no reference to the person or business firm occupying the premises so connected, and the benefit of the lower rate shall continue although the person or firm occupying such premises may change from time to time.

4. The sales agreement shall confirm the written proposal of Duke Power Company regarding the continued employment of the present employees of the county commission and the terms and places of their employment.

5. The sale shall be consummated on July 1, 1966.

SECTION 5. Advisory board.—An advisory board, consisting of five members, shall be appointed by a majority of the Legislative Delegation of Greenwood County for the purpose of advising the governing body of the county upon the investment of funds derived from the provisions of this act. They shall serve for terms of three years or until their successors are appointed and qualify and shall receive no compensation.

SECTION 6. Lake Greenwood Recreation Commission created.—There is hereby created the Lake Greenwood Recreation Commission which shall consist of seven members who shall be appointed by a majority of the Legislative Delegation of Greenwood County. The members shall serve for terms of three years or until their successors are appointed and qualify. They shall receive no compensation. They shall make recommendations periodically regarding the use of Lake Greenwood for fishing, boating, water skiing and other recreational activities. At least one member shall be a person who is an active fisherman, one member shall be a residential property owner on the shores of Lake Greenwood and one member shall be a person who actively engages in boating and water skiing activities.

SECTION 7. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 11th day of March, 1966.

(R1165, H2542)

No. 1294

A Joint Resolution Proposing An Amendment To Section 5 Of Article X Of The Constitution, Relating To The Bonded Indebtedness Of Certain Political Subdivisions, So As To Permit Greenwood School District No. 51 Of Greenwood County To Incur Bonded Indebtedness Up To Twenty Per Cent Of The Assessed Value Of The Taxable Property Therein, And To Eliminate Consideration Of Such Indebtedness In Determining The Total Amount Of Indebtedness Over And Upon Such Territory.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Amendment to Article X, Section 5, State Constitution, proposed—bonded indebtedness, Greenwood School Dis-

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 5, 2018



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