

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

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JAN 14 2012

SC Court of Appeals

Ralph K. Anderson III, Administrative Law Judge

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Case No. 10-ALJ-17-0270-CC

Duke Energy Corporation..... Appellant,

v.

South Carolina Department of Revenue..... Respondent.

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MOTION TO CONSOLIDATE  
AND  
TO HOLD TIMELINES IN ABEYANCE PENDING ORDER OF CONSOLIDATION

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The Appellant, Duke Energy Corporation, moves to consolidate the Notices of Appeal it has filed from various orders issued in the above-captioned case, all of which were decided by The Honorable Ralph K. Anderson III and all of which bear the same lower court case number. The first Notice of Appeal was filed on October 9, 2012, appealing from Judge Anderson's Order Granting Partial Summary Judgment in favor of the South Carolina Department of Revenue.<sup>1</sup> On October 23, 2012, an Amended Notice of Appeal was filed to include orders from October 11, 2012, one of which granted in part and denied in part reconsideration and the other of which amended the previously

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<sup>1</sup> Duke Energy filed a motion for reconsideration on August 20, 2012, and when no order on reconsideration was issued within thirty days, Duke Energy believed reconsideration was deemed denied, and filed its Notice of Appeal within thirty days of that deemed denial. Two days after the Notice of Appeal was filed, Judge Anderson issued an order on reconsideration, explaining that the ruling on reconsideration had been stayed.

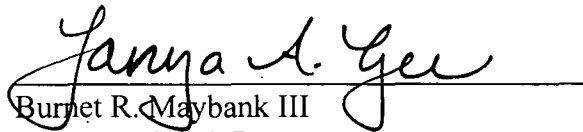
filed summary judgment order. On November 6, 2012, this Court requested that Duke Energy submit a memorandum addressing the appealability of the pending orders. Duke Energy's appealability memorandum was filed and served on November 16, 2012, and remains pending. The appellate case number for that appeal is 2012-213180.

On November 2, 2012, Judge Anderson issued a Final Order and Decision. A motion for reconsideration was filed, and pursuant to that motion, Judge Anderson issued an Order on Reconsideration and an Amended Final Order and Decision, both dated December 4, 2012. Duke Energy filed a Notice of Appeal from these orders on January 2, 2013, and the following day, on January 3, 2013, it filed an Amended Notice of Appeal from all orders issued in this matter. An appellate case number has not yet been assigned.

Pursuant to Rule 214 of the South Carolina Appellate Court Rules, Duke Energy asks that this Court consolidate their appeals from the following orders: (1) Order Granting Summary Judgment in Part and Denying Summary Judgment in Part filed on August 9, 2012; (2) The ALC's deemed denial of Appellant's August 20, 2012 Motion for Reconsideration (3) Amended Order Granting Summary Judgment in Part and Denying Summary Judgment in Part filed on October 11, 2012; (4) Order Denying Motion for Reconsideration in Part and Granting Reconsideration in Part filed on October 11, 2012; (5) Final Order and Decision filed on November 2, 2012; (6) Amended Final Order and Decision filed on December 4, 2012; and (7) the ALC's Reconsideration Order filed on December 4, 2012. **This consolidation of appeals, which includes the final decision of the Administrative Law Court, should resolve any lingering appealability issues.**

Duke Energy further asks that the thirty-day timeline for filing its Initial Appellant's Brief and Designation of Matter be held in abeyance while this Motion for Consolidation is pending, and that the due date for filing and serving its Initial Brief begin to run from the date such an order is issued.

RESPECTFULLY SUBMITTED,



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*Attorneys for Appellant Duke Energy Corporation*

January 14, 2013  
Columbia, South Carolina

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In The Court of Appeals

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Ralph K. Anderson III, Administrative Law Judge

Case No. 10-ALJ-17-0270-CC

Duke Energy Corporation..... Appellant,

v.

South Carolina Department of Revenue..... Respondent.

PROOF OF SERVICE

This is to certify that the foregoing Motion to Consolidate was sent via U.S. Mail  
addressed as follows this 14th day of January 2013:

Harry Hancock  
Milton Kimpson  
S.C. Department of Revenue  
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The Honorable Ralph K. Anderson III  
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**SC Court of Appeals**

*Sharon A. Werdenie*

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Special Counsel

January 14, 2013

**VIA HAND DELIVERY**

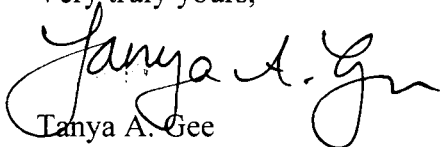
The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: Duke Energy Corp. v. S.C. Dept. of Revenue  
10-ALJ-17-0270-CC

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced case please find an original and seven copies of Appellant's Motion to Consolidate and to Hold Timelines in Abeyance Pending Order of Consolidation. I have enclosed a Proof of Service reflecting that counsel of record has been served with copies of the same. Please return one clocked copy of the documents to me via our courier.

Very truly yours,



Tanya A. Gee  
Enclosures

cc: The Honorable Ralph K. Anderson III  
Harry Hancock  
Milton Kimpson  
John M. S. Hoefler  
Tracey C. Green  
John Roberts  
Jana E. Shealy

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