

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2008-CP-17- 0180

Gary Weaver, BEA Wallentstein, and B.E.A
Wallenstein Hospice Inter Vivos Trust,

Of whom Gary Weaver is the,

Plaintiffs,

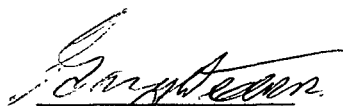
Appellant,

v.

Progress Energy Carolinas, Inc, William Johnson,
and John Does 1-20

Respondents.

RECORD ON APPEAL



Gary Weaver.
Appellant Pro Se
P.O. Box 539
Little Rock S.C.
29567
Ph: 843 841 1606
Fx: 843 774 2050

RECEIVED
APR 25 2011
SC Court of Appeals

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ORDERS

Order of October 1, 2007

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Order of August 12, 2009

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Order of January 4, 2010

ANSWER

Respondents Did Not File an Answer to the Complaint

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2004-CP-17-232

PLAINTIFF(S)

DEFENDANT(S)

Progress Energy Carolinas

GARY WEAVER
Beatrice Weaver

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(d), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

FILED
GWENTHYATT
2007 OCT -1 PM 1:35
CLERK OF COURT
DILLON COUNTY

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Per attorneys Case Settled - Formal
Order forth coming

Dated at Dillon, South Carolina, this 1 day of Oct, 2007

PRESIDING JUDGE

This judgment was entered on the 1 day of Oct, 2007, and a copy mailed first class this 1 day of Oct, 2007 to attorneys of record on to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Mark W. Bugck, Jr.

DAN SHINE
CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2004CP-17-232

PLAINTIFF(S) *Progress Energy Carolinas*

DEFENDANT(S) *Weaver, Gary
Pro/se*

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. *on 1/30/08.* The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED:

- ☐ See Attached order.
☒ Statement of Judgment by the Court:

The Court heard extensive oral arguments concerning the motion to enforce settlement agreement and finds that said agreement shall be enforced and that all parties are to abide by its terms. The defendant shall within 45 days of this date (2/28/08) come into compliance with the terms of paragraphs 3 and 4 of the Mutual Release Agreement dated or filed with the Clerk of Court on October 25, 2007. Parties to comply shall subject

Dated at *Dillon* South Carolina, this *28th* day of *Feb.* 2008.

dated or filed with the Clerk of Court on October 25, 2007. Parties to comply shall subject

The parties to this Contempt Proceeding of the Court, and it is so ordered.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

MARK W. Buysck, Jr.
ATTORNEY(S) FOR THE PLAINTIFF(S)
*PO Box 1909
Florence SC
29503*

*DAN Shine
GARY Weaver*
ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

CLERK OF COURT
DILLON COUNTY
FILED
GIVEN THYATT
2008 FEB 28 PM 12:29

*DAN Shine
205 W. HANPTON ST
DILLON SC 29536
GARY Weaver
PO Box 7682
Florence SC 29502*

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)
)
Progress Energy Carolinas, Inc.)
Plaintiff)
versus)
)
Gary Weaver, Pro Se)
Defendant)

CA: 2004-CP-17-232

ORDER

FILED
GMENT. HYAIT
CLERK OF COURT
DILLON COUNTY

2008 MAR 26 AM 9:29

This matter concerning Plaintiff's motion to enforce settlement agreement was heard before the Court at a Commons Pleas Non-Jury term held the week of January 28, 2009.

And Order was issued by the Court on February 28, 2008, granting Plaintiff's Motion. Numerous post trial motions have been filed by the Defendant, Gary Weaver, including a request for clarification dated March 7, 2008 and Letter of transmittal dated March 10, 2008.

The Court construes the Request for Clarification and the Letter of Transmittal to be a Rule 59(e) motion and finds that this is the only issue properly before the Court at this time.

The Court has reviewed its previous Order and the documents and briefs presented by the Defendant. The terms of this Court's Order dated February 28, 2008 are crystal clear with no ambiguities.

IT IS THEREFORE ORDERED that the Defendant's 59(e) motion to reconsider or amend is respectfully denied.

AND IT IS SO ORDERED.

A CERTIFIED
TRUE COPY

Gwen T. Hyatt

March 24, 2008
Pageland, South Carolina

CLERK OF COURT
DILLON COUNTY

Paul M. Burch
JUDGE PAUL M. BURCH

(10)

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF DILLON FILED

IN THE COURT OF COMMON PLEAS GWEN T. HYATT CASE NO. 2004-CP-17-232

PROGRESS ENERGY

CAROLINAS, INC.

2008 JUL 25 PM 4:56

GARY WEAVER &

BEATHICE WEAVER

CLERK OF COURT

DILLON COUNTY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)

☒ Statement of Judgment by the Court:

This case has ended and 59(e) motion has been denied. The

only matter the Club may accept in this case is Notice of Appeal. Otherwise

Dated at Dillon, South Carolina, this 25 day of July, 2008.

Clerk is directed to return all matters of record hereafter to the parties.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

MARK BLYCK, III

GARY WEAVER
DAN SHINE

ATTORNEY(S) FOR THE PLAINTIFF(S)

A CERTIFIED TRUE COPY

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

CLERK OF COURT
DILLON COUNTY

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dillon
IN THE COURT OF COMMON PLEAS

Gary Weaver

BEA Wallenstein

BEA Wallenstein Trust

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO 2008 -CP-17 - 00180

Progress Energy Carolina

William Johnson

John Doe

DEFENDANT(S)

CHECK ONE:

☐

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)

☒ Statement of Judgment by the Court:

case continued - Motions to
Be Heard in November

Dated at Dillon, South Carolina, this 10th day of August, 20 09.

[Signature]
PRESIDING JUDGE

This judgment was entered on the 10th day of August, 20 09, and a copy mailed first class this 10th day of August, 20 09 to attorneys of record or to parties (when appearing pro se) as follows:

Pro/se

Willcox Baych & Williams, PA

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT
DILLON COUNTY
3 P.O. Box 1909
Dillon, SC 29533
[Signature]
CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DILLON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

GARY WEAVER

PROGRESS ENERGY CAROLINAS

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

CLERK OF COURT
DILLON COUNTY

2008 AUG 12 AM 8:52

FILED
GIVEN T. HYATT

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Dated at DILLON, South Carolina, this day of AUGUST, 2008.

See Action Below

James E. Cook
PRESIDING JUDGE

This judgment was entered on the day of AUGUST, 2008, and a copy mailed first class this day of AUGUST, 2008 to attorneys of record to parties (when appearing pro se) as follows:

GARY WEAVER, PRO/SE
ATTORNEY(S) FOR THE PLAINTIFF(S)
Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

MARK W. BUICK, JR.
ATTORNEY(S) FOR THE DEFENDANT(S)
Gwen T. Hyatt
GIVEN T. HYATT
CLERK OF COURT

THIS MOTION ATTEMPTS TO CONSOLIDATE this case with an action that has ended. Therefore, it is denied respectfully. If Plaintiff disagrees with the dismissal of 2004-CP-17232, He should appeal the same.

James E. Cook
Circuit Judge

SCCA SCRPC Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA
COUNTY OF DILLON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-17-180

GARY WEAVER ETAL

PROGRESS ENERGY CAROLINAS ETAL

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)

☒ Statement of Judgment by the Court:

1 Motion to Dismiss - Buyck
2 Motion Def. Judgment Partial - Weaver
Case Dismissed - Mr. Buyck To Prepare
Formal Order In Judge Bailey's Signature
Review

Dated at DILLON, South Carolina, this 3RD day of NOVEMBER, 2009.

SANCTIONS TO BE IMPOSED. THIS FORM

4 IS NOT THE FINAL ORDER TO BE
ISSUED FROM TODAY'S HEARING.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this

_____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

PRO SE - *Mr. Gary Weaver*
ATTORNEY(S) FOR PLAINTIFF

MARK W. BUYCK III

ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT
DILLON COUNTY

Order of November 25, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-0180

GARY WEAVER, BEA Wallenstein,
and B.E.A. Wallenstein Hospice Inter
Vivos Trust,

Plaintiffs Pro Se,

vs.

Progress Energy Carolinas, Inc.,
William Johnson, and John Does 1-20,

Defendants.

**ORDER DISMISSING CASE
AND GRANTING ATTORNEY FEES
TO DEFENDANT PROGRESS ENERGY**

Just
This matter was heard by this Court on November 3, 2009, during a non-jury term in Dillon. The Defendant has filed a Motion to Dismiss this action in its entirety. The Plaintiffs have filed numerous Motions in this case which was initially filed by Mr. Gary Weaver as a Pro-Se Complaint. The filing of the initial Summons and Complaint in this action occurred on May 30, 2008. The case was assigned docket number 2008-CP-17-0180.

The Plaintiffs Gary and Beatrice Weaver (nee Wallenstein) have been pursuing litigation against the Defendant both before this Court and before the Public Service Commission for nearly the past ten years. This current action was filed in direct violation of previous Orders entered by the Court.

In 2004, Progress Energy Carolinas, Inc. brought an action against Gary Weaver and Beatrice Weaver seeking collection of amounts it claimed was owed for service to the Weaver residence. See *Progress Energy Carolinas, Inc., Plaintiff vs. Gary Weaver and Beatrice Weaver*,

Defendants, Case Number 2004-CP-17-0232. It appears from the record that a Mutual Release and Settlement Agreement was entered into between the parties on September 18, 2007.

On October 2, 2007, Judgment was entered in the matter noting that the case had been settled. Progress Energy filed a Motion to Enforce Settlement on October 25, 2007. Mr. Weaver filed a Motion to Enforce Settlement on October 26, 2007. A hearing on those pending Motions was heard before the Honorable Paul M. Burch on January 30, 2008.

Judge Burch entered judgment on a Form 4 Order on February 28, 2008, granting Progress Energy's Motion to Enforce Settlement. In his February 28, 2008 Order, Judge Burch ordered that "the Defendant (Weavers) shall within forty-five days of this date (2/28/09) come into compliance with the terms of Paragraphs 3 and 4 of the Mutual Release Agreement."

JB
In an Order dated March 24, 2008, Judge Burch noted that Mr. Weaver had filed numerous post-trial Motions including a Request for Clarification dated March 7, 2008, and a letter of transmittal dated March 10, 2008. In his March 24, 2008 Order, Judge Burch noted that "the Court construes the Request for Clarification and the letter of transmittal to be a Rule 59(e) Motion and finds that this is the only issue properly before the Court at this time." Judge Burch then denied Defendant Gary Weaver's Rule 59(e) Motion to Reconsider or Amend. Subsequent to Judge Burch's March 24, 2008 Order, Mr. Weaver continued to present various filings to the Clerk of Court of Dillon County challenging the veracity of the Settlement Agreement as well as other matters clearly related to the dismissed action.

In the face of continued filings from Mr. Weaver, the Honorable James E. Lockemy scheduled a hearing on June 3, 2008 at the Georgetown County Courthouse. In his Order entered as a result of the June 3, 2008 hearing, Judge Lockemy noted that Mr. Weaver's arguments

related to the Mutual Release and Settlement Agreement, his contention that Progress Energy was in violation of the Settlement Agreement and his arguments that Progress Energy had violated the Settlement Agreement "were not properly before me as they had been previously addressed by Judge Burch in the hearing on January 30, 2008, his Order of February 28, 2008, and his Order in response to Defendant Gary Weaver's Motion for Reconsideration, dated March 24, 2008."

In his June 27, 2008 Order, Judge Lockemy stated **"this case has ended. The Clerk of Court is directed not to accept any further pleadings or filings in this matter. This case ended with the issuance of Judge Burch's Order of March 24, 2008. The time for appeal has expired. Since this matter has ended there will be no Rule 59(e) appeal available with regard to this Order"** (emphasis added). In a handwritten notation to the Order Judge Lockemy noted **"as Ordered, case number 2004-CP-17-0232 is over at the trial level. If Mr. Weaver is dissatisfied with any ruling of this Court, then he should seek appellate relief. All parties are directed to follow the terms of the above Order."** (emphasis added)

In spite of the clear unambiguous Orders of Judge Burch and Judge Lockemy, Mr. Weaver then persisted in prosecuting case number 2008-CP-17-0180, which makes basically the same allegations all over again. Progress Energy filed a Motion to Dismiss this action on August 4, 2009. During the November 3 hearing, this Court reviewed the various Orders of Judge Lockemy and Judge Burch and their admonitions to the Weavers that all of the matters related to case number 2004-CP-17-0232, including the issues related to the Mutual Release and Settlement Agreement, had ended. During his argument before the Court, Mr. Weaver acknowledged that all of the causes of action in this instant case stemmed from his contention

that Progress Energy has violated the terms of the Settlement Agreement. As a result, this Court has determined not only to dismiss this successive case, but to also impose sanctions.

IT IS HEREBY ORDERED

1. Case number 2008-CP-17-0180 and all of the allegations contained therein have previously been addressed in case number 2004-CP-17-0232. That case has ended and the matters alleged in this case are res judicata. The Plaintiff continued to pursue these matters at the trial level in direct contravention of the Court's Orders.

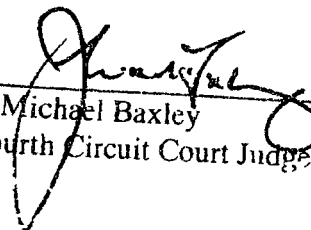
2. Case number 2008-CP-17-0180 is dismissed. The continued pursuit of these matters constitutes repetitive and frivolous filings. Pursuant to Rule 11(a) SCRCP, the Plaintiff Gary Weaver is hereby required to pay the reasonable attorney's fees and expenses of Progress Energy's counsel, Willcox, Buyck, & Williams, P.A., that were necessitated by Plaintiff's filing of this successive action, from May 30, 2008 through the date of this Order. I find that the reasonable and necessary amount of those fees is \$7,367.50, as confirmed by affidavit from Attorney Mark W. Buyck, III, which is attached hereto.

3. Mr. Weaver shall have thirty (30) days from the date that this Order is served upon him to pay this amount to Willcox, Buyck & Williams, P.A. Service may be made upon Plaintiff by first class US Mail, return receipt requested. Payment shall be made by one certified check either delivered by hand or sent via US Mail with proof of postdate and mailing. In the event Mr. Weaver does not make the payment as outlined above, it is the Court's Order that he shall be sentenced to ninety (90) days in the Dillon County Detention Center and held pursuant to the Court's criminal contempt powers. Mr. Weaver's obligation to make payment for the fees will not be stayed in the event the Plaintiffs choose to appeal this Order. The obligation to pay

the fees and the consequence for not doing so will survive any notice of appeal which Mr. Weaver may take from this Order, unless there is supercedeas or other specific relief granted by the appellate Courts.

The Clerk is directed to dismiss Plaintiff's case, with prejudice.

IT IS SO ORDERED.



J. Michael Baxley
Fourth Circuit Court Judge

At Chambers
November 25, 2009

**Willcox, Buyck &
Williams, P.A.**

Since 1896

Case PEC - PEC vs. Gary and Beatrice Weaver (Dillon)
File # 13793.12738
Period 6/1/2008 - 11/17/2009

Date	Timekeeper	Rate	Hours	Amount	Description
Attorney's Fees					
6/2/2008	15	\$ 225.00	0.3	\$ 67.50	Receipt and review of additional filings from Mr. Weaver regarding new suit and motion to consolidate.
6/2/2008	15	225.00	0.3	67.50	Preparation of e-mail to Anthony and Cagle; Receipt and review of e-mail from Anthony.
6/2/2008	15	225.00	1.1	247.50	Review/analyze previously filed Orders, Weavers pleadings, etc.
6/20/2008	3	290.00	2.3	667.00	Review/analyze new Dillon case #2008-CP-17-180; legal research re service, etc. and issues raised in pleadings; res judicata matters and memo to associate attorney and paralegal;
6/25/2008	3	290.00	0.5	145.00	Review/analyze matter and update status; default and service research;
7/29/2008	15	225.00	0.7	157.50	Review of Weaver verified complaint; Further review of complaint. ?
7/29/2008	15	225.00	0.1	22.50	Telephone call to Dan Shine. — 232
7/29/2008	15	225.00	0.3	67.50	Preparation of e-mail to Len Anthony; Review of and respond to Anthony e-mail.
7/30/2008	3	290.00	2.1	609.00	Receipt and review of associate attorney's memo (no charge); review newly received pleadings; legal research; conference with associate attorney (no charge); telephone conference with Len Anthony; further review and research and reach decision on how to proceed.
7/30/2008	36	85.00	0.2	17.00	Scan and e-mail new complaint to Len Anthony. —
7/30/2008	36	85.00	0.7	59.50	Research and print out statutes and regulations cited in new complaint.
7/30/2008	36	85.00	0.5	42.50	Review of new lengthy complaint filed by Weavers. —
7/30/2008	36	85.00	0.4	34.00	Download and print house pictures (20) submitted with Historical Application; Mark power cords. —
7/30/2008	15	225.00	0.4	90.00	Review of voicemail message from Len Anthony; Telephone conference with Anthony regarding complaint and PSC proceedings. —
7/30/2008	15	225.00	0.8	180.00	Review of and research service issues associated with complaint.
7/30/2008	15	225.00	0.3	67.50	Telephone conference with Len Anthony regarding strategies in responding to complaint.
7/30/2008	15	225.00	1.9	427.50	Review of PSC filings; Review of specific allegations of complaint regarding wrongful death allegations; Research and review of Weaver's NHTP nomination of property to Historic Register; Review of application and study accompanying photo's, etc. —
7/30/2008	15	225.00	0.3	67.50	Preparation of e-mails to Len Anthony and Greg Cagle.
7/30/2008	15	225.00	0.7	157.50	Conference with paralegal regarding various allegations relating to Administrative Code violations; Conference with file attorney regarding pleading strategies and other matters.
7/30/2008	15	225.00	0.1	22.50	Review of voicemail message from Len Anthony regarding pleading strategies.
7/31/2008	15	225.00	0.3	67.50	Review of e-mail from Greg Cagle; Preparation of e-mail to Len Anthony and Greg Cagle relating to on-site evidence of power. —
7/31/2008	15	225.00	0.2	45.00	Telephone call to Dan Shine; Review of voicemail message from Shine. — 232
7/31/2008	15	225.00	0.2	45.00	Conference with paralegal regarding storing and filing of photos.
8/5/2008	3	290.00	0.4	116.00	Review/analyze Mrs. Weaver's latest filing with PSC; review file and update; —

**Willcox, Buyck &
Williams, P.A.** Since 1896

Case PEC - PEC vs. Gary and Beatrice Weaver (Dillon)
File # 13793.12738
Period 6/1/2008 - 11/17/2009

Date	Timekeeper	Rate	Hours	Amount	Description
8/13/2008	15	225.00	0.2	45.00	Review/analyze Judge Lockemy's dismissal order.
8/13/2008	15	225.00	0.3	67.50	Strategy session.
8/15/2008	3	290.00	0.2	58.00	Receipt and review of emails re Dillon issues; review latest order filed August 12;
8/22/2008	15	225.00	0.1	22.50	Receipt and review of letter from Mrs. Weaver.
8/22/2008	15	225.00	0.3	67.50	Preparation of e-mail to Len Anthony and Greg Cagle; Forward Weaver letter.
8/22/2008	36	85.00	2.4	204.00	Begin draft Motion and Memorandum to Dismiss.
8/27/2008	36	85.00	4.3	365.50	Draft Motion To Dismiss and Supporting Memorandum with regard to Weaver's 2008 case.
8/10/2009	15	225.00	0.3	67.50	Receipt and review of Weaver package.
8/10/2009	15	225.00	0.2	45.00	Telephone conference with Dillon County Clerk of Court.
8/10/2009	15	225.00	0.8	180.00	Plan and prepare for hearing.
8/10/2009	15	225.00	0.7	157.50	Travel to Dillon Courthouse.
8/10/2009	15	225.00	0.8	180.00	Conference with Mr. Weaver.
8/10/2009	15	225.00	0.1	22.50	Attend call of Court.
8/10/2009	15	225.00	0.3	67.50	Attend hearing before Judge Borch regarding Weaver Motion for Continuance.
8/10/2009	15	225.00	0.7	157.50	Return travel to Florence.
8/10/2009	15	225.00	0.7	157.50	Continued review of Weaver pleadings.
10/19/2009	15	225.00	0.4	90.00	Receipt and review of Weaver Second Memorandum in Opposition to Rule 12(b) Motion to Dismiss and review of Mrs. Wallenstein's Affidavit.
11/2/2009	15	225.00	0.5	112.50	Review of various Weaver pleadings and review of previous Court Orders.
11/2/2009	15	225.00	0.2	45.00	Conference with paralegal regarding exhibit preparation.
11/2/2009	15	225.00	0.8	180.00	Preparation for Nov 3 hearing - outline arguments, etc.
11/3/2009	3	290.00	0.5	145.00	Review/analyze file and pre-hearing conference; later post-conference debriefing on court's positive ruling.
11/3/2009	15	225.00	0.5	112.50	Preparation for hearing, gather exhibits, review of Orders, review of outline.
11/3/2009	15	225.00	0.6	135.00	Travel to Dillon Courthouse.
11/3/2009	15	225.00	2	450.00	Attend Motions hearing and argument of Motion to Dismiss before Judge Baxley, follow-up with Mr. Weaver
11/3/2009	15	225.00	0.6	135.00	Travel to Florence.
11/3/2009	15	225.00	0.3	67.50	Conference with associate regarding status of matter and communication with client.
11/4/2009	15	225.00	0.2	45.00	Receipt and review of transcript of Order.
11/17/2009	15	225.00	2	450.00	Preparation of Order and fee affidavit

Attorney's Fees \$ 7,367.50

(16)

000122

Willeox, Buyck &
Williams, P.A.

Since 1895

Case PEC - PEC vs. Gary and Beatrice Weaver (Dillon)
File # 13793.12738
Period 6/1/2008 - 11/17/2009

Date	Timekeeper	Rate	Hours	Amount	Description
7/23/2008				0.80	Copying
7/30/2008				3.90	Copying
7/30/2008				1.80	Long Distance
8/22/2008				0.30	Copying
8/22/2008				1.50	Copying
8/22/2008				4.50	Facsimile
8/22/2008				0.20	Long Distance
8/22/2008				0.59	Long Distance
8/4/2009				25.00	Court fees DILLON COUNTY
8/4/2009				3.00	Copying
8/10/2009				40.80	Travel
11/3/2009				2.10	Copying
11/3/2009				0.30	Copying
11/3/2009				1.30	Copying
11/17/2009				43.75	Other PAMELA OZMENT-CARTEE

Costs 129.84

Total 7,497.34

Exhibit G.

17

ATTACHMENT FOR FEE TIMEKEEPER
CLARIFICATION ON BILLING

15 = Mark W. Buyck, III

3 = Mark W. Buyck, Jr.

36 = Paralegal

Order of January 4, 2010

FILED
GWEN T. HYATT FORM 4

STATE OF SOUTH CAROLINA

2010 JAN -6 AM 9:10

IN THE COURT OF COMMON PLEAS
Case Number: 08-CP-17-0180

COUNTY OF DILLON

CLERK OF COURT
DILLON COUNTY

Gary Weaver, et al,

Plaintiffs,

v.

Progress Energy Carolinas, Inc., et al,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER, ALTER,
OR AMEND JUDGMENT AND FOR
EXTENSION OF TIME TO FILE
PLEADINGS**

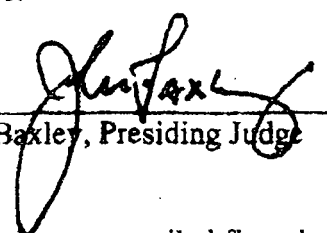
Received: Thurs. Jan 14/2010
13:00 PM
GWS

IT IS ORDERED AND ADJUDGED:

Plaintiff has moved to reconsider this Court's Final Order filed December 1, 2009, dismissing Plaintiff's case and imposing sanctions against Plaintiff. In that final Order, the Court found this litigation to be successive, vexatious, and directly violative of previous Court Orders finding the issues raised in this lawsuit to be res judicata. After review, this Court finds no reason to alter or amend its previous decision dismissing the case and imposing sanctions. The previous decision is confirmed. Plaintiff's Motion to Reconsider, Alter, or Amend is **DENIED**. This Court further declines to grant any extension of time to file an appeal. This matter has been fully litigated previously and is now ended at the trial level.

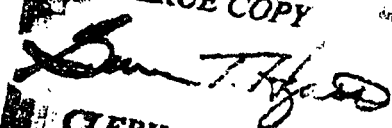
IT IS SO ORDERED.

Dated at Hartsville, South Carolina, this 4th day of January, 2010.

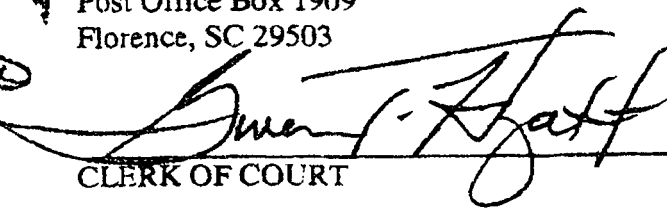

J. Michael Baxley, Presiding Judge

This Judgment was entered on the 6 day of January 2010, and a copy mailed first class this 6 day of January 2010 to attorneys of record as follows:

To Se Plaintiff
Gary Weaver
Post Office Box 539
Little Rock, SC 29567



CLERK OF COURT
DILLON COUNTY

Attorney for the Defendants
Mark W. Buyck, Jr., Esquire
Post Office Box 1909
Florence, SC 29503


CLERK OF COURT

(19)

Complaint

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 CASE NUMBER

Gary Weaver,)
 B. E.A. Wallenstein, and)
 B. E.A. Wallenstein Hospice)
 Inter Vivos Trust,)

VERIFIED COMPLAINT; SUMMONS

Plaintiffs Pro Se)

(CONTRACT)

vs.)

Progress Energy Carolinas, Inc.,)
 William Johnson, and)
 John Does 1-20)

Defendants.)

JURY TRIAL REQUESTED

A CERTIFIED
 TRUE COPY
Don T. Hyatt
 CLERK OF COURT
 DILLON COUNTY

CLERK OF COURT
 DILLON COUNTY

2008 MAY 30 PM 1:58

FILED
 GWEN T. HYATT

VERIFIED COMPLAINT

Come Now, Plaintiffs Pro Se Gary Weaver, B.E.A. Wallenstein and the B.E.A. Wallenstein Hospice Inter Vivos Trust, an express trust, by and through its undersigned Trustees (hereinafter jointly and respectively referred to as "Plaintiff(s)"), and for their claims for relief against the above-named Defendants, pursuant to Rule 3 (a), Rule 4(a) and Rules 17 (a) and (b) S.C.R.C.P., allege and aver as follows:

1. THE PARTIES, JURISDICTION, VENUE

1. Plaintiffs are and were at all times relevant herein resident in the unincorporated area of Dillon County, State of South Carolina during the time and period that the alleged events and claims herein occurred, commencing as of September 18, 2007 to the present. Plaintiffs are Real Parties in Interest as defined by Rule 17 (a) SCRCF, and have the capacity to sue pursuant to Rule 17 (b) SCRCF.

2. Defendant Progress Energy Carolinas, Inc., (hereafter "PEC") formerly known as Carolina Power and Light (C.P.&L"), is an investor-owned, for profit, North Carolina interstate electric Utility Corporation, licensed to do business in South Carolina, and

ostensibly regulated by the Public Service Commission of South Carolina ("Commission"), and the Office of Regulatory Staff of South Carolina ("ORS"). PEC provides electrical services to consumers in several States, with a government guaranteed fixed rate of return on investment, a government protected monopoly "franchise" market in Dillon County. PEC is poorly regulated by the Commission and ORS as to the protection and promotion of consumer rights in this State evidenced by more than 2000 complaints filed against PEC for the past several years mostly resolved in favor of PEC. PEC has provided electric services to Plaintiffs, jointly and separately, since 1994 to the present. Its main office is 410 S. Wilmington St. Raleigh N.C. 27601.

3. A. Defendants John Does 1-20 are named here under fictitious names for the reason that their true or probable identities are presently unknown to Plaintiffs, except that they are persons and/or entities who are directors, officers, agents, associates, masters, servants, employees, employers, contractors, subcontractors, subsidiaries, affiliates, attorneys or representatives of the above-named Defendant; and/or who were in some manner presently unknown to Plaintiffs, engaged in activities alleged herein; and/or who are in some manner responsible for the injuries so serious that they may result in wrongful death and continued medical expenses, wrongs and damages, discrimination and prejudice to Plaintiffs, and/or who conducted some activities in an intentional, callous, malicious, willful, wanton, grossly negligent, reckless, dangerous, prejudicial and discriminatory manner, which conduct was a direct and proximate cause of personal injuries, wrongs and damages to Plaintiffs, and/or who are in some manner related to the named Defendant PEC. Upon further discovery, the identities of said John Does persons or entities will be filed with the Court.

B. William (Bill) Johnson, is the President and Chief Executive Officer of PEC. As such, said Defendant is personally responsible, accountable and liable for the unethical, wrongful conduct, violations of statutes and regulations, and damages as described herein, of inter alia, his employees, attorneys, regulatory and customer service staff, all referred to above as John Does to be identified at trial.

4. The allegations and claims herein occurred as a direct and proximate result of the willful, wanton, grossly negligent, reckless, callous, malicious and dangerous acts and/or omissions of Defendants, and each of them, by and through the acts and/or omissions of

their directors, officers, agents, associates, masters, servants, employees, employers, and/or representatives, which include but are not limited to: abuse of process, tortious acts; bad faith violation of the terms and conditions of a Mutual Release compromise and settlement agreement dated September 18, 2007, in breach of contract; non-compliance with the Court Orders filed on or about February 28, 2008 and March 28, 2008; contempt of court authority; violation of Court Rules and Commission Regulations; denial of electric power without cause; deliberate and calculated discrimination, harassment and abuse against Plaintiffs on the basis of age, gender, national origin; reckless and malicious endangerment of the physical, emotional and personal life of Plaintiffs and property; breach of contract pursuant to Commission Regulation 103-341; economic damages and losses, and related issues cited herein below and in pleadings filed in **Docket No. 2004-CP-17-232**, which by reference are respectfully brought to the judicial notice of the Court and jury, and with court approval incorporated herein as part hereof.

5. This is an action for injunctive relief, equitable relief, declaratory relief, an accounting, disgorgement and monetary damages related to Defendants' willful, wanton, negligent, callous, malicious and reckless acts and/or omissions damaging to Plaintiffs.

6. This Court has both subject matter and personal jurisdiction over the nature of the litigation and the parties. At its discretion, this Court may exercise its inherent powers and authority to assume concurrent jurisdiction over regulatory matters between the parties pending before the Commission and/or O.R.S., and to issue a writ of mandamus as recommended in Plaintiff's pleadings pending before the court.

2. FACTS

7. In mid-1994, the law firm of Daniel H. Shine, Esq. executed a service agreement with PEC (then C.P. &L) on behalf of Plaintiff Pro Se Gary Weaver an officer of Renaissance International, Inc., the purchaser of a property located at 1253 Harllees Bridge Road, Dillon County, S.C. 29536 that same year. Pursuant to Commission Regulation 103-341, and the said agreement, PEC would and did provide electric services to the property. Plaintiff B.E.A. Wallenstein, falsely named as a Defendant in Docket No. 2004-CP-17-232 by Defendants herein, and a real victim in that travesty of justice, was

neither a party to, nor a beneficiary of the said agreement and was not even in the country at the time of execution of the said service agreement with Defendants.

8. During the year 2000, Plaintiff filed a formal complaint against PEC with the Commission relating to its billing, accounting, and breach of agreement to provide properly operating Area Security Lights, maintenance and repair free to Plaintiff.

9. The Commission ruled in part for, and denied in part Plaintiff's complaint. The Commission also established that it lacked the authority to grant damages and losses.

10. Without Plaintiff's knowledge or participation, the Commission's then Executive Director Mr. Gary Walsh, engaged in illegal ex parte communications with PEC's counsel Mr. Len Anthony and/or other John Doe parties, and negotiated a credit for Plaintiff relating to the said Area Security Lights account. Plaintiff was not informed of, and never knew about such negotiations, nor what amount of credit was agreed and on what basis it was reached. On enquiry of the matter, Plaintiff was told by the Executive Director that it "was none of your business." The issue then became a disputed account pursuant to **Commission Regulation 103-342**. Plaintiff requested details of any alleged amounts due to PEC and a proper reconciliation and accounting, **which to this day has still not been provided**. The only accounting that was eventually provided to Plaintiff in late 2007 is entirely missing the period of operations from approximately May 1994 through May, 1995 when the account was paid through the aforesaid law office of Daniel H. Shine, Esq.. The remainder of the billing statement provided is clearly a fabricated and manipulated accounting record. Defendants also exceeded authorized monthly bank withdrawal limits under a payment plan, causing damages with unauthorized overdrafts in the bank account and further disputes.

11. On or about **July 9, 2004**, PEC's legal counsel Len. Anthony, Esq. filed **Docket NO. 2004-CP-17-232**, an alleged open account collection action. It required Plaintiffs herein to file two pleadings for PEC to eventually provide an incorrect Exhibit A open account statement with the court. On **September 18, 2007**, the Parties executed a Mutual Release compromise and settlement agreement ("Release").

12. In a reprehensible abuse of process, PEC's attorneys added Plaintiff's spouse B.E.A. Wallenstein to the said docket as a Defendant, claiming her liability as wife for Gary Weaver's alleged debt under the so-called common law "doctrine of necessities."

Said doctrine does not apply since the case was in dispute as provided under Commission Regulation 103-342, and Plaintiff Gary Weaver acknowledged his liability if any was proven. Under the rubric of this doctrine PEC has continued to discriminate, harass and abuse said spouse, prejudicially denying the delivery of electric power in her own name every year since 2004, ignoring medical certificates of necessity, and more recently on May 14, 2008 illegally disconnecting power to other adjacent property as discussed herein below. By these abuses, PEC thereby intentionally, recklessly, negligently and maliciously endangered her health, life and property, and since 2004, virtually destroyed her actual and potential earning power with a "B&B" operation using the said property as an asset to earn income. At no time has B.E.A. Wallenstein owed PEC anything, contrary to PEC's discriminatory claim in Docket No. 2004-CP-17-232.

13. PEC knew and should have known this action against B.E.A. Wallenstein was incorrect under modern case law, cited in Plaintiff Gary Weaver's pleadings filed in the said docket and by reference incorporated herein. Not only was B.E.A. Wallenstein not a signatory to the original agreement between PEC and Gary Weaver pursuant to Commission Regulation 103-341, but the South Carolina Appellate Court has declared the doctrine of necessities to be discriminatory and unconstitutional under circumstances applicable to this case. The issue is to be put to the jury and the Court at trial for adjudication, and eventually Plaintiff plans to bring the issue before the State Legislature and the S.C. Supreme Court.

Moreover, Plaintiff Gary Weaver has filed pleadings and communications that the alleged debt, upon reconciliation and proper accounting, **was his obligation alone if proven**, which liability he formally acknowledged and accepted and is a matter of record with PEC and this Court. In the event, he paid the settlement amount pursuant to the said Mutual Release under paragraphs 1 and 2. PEC's attorneys abused the judicial process prejudicial to B.E.A. Wallenstein and PEC is liable for damages and losses as cited herein below that have occurred since (and prior) September 18, 2007.

14. On October 24 and 25, 2007 respectively, PEC and Plaintiff Gary Weaver filed motions to enforce the Release document. PEC's motion to enforce was fraudulent, frivolous and a nuisance not founded in fact, which issue is to be put to the jury and the Court at trial.

15. The Court, the Honorable Paul M. Burch, Presiding, held a hearing on the motions on or about January 30, 2008 and issued an Order on or about February 28, 2008. Said Order required **all three parties** to the Release to comply with the Release under threat of contempt of court authority. April 14, 2008 was the deadline which Defendants did not meet, and still have not as of this writing.

16. Thereafter Plaintiff Gary Weaver filed a formal Request for Clarification of the Order, and the Court filed its Order in response on or about March 28, 2008 stating that no clarification was necessary as the Order was "crystal clear". Thus Defendants have no valid argument for their non compliance and contempt of court.

17. On or about April 14, 2008, Plaintiff Gary Weaver filed with the Court a formal Notice of Progress Energy's non-compliance with the Court Order, and its contempt of the court's authority, with a request for sanctions pursuant to the January 30 order of the Honorable Paul M. Burch, the Presiding Judge.

18. Following the filing of the said Notice of non-compliance and contempt of court, eight days later on April 22, 2008, at approximately 10.30 a.m., Defendants' Customer Service Center in the person of an Ms. Joanne Hill, telephoned Plaintiff B.E.A. Wallenstein who was bed ridden with serious ailments.

1. Without any proper prior notice, Defendants' Ms. Hill stated to Ms. Wallenstein that PEC shall connect electric power the next day, April 23, 2008 to her residence at 1253 Harllees Bridge Road, Dillon; that is, some seven months delay (Sept 18, 2007 to April 23, 2008) after the electricity connection was due under paragraphs 1 and 2 of the Mutual Release.

2. Defendants' Ms. Hill was informed by Plaintiff that 24 hour notice was insufficient and not manageable under the circumstances. Further Defendants were advised to communicate through Plaintiff's attorney since the issues are still in litigation. Also, that following Defendants' earlier notice in October 2007 to Plaintiff, there were technical problems to be considered due to the long seven years delay. The electrical system had to be inspected, tested and checked by a licensed electrician before power was connected after so many years of disuse, and it would take time to arrange such an inspection and tests given her medical schedule, local conditions, and the unpredictability

of the date of availability of a licensed electrician. A one day notice was impossible under these circumstances.

3. After considerable time and effort, eventually a licensed electrician became available to conduct the inspection and tests which were scheduled to take place on Tuesday, May 13, 2008 at 1.00 p.m. Due to Plaintiff B.E.A. Wallenstein's illness, that event had to be postponed to a later date because she needed emergency medical attention.

4. Thus her primary physician personally changed a Tuesday, May 13, 2008 appointment scheduled at Medical University of South Carolina in Charleston to an emergency appointment with a specialist in Florence S.C. for Wednesday, May 14, 2008, the day that Defendants illegally disconnected power to 1249 Harllees Bridge Road, Dillon.

19. The next day, on Wednesday, May 14, 2008, at approximately 9.40 a.m., Plaintiff Wallenstein was getting ready to leave for the for the emergency medical appointment in Florence. In violation of Commission regulations as cited herein below, the Mutual Release and the Court Order, Defendants without the required proper 10 day, 3 day and 2 day written or verbal prior notices, and without good cause, maliciously, callously, willfully, wantonly and recklessly, illegally disconnected the electric power to Plaintiffs' property located at 1249 Harllees Bridge Road. Plaintiff B.E.A. Wallenstein, who was bed ridden, and preparing to leave the residence for an important medical appointment in Florence, was severely traumatized and stressed by the experience. As a result she became more ill and has had to seek further medical attention caused by the stress. The next day following the illegal disconnect of service, on May 15, 2008, Plaintiff B.E.A. Wallenstein was treated on an emergency medical basis at Medical University of S.C. in Charleston S.C.

20. Pursuant to Commission **Regulations 103- 316/345**, a formal complaint relating to Defendants' violation of regulations has or will be filed with the Commission and/or O.R.S., and this honorable court is respectfully requested to take judicial notice of that pleading as discussed further herein below.

21. As of the date hereof, Defendants have not complied with any of the terms and conditions of the Mutual Release since September 18, 2007, some eight months after

execution of the compromise and settlement agreement, have not complied with the Court Orders of February 28, and March 28, 2007, are in continued breach of two agreements, committed tortious acts against Plaintiffs, continue in contempt of court, and have continued to harass and abuse Plaintiffs in bad faith.

3. THE COUNTS FOR ADJUDICATION

COUNT 1

(Medical Expenses)

22. As a direct and proximate result of the Defendants' willful, wanton, negligent, and reckless acts and/or omissions, before and since September 18, 2007, Plaintiffs have incurred damages and losses as claimed herein for which Defendant is liable. Plaintiff B.E.A. Wallenstein's health and disabilities have been seriously impaired, her cancer infliction and other directly related painful illnesses and injuries have returned as a direct and proximate result of the stress, harassment and abuse caused by Defendants. By PEC's refusal to connect electric power as agreed, B.E.A. Wallenstein has been denied proper living conditions and standards necessary for an 81 year old elder, disabled, extremely ill woman, of which condition, Defendants knew and should have known. Refer to **Exhibits D-49-56** in Plaintiff's **Offer of Proof** filed in **Docket 2004-CP-17-232**, by reference made part hereof.

23. As a direct and proximate result of the above described willful, wanton, grossly negligent, callous, malicious and reckless acts and/or omissions of Defendants and each of them, Plaintiffs have incurred related medical expenses and will continue to incur related medical expenses in the future.

24. The Complaint and claims result from the events cited herein above and below that arise from Docket No. 2004-CP-17-232 in the Dillon Court of Pleas, and Defendants' violations of that certain Mutual Release compromise and settlement agreement thereto executed by the parties on September 18, 2007, and the Court's Order filed on February 28, 2008 enforcing the said Mutual Release. As noted, by reference and approval of the Court, said Docket pleadings that are pending disposition, are incorporated and made part hereof.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly and as is hereafter set forth.

COUNT 2

(Defendants' Wrongful Conduct, Invasion of Rights and Claim for Equitable Relief)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

25. Plaintiffs reallege and incorporate paragraphs 1-24 as if fully set forth herein.
26. The Defendants have engaged in an intentional, malicious and/or reckless and egregious course of wrongful conduct in its adverse relationship with Plaintiffs dating since 2001 and more recently with respect to its refusal to honor the terms and conditions of the Mutual Release settlement agreement since September 18, 2008 and the Court Orders of February 28, and March 28, 2008..
27. Subject to lax and liberal de minimus regulatory oversight by the Commission and ORS, and by exercise of its undue influence on the regulatory agencies, Defendants' through the exercise and abuse of their state guaranteed monopoly power, have operated with impunity, have violated two agreements and other verbal monthly payment arrangements with Plaintiffs, violated statutes and regulations, violated a Court Order in contempt of Court authority, and behaved in an illegal, amoral, arrogant and unethical manner in its dealings with Plaintiffs. All of which has been sanctioned by Commission and ORS regulatory inertia and indolence under the undue influence of PEC.

Defendants' wrongful conduct was intentional, and occurred under such circumstances that a person of ordinary prudence would have been fully aware that Defendants' acts and omissions were an invasion of Plaintiffs' rights.

Defendants' acts and omissions cited herein amount to a charge of wrongful conduct causing actual damages. The nature, significance and impact of Defendants documented illegal and unethical, wrongful conduct call for punitive damages of sufficient amount to deter Defendants from future such activities with other customers.

The punitive amount granted should be sufficiently large enough to make interested parties take notice and leave a deep long lasting impression that it is not good public policy nor practice to ignore or abuse consumer rights and ignore related State statutes and regulations as has been the egregious case now before this honorable court.

The punitive damages claimed herein are directed to the attention of the State Legislature, the Courts, the Commission, the O.R.S., Defendants, the electrical industry at large, and last but not least the public and the media.

28 Plaintiffs hereby state a claim for equitable relief against Defendants in amounts including accrued interest, for damages and losses to be assessed at trial as discussed further herein below.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly and as is hereafter set forth.

COUNT 3

(Defendants' Breach of Contract and Bad Faith)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

29. Plaintiffs reallege and incorporate paragraphs 1-28 as if fully set forth herein.

30. On September 18, 2007, the parties executed that certain Mutual Release compromise and settlement agreement to dispose of Docket No. 2004-CP-17-232.

31. Pursuant to paragraphs 1 and 2 of the Release, Plaintiffs in good faith, timely and duly complied with the two stipulated pre-condition requirements to trigger Defendants connection of electric power to Plaintiff B.E.A. Wallenstein's residence at 1253 Harllees Bridge Road, Dillon S.C. The only two pre-condition requirements were payment of one thousand dollars (\$1,000.00) on September 19, 2007 to Defendants which was done, and payment of a security deposit calculated by Defendants, which was done on or about September 22, 2007, when Defendants' Customer Service Center also allocated Plaintiff B.E.A. Wallenstein an account number for connecting power to her residence.

32. Upon notice of completion of those two acts, Defendants agreed to immediately connect the power. No other conditions or requirements applied to Defendants' obligation to connect power immediately on Plaintiffs' performance of those two acts which were done. As the Court stated in its Order of March 28, 2008, Defendants' obligation and duty were "crystal clear." As of this date, without good cause and in bad faith, Defendants have not connected the power (or corrected other matters under para. 4 of the Release) some eight months later.

33. By order of the Court on February 28, 2008, Defendants were required to comply with the terms of the Release, which order Defendants have ignored. In addition to fraud, bad faith and breach of agreement, Defendants are in contempt of court authority and must be sanctioned by the Court, pursuant to the Court's admonishment to Defendants at the conclusion of the Hearing on January 30, 2008 in Docket No. 2004-CP-17-232.

34. Under the doctrine of laches, Defendants have "sat on their hands" and came to the Court with "unclean hands." These issues are to be put to the jury at trial.

35. Plaintiffs are entitled to injunctive relief whereby Defendants are enjoined immediately from continuing their wrongful conduct and do so in the future under threat of court sanctions. Plaintiffs request the court to retain jurisdiction of the case, until the conditions provided for in paragraph 5, of the Release are complied with by Defendant.

Defendants are to be ordered to immediately connect electric power to Plaintiff's residence as agreed with "no strings attached," reverse the status of property at 1249 Harlees Bridge Road, Dillon S.C. from "small commercial" back to "residential," repair Plaintiffs' water well and security systems which it destroyed, and provide proper accounting for a third meter on the property, and for the period May 1994 through May 1995 for the account at 1253 Harlees Bridge road, Dillon.

WHEREFORE Plaintiffs pray judgment against the Defendants, and each of them, jointly, and as is hereinafter set forth.

COUNT 4

(Defendants' Breach of Contract and Refund)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

36. Plaintiffs reallege and incorporate paragraphs 1-35 as if fully set forth herein.

37. Plaintiffs have timely and duly paid the compromise and settlement amount of three thousand, one hundred and ten dollars and 44 cents (\$3,110.44) and the security deposit of one hundred and forty seven dollars (\$147.00), as agreed in Paragraphs 1 and 2 of the Release, and Defendant continues to refuse to connect electric power and correct its wrongs as provided for in paragraph 4 of the Release..

38. Pursuant to substantive case law on breach of contract cited in Plaintiff's pleadings in Docket No. 2004-CP-17-232, incorporated herein by reference, Plaintiffs

are entitled to full refund of the said settlement amount of three thousand, one hundred and ten dollars and 44 cents (\$3,110.44) and the security deposit of one hundred and forty seven dollars (\$147.00), paid, since Defendants are in full breach of the Release settlement agreement which is subject to adjudication under the law of contracts.

39. Plaintiffs seek disgorgement of the said settlement amounts, plus accrued interest from September 22, 2007 to April 23, 2008 at 8 percent per annum for Defendants' breach of contract, fraud, and bad faith. Thus a total disgorgement of three thousand, four hundred and nine, and forty five cents (\$3,409.45) are claimed.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, jointly and as is hereinafter set forth.

COUNT 5

(Defendants' Fraud, Tortious Breach of Contract and Punitive Damages)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

40. Plaintiffs reallege and incorporate paragraphs 1-39 as if fully set forth herein.

41. Defendants' committed fraud, fraudulent inducement and a fraudulent act in executing the said Release in bad faith. In particular Defendants fraudulently induced Plaintiffs to agree to paragraph 5 of the Release which Defendants, being professionals dealing with amateurs, knew and should have known would not be possible to execute or implement. It was an exercise in futility which was well known to Defendants at the time of executing the Release. Defendants committed the fraudulent inducement in order to induce Plaintiffs to execute the Release, and knowing full well that B.E.A. Wallenstein was scheduled for surgery shortly thereafter, needed the electric power for medical and living standards, and was under extreme pressure at the settlement conference.

42. Under the law of torts, a breach of contract action may claim punitive damages when a fraud, fraudulent inducement and a fraudulent act are committed by one of the Parties, in this case, by Defendants. Again, under the doctrine of laches, Defendants came to the Court with unclean hands which they have continued to sit on since September 18, 2007 and before.

43. Accordingly Plaintiffs seek relief by way of actual, compensatory, consequential and punitive damages set by jury trial.

WHEREFORE, Plaintiffs pray judgment against the Defendants, and each of them jointly and as is hereinafter set forth.

COUNT 6

(Contract Ambiguity and Defendants' Breach of Contract, Bad Faith and Refund)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

44. Plaintiffs reallege and incorporate paragraphs 1-43 as if fully set forth herein.

45. The Mutual Release compromise and settlement agreement is adjudicated under the law of contract. Paragraphs 1 and 2 of the agreement are precise and unambiguous and the evidence is prima facie that Defendants violated the agreement. Paragraphs 3 and 4 are ambiguous. Prepared by Defendants attorney, under the law of contract jury interpretation of the ambiguity is decided in the light most favorable to Plaintiffs herein. Defendants continue in breach of paragraph 4 of the Release in that it has not cured the matter between the parties relating to its illegal change of status of the property located at 1249 Harllees Bridge Road, Dillon. Moreover on May 14, 2008 Defendants illegally disconnected service to Plaintiff's property at 1249 Harllees Bridge Road in violation of paragraph 4 of the Release and continued harassment and abuse of Plaintiffs..

46. In mid-2004, Defendants illegally, in violation of Commission Regulations, and without prior notice, changed the status of the said property from "residential" to "small commercial." PEC's counsel Len Anthony, Esq. did this in retaliation for Plaintiff B.E.A. Wallenstein filing formal complaints with the Commission, against Defendants on various issues. The said property met all of Defendants' criteria for "residential" status, and was used as such for ten years previously, and confirmed on several occasions by Defendants' Customer Service staff.

47. Pursuant to Commission **Regulation 103-341** a verbal or written agreement between the parties is an enforceable contract. In this case, Defendants agreed to provide electric power to a "residential" property, not a "small commercial" property which it did for ten years. Thus its unilateral illegal change of status without notice or formal proceedings was a breach of the original contract to provide service to a residence.

Further, PEC's Ms. Pam Hardy also actually issued a new account number with a debit account for this property in violation of Commission Regulation 103-341 since

there was no agreement, meeting of the minds, mutuality, consideration, etc., involved in the situation and contrary to Plaintiffs' protests to the contrary.

48. This illegal change had the effect of raising the cost of electricity used by approximately 2.5 cents per KWH. It also required twice a month payments instead of once per month, and deferred payments plans were not available.

49. **As of this date Defendants have not changed the status back to "residential" from "small commercial" as required under paragraph 4 of the Release, and is in breach thereof, as well as in breach of the Commission Reg. 103-341 agreement, and the Court Order of February 28, 2008.**

50. Plaintiffs seek injunctive relief whereby Defendants are enjoined immediately from continuing their wrongful conduct on this issue, ordered to change the status of the property back to "residential" from "small commercial", and for disgorgement of the 2.5 per KWH overcharge dating from June 2004 to the date of re-conversion of the status. Plaintiffs claim actual, consequential and punitive damages to be determined at trial.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 7

(Emotional and Physical Stress)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

51. Plaintiffs reallege and incorporate paragraphs 1-50 as if fully set forth herein.

52. As a direct and proximate result of the actions of the Defendants described herein, Plaintiffs herein, and more particularly Plaintiff Pro Se B.E.A. Wallenstein aver, have been subjected to serious and severe emotional and physical distress, the kind with which a person normally constituted would not be adequately able to cope, as a result of, but not limited to, experiencing and witnessing the bad faith and fraudulent actions of Defendants since September 18, 2007, and before.

53. Defendants knew and should have known and with the exercise of ordinary care, of the emotional and physical stress placed on B.E.A. Wallenstein an extremely ill elder woman, as a result of Defendants' refusal to honor its agreement and connect electric power, and correct the other outstanding matters pursuant to paragraph 4 of the Release.

Defendants knew and should have known that Plaintiffs timely complied in good faith with paragraphs 1 and 2 of the Release, and Defendants should have complied in view of the several medical certificates of necessity it had in its possession since 2004.

54. As a direct and proximate result of Defendants' above described malicious, callous, gross negligence fraudulent, bad faith, unethical, immoral and breach of the agreements, Plaintiffs have suffered severe emotional distress, extreme mental anguish and anxiety for which Defendants are held accountable for actual and punitive damages.

. WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 8

(Defendants' Gross Negligence and Physical Injury)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

55. Plaintiffs reallege and incorporate paragraphs 1-54 as if fully set forth herein.

56. As noted, Defendants refused to connect electric power to Plaintiff B.E.A. Wallenstein's residence as agreed in September 2007 to the present. This prevented Plaintiff B.E.A. Wallenstein from access to first floor bedrooms and other facilities by preventing her using an electric chair to mount 32 steps of the stairway, and other medical equipment requiring electric power. Also Defendants' negligent acts denied her the use of essential household appliances necessary to a normal standard of living and medical care such as oven, hot water heater, clothes dryer, etc.. The unwarranted lack of electricity prevented her from obtaining household help as such personnel will not assist her without adequate electricity power for medical equipment, appliances, etc.

57. As a direct and proximate result of Defendants and each of them, said gross negligence and breach of duty, Plaintiffs sustained serious and painful personal injury including physical and emotional stress and mental anguish causing the untimely recurrence of terminal cancer and hence causing and accelerating the eventual wrongful death of Plaintiff B.E.A. Wallenstein.

58. Moreover, as a direct and proximate result of these grossly negligent acts and/or omissions, on **March 22, 2008** B.E.A. Wallenstein suffered an accidental fall because she could not use the electric chair lift. This resulted in serious and painful injuries

including but not limited to her back, neck, hip, legs and knees. Plaintiffs have incurred medical and related rehabilitation costs, pain and suffering.

59. Said personal injuries restricted her ability to care for herself, to care for her projects and possessions, pets, to attend to important personal and business matters, to sleep, to engage in any recreational activities, and to enjoy life.

60. As a direct and proximate result of Defendants and each of them, said negligence, Plaintiffs have incurred travel and communication costs, medical expenses and fees for hospital consultations, medical treatments, tests, and medications in amounts to be shown at trial, which Defendants must be held accountable for.

61. As a direct and proximate result of Defendants said negligence Plaintiffs may in the future incur expenses and fees for hospitalization, medical treatment and medications.

Additional costs are required to repair property damage caused as a direct and proximate result of Defendants' refusal to provide electricity needed for temperature and humidity controls. The absence of such residential climate controls in 23 rooms on three floors caused peeling of expensive English wallpaper, damage to antique plaster ceilings in six major rooms, and antique oriental rugs in a residence that Plaintiffs had included on the National Register of Historic Places. These expenses are expected to cost in excess of fifty thousand dollars (\$50,000.00).

62. As a direct and proximate result of Defendants' said negligence Plaintiff's ability to earn business and personal income has been permanently reduced to a degree which is undetermined at this time.

63. As a direct and proximate result of Defendants' said negligence Plaintiffs' suffered and will suffer in the future severe physical pain and suffering and mental anguish and distress.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 9

(Maintenance and Cure)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

64. Plaintiffs reallege and incorporate paragraphs 1-63 as if fully set forth herein.

65. Plaintiffs, because of Defendants' and each of their acts and omissions, and said gross neglect, is entitled to maintenance and cure from the time of her illness and disability on or about September 18, 2007 to the present and until she reaches maximum medical cure, in an amount which is just and proper in the circumstances.

66. Defendants had, and have actual knowledge that Plaintiff was an extremely ill person and suffered as a direct result of their intentional, callous, malicious, gross neglect and fraud, calculated to force her into executing a settlement agreement, and knew of the likely adverse medical ramifications of continued denial of electric power to her residence for medical reasons.

67. Defendants had and have actual knowledge that B.E.A. Wallenstein was extremely ill with several ailments and knew and should have known that she was and would be unable to work, take care of personal and business matters, that she needed medical treatments, cures, and Home Health Care, and that she had not reached maximum medical improvement. No electricity to the residence prevented Plaintiff B.E.A. Wallenstein from acquiring home health care workers who required working medical equipment and appliances, etc, powered by electricity.

68. Despite said knowledge, and in callous and malicious disregard for Plaintiffs' rights, Defendants failed to remedy and abate the damages caused by their wrongful acts and omissions, and refused to connect electric power as agreed in the said Mutual Release, to provide electric power as agreed to provide needed medical treatments for Plaintiff's injuries.

69. In so failing to provide the means for said medical cure and treatments Defendants acted in bad faith and with wanton, willful, reckless, callous, malicious disregard of the rights of Plaintiffs, which amount to gross negligence.

70. As a direct and proximate result of Defendants and each of them, said gross negligence and breach of duty, **Plaintiffs sustained serious and painful personal injury including physical, and emotional stress and mental anguish causing the untimely occurrence of terminal cancer and hence causing the wrongful death of Plaintiff B.E.A. Wallenstein.**

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 10

(Business Interference and Economic Losses)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

71. Plaintiffs reallege and incorporate paragraphs 1-70 as if fully set forth herein.
72. As a direct and proximate result of Defendants acts and/or omissions described herein, Plaintiffs have endured business interference, destruction, and economic losses.
73. Defendants attorney, Mr. Len Anthony knew and should have known of Plaintiff B.E.A. Wallenstein's plans to open a "B & B" operation and other related economic activities at the premises located at 1253 Harllees Bridge Road, Dillon.

Defendants were informed of these plans since Spring 2004 when Plaintiff B.E.A. Wallenstein obtained a Business License, and her attorney Daniel H. Shine, Esq. applied for power and submitted a security deposit to PEC. Counsel for PEC, Mr. Len Anthony, refused to provide the electric power, and returned the said deposit to Mr. Shine on the grounds of the doctrine of necessities applied to B.E.A. Wallenstein. This matter is discussed in Plaintiff's pleadings in Docket No. 2004-CP-17-232, by reference incorporated herein.

74. These plans involved conversion, completion, new construction and operation of buildings. These activities could not be completed and operations could not commence due to the lack of electricity denied by Mr. Len Anthony, PEC's attorney, between Spring 2004 to the settlement date of September 18, 2007, and further to the present date since PEC has refused to connect the power as required by para.1 and para 2.of the Release, and the Court's Order of February 28, 2008.

75. In breach of agreement, since the date of the settlement in September 18, 2007 to the present the stated objectives were continued to be denied. Thus, as of this date seven months of past economic activity have been lost and future losses will occur for an indeterminate period because of the negligent acts and/or omissions of the Defendants.

76. By their business interference, intentional prevention, negligence and other malicious acts and omissions, Defendants are directly and proximately responsible by their actions described herein, for actual and potential economic losses by Plaintiffs. Plaintiff demands actual, compensatory, consequential and punitive damages.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 11

(Invasion of Privacy and Trespass)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

77. Plaintiffs reallege and incorporate paragraphs 1-76 as if fully set forth herein.

78. Since 2004 there have been numerous occasions where PEC's field agents have **illegally trespassed** on Plaintiff **.E.A. Wallenstein property at 1253 Harllees Bridge Road**. These trespasses occurred without permission and in direct violation of Plaintiffs' numerous specific requests on record with the Commission and the Court, to cease and desist. Said trespassing occurred without cause since there has been no meter located at the property having been removed by PEC. See **Exhibit A** to the **Application for Change of Provider** filed with the Commission by Plaintiff pursuant to paragraph 5 of the Mutual Release on or about September 24, 2007, copy filed with this honorable court.

79. On two occasions since 2004, Defendants have illegally invaded Plaintiff's privacy by taking **unauthorized photographs** of Plaintiff's property and improvements thereon. Plaintiff objected and requested copies of any and all such photographs which Defendants have negligently refused to provide. Such photographs are an invasion of privacy and a security risk to Plaintiff's person and property.

80. On May 14, 2008, Defendants' agents trespassed on B.E.A. Wallenstein's residence property at 1253 Harllees Bridge Road, Dillon to illegally disconnect electric power service to property located at 1249 Harllees Bridge Road, refusing to use the designated ingress/egress gate to that property for which Defendants have had their own lock and key since 1994.

81. On or about September 17, 2007, Plaintiffs found two non-English speaking Mexican men wandering around Plaintiff's properties looking for "the front gate." They had no identification in violation of Commission Regulation **103- 344**. The foreman of a North Carolina company whose truck was located at the "front gate" claimed they worked for Progress Energy and were not sure what they were looking for on the properties.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 12

(Defendants' Violation of Statutes, Rules and Regulations)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

82. Plaintiffs reallege and incorporate paragraphs 1-81 as if fully set forth herein.
83. Defendant has violated Commission **Regulation 104-341** by breach of the service agreement with B.E.A. Wallenstein relating to the property at 1249 Harllees Bridge Road.

Defendants violated paragraphs 3 and 4 of the Release by failing to file stipulations for dismissals with the Court and the Commission.

Defendants thus violated **Rules 40(j), 41 (a) (1) (ii), 43 (k) and 79 S.C.R.C.P.** Under said rules only the Plaintiff in Docket No. 20004-CP-17-232 may and should file the stipulations, and has the legal duty and responsibility to do so. Defendants herein failed in that duty to Plaintiffs herein under the said Mutual Release agreement and the said rules. The net result is that the status of Docket No. 2004-CP-17-232 is uncertain requiring Plaintiffs to file pleadings that are pending before the Court as of this writing. Plaintiffs have also filed an accompanying Motion to Consolidate said docket with this complaint for further efficient administrative processing through the court.

84. On Wednesday, May 14, 2008, without prior notice, Defendants illegally disconnected electric power to Plaintiffs' property located at 1249 Harllees Bridge Road, Dillon S.C. This wrongful act was in violation of several legal and regulatory mandates to be discussed at trial, and in so doing, damaged Plaintiffs.

85. Defendants deliberately and negligently violated paragraph 4 of the Mutual Release, and the Court Order of February 28, 2008 requiring Defendants' compliance..

86. Defendants continue in contempt of court authority as provided for in the said Court Order.

87. Defendants wrongful acts and gross negligence violated the following specific Commission Regulations, inter alia:

1. Reg. 103-316/345: Complaints

Pursuant to Commission Regulations 103-316 and 345, Plaintiffs have filed a separate Complaint with the Commission for a prompt and thorough investigation of Defendants' violation of the regulations as cited herein. In adjudicating this complaint, the Court is respectfully requested to take judicial notice of said Commission complaint which is specifically intended to comply with the requirement for Plaintiffs to exhaust administrative relief and to mitigate damages prior to submitting Defendants' violations to the jurisdiction of this Court over Defendants wrongful acts as cited in this complaint.

Under the doctrine of futility it is the view of Plaintiffs herein that the Commission will do nothing about the violations, and in any case, the Commissions lacks any powers to award damages. Notwithstanding, this Court has the power to take concurrent jurisdiction of the matter at its discretion.

2. Reg. 103-330: Customer Information

Defendants violated each and every one of sub paragraphs (a) through (j) of this regulation relating to Customer Information, and para. 4 of the Mutual Release.

3. Reg. 103-331: Customer Deposits.

Defendants are in deliberate violation of this regulation and para. 4 of the Mutual Release.

4. Reg. 103-341: Service Contract

Defendants are in breach of the service contract and para. 4 of the Mutual Release and the Said Court Order..

5. Reg. 103-342: Disconnect of Service.

Defendants' wrongful act on May 14, 2008 was a complete violation of the requirements under this regulation (a) through (m).

6. Reg. 103-344: Right of Access.

On May 14, 2008, Defendants violated Reg. 103-344 in several ways. First, their agents did not enter the property at 1249 Harllees Bridge Road through the designated ingress/egress gate to which they have had their own lock and key since 1994 and which they regularly disregard. Instead they trespassed on Plaintiffs property at 1253 Harllees Bridge Road.

Second, initially Defendants' agents refused to provide proper identification upon request, but changed their minds when reminded of this regulation by Plaintiffs.

Third, **before entry**, the agents failed to inform Plaintiffs of the purpose to disconnect the service, as required by the regulation, and for trespassing on the wrong property to gain entry.

On numerous occasions dating since 2004 and September 18, 2007, Defendants agents have trespassed on Plaintiff's properties without proper identification in violation of Commission Regulation 103- 344. As noted above, the most recent event **previous** to the May 14, 2008 violation involved Mexican nationals trespassing on Plaintiffs property in September 2007, unable to speak English and not knowing why or what they were to do for Defendants on Plaintiffs' properties.

7. **Reg. 103-352: Procedures for Termination of Service**

Defendants maliciously, intentionally, willfully and negligently violated all the requirements of this regulation, in particular the denial of proper notices and disconnection without good cause.

88. Defendants' violations of the foregoing regulations shall be discussed in detail at trial. Under case law of this state, violations of a statutes or regulations constitute negligence and are evidence of recklessness. And causative violation of an applicable statute constitutes actionable negligence, and is evidence of recklessness and willfulness. (See, **Adams vs. Hunter**, 343 F.Supp. 1284 (D.SC 1972)). And the question of negligence is for the jury as demanded in this complaint.

89. In failing to exercise the degree of care which was reasonable and prudent under the circumstances, Defendants have negligently damaged Plaintiffs by their violation of the Commission regulations in illegally and negligently disconnecting service on May 14, 2008.

90. Plaintiffs have initiated regulatory process to exhaust administrative relief and mitigate damages related to all of these regulatory matters. Since the Commission/Ors are not likely to take any corrective action based on past experience, and in any case can not grant damages, and given Defendants' demonstrated influence over those Agencies, Plaintiffs seek justice from this Court and jury.

91. As a result of the aforesaid acts and omissions of the Defendants, and each of them, the Plaintiffs sustained damages, actual and punitive. The event of May 14, 2008 placed extreme stress on Plaintiff B.E.A. Wallenstein who became extremely ill as a consequence requiring medical attention.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 13

(Claim for Equitable Relief)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

92. Plaintiffs reallege and incorporate paragraphs 1-91 as if fully set forth herein.

92. Defendants have engaged in an intentional and/or reckless and egregious course of conduct in assessing charges on the meter at 1261 Harlees Bridge Road, Dillon, (Little Rock Stables) for which PEC refuses to provide a proper accounting; such accounting as it has provided are missing critical months. As a result of this continued impasse, PEC continues to harass and abuse Plaintiffs with repeated threats off disconnect.

93. Defendants' in their provision of regulated electric utility services owe a fiduciary and legal duty to their customers to bill only those charges for which it can properly account. Defendants' actions relate to this matter thus cause an extremely ill elder woman gross emotional and physical stress on a continuing basis.

94. Overcharges and denial of proper billings and accounting are not authorized by the Commission, even though the Commission has demonstrated extremely lax oversight on these issues in this case. Plaintiffs have exhausted administrative relief, efforts at mitigation, and further efforts are futile in this and the other causes of action.

95. Accordingly, pursuant to the "doctrine of futility" provided for in Administrative Law and cases, Plaintiffs are entitled to both injunctive relief whereby PEC is enjoined immediately from continuing their wrongful conduct, and to a proper accounting whereby PEC must account for all the charges it has improperly billed Plaintiffs on the subject account.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 14

(Defendants' Willful, Wanton, Gross Negligence, Reckless and Malicious Behavior)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

96. Plaintiffs reallege and incorporate paragraphs 1-95 as if fully set forth herein.

97. The acts and/or omissions of Defendants and each of them, as herein above described were willful, wanton, grossly negligent, reckless, callous and malicious.

Defendants' behavior before and since September 18, 2007 were conducted in total disregard for the welfare, benefit, security and safety of Plaintiff B.E.A. Wallenstein who in good faith executed the Release settlement agreement because of impending surgery and ill health. Defendants' knew and should have known of this fact and proceeded to violate the terms and conditions of the Release agreement, not to mention the Court Order to all the three parties to enforce compliance of the Release.

98. As a direct and proximate result of the Defendants' and each of their willful, wanton, negligent, reckless and malicious conduct, Plaintiffs have been damaged physically, emotionally, financially, and permanently, giving rise to the issue of punitive damages, along with actual, compensatory, consequential and other damages.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 15

(Defendants Wrongful Conduct, Wrongful Acts Caused Permanent Personal Injuries and Wrongful Death of Plaintiff)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

99. Plaintiffs reallege and incorporate paragraphs 1-98 as if fully set forth herein.

100. As a direct and proximate result of Defendants acts and/or omissions and wrongful conduct described herein, Defendants and each of them, have caused Plaintiff B.E.A. Wallenstein serious permanent personal injuries to her *person* that according to every reasonable probability will continue throughout the remainder of her life, and has directly and proximately caused an approaching wrongful death.

101. As cited herein, Defendants knew and should have known of Plaintiff B.E.A. Weaver's prompt need for installation of electric power for medical reasons and of her ill health and impending surgery. This situation was discussed at length by all parties and attending legal counsel during the settlement conference on September 18, 2007. Defendants' knew that this was the only reason she executed the settlement agreement because she needed power for post operation and medical care in the immediate future.

Defendants' knew and should have known that Plaintiffs' met all pre-conditions pursuant to paragraphs 1 and 2 of the said Mutual Release and Defendants did not by refusing to promptly connect electric power to her residence as agreed. On April 22, 2008, Defendants telephoned her with one day's notice that they would connect power on April 23, 2008, ~~some seven months~~ after they were required by law and court order to comply with the said settlement agreement.

102. By their wrongful conduct, breach of a settlement agreement, and bad faith, Defendants and each of them, contravened the duties attached by law to the relations between the parties pursuant to Defendants' violation of paragraphs 1, 2 and 4 of the said Mutual Release, non-compliance with the Court Order dated February 28, 2008 and contempt of court authority, and violations of Commission and ORS regulations as set forth herein.

103. Defendants' wrongful acts in the ordinary course of affairs, and in this particular case pursuant to the said Mutual Release and Court Order, infringed upon the rights of Plaintiffs, to their damage, and Defendants did not have an equal or superior right in this matter of connecting electric power as agreed and timely paid in full for, pursuant to paragraphs 1 and 2 of said Mutual Release. Defendants' also violated paragraph 4 of the said Mutual Release by not curing outstanding matters thereby causing cumulative stress, anguish and ill health.

104. Pursuant to S.C. Code Ann. **Section 15-51-10** et. seq., Plaintiff B.E.A. Wallenstein's beneficiaries have a statutory right for a cause of action for damages for the impending wrongful death that is directly and proximately caused by Defendants' wrongful acts and conduct as cited herein.

105. As a result of their wrongful acts and conduct, gross negligence, bad faith, willful, wanton, reckless, and other acts and omissions cited herein, Defendants are directly and proximately responsible for actual, compensatory, consequential and punitive damages.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 16

(Property Damage, Environmental Degradation and Endangerment of Health)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

106. Plaintiffs reallege and incorporate paragraphs 1-105 as if fully set forth herein.

107. As a direct and proximate result of Defendants' acts and/or omissions, negligence and wrongful conduct described herein, Defendants and each of them, have caused Plaintiffs property damages and losses, residential environmental degradation, and endangerment of personal health through the loss of residential climate control of temperature, humidity and air conditions resulting from lack of electric power.

108. Said damages include, inter alia, mold, mildew, allergens, air pollution, dust, and damage to wallpaper, plaster ceilings, fine arts, antique carpets and rugs, etc.

109. As a result of the acts and omissions of the Defendants the Plaintiffs have sustained damages, actual and punitive.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 17

(Claim for Culpable and Criminal Gross Negligence of Defendants)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

110. Plaintiffs reallege and incorporate paragraphs 1-98 as if fully set forth herein.

111. The acts and/or omissions of Defendants and each of them, as herein above described, **constituted intentional, culpable, and criminal gross negligence.**

112. Defendants and each of them have failed to exercise a proper degree of care towards Plaintiffs given their knowledge of the serious medical condition of Plaintiff B.E.A. Wallenstein, which constitutes "negligence". Given the facts and circumstances, the acts and/or omissions of Defendants and each of them constitutes **gross negligence,**

culpable negligence and criminal gross negligence for which Defendants and each of them are accountable and liable to Plaintiffs in amounts to be shown at trial.

113. Defendants and each of them have intentionally failed to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of Plaintiffs; and with such a gross want of care and regard for their rights as to justify the presumption of willfulness and wantonness, constituting **gross negligence and malicious intent of PEC's in-house legal counsel.**

114. Defendants and each of them are liable to Plaintiffs for **culpable negligence** by intentionally and deliberately failing to exercise that degree of care rendered appropriate by the particular circumstances, and which a person of ordinary prudence in the same situation and with equal experience would not have omitted. Defendants and each of them knew and should have known that their actions and omissions in denying electric power to Plaintiff B.E.A. Wallenstein on or about September 23, 2007, or again on or about March 3, 2008 or anytime subsequent to those dates, pursuant to Court Orders, a settlement agreement executed on September 18, 2008, and medical certificates of necessity, would cause her grievous emotional and physical stress and endanger her life and property, which it did. Defendants knew and should have known that the illegal disconnect of electric power to Plaintiff's property located at 1249 Harlees Bridge Road on May 14, 2008 would have the same adverse effect on Plaintiffs.

115. The severe physical and emotional stress caused by the acts and/or omissions of Defendants and each of them, as herein above described, commencing since before and continuing after September 18, 2007 **are a direct and proximate cause of the metastasis and remission of Plaintiff B.E.A. Wallenstein's cancer condition which has been declared to be terminal by her doctors.** Defendants' acts and/or omissions are also a direct and proximate cause of other painful illnesses directly associated with the re-emergence of the cancer, including deterioration of her immune system and resistance caused by severe stress. Defendants knew for four years, and specifically from September 18, 2007 when they were informed of this and other serious illnesses at the settlement conference, and should have known of Plaintiff's cancer and other conditions, and are therefore liable to Plaintiffs for **criminal gross negligence.**

116. **Criminal negligence** which will render killing a person to be manslaughter, is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful prudent man under like circumstances would not do by reason of which another person is endangered in life or bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection.

117. The aforesaid errors, acts and omissions of Defendants and each of them, considered separately and cumulatively and over a long period of time, given Defendants' knowledge of Plaintiffs medical condition documented by numerous medical certificates of necessity, constitutes **criminal gross negligence**, for which Defendants are held liable to Plaintiffs.

118. Thus Plaintiffs claim that the Defendants' "gross negligence" committed against Plaintiffs, is culpable or criminal when accompanied by acts of commission, or omission of a wanton, or willful nature, showing a reckless or indifferent disregard of the rights of Plaintiffs under circumstances reasonably calculated to produce injury (attempted coercion to collect an alleged debt or execute an agreement), or which make it not improbable that injury will be occasioned, and the offender knows or is charged with knowledge of the probable result of his acts; "culpable" meaning deserving of blame or censure. Plaintiffs demand both blame and censure, and appropriate damages to be determined at trial.

119. As a direct and proximate result of the Defendants' and each of their willful, wanton, grossly negligent, reckless, callous and malicious conduct, Plaintiffs have been damaged physically, emotionally, financially, and permanently, and the stress caused by Defendants have caused a remission of Plaintiff B.E.A. Wallenstein's cancer and directly related other illnesses, giving rise to the issue of punitive damages, along with actual, compensatory, consequential and other damages.

WHEREFORE, Plaintiffs pray judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

COUNT 18

(Compensation for Harassment, Abuse of Process, Non-compliance and Losses)

For a separate and distinct claim for relief, Plaintiffs allege as follows:

120. Plaintiffs reallege and incorporate paragraphs 1-119 as if fully set forth herein.

121. The Mutual Release compromise and settlement agreement executed on September 18, 2007 was intended to settle Docket No. 2004-CP-17-232, and cease further litigation between the three parties to that action, which included Plaintiff Pro se Gary Weaver C.L.U., Ch. F. C., A.B., M.B.A., a 75 year old elder resident in ill health.

122. Defendants' violation of said Release, fraud, and filing a frivolous and nuisance pleading, non-compliance with the aforesaid Court Orders on February 28, 2008 and March 28, 2008, and contempt of court authority commencing September 18, 2007 until the present date, have caused Plaintiff Pro Se Gary Weaver to expend a tremendous amount of time, energy, effort, and costs in prosecuting a case against Defendants in Docket 2004-CP-17-232, processing the above entitled Complaint and prosecuting Defendants before the Commission on various issues related to Defendants and this case. This work product required research, preparation, publishing and filing of pleadings, correspondence, costs, attending hearings, etc. This process should have been unnecessary had Defendants complied with the Mutual Release and the Court Orders as noted, and in particular Paragraphs 1 and 2 of the agreement.

123. The time and effort necessary to undertake these activities directly caused an additional undue economic, emotional and physical burden and caused Plaintiff to forego other business, legislative, academic research activities, and interfered with Plaintiff's economic interests unrelated to Defendants, thus causing delays, interruptions and losses related to Plaintiff's other obligations and responsibilities..

124. Because of the time, effort and cost of processing litigation associated with defending Docket No. 2004-CP-17-232, and related Commission/ORS pleadings, Plaintiff Gary Weaver was forced to participate as a Pro Se litigant.

125. Had the Commission and the ORS initially performed their respective public duties, responsibilities and mandate to protect the State's consumers and provide proper unbiased and impartial, objective consumer protection and propagation of consumer rights in this whole process, and had those public regulatory agencies not been operating

under the undue influence of the Defendants, the matter would never have gone to court in the first place. As for many consumers dealing with the electric utilities in this State, Plaintiff did not consider it reasonable to have to spend many thousands of dollars to defend against a small claim that was inappropriate in the first place, particularly as to the harassment and abuse of Plaintiff B.E.A. Wallenstein under an inappropriate application of the so-called "doctrine of necessities." Moreover, by submitting their claim to a third party professional interstate debt collector in 2004 under Federal unfair debt collection statutes, Defendants in fact removed the issues from the jurisdiction of the Commission and ORS. Again, requiring unnecessary work by Plaintiff Pro Se Gary Weaver.

126. The extremely high cost of litigation to protect one's consumer rights in this State, particularly for small claims such as in this case, has a chilling effect on any such consumer activity to protect one's interests, and the reason why the utilities generally prevail. Consumers generally lack the resources, time and ability to engage in regulatory or court litigation against multi-billion dollar interstate utility corporations with "deep pockets," a generous purse, a small army of in-house specialist attorneys and a large army of contract law firms all of whom are compensated, to protect their interests at the regulatory agencies, the legislature, in the courts and the media..

127. The net result of this situation is that Plaintiff Gary Weaver, who is not compensated, was forced to defend his interests as a Pro Se litigant, and thus claims damages and compensation for having to process litigation filed by Defendants that was fraudulent, frivolous and a nuisance, before this court and the Commission, before and since 2004; and especially since September 18, 2007.

128 As a direct and proximate result of Defendants' acts and/or omissions, negligence and wrongful conduct described herein, Defendants and each of them, have caused Plaintiff Gary Weaver economic losses and burdens, physical burdens, loss of investment of time and effort resulting from distractions caused by processing unnecessary litigation initiated by Defendants, their breach of agreements, violations of State statutes and regulations, contempt of court and malicious behavior.

129. As a businessman and a professional, Plaintiff places a value for his efforts in processing this case at the same rate as Defendants' attorneys and requests reasonable compensation, actual and punitive damages.

WHEREFORE, Plaintiff prays judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

4. RELIEF

WHEREFORE, by reason of the foregoing, Plaintiffs pray that summons issue citing Defendants to appear and answer the aforesaid matters, and for judgment against the Defendants and each of them, jointly, and as is hereinafter set forth.

1. **Special damages** in such amounts as shall be shown at trial, including but not limited to Plaintiff's medical related bills, maintenance and cure.

2. **General damages** in the sum shown at trial, but no less than the jurisdictional amount.

3. **Actual, Compensatory and Consequential damages** in such amounts as will be shown at trial.

4. **Punitive damages** in the amount to be shown at the time of trial and that the Court and jury deems just and proper under the circumstances

5. Such damages to include compensation to Plaintiff B.E.A. Wallenstein for loss of income from B&B seasonal room rental operations including weddings, executive retreats, etc., estimated to be a **minimum** of twenty six thousand dollars (\$26,000) for the period September 2007 through September 2008. **Special compensation** should be granted for loss of income dating since July 2004 to the present since she should not have been included in this action in the first place.

6. Plaintiffs are entitled to full refund of the said settlement amount of three thousand, one hundred and ten dollars and 44 cents (\$3,110.44) and a security deposit of one hundred and forty seven dollars (\$147.00) paid, since Defendants are in full breach of the Release settlement agreement which is subject to adjudication under the law of contracts. Plaintiffs seek disgorgement of the said settlement amounts, plus accrued interest from September 22, 2007 to April 23, 2008 at 8 percent per annum for Defendants' breach of contract, fraud, and bad faith. Thus a total disgorgement of three thousand, four hundred and nine, and forty five cents (\$3,409.45) are claimed.

7. For an award of **Late Penalty, plus accrued interest**, imposed on Defendants in the amount of one hundred dollars (\$100.00) for each and every day that

Defendants refused to connect electric power to Plaintiff's residence (September 18, 2007 to April 23, 2008.) as agreed in the Mutual Release..

8. For an award of **Late Penalty** plus accrued interest imposed on Defendants in the amount of one thousand dollars (\$1,000.00) for each and every day, commencing from May 14, 2008, that Defendants refuse to change the status from "small commercial" back to "residential" for Plaintiff's property at 1249 Harllees Bridge Road, Dillon, in violation of para. 4 of the Mutual Release, the Court Order of February 28, 2008, and for refusal to reconnect electric power which they illegally disconnected on May 14, 2008 from Plaintiff's property at 1249 Harllees Bridge Road, Dillon..

9. For disgorgement of the 2.5 per KWH overcharge dating from June 2004 to the date of re-conversion of the "residential" status of Plaintiff's property located at 1249 Harllees Bridge Road, Dillon.. Plaintiffs claim actual, consequential and punitive damages to be determined at trial

10. For **injunctive relief** whereby:

a. Defendants are enjoined immediately from continuing their wrongful conduct, harassment and abuse of Plaintiffs, and do so in the future under threat of court sanctions;

b. Defendants to be ordered to immediately connect electric power to Plaintiff's residence as agreed with "no strings attached;"

c. Defendants' to immediately reconnect power and reverse the status of property at 1249 Harllees Bridge Road, Dillon S.C. from "small commercial" back to "residential";

d. Repair Plaintiffs' water well and security systems which it destroyed;

e. Provide proper accounting for a third meter on the property located at 1261 Harllees Bridge Road;

f. Plaintiffs request the court to retain jurisdiction of the case, until the conditions provided for in paragraph 5, of the Release are complied with by Defendant,

g. Defendants' enjoined to provide an accurate and complete accounting for the period of operations from approximately May 1994 through May,

1995 at 1253 Harlees Bridge Road property, which is needed for estate planning purposes.

11. For an order directing Defendants to pay any and all costs for a change of providers pursuant to paragraph 5 of the Release, including an alternative remedy of installing alternative energy systems to completely and reliably replace Defendants as a supplier to Plaintiffs.

12. For **declaratory relief** under South Carolina's Declaratory Judgment statutes and Rule 57, S.C.R.C.P, that Defendants' are in violation of Rules 40(j), (41 (a) (1) (ii), 43 (k), and 79, S.C.R.C.P, Commission Regulations cited herein above, and in particular Reg. 103-341, and Reg. 103- 344.

13. For a finding that the Mutual Release is an ambiguous contract as to paragraphs 3 and 4 of the agreement, and rule in favor of Plaintiffs as claimed herein.

14. For the Court to impose sanctions and penalties and such other punishment including jail sentences for Defendants as described by the Honorable Paul M. Burch, Presiding Judge, for their deliberate, blatant and insulting **non-compliance and contempt of court authority** by ignoring the Court Orders of February 28, 2008 and on or about March 28, 2008 in Docket No. 2004-CP-17-232. Said punishment should include barring Defendants' in-house legal counsel from practicing law in this State for a minimum period of two years to discourage further violations of Commission regulations and abuse of consumer rights.

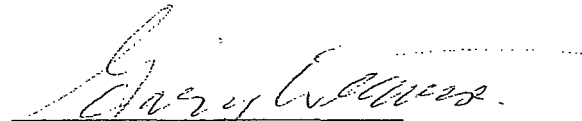
15. Grant Plaintiffs such other and further relief as the Court may deem just and proper that justice may require for Plaintiffs to be fully compensated, including but not limited to, a court award of any other amount, pre-judgment interest, reasonable attorneys' fees, cost of court and reasonable compensation to Plaintiff Pro Se Gary Weaver for work involved in having to process this case since July 9, 2004.

16. Such relief should consider that Plaintiff Pro Se B.E.A. Wallenstein is an innocent victim in these whole proceedings which in her case are really a travesty of justice that needs correction. Through no fault of her doing she has been harassed and abused by Defendants over a four year period, denied the opportunity to earn income from her assets, her health ruined, and her life endangered by Defendants' fraud, frivolous and nuisance pleadings in this court and before the Commission.

Respectfully submitted.

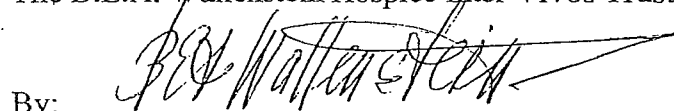
DATED: Dillon County, S.C. May 20, 2008

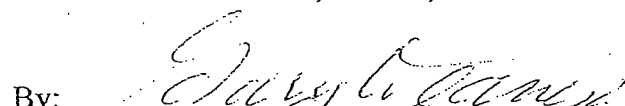
Plaintiffs' Signatures:


Gary Weaver, Plaintiff Pro Se


B. E.A. Wallenstein, Plaintiff Pro Se

The B.E.A. Wallenstein Hospice Inter Vivos Trust:

By: 
B. E.A. Wallenstein, Trustee, Plaintiff Pro Se

By: 
Gary Weaver, Trustee, Plaintiff Pro Se

Gary Weaver, et alia vs. Progress Energy Carolinas, Inc, et alia, Complaint and Summons

P.O Box 539
Little Rock S.C. 29567

April 18, 2009

Len S. Anthony, Esq.
Deputy General Counsel-Regulatory Affairs
Progress Energy Service Co., LLC
P.O. Box 1551
Raleigh, N.C. 27602-1551
Ph: 1 919 546 6367
Fax: 1 919 546 2694
Counsel for Progress Energy

Dear Mr. Anthony:

Subject: Docket No. 2008-CP-17-180
Second Service of Verified Complaint and Summons
by U.S. Certified Mail, Return Receipt.

Ref: Rule 4 (d) (1) (3) (8) S.C.R.C.P.

Enclosed herewith please find a second certified true copy of the subject Verified Complaint and Summons duly filed with the Clerk of Court, Dillon County by the undersigned on May 30, 2008. The first copy was duly mailed to you on or about July 24, 2008.

Pursuant to the above referenced rules and Rule 4(d) (8) S.C.R.C.P. I am remitting the enclosed Complaint and Summons document by U.S. registered mail, return receipt requested, and delivery restricted to the addressee, as proof of service. This is the second time I have remitted a copy of the said document to you. A copy was duly remitted to Mr. Buyck, your attorney of record.

Pursuant to Rule 4 (d) (8) please ensure that the return receipt was signed by an authorized person in your firm and please notify me in writing of such.

Thank you.

Yours sincerely,

Gary Weaver,
Plaintiff Pro Se

Cc: Mark W. Buyck, III., Esq.
Attorney at Law
P.O. Box 1909
Florence S.C. 29503-1909
Counsel for Defendant

Clerk of Court, Dillon County

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Transcript

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEASE
	)	
COUNTY OF DILLON	)	FOURTH JUDICIAL CIRCUIT
	)	
GARY WEAVER	)	
	)	
PLAINTIFF	)	
	)	
VERSUS	)	2008-CP-17-0180
	)	
PROGRESS ENERGY CAROLINAS	)	
DEFENDANT	)	NOVEMBER 3, 2009
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

GARY WEAVER, PRO SE

MARK W. BUYCK, III, ESQUIRE
ATTORNEY FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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NO EXHIBIT OFFERED

1 (Whereupon, these proceedings are brought to
2 order at 11:25 a.m. on Tuesday, November 3, 2009.)

3 THE COURT: All right. This leaves us with one
4 matter now, the matter of Gary Weaver versus Progress
5 Energy.

6 Madame Court Reporter, this is the case of 2008-17-
7 180. Let's come across and let everyone introduce
8 themselves. Mr. Weaver we will begin with you.

9 MR. WEAVER: Well, Your Honor, I am Gary Weaver,
10 and I am here representing myself.

11 THE COURT: Very good. Counsel.

12 MR. BUYCK: Your Honor, I am Mark Buyck, III, and I
13 am here on behalf of Progress Energy.

14 THE COURT: All right. What the Motion is, I
15 believe is your Motion Mr. Buyck to dismiss; am I
16 correct?

17 MR. BUYCK: Yes, sir.

18 THE COURT: And there is also a Motion pending for
19 default, is that correct?

20 MR. BUYCK: Yes, sir, Your Honor. I am prepared
21 to give Your Honor the background of the case.

22 THE COURT: Let me first of all say, Mr. Weaver
23 the way we are going to proceed here is, I am going to
24 let Mr. Buyck argue first. His Motion to Dismiss would
25 be dispositive, meaning it would end everything, whereas

1 a partial summary judgment or partial default. I will
2 hear from him first.

3 The court has some familiarity with this. Either I
4 have had hearings in this matter before, or at least have
5 had some knowledge of the case, and I am not certain of
6 from what source. But, I do recall the name of the case
7 as soon as I saw it on the Roster. And is there any
8 objection to this court hearing it from the defendants?

9 MR. BUYCK: No, sir, Your Honor.

10 THE COURT: And any from the defendant?

11 MR. WEAVER: No, sir.

12 THE COURT: All right. Please be seated, and Mr.
13 Buyck, I will hear from you first.

14 MR. BUYCK: All right, Your Honor. I want to
15 start by passing up a Order from Judge Brigden, and that
16 is dated December 2004.

17 THE COURT: All right.

18 MR. BUYCK: And the reason I present this order to
19 the court is that it does set out sort of the history of
20 the dispute between the Weavers and Progress Energy. If
21 you look at the bottom of page one, that last sentence,
22 it says that the parties have been involved in a long
23 running dispute regarding the provision of electricity to
24 the defendant's residence at 1253 Harley's Bridge Road,
25 in Dillon County.

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1 Mr. Weaver contracted with Progress Energy for some
2 area lights, and they - The Weavers have had service
3 there since about 1994. They had some - they put some
4 area lights in there in 1996. There were some problems
5 with the lights. The Weavers brought a Complaint with
6 the Public Service Commission, actually opened a file
7 there. And, The Commission through that process, heard
8 the Complaint, and issued an Order, and part of the Order
9 was that Progress Energy was to credit the Weavers with a
10 portion of the Bill for the area light service that they
11 were complaining about. This was done, and there was no
12 dispute that Progress did what they were ordered to.

13 However, Mr. Weaver appealed the Public Service
14 Commission's Order, and that was the first case at
15 Circuit Court, and it was here in Dillon County, and it
16 was Case Number 2002-CP-17-090. Judge Burch dismissed
17 that Complaint in April of 2002. Judge Breeden notes on
18 the top of page three, that the incident Complaint, the
19 one that was pending in 2004, was nothing but a rehash of
20 the plaintiff's various complaints and charges, lies
21 against the defendant before the Public Service
22 Commission. All of the plaintiff's charges stems from
23 dissatisfaction with the installation, operation, repair
24 and maintenance of various security lights. Then Judge
25 Brigden goes on to explain why it is that he is

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1 dismissing the Complaint that Mr. Weaver brought in
2 Florence County in 2004.

3 Now, in 2004, after that Complaint was actually
4 while that Complaint was pending, Progress brought an
5 Action in Dillon County to collect past due amounts, due
6 to the service owed on the service. Mr. Weaver then
7 Counterclaimed in that Action. We have been before Judge
8 Burch several times. We have been before Judge Lockemy
9 numerous times. The case was ultimately mediated, and at
10 the time this was in - on September 18, 2007, we had a
11 conference in Mr. Shine's Office. Dan Shine at that
12 time, was representing Mrs. Weaver. He was not
13 representing Mr. Weaver. However, he was representing
14 Mrs. Weaver, and we entered into a mutual release, and a
15 settlement agreement on September 18, 2007. And as part
16 of that Agreement The Weavers agreed that they would drop
17 all matters that they had currently pending before the
18 Public Service Commission. On September 22nd, four days
19 later, which was, I think, a Monday, The Weavers, in
20 violation of their agreement, filed a Motion with the
21 Public Service Commission asking them to expedite the
22 matters that were on the docket before them. We filed a
23 Motion to Enforce the Settlement Agreement on October 25,
24 2007. Mr. Weaver filed a Motion to enforce the
25 Settlement Agreement the day after we did. A hearing was

1 held on that, and I believe it was - and I have the order
2 here --- Judge Burch --- actually here is our Motion to
3 Enforce the Settlement Agreement. Judge Burch issued an
4 order granting the relief that we had requested, and ---
5 I'm sorry, I have so much in this file.

6 (PAUSE.)

7 MR. BUYCK: Judge Burch's Order February 28, 2008,
8 and in his order, Judge Burch grants Progress' Motion to
9 enforce a Settlement Agreement, and says that the said
10 agreement shall be enforced, and that all parties shall
11 abide by its terms. The defendant shall within forty-
12 five-days of this date come in to the defendant, and the
13 defendant in that case was the Weavers. The defendant
14 shall come into compliance with the terms of paragraphs
15 three and four of the mutual release agreement, dated and
16 filed with the Clerk of Court on October 25, 2007, and
17 failure to comply shall subject the parties to the
18 contempt powers of the court.

19 And it is so ordered. Judge Burch.

20 There was a subsequent order issued by Judge Burch
21 on March 26, 2008, that was in response to the Motion for
22 Reconsideration that Mr. Weaver had filed. And in that
23 Motion Judge Burch said, that his Order is clear, and he
24 doesn't have any - he says that it needs to be
25 enforced.

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1 Mr. Weaver on May 30, 2008, while --- in what he has
2 called a Verified Complaint, and it notes that it was
3 filed on May 30, 2008, at 2:05 p.m., and it is
4 handwritten. There was a hearing on June 3, 2008, in
5 front of Judge Lockemy. Again, Judge Lockemy in the face
6 of a number of post trial motions and whatnot from Mr.
7 Weaver, scheduled a hearing. We went down to Georgetown,
8 and he heard --- he heard this. And as you see in
9 paragraph one, it came before me on June 3, 2008,
10 regarding certain misunderstanding relating to the
11 conclusion of case number 2004-CP-17-232.

12 Paragraph 9, which is on page 3 of Judge Lockemy's
13 Order states, that the court heard argument from Mr.
14 Weaver concerning the mutual release and settlement
15 agreement. Particular Mr. Weaver's contention that the
16 plaintiff is in violation of the settlement agreement,
17 and that it had not reconnected the residence pursuant to
18 the terms of the agreement. [These matters are not
19 properly before me, as they had been previously addressed
20 before Judge Burch in a hearing on January 30, 2008. His
21 Order of February 28, 2008, and his order and response to
22 Defendant Gary Weaver's Motion for Reconsideration dated
23 March 24, 2008.

24 Judge Lockemy's final paragraph of that order says
25 that this case has ended. The Clerk of Court is directed

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1 not to accept any further pleadings or filings in this
2 matter. The case ended with the issuance of Judge
3 Burch's Order on March 24, 2008.

4 Then while — but before June 3, and June 27th, Judge
5 Lockemy references a letter that he received from Mr.
6 Weaver on June 19th. And again Judge Lockemy says that
7 the case — that if Mr. Weaver is dissatisfied with any
8 ruling of this court, then he should ask for appellate
9 relief. All parties are directed to follow with the tone
10 of the above order. The power was reconnected. The case
11 was ended. Mr. Weaver, however unbeknownst to us, had
12 filed a subsequent action, in which he is making the same
13 claims that he was making in the 2004 action. He is
14 claiming in his Complaint that his number 2008-17-180,
15 that Progress Energy has violated the terms of the
16 Settlement Agreement, and has caused him damage by virtue
17 of the fact that we have violated the terms of the
18 Settlement Agreement. It is our position, and we have
19 made this argument a number of times. We have made it to
20 Judge Burch, we have made it to Judge Lockemy, we did
21 comply with the terms of the settlement agreement that
22 the judge — both Judge Burch and Judge Lockemy said, that
23 we had complied with the terms of the settlement
24 agreement. As a matter of fact, Judge Burch found that
25 Mr. Weaver was the one that did not comply with the terms

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1 of the settlement agreement, and issued an order saying
2 that if he fails to comply, that he will be subject to
3 the contempt powers of the court.

4 The case has ended. It is has been going on now ---
5 this feud has been going on for almost twenty years.
6 This case has been going on for over five years, and it
7 all relates to the same matter. The case is over. Judge
8 Lockemy ended the case. He said there will be no more
9 filings in the case. And we believe that if you look at
10 the verified complaint, and I don't believe it is
11 properly verified, but if you look at the complaint,
12 every cause of action that he has in here, relates to the
13 fact that he alleges that we violated the terms of the
14 settlement.

15 THE COURT: All right. Let me stop you there
16 counsel.

17 Mr. Weaver, under the multiple orders of this court,
18 how can you maintain this claim, even file this claim
19 sir?

20 Let's do this, because you are a party representing
21 yourself, we are going to place you under oath before we
22 begin.

23 Please follow our clerk's instructions, sir.

24 CLERK OF COURT: Would you raise your right hand.

25 WHEREUPON, GARY WEAVER

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1 BEING DULY SWORN TESTIFIES AS FOLLOWS

2 MR. WEAVER: I do. I am sorry, Your Honor. I am
3 hard of hearing.

4 THE COURT: All right, sir. And I am going to ask
5 you to speak up, so our court reporter can hear you. But
6 how are you able to even maintain this lawsuit, file this
7 lawsuit, in the face of the multiple orders that you have
8 already had handed down with regard of these issues from
9 other judges?

10 MR. WEAVER: Actually, I think that is very easy,
11 Your Honor. It is hard to know where to start with this
12 exposition of the history of this case. It is riddled
13 with all kinds of misinformation. In answer directly to
14 your question, Judge Burch's order of 28th of February,
15 follows the hearing of January 30th of the two Motions
16 that we both filed on October 25th. Both of us filed for
17 enforcement of the settlement agreement. Now, in
18 Progress Energy's case, they claimed that I had not filed
19 a letter of dismissal with The State Progress Service
20 Commission. Now, that refers to paragraph 3 and 4 of
21 the Settlement Agreement, and, in fact, everything has
22 been dismissed before the public service commission, and
23 I had it all in writing, and where we submitted all the
24 pleadings, and all of the exhibits, and exception of
25 service. In addition to which counsel for Progress

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1 Energy, which is Mr. Anthony, General Counsel for the
2 company, they filed a Notice with the Public Service
3 Commission that the case had been dismissed, and
4 acknowledged to me in several letters that I filed,
5 everything has been dismissed. So in addition to which,
6 the ambiguity of paragraph 4 was the issue at state, and
7 January 30th hearing.

8 **THE COURT:** All right, sir. Let me stop you there
9 with the history that you are giving me, and ask you
10 this. What is the new issue that you raise in this new
11 Complaint?

12 **MR. WEAVER:** The violation of the Order issued by
13 Judge Burch on the 28th of October, which says that both
14 parties are to meet in terms of the settlement agreement.
15 Progress Energy does not turn on the electricity. And
16 all of the conditions, and this is a two page document
17 --- I find, the first two paragraphs says, I will make
18 certain payments, which we agreed on. I have made those
19 payments. Seven months later we still didn't have any
20 electricity. So I filed abuse of the agreement, breach
21 of the agreement, non compliance with Judge Burch's
22 order, and abuse of court authority.

23 **THE COURT:** This is in the new lawsuit?

24 **MR. WEAVER:** Yes, sir.

25 **THE COURT:** All right.

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1 **MR. WEAVER:** It has nothing to do with 272
2 whatsoever, except for the settlement agreement.

3 **THE COURT:** All right. Let me stop you right
4 there, and go back to Mr. Buyck. Tell me why it took
5 seven months as Mr. Weaver said, to turn on the power,
6 when it should have been turned on previously, again that
7 is his position.

8 **MR. BUYCK:** Your Honor, I would be happy to give
9 you a detailed response to that question. However, I
10 will refer you to Judge Lockemy's Order from June 2008 --

11 **THE COURT:** All right.

12 **MR. BUYCK:** -- When he heard us. And we have had
13 this argument. We had an hour and a half argument in
14 front of Judge Lockemy concerning the misunderstandings
15 about the settlement agreement.

16 **THE COURT:** All right.

17 **MR. BUYCK:** And it was our position then and now
18 --

19 **THE COURT:** Very good. Thank you. That matter
20 has been litigated, and Judge Lockemy has ruled on it.

21 **MR. WEAVER:** That is on case 232, Your Honor.

22 **THE COURT:** Sir?

23 **MR. WEAVER:** Let me explain a little bit. I have
24 an order --- a full court order from Judge Lockemy on
25 that hearing in June, and that hearing in June had to do

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1 with consolidating two cases. I will go further and
2 explain it. Judge Burch had dismissed 232, back in
3 October. I did not know, I never received a copy of the
4 Form 4 Order. Somehow it got missing in the mail, and
5 that is possible because at that time I was Arizona with
6 Mrs. Weaver at the Mayo Clinic getting cancer treatments
7 with her, so in the mail I may not have received that.
8 But I never received a copy of that order from Judge
9 Burch back in October of 2007, until May of 2008, and we
10 had a hearing right here on January 30th, for an hour or
11 an hour and a half, and I was talking about going to
12 trial, and the judge was talking about the settlement
13 agreement. I didn't know that the case had already been
14 dismissed by him, and it is right here. Per the
15 attorneys, first per the attorneys the case settled, a
16 formal order forthcoming. There was never any formal
17 order forthcoming. I never received any order that it
18 had been dismissed at all. So I went rightly along,
19 figuring I was going to trial, demanding a jury trial.
20 And then when I flied after I got the settlement from
21 Judge Burch, and they did not comply with this order,
22 they issued on the 28th of February. I said, okay, I will
23 file a new complaint on the settlement, which I did. Now
24 just before this court today, it has nothing with 232, it
25 is 180. I filed a complaint, why are they against it,

1 the issues have never been tried.

2 THE COURT: All right, sir. Mr. Weaver, I am going
3 to stop you there, sir. This matter is *res judicata*. It
4 is a case that has been decided. It is over. And, sir,
5 you have been ordered by Judge Lockemy as well as
6 certainly the tone of the other judges' orders is to,
7 cease and desist from these constant filings. This
8 matter is done. The Courts do not have the personnel or
9 the time to continue to relitigate, and relitigate, and
10 relitigate, and this is The Court's decision.

11 Not only am I going to dismiss this case that you
12 have filed, but I am going to grant sanctions against you
13 Mr. Weaver.

14 I am going to require you to pay the attorney fees
15 that Mr. Buyck has generated on behalf of Progress Energy
16 Carolinas from the date of the filing to the present
17 date. I am going to give you thirty days to pay those.
18 And if you fail to do that, then I am going to sentence
19 you to ninety days in the County Detention Center.

20 Now, let's make sure that we understand how we are
21 going to go from here. Mr. Buyck, I am going to ask you
22 to prepare an Order, which basically states the ruling
23 that The Court has just made.

24 I am going to sanction Mr. Weaver, because I find
25 this to be a repetitive and frivolous filing; volitive of

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1 the previous courts orders. I am going to require you to
2 pay attorney fees. And I am going you to require you to
3 attach an Affidavit of Attorney Fees to the proposed
4 order that you provide us electronically.

5 Once the Order is signed, Mr. Weaver will have
6 thirty days to pay those fees. Failure to do so within
7 thirty days, he will have to serve ninety days in the
8 County Detention Center.

9 Please understand, and I want it noted in the Order
10 that an appeal of this decision will not prevent a
11 trigger of the time frame he must pay it and then appeal,
12 otherwise this Court will enforce this Order and place
13 him in the County Detention Center. Do you have any
14 questions about what I have directed to be contained
15 within the Order, Mr. Buyck?

16 **MR. BUYCK:** Let me clarify it. Would this be the
17 fees generated subsequent to Judge Lockemy's, the date of
18 Judge Lockemy's Order ending the case?

19 **THE COURT:** No, sir. This is from the day of the
20 filing of 180, what we are here about today being your
21 responsive pleadings, your Motions, whatever we have
22 done, today's time, everything from that day forward, not
23 from Judge Lockemy's Order. What I have today, really is
24 before me in the case 180, let that be the trigger date,
25 the filing of 180.

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1 Again, in your Affidavit, please account for the
2 time so that it can be readily reviewed, and The Court
3 will be prepared to first of all review it myself to
4 determine whether if it appears fair under the
5 circumstances, and then issue an Order that would be
6 consistent therein. All right, that is the decision of
7 The Court.

8 Mr. Weaver, we cannot have any further filings over
9 these issues. These matters are done.

10 This Court is in recess in this case.

11 **MR. WEAVER:** Your Honor, I am going to file a
12 Motion and a Notice of Appeal.

13 **THE COURT:** All right. But, Mr. Weaver, please be
14 very careful. You are certainly welcome to appeal. But,
15 please note, the Order is requiring you to make payment,
16 otherwise it is going to trigger the arrest for failure
17 to make payment within the thirty days.

18 If you wish relief from that, you will have to get a
19 superceded from the Appellate Courts, all right, sir?

20 **MR. WEAVER:** I understand that.

21 **THE COURT:** All right, sir. Very good. Then that
22 is The Court's Order. Thank you.

23 **MR. WEAVER:** There will be an objection on that for
24 abuse of discretion and clear error of law and fact.

25 **THE COURT:** Very good, and that will ultimately be

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1 decided by the Appellate Court. But, this Court has made
2 its decision.

3 Good luck to you, sir.

4 MR. BUYCK: Thank you, Your Honor.

5 -- END OF REQUESTED TRANSCRIPT --

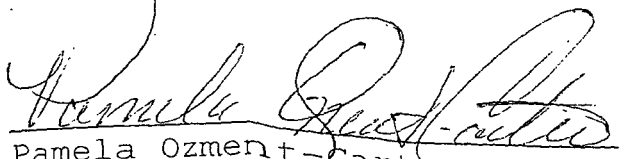
CERTIFICATE OF REPORTER

19

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and partial Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of Common Pleas in Dillon County, South Carolina, on the 3rd day of November 2009.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

June 22, 2010


Pamela Ozment-Cartee
Circuit Court Reporter

Mutual Release Agreement dated September 18, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) CASE NO.: 04-CP-17-232

PROGRESS ENERGY CAROLINAS,)
INC.,)

PLAINTIFF,)

VS.)

MUTUAL RELEASE

GARY WEAVER AND BEATRICE)
WEAVER,)

DEFENDANTS.)

.....
The case of Progress Energy Carolinas, Inc., v. Beatrice Weaver and Gary Weaver CA #

2004-CP-17-232 will be dismissed on the following terms and conditions:

- (1) Payment from Beatrice Weaver and/or Gary Weaver to Progress Energy Carolinas, Inc in the amount of \$3,110.44 as follows:

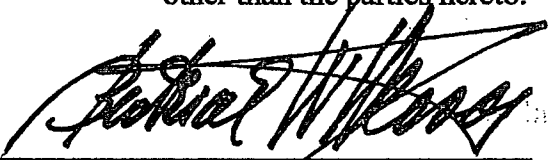
September 18, 2007 - \$1,000.00 (upon the execution of this release)

October 18, 2007 - \$1,000.00

November 18, 2007 - \$1,110.44
- (2) Progress Energy Carolinas, Inc will reinitiate electrical service to 1253 Harlees Bridge Road, Dillon, SC 29536 in the name of Beatrice Wallenstein Living Trust upon payment of the first \$1,000.00 referenced above and upon payment of the normal and customary security deposit.
- (3) Beatrice Weaver, Gary Weaver and Progress Energy Carolinas will dismiss any complaint and any response thereto relating to any matter currently pending before the South Carolina Public Service Commission.

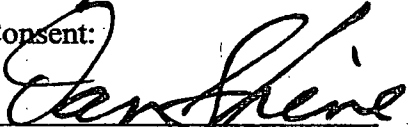
 EXHIBIT "A"  (74)

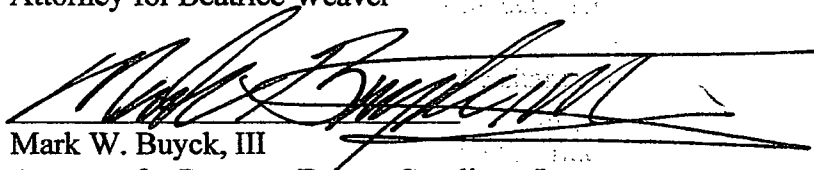
- (4) The parties will mutually release each other as to any matter, action, potential action or any matter whatsoever which may exist between the parties as of September 17, 2007.
- (5) Progress Energy Carolinas, Inc will consent to a request by Beatrice Weaver, Gary Weaver or the Beatrice Wallenstein Living Trust for a change of service provider to the premises owned by the said Trust or by Mrs. Weaver or by Mr. Weaver, and they acknowledge that the ultimate decision regarding the change of service will be subject to negotiations between the Progress Energy Carolinas, Inc. and the substitute service provider. There is no guarantee that Progress Energy will ultimately approve the change of service if such change of service involves any potential loss of current or future customers of Progress Energy Carolinas, Inc., other than the parties hereto.


Beatrice Weaver


Gary Weaver

We Consent:


Daniel H. Shine
Attorney for Beatrice Weaver


Mark W. Buyck, III
Attorney for Progress Energy Carolinas, Inc.

Letter Re Settlement Agreement dated September 27, 2007



September 27, 2007

Mr. Charles Terreni
Chief Clerk and Administrator
Public Service Commission of South Carolina
P. O. Drawer 11649
Columbia, South Carolina 29211

RE: Docket No. 2004-219-E

Dear Mr. Terreni:

Please find attached a settlement agreement entered into between Progress Energy Carolinas, Inc., Gary Weaver and Beatrice Weaver.

THIS DOCUMENT IS AN EXACT DUPLICATE, WITH THE EXCEPTION OF THE FORM OF THE SIGNATURE, OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

Yours very truly,

A handwritten signature in cursive script that reads "Len S. Anthony / mhm".

Len S. Anthony
Deputy General Counsel-Regulatory Affairs

LSA:mhm

Attachment

256168

A-3

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Plaintiff's Motion to Enforce Settlement dated October 24, 2007

Progress Energy Carolinas, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION TO
	)	ENFORCE SETTLEMENT
	)	
Gary Weaver and Beatrice Weaver,	)	
	)	
Defendants.	)	
	)	

3. As a condition of settlement, Beatrice Weaver and Gary Weaver were required to dismiss all complaints pending before the South Carolina Public Service Commission as of September 17, 2007. This has not transpired and, in fact, Mrs. Weaver applied to the Commission almost immediately after execution of the Mutual Release for action by the Commission in connection with matters existing between the parties as of September 17, 2007, in contravention of the Mutual Release and Settlement Agreement.

4. On September 21, 2007, Mrs. Weaver/Wallenstein filed the first of a series of filings with the Public Service Commission. The September 21 filing did not request that the action be dismissed, rather she requested that the Commission "expedite...formal responses to the outstanding pleadings which I require for the record, pending future proceedings" (See attached Exhibit 2).

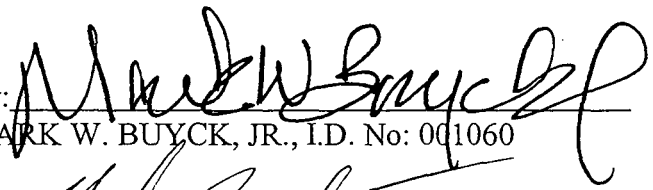
5. The Plaintiff in this action has complied with the terms of the settlement agreement insofar as acknowledging the Defendants' potential request for a change of service providers. The release and settlement document has been filed with the Public Service Commission. No alternative service provider has contacted Progress Energy Carolinas, Inc. as of the date of this Motion.

6. Progress Energy and the Defendants reached a negotiated settlement with Progress Energy giving up part of its debt in consideration of the terms of the Mutual Release. Both Progress Energy and the Defendants were represented by counsel at the time the Mutual Release was negotiated and signed by Beatrice Weaver and Gary Weaver with the consent of Attorney Daniel H. Shine representing Beatrice Weaver and Mark W. Buyck, III, attorney for Progress Energy Carolinas, Inc.

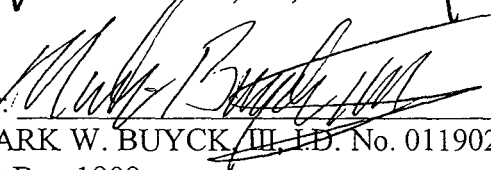
WHEREFORE, the Defendants having failed to comply with the settlement and Mutual Release, the Plaintiff hereby applies to the Court to compel the Defendants to comply with the terms of the Mutual Release and Settlement Agreement by dismissing any action or matter whatsoever which existed between the parties as of September 17, 2007, specifically the matters pending before the South Carolina Public Service Commission, at which time the Plaintiff will consent to a request

by Beatrice Weaver, Gary Weaver and the Beatrice Wallenstein Living Trust for a reinstatement of electrical service to 1253 Harllees Bridge Road, Dillon, South Carolina.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 

MARK W. BUYCK, JR., I.D. No: 001060

By: 

MARK W. BUYCK, III, I.D. No. 011902

PO Box 1909

Florence, SC 29503-1909

(843) 662-3258 - Tel

(843) 662-1342 - Fax

ATTORNEYS FOR PLAINTIFF

October 24, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) CASE NO.: 04-CP-17-232

PROGRESS ENERGY CAROLINAS,)
INC.,)

PLAINTIFF,)

VS.)

MUTUAL RELEASE

GARY WEAVER AND BEATRICE)
WEAVER,)

DEFENDANTS.)

.....
The case of Progress Energy Carolinas, Inc., v. Beatrice Weaver and Gary Weaver CA #
2004-CP-17-232 will be dismissed on the following terms and conditions:

- (1) Payment from Beatrice Weaver and/or Gary Weaver to Progress Energy Carolinas, Inc in the amount of \$3,110.44 as follows:

September 18, 2007 - \$1,000.00 (upon the execution of this release)

October 18, 2007 - \$1,000.00

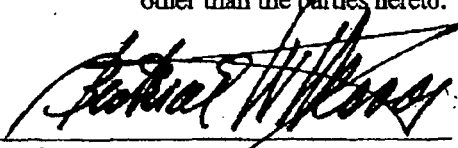
November 18, 2007 - \$1,110.44
- (2) Progress Energy Carolinas, Inc will reinitiate electrical service to 1253 Harlees Bridge Road, Dillon, SC:29536 in the name of Beatrice Wallenstein Living Trust upon payment of the first \$1,000.00 referenced above and upon payment of the normal and customary security deposit.
- (3) Beatrice Weaver, Gary Weaver and Progress Energy Carolinas will dismiss any complaint and any response thereto relating to any matter currently pending before the South Carolina Public Service Commission.

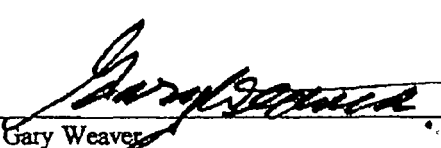


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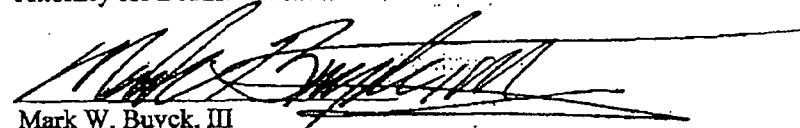
- (4) The parties will mutually release each other as to any matter, action, potential action or any matter whatsoever which may exist between the parties as of September 17, 2007.
- (5) Progress Energy Carolinas, Inc will consent to a request by Beatrice Weaver, Gary Weaver or the Beatrice Wallenstein Living Trust for a change of service provider to the premises owned by the said Trust or by Mrs. Weaver or by Mr. Weaver, and they acknowledge that the ultimate decision regarding the change of service will be subject to negotiations between the Progress Energy Carolinas, Inc. and the substitute service provider. There is no guarantee that Progress Energy will ultimately approve the change of service if such change of service involves any potential loss of current or future customers of Progress Energy Carolinas, Inc., other than the parties hereto.


Beatrice Weaver


Gary Weaver

We Consent:


Daniel H. Shine
Attorney for Beatrice Weaver


Mark W. Buyck, III
Attorney for Progress Energy Carolinas, Inc.

100130

1253 Harlees Bridge Rd
Dillon S.C. 29536
Ph/Fax: 843 841 1606

September 21, 2007

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
S.C. Public Service Commission
P.O. Drawer 11649
Colombia S.C. 29211
Ph: 1803 896 5113; Fx: 1 803 896 5231

Dear Mr. Terreni:

Subject: Request for Response to Pending Pleadings

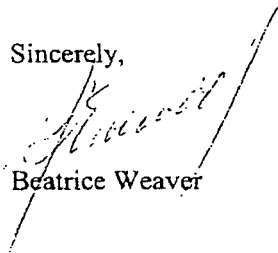
Ref: Progress Energy Petition No. 2004-219-E

For the record you are hereby advised that I have not received a formal response to the several pleadings I have filed in the subject case over some months duration now.

Please expedite the Commission's formal responses to the outstanding pleadings which I require for the record, pending future proceedings.

Thank you.

Sincerely,


Beatrice Weaver

RECEIVED

SEP 21 2007

RECEIVED
MAIL ROOM

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PLAINTIFF'S
EXHIBIT

tabbles

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STATE OF SOUTH CAROLINA)
COUNTY OF DILLON) IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2004-CP-17-232

Progress Energy Carolinas, Inc.,)
Plaintiff,)
vs.)
Gary Weaver and Beatrice Weaver.)
Defendants.)
MOTION FOR ENFORCEMENT OF
SETTLEMENT AND FOR REDRESS
OF WRONGS AND EQUITABLE
RELIEF; NOTICE OF MOTION;
CERTIFICATE OF SERVICE

A CERTIFIED
TRUE COPY

[Signature]

CLERK OF COURT
DILLON COUNTY

FILED
GWENTHYATT
2007 OCT 25 PM 3:56
CLERK OF COURT
DILLON COUNTY

**MOTION FOR ENFORCEMENT OF SETTLEMENT AND FOR
REDRESS OF WRONGS AND FOR EQUITABLE RELIEF**

Comes now Gary Weaver, Defendant Pro Se (hereafter "Defendant") in the above entitled case, and respectfully moves this Honorable Court for adjudication of the above entitled Motion.

This motion is filed pursuant to Rule 7, Rule 8, particularly (e) (2), Rule 9, and Rule 10, S.C.R.C.P.,

Grounds for this Motion are Plaintiff's demonstrated bad faith, malicious, deliberate, calculated, grossly negligent and damaging violation and untimely non compliance with the terms and conditions of that certain settlement agreement titled "Mutual Release" executed by the parties hereto, on September 18, 2007; copy attached hereto as **Exhibit A** and by reference made part hereof.

Further grounds for this Motion result from Plaintiff's attempts to impose clearly punitive, discriminatory and arbitrary post-settlement terms and conditions on Defendants, together with its continued pattern and practice of harassment and abuse in violation of Federal and State Consumer Protection Fair Debt Collection Practices Acts.

Additionally, Plaintiff has continued its past practice of negligently and deliberately with malicious intent, to violate State statutes and regulations in the conduct

Defendant's Motion for Enforcement of Settlement dated October 25, 2007

of its business practices since the execution of the said settlement agreement on September 18, 2007.

All of these practices have wronged Defendants who have incurred inconvenience, physical, and emotional stress and economic and tortious damages and losses as a result of Plaintiff's bad faith violations and non compliance with the terms and conditions of the Mutual Release.

Defendants' efforts to exhaust administrative relief and for mitigation of the issues with the Public Service Commission of South Carolina (the "Commission"), and the Plaintiff directly, have been unsuccessful as of this date.

Defendant complied in full with the immediate requirements of the Release (paragraphs 1 and 2) and Plaintiff did not as agreed and is in violation of the Release.

At the settlement conference on September 18, 2007, in order to expedite a compromise and settlement in good faith, Defendant agreed to pay considerably more than he wanted to in order to relieve the emotional stress on Defendant Beatrice Weaver who was scheduled for major surgery two days later on September 20, 2007.

Plaintiff's attorney drafted the Mutual Release and the ambiguous terms therein have created the need for this motion. Defendant did not participate in the drafting. Case law provides that interpretation of the Release document is in favor of the non-drafter of the document.

Therefore, time being of the essence, Defendant finds it necessary to file this Motion for equitable, tortious and administrative relief. A Memorandum of Law and Argument in support of this Motion shall be filed in due course under separate cover.

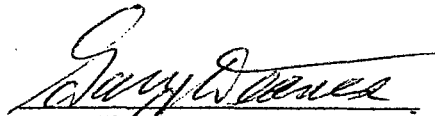
WHEREFORE, the Plaintiff having deliberately violated the terms and conditions of the Mutual Release, and having deliberately, willfully and wantonly failed to comply with the settlement agreement in a timely and responsible manner, and having caused Defendants harm, damages and losses, Defendant hereby moves the Court to compel the Plaintiff to comply with the terms and conditions of the said Mutual Release and Settlement Agreement by ordering Plaintiff to immediately connect electricity to Defendant Beatrice Wallenstein/Weaver's residence as provided in the agreement (paragraphs 1 and 2 of the Release), immediately initiate the process for a change of

provider (paragraph 5 of the Release) as agreed, and for damages and losses as claimed in Defendant's separate Memorandum of Law and Argument to be filed.

Compliance with the other terms of the Release shall turn on the Court's interpretation of the ambiguous and imprecise wording of the document, the intent of the parties, the "meeting of the minds" and Plaintiff's breach of the agreement, as discussed at length in Defendant's Memorandum of Law and Argument.

Dated: Florence, October 24, 2007.

Respectfully submitted.


Gary Weaver, Defendant Pro Se

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P.O Box 7682
Florence, S.C.
29502

Nov. 1, 2007

The Hon. James E. Lockemy
Judge, Court of Pleas
Dillon County
P.O. Box 750
Dillon S.C. 29536

Dear Judge Lockemy:

Subject: **Application for Change of Providers**

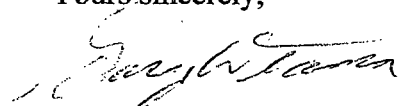
Ref: Docket No. 2004-CP-17-232 Progress Energy vs. Weaver
Petition No. 2004-219-E S.C. Public Service Commission
Plaintiff's Motion to Enforce dated Oct. 24, 2007
Defendant's Motion to Enforce dated Oct. 25, 2007
"Mutual Release" dated Sept. 18, 2007
Medical Certificate of Necessity

For the case record, I am filing herewith a copy of the subject pleading dated Nov. 1, 2007, duly filed with the S.C. Public Service Commission ("Commission."). I respectfully request that this Court take judicial notice of said pleading as to its direct relevance to the motions now pending before the Court, and an additional motion and pleadings I shall be filing in the near future.

Plaintiff Progress Energy continues to be in breach of all five paragraphs of the Mutual Release compromise and settlement as of this writing. These issues will be further addressed in the said additional Memoranda and motion I will file shortly.

The subject Application relates to Defendant's administrative relief and mitigation of the issues.

Yours sincerely,


Gary Weaver,
Defendant Pro Se

Att: Copy of the Application for Change of Providers

Cc: Mark W. Buyck, Jr, Esq.
Daniel H. Shine, Esq.

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1253 Harllees Bridge Road
Dillon S.C. 29536
Ph: 843 841 1606
Fx: 843 774 2050

November 1, 2007

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
S.C. Public Service Commission
P.O. Drawer 11649
Colombia S.C. 29211
Ph: 1803 896 5113; Fx: 1 803 896 5231

Dear Mr. Terreni:

Subject: **Application for Change of Providers**

Ref: Progress Energy Petition No. 2004-219-E
 Case No. 2004-CP-232, Dillon Court of Pleas.

“Mutual Release” dated Sept. 18, 2007 by and between
Progress Energy and the Undersigned.

Medical Certificate of Necessity; filed even date.

My letters to you dated Oct, 15, 2007 and September 21,
2007 (Request, etc.)

1. Enclosed please find two copies of the subject Application for filing.
2. Please record the documents and return to me one copy properly date/timed for my file.
3. Said Application includes the following documents:
 1. Application for Change of Provider
 2. Memorandum In Support of Application.
 3. Affidavit of Beatrice Weaver.
 4. Attachment A Relating to Media
 5. Exhibits A-G.
 6. Notice and Certificate of Mailing
4. Please note that I am requesting a formal Hearing, to be held in Dillon if possible. I first initiated my Request for guidance from the commission on September 21, 2007, some six weeks ago. The Commission quite incorrectly declined to deliberate Item 9 on the October 17, 2008 Agenda. The status of the Mutual Release which is now in

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contention is irrelevant to the information I requested from your Office. Since it is clear the Commission will do nothing as usual, I decided to cut the Gordian Knot, and proceed to formally file the Application in order to expedite the matter. For once I would like the Commission to do something unusual for a consumer, to cooperate in expediting the order to change to both PEC and Marlboro.

5. Please be so kind and have your staff distribute copies to whomever you deem necessary. I have no idea at this stage as to who should receive a copy. Progress energy has communicated with so many persons, I do not know who is a party at interest and who is not.

6. Please inform me by return, the likely date for the formal Hearing. I need to coordinate with my medical schedule, which quite frustratingly, literally changes from day to day. I am dealing with three hospitals, six doctors and their respective staffs. So matters become quite complicated at times.

7. Due to the trauma I experienced during and following the settlement negotiations on September 18, 2007, and my medical conditions, I was physically and emotionally unable to undergo the major surgery scheduled for September 20, 2007 just two following the settlement date. It has been again postponed to a later date.

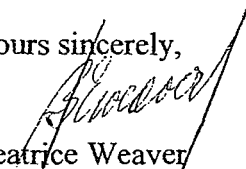
8. The whole purpose of the settlement agreement was to settle matters so I could proceed without any emotional stress, etc. However, Progress Energy, with its usual and customary duplicity, reneged on meeting any of its obligations under all five paragraphs of the release. So we are now back in Court.

9. I want to complete the change of providers as soon as possible for several reasons. I respectfully request the Commission to expedite processing the Application. I did not bother to file ex parte, as I know Progress Energy would not agree.

10. Finally, please note I am formally filing a copy of this Application with the Dillon Court of Pleas with the request that it take judicial notice of the filing relative to the issues of administrative relief and mitigation. These issues are relevant to the two motions presently residing in that Court. I know there will be one or two additional motions to be filed there shortly.

Thank you.

Yours sincerely,


Beatrice Weaver
Respondent Pro Se

Cc: The Hon. James E. Lockemy
Dillon Court of Pleas

Attached: Original and one copy of Application for Change of Provider.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

September 19, 2007

In the Matter of	)	APPLICATION FOR CHANGE
Application of Beatrice Wallenstein	)	OF ELECTRIC SERVICE
To Terminate Progress Energy	)	PROVIDER; MEMORANDUM
Carolinas, Inc as Electric	)	IN SUPPORT OF
Service Provider	)	APPLICATION; AFFIDAVIT
	)	OF BEATRICE WALLENSTEIN;
	)	EXHIBITS A-G; ATTACHMENT
	)	NO 1; NOTICE OF
	)	APPLICATION; CERTIFICATE
	)	OF SERVICE

APPLICATION FOR CHANGE OF ELECTRIC SERVICE PROVIDER

Comes now Beatrice Wallenstein ("Applicant") and moves the Public Service Commission of South Carolina ("Commission") for approval of change of service providers from Progress Energy Carolinas, Inc, ("PEC") that is the Commission's present designated electric service provider, to a replacement electric service provider; namely, Marlboro Electric Cooperative, Inc, Highway 15A, Bennettsville S.C., mailing address P.O. Drawer 1057, Bennettsville, S.C. 29512, (hereafter referred to as "Provider").

This Application is filed pursuant to **South Carolina Code of Laws, 1976. Ann. ("Code") Sections 58-27-610, et seq, and specifically Code Section 58-27-660, and Commission Rule 103- 803 (waiver of rules); Rule 103-821 et seq. for Formal Hearing; Rule 103-830 et seq; Rule 103-834 (Applications) and Rule 103-833 (Verification).**

Grounds for this Application are:

PEC's documented continued transgressions since 2001 against Applicant as more fully discussed in the attached Memorandum in Support. Inter alia, these include PEC's unethical and bad service, fluctuations and unreliable delivery of power particularly in the mid-afternoons, accounting errors and omissions, billing irregularities,

abusive below standard customer service, no local management, procedural irregularities before the Commission, violations of State statutes and Commission regulations, filing frivolous and nuisance petitions with the Commission, unsupervised incompetent field employees and contractors (see **Exhibit B**), damages and losses caused Applicant, and the irreconcilable, acrimonious commercial relationship that exists between the parties, beyond repair.

Further grounds are that the Provider provides more reliable and cheaper electric power to customers, better local management, superior and friendly customer services, more accessory services, excellent public reputation as opposed to PEC's poor public reputation, etc. See, **Exhibit D**.

Settlement Agreement Consent By and Between Applicant and PEC.

As discussed more fully in the attached **Memorandum in Support**, this Application is filed in accordance with the stipulation agreed on by the parties contained in that certain recorded **Mutual Release Settlement Agreement** by and between Applicant and PEC executed on September 18, 2007 in **Case No. 2004-CP-232** Dillon Court of Pleas. The Commission has previously been requested to take judicial notice of said case. See **Exhibit A** attached hereto and made part hereof. PEC Counsel formally filed a copy of said Exhibit A with the commission on or about September 27, 2007.

The said Mutual Release agreement authorizes this Application by both signatories pursuant to paragraph **Item No 5** of the terms and conditions therein whereby PEC "**will consent**" to this Application for change of electric service supplier by the undersigned Applicant as discussed in the said Memorandum In Support. No time limit was set in the said Item No. 5 condition for either party, but it was expected and understood by Applicant that time was of the essence and that PEC would initiate negotiations with Marlboro within a reasonable time to effect the changeover. That has not been done as of this writing, some six weeks later. This Application is filed in mitigation of delays caused by third parties other than Applicant, and to exhaust administrative remedy in the event the court requires same.

Rule 103-821: Formal Proceedings: The Application calls for a **Formal Hearing** on the Application pursuant to **S.C. Code. Reg.103- 821, et.seq, and**

specifically Reg. 103-834 (A) & (B). Permission for media attendance is hereby requested in Attachment No 1 attached hereto and part hereof.

Rule 103- 803: Waiver of Rules: Due to Applicant's serious illnesses and physical handicaps as duly documented in full with the Commission and PEC, Applicant respectfully requests the Commission to waive rules as may be necessary to expedite this Application on the grounds of unusual hardship, physical burden or difficulty. For example, the conduct of any other future hearings that may be deemed necessary by the Commission or parties. Applicant applies for the requested hearing to be held in Dillon rather than Colombia.

Conclusion.

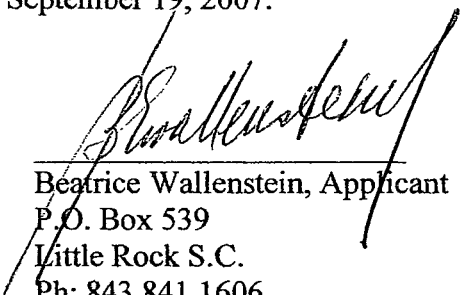
This Application is based on the above cited legal authorities, the said Mutual Release, the Memorandum in Support of the Application, Affidavit of Beatrice Wallenstein, Exhibits A-F and Attachment No 1 attached hereto, made part hereof, and the records and files in Commission Case No. 2004-219-E, and Case No. 2004-CP-232 Dillon Court of Pleas, and such other and further oral and/or documentary evidence as may be presented.

This Application is filed for administrative relief, mitigation, and Commission approval to take effect forthwith.

WHEREFORE, having fully set forth the grounds for the Application, for good cause, Applicant respectfully moves the Commission for an order granting a change of service provider as applied for hereinabove, effective forthwith.

DATED: Little Rock, Dillon County, S.C. September 19, 2007.

Respectfully submitted



Beatrice Wallenstein, Applicant
P.O. Box 539
Little Rock S.C.
Ph: 843 841 1606
Fax: 8543 774 2050

In the Matter of
Application of Beatrice Wallenstein
To Terminate Progress Energy
Carolinas, Inc As Electric
Service Provider

)
)
)
)
)
)
**MEMORANDUM IN SUPPORT
OF APPLICATION FOR
CHANGE OF ELECTRIC
SERVICE PROVIDER**

**MEMORANDUM IN SUPPORT OF APPLICATION FOR CHANGE OF
ELECTRIC SERVICE PROVIDER**

1. **Introduction**

This Application is filed in accordance with the stipulation agreed on by the parties contained in that certain recorded **Mutual Release** Compromise and Settlement Agreement (Mutual Release) by and between Applicant and PEC executed on September 18, 2007 in Case No. **2004-CP-232** Dillon County Court of Pleas ("Court"). See **Exhibit A** hereto and made part hereof. The Commission was previously requested to take judicial notice of said case in previous pleadings in Commission Case No. **2004-219-E**.

A copy of this Application is being duly filed with the Court for record in the aforesaid civil case for judicial notice relevant to pleadings pending before the Court as of this writing, and in the event Applicant shall have to appeal the Commission's decision on this Application to the Court. Further, PEC has already hedged on its consent agreement for change of providers (paragraph 5 of the Release) in a subsequent pleading filed with the Court on October 24, 2007. And from the outset of executing the said Release on September 18, 2007, PEC has flagrantly breached the Agreement to connect electric service to Applicant's residence pursuant to paragraphs 1 and 2 of the release. Finally, PEC has refused to dismiss the action before this commission and the Court as agreed in paragraphs 3 and 4 of the Release. The net result is that PEC is guilty of fraudulent inducement for Applicant to execute the said Release, in prima facie breach of the agreement, and liable for contract and tortious damages subject to further litigation before the Court.

Accordingly, Applicant is of the understanding and belief that PEC is more than likely to attempt to default on its consent Agreement with applicant to change providers.

Based on PEC's documented unethical past performances in dealing with

Applicant, the latter believes it is a major possibility that PEC will attempt to renege on its consent agreement. Therefore, pursuant to the statutory authority and jurisdiction of the Commission to issue an order for good cause to change providers from PEC to Marlboro Electric Cooperative, Applicant decided to file this formal Application. An additional reason is that time being of the essence in compliance with the terms of the Release, this Application is also filed to conform to the dictates of the doctrine of exhausting administrative remedy and for mitigation under case law.

2. Legal Authority

In summary, S.C. Code Ann. Section 58-27-660 (1) provides that any electric supplier (designate Marlboro) may furnish service to any consumer who desires service from such electric supplier at any premises being served by another electric supplier, upon agreement of the affected electric supplier (PEC)..

S.C. Code Ann. Section 58-27-660 (2) provides the Commission the authority and jurisdiction, after hearing if requested by any affected party, to order any electric supplier which may reasonably do so, to furnish electric service to any consumer desiring such service from the supplier, upon certain conditions such as the conditions of service and discrimination, etc.

3. Mutual Release Settlement Agreement By and Between Applicant and PEC.

The aforesaid Mutual Release agreement authorizes this Application by both signatories pursuant to Item No (5) of the terms and conditions therein as follows; to wit:

“Progress Energy Carolinas, Inc will consent to a request by Beatrice Wallenstein, Gary Wallenstein or the Beatrice Wallenstein Living Trust for a change of service provider to the premises owned by the said trust or by Mrs. Wallenstein or by Mr. Wallenstein, and they acknowledge that the ultimate decision regarding the change of service will be **subject to negotiations between the Progress Energy Carolinas, Inc and the substitute service provider**. There is no guarantee that Progress Energy (sic) will ultimately approve the change of service if such change of service involves any potential loss of current or future customers of Progress Energy Carolinas, Inc., other than the parties hereto.”

Comment: At the settlement conference on September 18, 2007, it was discussed and clearly understood by Applicant that PEC would initiate contact with Marlboro to negotiate the expedition of the changeover. As of this date, PEC has done nothing and is in violation of the Release Agreement. Applicant took the initiative in good faith to

commence the process by initially requesting the Commission for guidance as to policy and procedure and also to Marlboro. See discussion herein below.

4. **Reasons for Applicant's Termination of PEC as Service Provider.**

Applicant does not wish to have PEC as an electric service provider for the following reasons:

1. A continued pattern and practice of PEC's violation of State statutes and Commission rules over a twelve (12) year period 1994-2007);
2. Documented substantial undue influence on the Commission and the Office of Regulatory Staff of South Carolina ("ORS") and their respective staffs;
3. Constant repeated unethical, insulting, abusive, harassing, irresponsible and arbitrary behavior towards Applicant;
4. Repeated incorrect billings, errors and omissions, overcharges, improper check handling, and constant threat of disconnect on spurious allegations;
5. The business relationship has deteriorated to the stage where PEC engages in personal **ad hominem** attacks on applicant, vendetta, libel, slander, and defamation of character;
6. Arbitrary manipulations of accounts; arbitrary change of status of property;
7. Non existent consumer protection and arbitrary violations of statutes and regulations from the Commission and the ORS as to this Applicant.
8. Continued discriminatory practices against Applicant relating to age, sex, and national origin.
9. **Documented** lies, distortion of facts and misrepresentations to the Commission and Office of Regulatory Staff ("ORS"), and orchestrated alleged difficulties concerning incompetent, poorly supervised and managed, untrained meter readers employed by PEC; See, **Exhibit B**
10. Commission Regulation violations as to charges on estimated readings, extending beyond the regulatory 60 days limit;

11. Repeated threats of disconnect on the basis of illegal monthly estimated charges;
12. Charging estimated fees under threat of disconnect on an account that has not been in use for many months;
13. Ill mannered, abusive and uncooperative Customer Relations Staff, that is generally uninformed and incapable of an intelligent discussion of one's account if an issue "is not in the computer."
14. PEC's violation of Regulations by an unauthorized, retributive, and malicious changing of "status" from "residence" to "commercial" rates and procedures without proper notice, in direct violation of Commission regulations and with regulatory oversight impunity.
15. **Documented** illegal ex parte communications between PEC staff and the Commission and ORS staff, harmful to Applicant;
16. Several acrimonious lawsuits have been filed by both parties resulting in a deterioration of the commercial relationship;
17. **Applicant intends to lobby the General Assembly of South Carolina for changes in legislation and the regulatory processes of this State and intends to use the cited 12 year experience in dealing with PEC as a case study for the legislature;**
18. **Applicant intends to make a television documentary on regulation of private interstate conglomerate utility providers in this State using this case study.**
19. Unauthorized Trespassing on Property:
PEC staff, employees and contractor staff, have repeatedly illegally trespassed on Applicant's property at 1253 Harllees Bridge Road, Dillon S.C. Said trespassing includes illegal taking of photographs of said property without permission or approval of Applicant and against specific requests not to do so, and PEC has refused to send copies of said photographs to Applicant who has requested them. Typical of past experience, **on or about September 7, 2007** Applicant discovered two non English speaking Mexicans trespassing on the property, with no

identity cards , no prior notice to Applicant, who turned out to be employees of a North Carolina Company who said they were doing some work for PEC. For the past 12 years, PEC employees, agents, representatives and executives have trespassed on applicant's property, not one of which, without exception, have been able to provide any identification cards in violation of Commission Regulations. Example: On or about October 2, 2007, after the signing of the Release agreement on September 18, 2007, a person claiming to represent PEC's "Revenue Dept.", appeared at the main "front gate" (not the designated gate) demanding to meet the owner of the property, and to discuss a loss of \$5,500. Asked for his identification card and authorization, he did not have any, and refused to give Applicant his driver's license and reluctantly finally presented his business card which took him five minutes to find. Applicant referred him to PEC's Mr. Cagle and/or Mr. Anthony, and not to bother Applicant any more since the matter had been settled.

20. In 12 years since 1994. PEC's representatives, agents, meter readers, etc. refused to use the gate designated by Applicant on numerous occasions, verbally and in writing, for ingress and egress (to which PEC has had its own lock and key since 1994), as provided for in Commission Regulations. See **Exhibit C** hereto. This particular matter is the major cause of all the problems that have developed between PEC and Applicant over the years; together with the lack of regulatory oversight and the condonation of PEC's actions by the Commission and the O.R.S. For example, refusing to investigate PEC's ridiculous, frivolous and nuisance petitions to terminate service on spurious and specious grounds (high grass; dogs that in 12 years have never once bothered delivery personnel who deliver items on a twice weekly basis). These petitions are the basis of pending matters before the commission that are addressed in paragraphs 3, 4 and 5 of the said Release.
21. Applicant has suffered considerable damages and losses resulting from PEC's actions.

5. **Request for Approval of Marlboro Electric Cooperatives as Service Provider.**

Applicant requests that in accordance with S.C. Code Ann. Section 58-27-660 and paragraph 5 of the said Mutual Release, the Commission order Marlboro Electric Cooperative located in Bennettsville, S.C. to be the designated service provider for the several properties located at 1253 Harlees Bridge Road. Note: Coincidentally, all meters on said properties are located more than three hundred feet from the existing power lines running along Harlees Bridge Road in Dillon County. Applicant does not know the owner of those lines.

6. **Marlboro is preferred for the following reasons:**

On the basis of Applicant's research, dealing with the respective Providers' staff, interviews and anecdotal reports from Little Rock and Dillon customers, Applicant prefers to change to Marlboro as service provider, for the following reasons:

1. Lower cost electricity.
2. Local management and administration that is readily accessible.
3. Demonstrated courteous and cooperative service and customer relations.
4. Wider range of accessory services. See **Exhibit D** attached as part hereof.
5. Membership participation.
6. Public reputation for good service c/f PEC which has the opposite reputation, evidenced by Applicant's experience in dealing with PEC.
7. Promote competition for PEC which is a poorly supervised monopoly that regularly harasses and abuses its customers.

7. **Third Parties.**

With respect to initiating activities to effectuate the changeover provided in paragraph 5 of the Release, third parties are involved in the process: PEC, Marlboro, the Commission and the Court. Consequently timing, administrative and operational processing of the changeover is beyond Applicant's control.

For that reason, Applicant has decided to formally file this Application rather than wait for third parties to initiate efforts or perform to meet their respective obligations, responsibilities and duties pursuant to the law and the Release. As discussed in detail below, Applicant has initiated what may reasonably be done to mitigate unnecessary

delays caused by third parties, particularly PEC, whose actions or inactions are beyond Applicant's control.

8. Administrative Remedy

As noted in Applicant's September 15, 2007 letter to the Commission, the Mutual Release document actually comprises two parts. The first part (paragraphs 1 and 2) relate to an alleged consumer debt in an action in the Dillon Court. That is of no concern of the commission. The second part of the Release (paragraphs 3, 4 and 5) relates to actions involving administrative and regulatory remedy which are within the jurisdiction of the Commission. PEC Counsel recognized that by formally filing a copy of the Release with the Commission on September 27, 2007, some eight days following the execution of the document on September 18, 2007 and in response to Applicant's communications with the commission.

In fact, under the statutes and case law, the Dillon Court has inherent jurisdiction, authority and the discretion to rule on all five issues and the two motions (to date) that have been filed with the Court to that effect.

However, to this observer, it remains unclear under case law, as to whether or not the Dillon Court would or should rule on the motions without the parties' exhausting administrative remedy and pursuing mitigation beforehand.

Consequently, being unable to foretell the actions of the Court in that regard, Applicant has decided to file this formal application sooner rather than later. The purpose is to conform to the Release requirements for reasonable and good faith performance under the law of contract, and in keeping with the case law doctrine of exhausting administrative remedy and for mitigation purposes. See discussion in **R.R. Lowell, Esq. and S.P. Bates, Esq., Editors, South Carolina Administrative Practice and Procedure, S.C. Bar-CLE Division, Chapt. 1, Sections VI, C. 2-4, pp 83-103.**

Whether or not the Commission accepts or rejects any responsibility to perform its statutory responsibilities and duties in this regard as requested in this Application, Applicant will direct the issue to the Dillon Court in any case relating to PEC's extant violations of the Release under contract law, for equitable, tortious and administrative damages and other relief, and even on an appeal, based on the Commission's past performances and the regulatory manipulations of PEC.

9. **Mitigation**

For the record, the following discussion records Applicant's efforts to initiate the paragraph 5 conditions of the Release and to mitigate any damages for delays caused by third parties that are beyond applicant's control as noted herein above. As of this writing, in good faith, Applicant has carried out the following activities to comply with paragraph 5 of the Release, exhaust administrative remedy, and good faith efforts for mitigation of damages claims that Applicant has and will file against PEC in the Dillon Court:

1. On September 21, 2007, three days after executing the Release on September 18, 2007, and on completion of medical matters pertaining to major surgery scheduled for September 20, 2007, Applicant filed with the Commission a **"Request for Advance Response to Proposed Application for change of Electric Provider."** It was received by the commission on September 24, 2007.. This formal inquiry was Applicant's good faith attempt to determine the Commission's policy and procedures, other than the legal requirements known to Application concerning the changeover that PEC had already consented to comply..

2. Following receipt of the Commission's acknowledgment, Applicant then filed a letter dated September 27, 2007 to correct certain administrative matters and clarify the Request.

3. PEC's Counsel formally filed a copy of the Mutual Release Document with the Commission..

4. October 15, 2007, Applicant filed a letter with the Commission concerning the change of provider issue, and also the issue of an order for PEC to connect power pursuant to paragraphs 1 and 2 of the Release, and the Certificate of Medical Necessity. These matters have been ignored by the Commission to date.

5. The Commission set the Request for consideration at its meeting on October 17, 2007 as Item 9 on the Agenda.

6. Based on Commission Counsel's incorrect recommendation, Item No. 9 was withdrawn on the erroneous ground that Respondent Pro Se Gary Wallenstein was going to be present at the Meeting and had informed the Commission earlier that PEC was in default and breach of the Mutual Release agreement and therefore the matter remained unsettled. Applicant has not been informed of the Commission's plans to

process the said Request, and the change of provider item remains in limbo as of this writing.

7. On October 18, 2007, Applicant initiated the changeover procedure with Marlboro Electric Cooperative. Applicant formally notified Marlboro of the intent to change provider again on November 1, 2007. See **Exhibits E and F** hereto. As of this writing there has been no response. Nor has there been any notification from PEC that it has initiated any efforts to negotiate with Marlboro to comply with paragraph 5 of the Release.

8. On October 19, 2007, Applicant filed a letter with the Commission protesting the violation of process and requesting further information which has not been forthcoming. Applicant informed the Commission that the Request for information and guidance should be processed irrespective the status of the Mutual Release document.

9. On November 1, 2007, applicant followed up with Marlboro to determine the status the October 18, 2007 inquiry.

10. Because time is of the essence in expediting this matter, and other issues relating to the Mutual Release, and Applicant's medical needs, Applicant decided it is pointless and counter productive to wait for a response to the earlier September 21, 2007 Request for policy and procedural guidance from the Commission (5 weeks and no indication of any response to be forthcoming.).

11. It is thus timely to immediately and formally file this Application with the Commission, with formal notification for judicial notice to the Dillon Court with respect to compliance with paragraph 5 of the Release, and the motions pending before the Court.

10. **Further Argument**

Applicant objects to being forced to pay for higher cost electricity with poor service, and dealing with PEC's arrogant, uncooperative and ill mannered staff, to a supposedly regulated monopoly that has an unconscionable and obsolete 13.25 percent return on investment (ROI) **guaranteed** by the Public Service Commission, and paid for by the customers who have no recourse to change providers at will.

This means the ratepayers in Dillon County are being forced to subsidize PEC's national and foreign shareholders and bond holders with a ROI that should be no more than 7.0 percent, p.a. with a guaranteed monopoly. The designated provider does not have

this cost factor built into rates, has lower overhead costs, and most electric cooperatives generally declare annual dividends to members. With the support of the Commission, monopolistic PEC takes care of its shareholders at the expense of Dillon County customers.

The net result of the above cited adverse conditions in dealing with PEC and the public regulators is that the commercial relationship between the parties cannot sustain a workable or an amicable basis. PEC has unequal monopoly economic and political bargaining power vis a'vis Applicant, and its other Dillon County customers, and unequal power and influence over the Commission and the ORS, each of which turns a blind eye to PEC's behavior in the retail market place. Experience shows that Applicant has no consumer protection from the Commission or the Office of Regulatory Staff, both of which have been demonstratively and repeatedly influenced by PEC and prejudiced against Applicant. And it is documented that both have flagrantly violated State statutes and regulations during the course of processing various matters and pleadings before the Commission, all favorable to PEC.

As noted above, PEC has previously filed two frivolous and nuisance petitions before the Commission relating to its monthly billing practices and termination of service because of spurious, alleged dog problems, alleged high grass problems with access, and alleged meter reader difficulties. All allegations, were frivolous, nuisance and unfounded in fact, but ignored by the Commission without any investigation of the facts. The Commission has respectfully been requested to take judicial notice of said frivolous and nuisance petitions filed by PEC, which were totally ignored and not even investigated by either regulatory agency. See **Exhibit B**.

There should be no reason why PEC should be harmed economically by the Commission's approval of this Application.

Based on the said Mutual Release, there is no reason why the Commission should receive any opposition from PEC on this Application, and there is no reason why the Commission should approve the Application in any manner that adversely affects PEC's interests as stated above in the Mutual Release (paragraph 5).

11. Summary

1. This is a formal Application for Change of Providers pursuant to S. C Code Ann. Chapt. 58-27-660, et seq., and paragraph 5, of that certain Mutual Release filed by PEC with the Commission on September 27, 2007.

2. Under said laws, the Commission has the authority and the jurisdiction to order both PEC and Marlboro to effect the change over, and to protect PEC's business interests as cited in said paragraph 5, of the Release.

3. Pursuant to said paragraph 5, PEC "will consent" to the changeover. The only "loophole" which Applicant seeks to change herewith, is the provision concerning protection of PEC's business interests.

4. Time is of the essence given Applicant's medical problems, the Medical Certificate of Necessity, the terms of the Release, and the action pending before the Dillon Court.

5. Applicant respectfully requests A FORMAL Hearing on the Application in Dillon.

6. Pursuant to S.C. Code Ann. Rule 605, S.C.A.C.R., Applicant respectfully requests approval of media coverage at the Hearing and any other formal Hearings on these matters.

12. Conclusion

This Application will visit no harm on any party and will relieve the tension and discord that exists between the Applicant and PEC which is beyond repair. Applicant does not trust PEC or its staff one iota. Under the existing circumstances, it is most likely that to continue the present commercial relationship will probably only lead to further unnecessary acrimony and probably further petitions by Applicant or PEC to the Commission in the future.

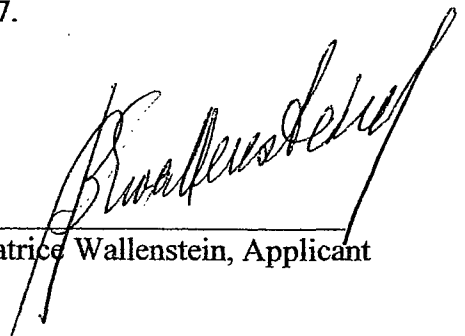
PEC is not likely to change any of its accounting, billing, trespassing, arbitrary harassing, abusive and arrogant practices as cited above, the two public regulatory agencies are not likely to diminish their documented unbalanced favoritism, and lack of oversight of PEC, and Applicant is not likely to stand for such practices as she has already demonstrated to date on the record.

Given the state of the art in modern digitalized telecommunications, computerized accounting and systems operations, it is a relatively simple matter to administratively and

operationally arrange the change of electric service provider for Applicant as requested herein. **Time is of the essence for processing this Application.**

DATED: Little Rock, Dillon County, November 1, 2007.

Respectfully submitted.



Beatrice Wallenstein, Applicant

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

September 19, 2007

In the Matter of	)	AFFIDAVIT OF BEATRICE
Application of Beatrice Wallenstein	)	WALLENSTEIN FOR CHANGE
To Terminate Progress Energy	)	OF ELECTRIC SERVICE
Carolinas, Inc as Electric	)	PROVIDER; EXHIBITS A-G;
Service Provider	)	ATTACHMENT NO 1
Service Provider	)	
_____	)	

AFFIDAVIT OF BEATRICE WALLENSTEIN FOR
CHANGE OF SERVICE PROVIDER

County of Dillon	).	
	)	SS.
State of South Carolina	)	
_____	)	

BEATRICE WALLENSTEIN, being first duly sworn upon her oath, hereinafter
"Affiant", deposes and says as follows:

1. Affiant is the Applicant in the above titled Application, and the premises located at 1253 Harllees Bridge Road, Dillon S.C. 29536 is owned by the B.E.W. Wallenstein Living Trust.
2. This affidavit is submitted in support of Affiant's **Application for Change of Electric Service Provider** timely filed with the Pubic Service Commission of South Carolina ("PSC" or "Commission") and Progress Energy Carolinas, Inc ("PEC" or "Progress Energy"), pursuant to S.C. **Code Ann. Section 58-27-660**.
3. For the reasons cited in the Application, the accompanying Memorandum In Support of the Application, and **Attachment No 1** hereto, **Affiant states that she believes she is unable to receive courteous, efficient, adequate, dependable and reasonable service from Progress Energy; that the relationship has deteriorated to**

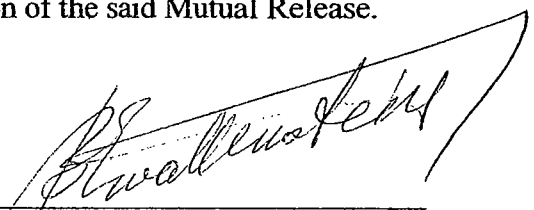
acrimony and deep mistrust; there cannot be a healthy commercial relationship because of PEC's documented, repeated transgressions over a long period of time, particularly its harassment and abusive practices, the past civil and regulatory violations by PEC, and the resulting litigation between the parties. Affiant respectfully requests a change of electric service provider to be expeditiously granted.

4. Affiant believes that the Commission has the legal authority, jurisdiction and the duty to grant the change of electric service provider as requested herein for good cause on the grounds cited in the Application and the Memorandum In Support of the Application..

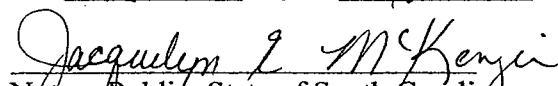
5. Affiant resides at 1253 Harllees Bridge Road, Dillon, S.C. 29536. The mailing address is P.O. Box 539, Little Rock SC 29567. Affiant is a retired Senior Citizen in her eighties and in extremely poor health. Affiant makes this affidavit from personal knowledge and belief of the facts, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in costs. Affiant is competent to make this deposition. Affiant alleges and avers that the facts are as stated herein and Exhibits A-F attached hereto are true and correct copies of the original documents.

6. Affiant executed said Exhibit A under duress and extreme agitation because of her serious ill health duly documented with this Commission, and imminent serious surgeries. Otherwise, Affiant would have continued the litigation to conclusion in Case No. 2004-CP-232 in Dillon County Court of Pleas and all of the pending pleadings before the Commission on file as of the date of execution of the said Mutual Release.

Further, Affiant sayeth naught.

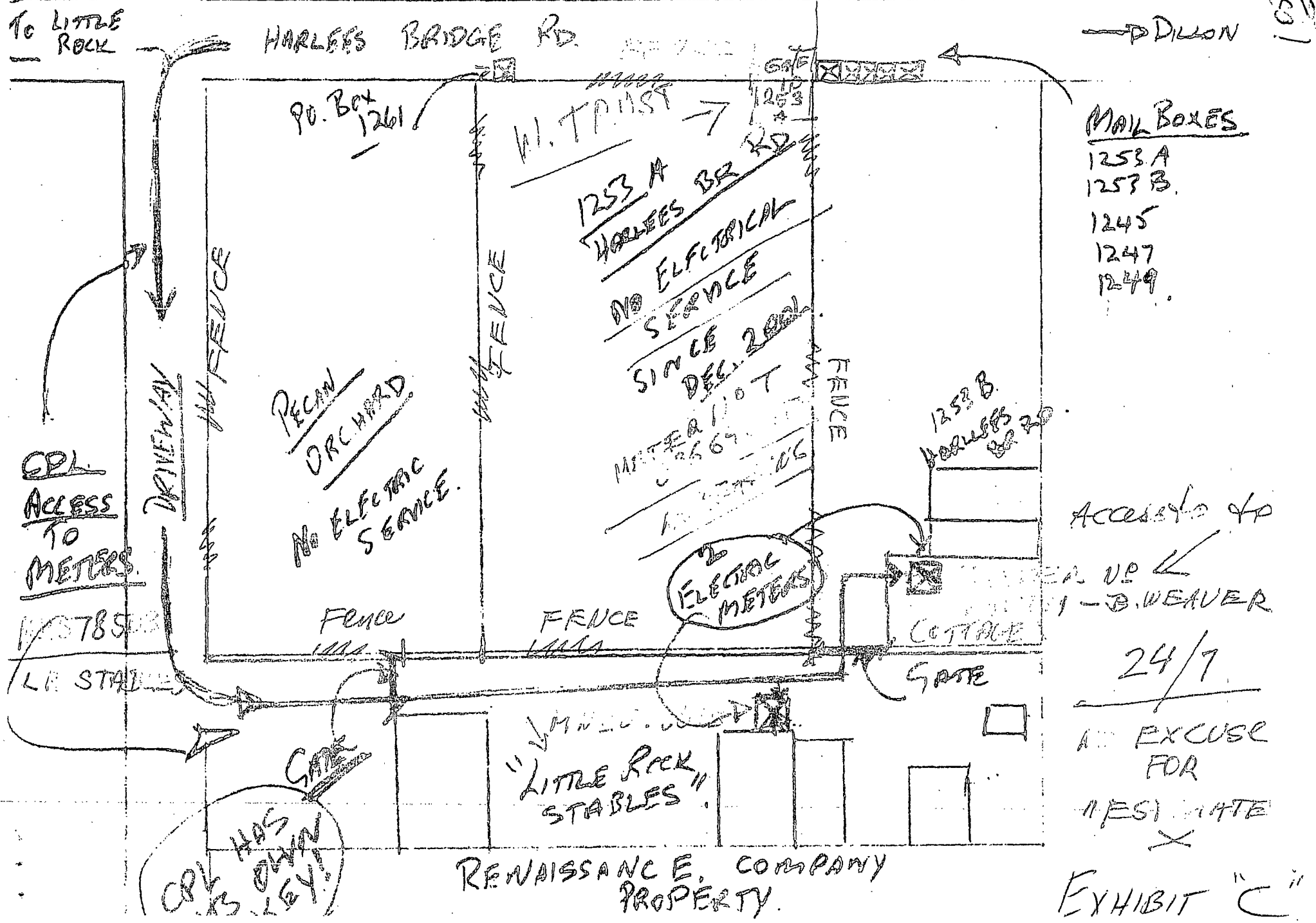

Beatrice Wallenstein, Affiant

Subscribed and sworn before me
this 6th day of November 2007.


Notary Public, State of South Carolina

My Commission expires: 2-8-16

CPL ACCESS



- MAIL BOXES
- 1253 A
 - 1253 B
 - 1245
 - 1247
 - 1249

Access to UP
B. WEAVER

24/7

AN EXCUSE FOR
'FEST' DATE

EXHIBIT "C"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2004-CP-17-232

Progress Energy Carolinas, Inc.,) SUMMARY STATUS OF THE CASE;
Plaintiff,) EXHIBITS A-D AND G-1, G-2;
vs.) CERTIFICATE OF SERVICE

Gary Weaver and Beatrice Weaver.
Defendants.

A CERTIFIED
TRUE COPY
CLERK OF COURT
DILLON COUNTY

SUMMARY STATUS OF THE CASE

1. Introduction

Both Plaintiff and Defendant Gary Weaver have filed respective Motions to Enforce the compromise and settlement agreement titled "Mutual Release" executed on September 18, 2007. See, **Exhibit A** hereto.

This Defendant has filed two Memoranda with the Court: (1) Memorandum in Response to Plaintiff's Motion and in Support of Defendant's Motion to Enforce filed on or about December 3, 2007, (hereafter "Memorandum In Response"), and (2) Supplemental Memorandum in Support of Motion filed on December , 2007. (hereafter "Supplemental Memorandum").

Plaintiff's Motion filed on October 24, 2007 relates to enforcement of paragraphs 3 and 4 of the Mutual Release. Defendant claims in the said Memoranda that the issue is moot having been settled in May 2007 as discussed herein below; that **Plaintiff's Motion should be summarily dismissed as there are no genuine issues of material fact and Defendant is entitled to judgment as a matter of law**, and Plaintiff ordered to immediately connect electric power as agreed in paragraphs 1 and 2 of the Mutual Release.

This Defendant's Motion to Enforce relates to paragraphs 1 and 2 of the Mutual Release of which Plaintiff is in breach, along with paragraphs 3 and 4 dealing with

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DILLON COUNTY

matters allegedly before the Public Service Commission of South Carolina (the "Commission"). Defendant has moved the Court to bifurcate the issues of liability and send the facts and damages claims to the Jury.

As of this filing this Defendant has not been apprised by Plaintiff or the Court as to when the hearing on the said Motions is to be held.

Accordingly, pursuant to **Rule 16 (c) S.C.R.C.P.** in view of the circumstances and facts of this case, and in the interests of furthering Court administrative efficiency and conduct of a fair hearing on the Motions, this Defendant respectfully files this **Summary Status of the Case** report for the Court's consideration. Defendant anticipates that the Court may call a conference of the parties and files this report primarily directed at the summary dismissal of Plaintiff's Motion.

2. Plaintiff's Motion is redundant, moot and should be summarily dismissed with Judgment for Defendant for filing a frivolous and nuisance pleading, and with sanctions.

1. Plaintiff's motion relates to enforcement of paragraphs 3 and 4 of the Mutual Release which call for dismissal of matters before the Commission and before this Court.

2. As discussed in Defendant's Supplemental Memorandum, pursuant to **Rule 41 (a) (1) (ii) S.C.R.C.P.**, Plaintiff had a legal duty to file properly executed Stipulations for Dismissal with this Court and the Commission. It did not and is in violation of the law. ✓

3. Plaintiff did file a copy of the Mutual Release with the Commission on or about September 27, 2007, some nine days after execution of the Release on September 18, 2007. The question before this Court is whether or not the said submittal to the Commission constitutes a Rule 41 filing of a stipulation. See discussion. ✕

4. Finally, irrespective of the Court's finding as to items (a) and (b), the issue is moot and never should have been brought to the Court in the first place. The matters before the Commission were disposed of in May 2007 and reconfirmed at Defendant's request for closure in November 2007. Plaintiff knew and should have known that the

commission had disposed of the matters and wasted the Court's time in filing its frivolous and nuisance motion.

3 2. In May 2007, the Commission disposed of all matters under Docket No. 2004-219- E, the only matter before it as to Defendants, and Plaintiff's Motion is moot and never should have been filed.

1. On or about May 3, 2007, the Commission issued Order No. 2007-298 Denying Motion to Continue and Dismissing Counterclaims. See Exhibit B hereto.

2. Ignoring good cause based on medical reasons properly documented, and in documented violation of statutes and the Commission's own regulations, the said Order abused its discretion and denied the motion claiming: "... she is, by her own representations to the commission, physically unable to prosecute her counterclaims." See Exhibit B, page 5 at para. 2, line 3. The commission dismissed the counterclaim and declared the docket moot.

3. On or about May 24, 2007, the Commission's Hearing Officer issued a Directive stating Mrs. Weaver's filings were untimely and must be rejected and the relief sought must be denied. See Exhibit C, last line.

4. On or about November 8, 2007, the Commission confirmed the earlier closing of Docket 2004-219-E. See Exhibit D, Defendant's Motion in Response, p.2 at 2.

5. On or about November 13, 2007, the Commission issued Order No. 2007-835 reiterating and affirming "... our prior denial of Mrs. Weaver's request for continuance and dismissal of her counterclaims without prejudice." See Exhibit B attached to Defendants Supplemental Memorandum, pages 1, para. 1, and p. 4 last line.

6. Finally, Plaintiff filed a copy of the Mutual Release with the Commission on or about September 27, 2007. Receipt confirmed by the commission on October 9, 2007. See Exhibit G-1 and G-2 in the Memorandum in Response (copy attached).

7. Plaintiff knew and should have known that the matters before the commission were finalized and should not have filed the Motion to Enforce. It was

fraudulent, frivolous and a nuisance. The issue is moot. Plaintiff's Motion should be summarily dismissed with sanctions.

43. Defendant's matters before the Commission have been final since May 2007, and Defendants have had no further recourse pursuant to statutes and Commission regulations.

1. Pursuant to **S.C. Code Ann. Sect. 58-27-2150** a party may request Rehearing within ten days after service of the order or decision. A failure of the commission to act upon such application within twenty days, "... shall be deemed a refusal thereof." Based on this statute Defendant understood and believed that the Commission's failure to act within the said twenty day period, constituted a refusal. Upon request, a seven month later re-confirmation as cited above is finality and documents Defendant's claim that there were no matters before the Commission contrary to the claims of Plaintiff.

Note: Plaintiff's Motion to Enforce did not provide any proof or documentation that as of September 17, 2007 there were any matters outstanding before the Commission as referred to in paragraphs 3 and 4.

2. Pursuant to **S.C. Code Ann. Sect. 58-27-2310**, provides for appeal of the Commission's orders **but only after filing and refusal of a Rehearing as in this case.** There is the necessity of a prior petition for rehearing. Based on this statute, Defendant Beatrice Weaver filed a petition for Rehearing as a matter of proper procedure prior to an intended appeal. Any such action must commence within thirty days. Since Defendant did not file any appeal within thirty days, the matter before the Commission was final. **Plaintiff knew this. See, Hamm vs. S.C. Pub. Serv. Comm. (S.C. 1992) 307 S.C. 188, 414 S.E.2d 149. rhg dnd.**

3. **S.C. Code Ann. Regulations 103-880** provides for finality of the Commission's Order; **Reg. 103-881** provides for Rehearings as a predicate to any appeal to a Court; **Reg. 103-883** provides for Appellate Review of Commission Orders pursuant to "applicable provisions of law." See **Code Sect. 58-27-2150..** essentially the Commission regulations mirror the statutes.

4. According to the cited statutes and regulations, Defendants action before the Commission was final in MAY 2007, some **seven months before the September 18, 2007 Mutual Release**. The Commission's letters to Defendant Beatrice Weaver dated November 8 and 13, 2007 merely re-confirmed the earlier finalization of the matters in May, 2007.

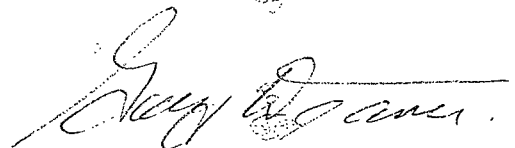
5. **The issues cited in Plaintiff's Motion to Enforce are moot. There are no material facts in dispute and there are no genuine issues before the Court. Plaintiff's motion has not presented any proof to the Court that there are in fact any matters before the commission to be dismissed. Plaintiff's Motion must be dismissed summarily and Plaintiff ordered to connect electric service as agreed.**

4. Defendant's Motion to Enforce should be summarily granted as to Paragraphs 1 and 2 of the Release. There are no genuine issues of material fact and Defendants are entitled to the grant as a matter of law.

5. Defendant's Motion requests submittal to the Jury for finding of facts and damages for breach of contract, and tortious acts. Defendant relies on recognized authority that the Court has the inherent jurisdiction of the subject matter and the discretion to decide on bifurcation under Rule 42 (b). Further, that the correct process is to file for summary judgment rather than a formal separate Complaint for breach of contract. See, 6 S.C. Juris., Sect. 19, p.98 citing, **Oxzagilar vs. Davis. 701 F. 2d. 306 (4TH Cir. 1983)**. However, Defendant stands ready to file according to instructions from the Court to process claims for breach, damages, etc as cited in Defendant's Motion to Enforce, etc., and the cited Memoranda.

bifurcate
issues.

Respectfully submitted,



Gary Weaver
Defendant pro Se

DATED: Florence, December 7, 2007

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-219-E - ORDER NO. 2007-298

MAY 3, 2007

IN RE: Petition of Progress Energy Carolinas, Inc. to) ORDER DENYING
 Terminate Service) MOTION TO CONTINUE
) AND DISMISSING
) COUNTERCLAIMS

This matter comes before the Public Service Commission of South Carolina (Commission) pursuant to the Motion to Continue Date of Hearing and Extension of Time for Filing of Pleadings (Motion to Continue) filed by Mrs. Beatrice Weaver (Respondent or Weaver) and the Motion to Close Docket filed by Progress Energy Carolinas, Inc. (PEC).

The above-referenced docket was established by the Commission on August 5, 2004, in response to PEC's Petition to Terminate Service to Mrs. Weaver's property at 1253 Harlees Bridge Road, Little Rock, South Carolina. Mrs. Weaver's current Motion to Continue represents her fifth request to delay the hearing in this docket.

On September 29, 2004, in response to Mrs. Weaver's request for a formal hearing on PEC's Petition to Terminate Service, the Commission issued its order setting a hearing date of December 9, 2004. On November 24, 2004, Mrs. Weaver moved for a three-month continuance of the hearing on the basis of her medical condition. The

EXHIBIT B

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DOCKET NO. 2004-219-E - ORDER NO. 2007-298
MAY 3, 2007
PAGE 2

Commission, by its order dated December 3, 2004, granted her motion and scheduled the hearing for March 10, 2005.

Prior to the scheduled hearing date of March 10, 2005, in a motion received February 14, 2005, Mrs. Weaver again moved the Commission for a continuance based upon medical reasons. The Commission issued its order on March 14, 2005 granting a continuance. Thereafter, on September 12, 2005, the Commission received a letter from Mrs. Weaver advising that her medical condition would preclude her participation in a hearing until mid-November 2005, at the earliest. To accommodate Mrs. Weaver's needs, the Commission again rescheduled the hearing, setting it for December 14, 2005.

PEC requested withdrawal of its petition to terminate service on or about October 17, 2005. However, in a letter dated November 17, 2005, Mrs. Weaver informed the Commission that she intended to continue prosecuting her counterclaims against PEC, and requested further that the matter be again continued. Subsequently, in a letter dated November 25, 2005, Mrs. Weaver asked the Commission to order PEC to reconnect service to her house in her name without requiring payment of the outstanding debt. PEC opposed the request, and on December 16, 2005, the Commission issued its Order Ruling on Various Requests and Establishing Hearing. In the order, the Commission scheduled all contested matters, including Mrs. Weaver's claim of entitlement to reconnection of service, to be heard on January 12, 2006. The Commission's order further sought to accommodate Mrs. Weaver's medical needs by offering to provide her with a video conference hook-up to relieve her from the necessity of traveling to Columbia to attend

DOCKET NO. 2004-219-E – ORDER NO. 2007-298
MAY 3, 2007
PAGE 3

and participate at the hearing in person. Mrs. Weaver ignored the Commission's offer of videoconferencing.

On January 10, 2006, Mrs. Weaver again requested that the hearing be postponed, and the Commission again accommodated her request by rescheduling the matter for April 13, 2006.

On February 8, 2006, Mrs. Weaver again moved for a continuance, citing without specificity the anticipated absence of unnamed material witnesses for observances of Passover and/or Easter. In an order entered February 27, 2006, the Commission denied Mrs. Weaver's motion for a continuance of the April 13, 2006 hearing. Mrs. Weaver renewed her motion for continuance through several filings thereafter, this time raising medical grounds for her request. In her March 10, 2006 Memorandum in Support of Motion to Continue Date of Hearing, Mrs. Weaver revealed that, within days of filing her February 8, 2006 motion for continuance, and with full knowledge that her hearing was scheduled for April 13, 2006, she elected to have surgery on April 12, 2006, thereby making it impossible for her to attend the April 13 hearing or to comply with any other hearing date scheduled until after the end of May.¹

The Commission is empowered with broad discretion, pursuant to S.C. Code Ann. Regs. 103-862, to grant or deny requests for continuances. The Commission has demonstrated its ample willingness to accommodate the needs of Mrs. Weaver by granting four previous requests for continuances over a sixteen-month period. The

¹ Subsequently, in a letter dated August 7, 2006 and received in the Commission's offices on or about August 17, 2006, Weaver again advised the Commission that her medical condition precluded her from participating in any proceeding "until further notice" and requested that the Commission "continue the proceedings indefinitely until [her] medical condition permits [her] to attend the hearing."

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Commission has further offered to facilitate Mrs. Weaver's claimed travel-related difficulties by allowing her to participate by videoconference at no additional expense to her.

For the duration of the pendency of this docket, Mrs. Weaver's actions have made it apparent that she is personally either unwilling or unable to litigate this matter to its conclusion. For example, in her January 6, 2006 correspondence filed with the Commission, Mrs. Weaver asserts that necessary documents and notices involving this case were received in the mail but withheld from her by her staff, purportedly due to her continuing illness. And as detailed previously, Mrs. Weaver has repeatedly found it necessary to seek continuances due to her medical condition. Not having access to necessary notices in the case, no matter what the reason, creates obvious problems in prosecuting the case, since Mrs. Weaver has been proceeding *pro se* and therefore has no one else to answer for her in case of incapacity due to illness.

The Commission makes every reasonable effort to accommodate the needs of all litigants, and is particularly sensitive to the needs of those appearing *pro se*. It is not obligated, however, to continue these proceedings simply because a litigant makes a request that it do so. A contrary ruling would empower a litigant to impose a continuance upon the Commission unilaterally. Whether to grant a request for continuance is squarely within the discretion of the Commission. 26 S.C. Code Ann. Regs. 103-862. Consistent with the discretion afforded the Commission by the Regulations, the Commission therefore denies Mrs. Weaver's now fifth request for continuance.

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While the Commission is always sensitive to the needs of individual litigants, Mrs. Weaver's own filings to date indicate that she is unable to participate in a hearing now or in the foreseeable future. The Commission has further been made aware that Mrs. Weaver has likewise repeatedly demanded and received continuances of PEC's ongoing civil suit against her and her husband Gary Weaver in the Dillon County Court of Common Pleas, Fourth Judicial Circuit (Case No. 2004-CP-17-232), in which PEC seeks recovery of alleged unpaid electric bills, and that the civil case has, like this matter, languished on the docket for an extended period of time.

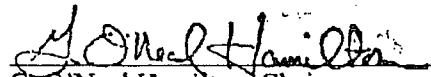
This matter has now been pending at the Commission for almost three years, having been commenced in August 2004. It has not been adjudicated because Mrs. Weaver cannot or will not appear for a scheduled hearing. Viewed in the light most favorable to Mrs. Weaver, it can fairly be said that she is, by her own representations to this Commission, physically unable to prosecute her counterclaims. Accordingly, the Commission now dismisses Mrs. Weaver's counterclaims without prejudice for lack of prosecution. Because PEC had previously withdrawn its petition and the Commission has now dismissed Mrs. Weaver's counterclaims, PEC's motion to close the docket is now moot.

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PAGE 6

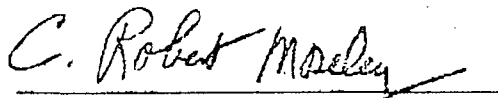
CONCLUSION

The motion of Mrs. Beatrice Weaver to continue the April 13, 2006 hearing in Docket No. 2004-219-E is denied. PEC's Motion to Close Docket is dismissed as moot. Pursuant to the Commission's discretionary authority, this matter is dismissed without prejudice.

BY ORDER OF THE COMMISSION:


G. O'Neal Hamilton, Chairman

ATTEST:


C. Robert Moseley, Vice Chairman

(SEAL)

COMMISSION HEARING OFFICER DIRECTIVEADMINISTRATIVE
MATTERS☐DATE May 24, 2007MOTOR CARRIER
MATTERS☐DOCKET
NO. 2004-219-E

UTILITIES MATTERS

☒ORDER NO. N/AHEARING
OFFICER:

B. Randall Dong

DOCKET DESCRIPTION:

In re: Petition of Progress Energy Carolinas, Inc. to Terminate Service

ADMINISTRATIVE MATTERS UNDER CONSIDERATION:

Objections to Commission Order No. 2007-298 and Motion to Reconsider, to Rescind Order, and for Extension of Time to File Pleadings and for Continuance, mailed and faxed to Charles L.A. Terreni on May 17, 2007.

HEARING OFFICER ACTION:

The filing by Mrs. Weaver seeking reconsideration or rehearing and modification or rescission of Order No. 2007-298 is rejected as untimely and therefore denied in accordance with S.C. Code Ann. §58-27-2150. While Mrs. Weaver has specifically represented to the Commission in her cover letter to Mr. Terreni that she received her copy of Order No. 2007-298 on May 7, 2007, the return receipt card indicates that the U.S. Postal Service delivered Order No. 2007-298 to Mrs. Weaver, and that she personally signed the card acknowledging receipt thereof, on May 5, 2007. Her Motion, while dated May 15, 2007 on the face of the document, was faxed and mailed on May 17, 2007, 12 days after she acknowledged service of the order by signing the receipt card. Section 58-27-2150 requires applications for rehearing to be made within ten days of notice of entry of the order or decision from which the applicant seeks relief. Mrs. Weaver's filing is therefore untimely, and accordingly, it must be rejected and the relief sought must be denied.

EXHIBIT C

COMMISSION HEARING OFFICER DIRECTIVE

ADMINISTRATIVE
MATTERS

☐

DATE May 24, 2007

MOTOR CARRIER
MATTERS

☐

DOCKET
NO. 2004-219-E

UTILITIES MATTERS

☒

ORDER NO. N/A

HEARING
OFFICER:

B. Randall Dong

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EXHIBIT C - Summary Status.



Randall Dong
Staff Counsel

The Public Service Commission State of South Carolina

COMMISSIONERS
G. O'Neal Hamilton, Fifth District
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C. Robert Moxley, At-Large
Vice Chairman
John E. "Butch" Howard, First District
David A. Wright, Second District
Randy Mitchell, Third District
Elizabeth B. "Lih" Fleming, Fourth District
Mignon L. Clyburn, Sixth District

Phone: (803) 896-5176
Fax: (803) 896-5231
Randall.Dong@psc.sc.gov

November 8, 2007

VIA FACSIMILE TRANSMISSION AND U.S. MAIL
FAX (843) 774-2050

Mrs. Beatrice Weaver
1253 Harllees Bridge Road
Dillon, South Carolina 29536

Re: Recent Correspondence Regarding Docket No. 2004-219-E

Dear Ms. Weaver:

As Hearing Officer in Docket No. 2004-219-E, I am responding to your letters to Mr. Terreni dated October 17, October 29, and November 1, 2007, along with the accompanying memoranda and supporting documents.

In the memorandum faxed to us with the October 17 letter, you request that we identify the statutes governing the change of electric service providers, that we clarify the consumer's role in the process, and that we address your allegations concerning Progress Energy's conduct in connection with the mutual release and settlement agreement executed by you and Progress Energy on or about September 18, 2007. You further request that the Commission state in advance (1) whether it would approve a future petition for change of electric service provider prior to the petition being filed; and (2) that there will be no "complications" caused by Progress Energy in having your electric service provider changed. Subsequently, in your letters dated October 29 and November 1, 2007, you asked whether the Commission has jurisdiction to enforce the terms of the September 18, 2007 settlement agreement or to order Progress Energy to connect power to your residence. ✓

The specific statute governing whether your electric service may be provided by a provider other than Progress Energy is found at S.C. Code Ann. §58-27-660. Subsection 1 of the statute provides that the change in service providers you would be requesting could be granted upon agreement of both affected electric service providers. In the event that the affected providers reach no such agreement, the Commission may, pursuant to Subsection 2 of the statute, order the change "upon a finding that service to such consumer by the electric supplier which is then furnishing service...is or will be inadequate or undependable, and cannot or will not be made adequate and dependable within a reasonable time, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory." I would

EXHIBIT D

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Mrs. Beatrice Weaver letter
November 8, 2007
Page 2

encourage you to seek legal counsel to advise you as to the meaning and effect of the statute upon your prospective request for a change of electric service providers. As you know, we cannot offer any legal advice to you.

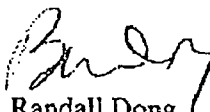
Your petition for a change in electric service providers should be filed with our office in the same manner as any other complaint or petition for relief. Because this request was not a part of the initial claim and counterclaim contained in Docket No. 2004-219-E, and because the Commission has already ordered Docket No. 2004-219-E closed, it would be appropriate for the new petition to be assigned a new docket number. The Commission cannot prejudge your petition, just as it cannot promise any particular result to any party appearing before it. The Commission is bound to fairly adjudicate every case based upon the facts presented and the applicable law.

It would appear that action seeking interpretation or enforcement of the terms of the settlement agreement should be pursued in the Court of Common Pleas for Dillon County. The Commission generally has the authority to enforce its regulations concerning the prerequisites for discontinuance of service and to order reconnection where those prerequisites have not been met. However, actions regarding the enforcement of the September 18, 2007 settlement agreement in the Court of Common Pleas, even though pertaining to reconnection of your electric service, would appropriately be brought before that court.

I hope this information has been helpful and responsive to your inquiries.

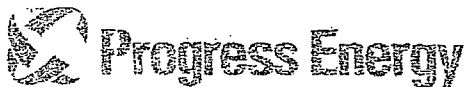
With continued kind regards, I am

Very truly yours,


B. Randall Dong
Hearing Officer

cc: Len S. Anthony, Esquire
Shannon B. Hudson, Esquire

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September 27, 2007

Mr. Charles Terreni
Chief Clerk and Administrator
Public Service Commission of South Carolina
P. O. Drawer 11649
Columbia, South Carolina 29211

RE: Docket No. 2004-219-E

Dear Mr. Terreni:

Please find attached a settlement agreement entered into between Progress Energy Carolinas, Inc., Gary Weaver and Beatrice Weaver.

THIS DOCUMENT IS AN EXACT DUPLICATE, WITH THE EXCEPTION OF THE FORM OF THE SIGNATURE, OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

Yours very truly,

A handwritten signature in cursive script that reads 'Len S. Anthony' followed by a small mark.

Len S. Anthony
Deputy General Counsel-Regulatory Affairs

LSA:mhm

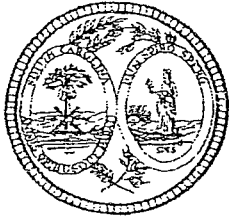
Attachment

256168

Progress Energy Service Company, LLC
P.O. Box 1551
Raleigh, NC 27602

(See Exhibit "A")

EXHIBIT CT-1



Randall Dong
Staff Counsel

The Public Service Commission State of South Carolina

COMMISSIONERS
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Chairman
C. Robert Moseley, At-Large
Vice Chairman
John E. "Butch" Howard, First District
David A. Wright, Second District
Randy Mitchell, Third District
Elizabeth B. "Lib" Fleming, Fourth District
Mignon L. Clyburn, Sixth District

Phone: (803) 896-5176
Fax: (803) 896-5231
Randall.Dong@psc.sc.gov

October 9, 2007

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

Mrs. Beatrice Weaver
1253 Harllees Bridge Road
Dillon, South Carolina 29536

Re: Docket No. 2004-219-E

Dear Mrs. Weaver:

I have received your request invoking the Administrative Procedures Act and the Freedom of Information Act and requesting certain information, which was faxed to our office from "Renaissance (843) 774-2050" on September 27, 2007, at 11:22 p.m.

We intend to comply fully with our obligations to provide you with public information. However, we have received a filing from Progress Energy informing us of the fact that you and Mr. Weaver have compromised, settled, and released any and all claims relating to the matters pending between you and Progress Energy in the Court of Common Pleas and at the Public Service Commission. In light of your settlement agreement, I am writing to ask you to confirm in writing whether you still wish us to copy and send to you (at your expense, at the rate of ten cents per copied page, plus reasonable costs of packaging and shipping) the documents responsive to your request to which you would be entitled under the statute. If you do still wish these documents to be copied and sent to you, we will require a deposit to cover the costs. We will inform you of the amount of the required deposit once we receive notice from you that you still desire copies of the documents and once we estimate the number of pages responsive to your request.

Sincerely yours,

B. Randall Dong
Staff Counsel

BRD/hha

EXHIBIT G-2

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FAX TO: MR CAGLE
PROGRESS ENERGY CAROLINAS INC

VIA FAX: 1 919 232 5601

FROM: BEATRICE WALLENSTEIN (AKA BEATRICE WEAVER)

SUBJECT: **EIGHTH NOTICE OF MUTUAL RELEASE DEFAULT AND
LATE PENALTIES CLAIM**

DATE: Feb. 19, 2008

MESSAGE:

FOR THE RECORD:

1. PURSUANT TO PARA. 1 AND 2 OF THE RELEASE YOU ARE AGAIN
NOTICED OF YOUR DEFAULT AND DEMAND MADE TO CONNECT POWER
VIA THE ATTACHED MEMORANDUM. X

THANK YOU *BEW*

PAGES: 3.

*X UNDER SEPARATE COVER WITH U.S. POSTAL
CERTIFICATE OF MAILING
CONFIRMATION COPIES*

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File cc

P.O Box 7682
Florence, S.C. 29502
Ph: 843 841 1606

March 7, 2008

The Hon. Paul M. Burch
Judge, Dillon Court of Pleas
P.O. Box 276, Pageland S.C. 29728

Dear Judge Burch:

Subject: Request for Clarification of Order dated February 28, 2008,
and Formal Objections to the Order for the Record

Ref: Docket No. 2004-CP-17-232 Progress Energy vs. Weaver
Motion/Hearing Roster January 30, 2008
Mutual Release dated September 18, 2007.
Exhibits D-1 to D- 56, Offer of Proof Filed Jan. 30, 2008

Introduction

On Friday March 7, 2008 I received a copy of the Court's Order dated February 28, 2008. After careful consideration of the Order, and in light of the facts, the testimony, and the law, I decided it appropriate to respectfully bring the following matters to your attention; more specifically, to seek clarification of the Order, particularly since the Order stipulates a date certain for compliance by the parties, which I believe is April 14, 2008.

Further, I respectfully remind the Court of the **ambiguity of paragraphs 3, 4 and 5** of the Mutual Release prepared by Plaintiff's Counsel as to respective responsibilities, obligations and duties for performance by the signatories. Under the law, circumstances and facts I respectfully submit to the Court that Defendants have complied with all five paragraphs to the best of their abilities and find it necessary to request clarification of the Order as discussed below. Also it is appropriate under these circumstances to respectfully file this formal objection to the Order as to its reference to Defendants, for the record.

Finally, I remind the Court that the Mutual Release applies only to any alleged matters between the three signatories that existed up to September 17, 2007. Any matters that occur between the three parties commencing from September 18, 2007 are not covered by the Release.

Requests for Clarification and Objections

1. First, the Order states that "all parties" are to abide by the terms of the Mutual Release, a copy of which was filed by the Plaintiff on October 24, and myself on October 25, 2008.

As noted, supported by the record, it is my position that in good faith, both Defendants have complied in full with the terms of all five paragraphs of the Mutual Release to the extent possible under the statutes, the appropriate rules under SCRCF and the Administrative procedures of the Public Service Commission ("Commission"). Reviewing the Order, I note that the Court took the narrow view of the parties' respective motions to enforce, and in particular, declined to comment on the issues raised in my pleadings relating to disposition of the issues I raise as to enforcement, Plaintiff's liabilities and the requested jury trial for finding of facts and damages, etc.

I also respectfully remind the Court that my testimony at the January 30, 2008 Hearing was terminated by the Court before I had completed testifying on issues related to paragraph five of the Mutual Release pertaining to enforcement of the change of providers provision. That matter is presently being processed by the Commission during March 2008. See the attached copy of the Commission's Notice dated January 11, 2008

As I see it, there are two outstanding matters under paragraphs 1 and 5 to be addressed with respect to the Order, and two outstanding matters pursuant to paragraph 4. All of these matters require action of Progress Energy to comply with the Order, not Defendants.

2. The first immediate issue to be addressed is paragraph 5 relating to the Change of Providers. Immediately following execution of the Mutual Release on September 18, 2007, Defendant Beatrice Weaver initiated that process with the Public Service Commission on or about September 22, 2007. As of this date, the matter is basically beyond any control of the Defendants. See the attached copy of the Commission Notice dated January 11, 2008.

As I informed the Court at the Hearing on January 30, 2008, I consider the para. 5 change of provider process to be an administrative and regulatory exercise in futility. My motion and Memoranda requested this Court to take administrative control of the matter

in the interest of judicial and administrative efficiency since the matter eventually is going to end up back before this Court.

Note in Exhibit D-25 of the Offer of Proof, (copy attached) the Commission's position that enforcement of the Mutual Release "... should be pursued in the Court of Common Pleas for Dillon County." (Paragraph 3, page 2.). This refers to both the change of providers under para. 5, and connection of electricity under paragraph 1 and 2 which Plaintiff has manifestly ignored. In short, it is a matter of record that the Defendants have done all they can with respect to dismissing the matters before the Commission by exhausting the administrative and court procedures.

So as discussed herein below, the question is: specifically, what else does the Court want the Defendants to do with respect to para. 3 and 4 and 5. To repeat, it is the Plaintiff that is in violation, not the Defendants.

Finally, Progress Energy has already reneged on its position with respect to the proposed changeover under paragraph 5. Given its proven and demonstrated influence with the Commission I see no prospect of the Commission taking any stance on the issue other than to support Progress Energy as it always does in these matters.

As I evaluate the situation and the Order, I foresee the only recourse Defendants have is to take the matter to the Jury as I have already requested **on the record** since the outset of this case. Appropriate pleadings on that matter will be filed in due course.

Therefore, under the circumstances it seems logical to herein seek clarification from the Court as to exactly what is required of both Defendants by the Court, if any, in order to be in compliance with the Order on or before April 14, 2008 with respect to paragraph 5 of the Mutual Release.

3. The second immediate issue relates to **compliance with paragraphs 1 and 2** of the Release. Defendants are in full compliance with the terms of these two paragraphs and it is a matter of record that Plaintiff has deliberately violated both the letter and the spirit of the terms. Please refer to the attached copy of my letter dated November 14, 2007 addressed to Judge Lockemy relating to para. 1 terms and Plaintiff's violation thereof. As of this date I have not received any instructions from the Court concerning the deposit with the Clerk of Court. Please refer to Exhibits D-14 to D-20 in the Offer of Proof.

On this point, please note my reference to State case law in my pleadings that when one party violates a contractual agreement, in this case Progress Energy, the other parties are relieved of any obligations or duty to further observe the terms of the agreement. I have claimed that right under case law which the Order declined to address. Pursuant to the cited case law and Plaintiff's documented violation of para. 1 and 2 of the Release, the Plaintiff has forfeited any claim to further payments and is liable for refund of payments already made.

Therefore I respectfully request the Court to state with specificity exactly what is expected of Defendants with respect to para. 1 and 2 of the Release, to be in compliance with the Order on or before April 14, 2008.

Defendants will timely comply in good faith with the Court's instructions.

4. Stipulations to Dismiss.

The Order refers to Defendants' **compliance with paragraphs 3 and 4** of the Mutual Release. It is my position supported by the record that this order is ⁱⁿ error. Both Defendants have complied in full with the terms of both paragraphs 3 and 4 and it is the Plaintiff that has violated the agreement and the law on the subject.

Subsequent to the January 30, 2008 Hearing I conducted further research into the matter preparatory to filing motions relating to the requested jury trial. In addition to Progress Energy violating Rule 41 (a)(1)(ii) and Rule 43 (k) SCRCP, it also is in violation of **Rule 40 (j) SCRCP**. This rule applies only to the Plaintiff in this case, not the Defendants since there are no counterclaims, cross-claims or third party claims. Rule 40 (j) further supports my position that it is the Plaintiff that has the legal duty and obligation, not the Defendants, to initiate and file the Stipulations to Dismiss.

Furthermore, even for the sake of argument, under these rules the Defendants do not have the legal right to prepare and file any stipulations for voluntary dismissals, only the Plaintiff, particularly as to filing with this Court. Otherwise Defendant Beatrice Weaver's legal counsel would have done so if it was called for. The Court Order appears to ignore this important legal fact.

5. Paragraph 3 of the Mutual Release:

With respect to paragraph 3 relating to the Public Service Commission, I respectfully refer the Court to review the Commission's written confirmation that all

matters between the parties have been dismissed. Exhibit D-2 at page six in the Offer of Proof I filed with the Court is the Commission Order dated **May 3, 2007** dismissing the action some five months before the execution of the Mutual Release on **September 18, 2007**.

Exhibit D-3 dated **May 24, 2007** is the Commission Hearing Officer's dismissal of Defendants' claims. The Commission further dismissed the action on November 13, 2007 relating to pleadings that had been filed on **May 17, 2007** five months prior to the September 18, 2007 signing of the Mutual Release. See Exhibit D-9, Page 4. Again, as noted above, on **November 8, 2007**, the Commission's Hearing Officer, Mr. Dong confirmed to Mrs. Weaver that "...the Commission has already ordered Docket No. 2004-219-E closed...." And a new Docket No assigned to the petition for change of providers under paragraph 5 of the Release. See attached copy of Exhibit D-25, paragraph 2, page 2.

Finally, notwithstanding the Commission's several confirmations of dismissal on the record, Defendants forfeited any further claims by forgoing any appeal pleadings pursuant to **S.C. Code Sect. 58-27-2150 (Rehearings) and Sect. 58-27-2310** (to vacate order). See Exhibit D-32.

Please refer to Exhibit D-10, my letter dated January 24, 2008 wherein I confirmed to the Commission the existence of the Mutual Release and dismissal of all matters as follows:

"6. Thus I confirm for the record to the best of my knowledge and understanding that all matters previously before the Commission under Docket No. 2004-219-E were dismissed by the Commission in May 2007; at Mrs. Weaver's request, confirmed again in November 2007, by Mr. Dong in his recent November 2007 correspondence with Mrs. Weaver, and by Progress Energy with its filing a certified, true copy of the Mutual Release with your Office on or about September 27, 2007.

"7. Pursuant to paragraphs 3 and 4 of said Release it is my understanding, belief and position that as Petitioner to the Commission, and Plaintiff/Signatory to the Release, that Progress Energy has the legal duty to file stipulations for dismissal with the Court and the Commission under Rule 41(a)(1)(ii) and Rule 43 (k) SCRCF which under your regulations and the statutes also apply to the Commission." (To which I have now added Rule 40(j))

On September 27, 2007 Progress Energy filed a copy of the settlement agreement with the Commission, which of course is signed by all three parties to the agreement. See Exhibit D-26 of the Offer of Proof, copy attached.

On October 15, 2007, Defendant Beatrice Weaver requested the Plaintiff's draft Stipulation for Dismissal from her attorney that the Plaintiff's attorney had neglected to send as stated in his letter dated September 24, 2008. See Exhibit D-29, para. 3, page 1.

Plaintiff refused to process the stipulation on the fatuous claim that Mrs. Weaver had not complied with the Mutual Release, erroneously claiming that "your clients" (sic) should "send a request to withdraw the counterclaim". See Exhibit D-28 and D-29, para 3, page1. (Note that I am not a "client" of Mr. Shine in this case.)

To repeat my notice to the Court at the Hearing on January 30, 2008, Defendant Mrs. Weaver should not have been made a party under the doctrine of necessities, to any claim of Plaintiff for an alleged debt of mine. Quite apart from the constitutionality issue I raised to the Court, at all times I have acknowledged on the record on numerous occasions that any alleged debt that may possibly be due was my responsibility and liability if proven, subject to a proper accounting and reconciliation of the accounts which Plaintiff would not and could not provide even to this date. Plaintiff knew and should have known of that fact and should have provided the accounting.

Mrs. Weaver should not have been placed in the position relating to counterclaims, and threats, etc. by the Plaintiff. Moreover, Plaintiff's refusal to comply with para. 1 and 2 of the Mutual Release, has caused Mrs. Weaver serious economic damages, seriously impaired her health, denied her access to home care, quality of living, etc. Inter alia, I wish to take these and related issues to the jury for finding of facts, damages, etc.

As noted above, all matters including Mrs. Weaver's counterclaim filed with the Commission had already been dismissed back in May 2007, five months before. The plaintiff and its attorney knew and should have known of that fact. And as already noted above and at the Hearing, the rules under SCRCF required the Plaintiff not Defendants to file the stipulations. Even so, as noted above Defendants have complied with the five paragraphs to the best of their ability.

Therefore with respect to compliance with the Order as to Para. 3 of the Mutual Release, under the facts and circumstances cited above, the Defendants are at a loss to know what the Court demands of them with respect to further compliance.

Accordingly, Defendants hereby respectfully request the Court to state specifically, precisely and exactly what it requires Defendants to do, to be in compliance with para. 3 of the Release and the Court Order on or before April 14, 2008.

6. Paragraph 4 of the Mutual Release:

This paragraph provides that **all three parties** shall mutually release each other as to any matter, action, potential action or any matter whatsoever which may exist between the parties as of September 17, 2007. As I explained at the Hearing, the Plaintiff is, and continues as of this writing, to be in violation of the terms of this paragraph on two issues which the Release was intended to cure:

1. Change of Status.

For ten years from 1994 to 2004, the status of electric service to the residential property located at 1249 Harllees Bridge Road in Dillon was classified under the regulations as "residential" which was and remains to this day, its use. In 2004, when Defendant Beatrice Weaver was absent during her stay in North Carolina at the Morris Cancer Center, and subsequently, the groundskeeper lived in that building which has a kitchen, bathroom, bedroom and regular living quarters, telephone, TV etc. The illegal change of status was Progress Energy's retaliation for Defendant Beatrice Weaver's filing of a complaint against Progress Energy with the Commission in 2004. The executive staff of Progress Energy unilaterally and arbitrarily without the required notice or justification, changed the status of the premises from "residential" to "commercial."

As explained at the Hearing, this resulted in an additional two cents per kilowatt hour of electricity used (some \$2,000.00 since 2004) and inconvenient billings every two weeks instead of once per month. Beatrice Weaver's continued formal objections to this unjustified and discriminatory action by Defendant Beatrice Weaver have been ignored by the Plaintiff (and the regulatory agencies). Progress Energy continues to refuse to change the status back from "commercial" to "residential," and the Order has ignored this issue which was discussed at the Hearing.

2. Plaintiff's Continued Refusal to Provide Proper Accounting.

The second issue intended to be resolved under para. 4 of the Release relates to Plaintiff's continued incorrect billings and provide proper accounting for its electric service to a property referred to as the "Little Rock Stables" account located at 1261 Harlees Bridge Road, Dillon, since 2004. While the account is active, Defendant Beatrice Weaver has not used any electricity on that account since before 2004. Yet Progress Energy continues to incorrectly bill and account for alleged use of power from that account that has been in dis-use for the past four years. Many requests have been made for proper accounting to no avail.

These two remaining matters were supposed to be cured under paragraph 4 of the Release. Defendant Beatrice Weaver has made many demands, requests and much effort to have these matter resolved expeditiously. Progress Energy continues to refuse to change status of property at 1249 Harlees Bridge Road, Dillon back to "residential" and refuse to provide proper accounting on the "Little Rock Stables" account.

Based on the facts and evidence, it is clear that Progress Energy is the party in violation of para. 4, not the Defendants, who have no control over Plaintiff's actions on these issues. The record shows that Defendants' efforts at Administrative Relief have been exhausted in the past, and as noted herein above, it is the Commission's position that enforcement of the terms of the Mutual Release is the domain of this Court, not the Commission.

Therefore, Defendant hereby respectfully requests the Court to clarify its Order and instruct Progress Energy to change the status of the premises at 1249 Harlees Bridge Road, Dillon back to "residential" retroactively and reimburse Defendant Beatrice Weaver for the 2.5 cent/kwh overcharges. And provide a proper accounting for the second "Little Rock Stables" property.

In the alternative, the Court can wait for the forty five day time constraint for Plaintiff's compliance as ordered. If Progress Energy does not comply with para. 4 as requested and agreed by April 14, 2007, Defendants will file a motion for sanctions and contempt of court by Plaintiff as stated in the Order.

Finally, to repeat, the Court is respectfully requested to instruct Defendants as to what it expects of them to be in compliance with paragraph 3 and 4, of the Release.

Time of the Essence.

Due to the 45 day time constraint for compliance imposed by the Court, and Mrs. Weaver's medical condition which has seriously deteriorated since the January 30, 2008 Hearing, the Court is respectfully requested to expedite a response to the above requests for clarification of the Order at its earliest convenience. Due to the recent developments concerning Mrs. Weaver's medical conditions, Defendants expect to have to spend considerable time out of state over the next two months visiting hospitals and doctors.

Moreover, the issues of para.5 of the Release are scheduled for processing by the Commission during March 2008. See attached copy of the Commission Notice dated January 11, 2008. It would be greatly appreciated and relevant if the Court could expedite a response to this request for clarification as soon as possible before March 23, 2008. Defendant/Petitioner's Rebuttal Testimony is to be filed on or before March 24, 2008. (Please refer to Commission Notice, Item 3).

Given the combined constraints and stress imposed by the Court's 45 day deadline, the Commission's processing dates, and the increased demands related to Mrs. Weaver's serious medical situation, an undue economic, physical and time burden is placed on the undersigned with respect to compliance and regulatory processes.

Summary and Conclusion

1. Defendants do not understand the Court's Order as to what the Court expects them to do for each of the five paragraphs, and especially para 3 and Para. 4 of the Mutual Release, in order to be in compliance by April 14, 2008.
2. Accordingly, Defendants respectfully request the Court's clarification as to what they are specifically expected to do for each of the five paragraphs.
3. Defendants have no control over the Commission's processing of para. 5 for change of providers, nor over the actions of the Plaintiff as discussed above with respect

to the five paragraphs. Defendants' only recourse for remedy is to rely on the Court system including the requested jury trial.

4. Defendants do not wish to be placed in a position of any non-compliance as a result or consequence of the inactions of the Plaintiff or other third parties.

5. Based on the facts, circumstances, laws, rules, argument, pleadings, and testimony at the January 30, 2008 Hearing, I respectfully submit to the Court that the question of Defendants' compliance with the terms of the Mutual Release is a moot issue.

6. The record clearly shows that the Defendants are in compliance and have done all they reasonably can to be in compliance with the Release Agreement.

7. Based on the above, I respectfully object and submit for the record that the Court Order is in clear error, a discretionary aberration, and denial of process.

8. If the Court grants this request for clarification of the Order as to exactly what is expected of Defendants to comply as instructed, Defendants stand ready in good faith to implement whatever it is the Court wants them to do under each of the five paragraphs, in order to be in compliance on or before April 14, 2008.

9. Meanwhile I respectfully inform the Court that to the best of their ability Defendants have been and are now in full compliance as ordered and the Plaintiff is not, as of this writing. Plaintiff's non-compliance has undermined the whole purpose and motive for Defendants' entering into the agreement in the first place, which was to relieve the economic, quality of life, emotional, physical and mental stress on Mrs. Weaver.

10. If the Court does not grant this request for clarification, I respectfully request a written notice of such by March 21, 2008 if possible at the Court's earliest convenience in light of the 45 day constraint and the Commission's processing of the para. 5 changeover provision.

11. Finally, I am respectfully filing herein notice to the Court that if Plaintiff does not comply with the Order as discussed herein above on or before April 14, 2008, I shall immediately file a motion for sanctions and contempt as provided for in the Order. In particular, this applies to Plaintiff's expeditious connecting electric power to Mrs. Weaver's residence at 1253 Harllees Bridge Road, Dillon.

As a final comment, I wish to remind the Court that the Plaintiff comes to the Court with unclean hands, committed fraudulent abuse of the legal process and amoral conduct in negotiating the settlement agreement. Plaintiff's frivolous and nuisance motion was a fraud on the Court and an unnecessary, timely, costly and improper imposition on Defendants and the Court.

Also that Mrs. Weaver is an 81 year old woman with a serious continuing cancer condition who faced serious surgery just two days after the settlement conference on September 18, 2007. The issue before this Court related to an alleged consumer debt which was my obligation if any. She should not have been involved in the first place. The objective of settlement was to close the case and ensure immediate connection of electricity for Mrs. Weaver which she needed for post operation reasons. Five months later, Defendants having complied with the terms of the settlement, that objective has not been achieved due to Plaintiff's violation of the agreement and bad faith negotiations.

Plaintiff took advantage of the situation and the conditions and introduced matters for settlement that were totally unrelated to the settlement of my alleged consumer case with the Plaintiff that commenced in 2000 and 2001. The matters with the Commission were related to Mrs. Weaver's complaint in 2004 against Progress Energy's Mr. Anthony, Mr. Cagle and Ms. Hardy. That matter had absolutely nothing to do with Progress Energy's 2001 consumer claim against this Defendant, in this Court.

All of the 2004 matters before the Commission had already been dismissed by the Commission in May 2007 five months earlier before the date of the settlement in September 2007 and were not before this Court. Plaintiff knew and should have known that Mrs. Weaver was in no way liable to it for my alleged consumer debt since I had stated on numerous occasions that any such matter would be settled by me upon receipt of a proper reconciliation and an accounting.

I fail to see how the Court can excuse such behavior by the Plaintiff, and I intend to hold Plaintiff accountable before a jury with the approval of the Court, and if necessary go to the S.C. Supreme Court.

Respectfully submitted,

Gary Weaver, Defendant Pro Se

Cc: Parties of Record

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2004CP-17-232

PLAINTIFF(S) *Progress Energy Carolinas*

DEFENDANT(S) *Weaver, Gary
Pro/se*

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. *on 1/30/08.* The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp Settled; ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED:

- ☐ See Attached order.
☒ Statement of Judgment by the Court:

The Court heard extensive oral argument concerning the motion to enforce settlement agreement and find that said agreement shall be enforced and that all parties are to abide by its terms. The defendants shall within 45 days of the date (2/28/08) come into compliance with the terms of paragraphs 3 and 4 of the Mutual Release Agreement dated or filed with the Clerk of Court on October 25, 2007. Failure to comply shall subject

Dated at *Mon* South Carolina, this *28th* day of Feb. 2008

This parties to this Contempt Power of the Court, and it is so ordered.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (whether appearing pro se) as follows:

MARK W. Buysck, Jr.
ATTORNEY(S) FOR THE PLAINTIFF(S)
*PO Box 1909
Florence SC
29503*

*DAN SHINE
GARY WEAVER*
ATTORNEYS(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

*Received on
March 7, 2008.
[Signature]*
SCCA SCRCp Form 4 (Revised 12/07)

FILED
GIVEN T. HYATT
2008 FEB 28 PM 12:29
CLERK OF COURT
DILLON COUNTY

*DAN SHINE
205 W. HANCOCK ST
DILLON SC 29536
GARY WEAVER
PO Box 7682
Florence SC 29502*

3/7

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P.O Box 7682
Florence, S.C.
29502

November 14, 2007

The Hon. James E. Lockemy
Judge, Court of Pleas
Dillon County
P.O. Box 750
Dillon S.C. 29536

Dear Judge Lockemy:

Subject: Mutual Release-Third Payment

Ref: Docket No. 2004-CP-17-00232
Progress Energy vs. Weaver
Letter dated Oct. 18, 2007 Re Rule 67 SCRC
Deposit in Court.

This letter is respectfully filed with the Court relating to the third payment due on or before November 18, 2007 pursuant to paragraph 1 of the subject Mutual Release compromise and settlement agreement executed by the three parties on September 18, 2007. The second payment was deposited with the Court pursuant to my letter dated October 18, 2007.

Plaintiff in this case continues to be in violation of all five paragraphs of the Mutual Release, and both parties have filed memoranda seeking enforcement. Given the facts and circumstances of the case since September 18, 2007, I consider Plaintiff's motion to be frivolous and a nuisance, if not fraudulent, which issues shall be addressed to the Court in due course.

Meanwhile, in attempted mitigation of damages, Defendants have continued to give Plaintiff regular notices of its breach of the agreement. See attached Exhibit A, the latest in a series of such notices. Note also that a claim for a Late Penalty of \$100.00 per day, commencing October 5, 2007 shall be lodged with the Court, along with other claims for damages. All parties associated with Plaintiff have been given due notice on October, 5, 11, 15, 22, and Nov. 14, 2007. See attached Exhibit A.

Accordingly, because of Plaintiff's continued breach of the agreement and refusal to connect electric power as agreed, I have decided in good faith as a matter of prudence to withhold a deposit with the Court of the third payment as a set off to the claim for Late Penalty and other damages claimed against Plaintiff.

If this procedure is not acceptable to the Court, or if the Court may consider it to be in any way a breach of the agreement, please be advised that I stand ready, willing and

1/34

able to deposit the said third payment due on November 19, 2007, (allowing for Sunday the 18th), upon notice of the Court. Alternatively, the Court may consider extending the payment date until completion of the hearings on pending motions on or about December 10, 2007.

Respectfully submitted.

Gary Weaver, Defendant Pro Se

Attachments: Copy of letter to Plaintiff dated Nov. 14, 2007.
Copy of Mutual Release dated Sept. 18, 2007

Cc: Daniel H. Shine, Esq.
Mark W. Buyck, Jr, Esq.
Mr. Charles L.A. Terreni
Chief Clerk/Administrator
S.C. Public Service Commission



*The Public Service Commission
State of South Carolina*

Charles L.A. Terreni
Chief Clerk/Administrator
Phone: (803) 896-5133
Fax: (803) 896-5246

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David A. Wright, Second District
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Elizabeth B. "Lib" Fleming, Fourth District
Mignon L. Clyburn, Sixth District

Docketing Department
Jocelyn G. Boyd, Deputy Clerk
Phone: (803) 896-5100
Fax: (803) 896-5199

January 11, 2008

IN RE: DOCKET NO. 2007-401-E – Beatrice Wallenstein a/k/a Beatrice Weaver,
Complainant/Petitioner v. Progress Energy Carolinas, Inc. and Marlboro Electric
Cooperative, Inc., Defendants/Respondents

TO: ALL PARTIES OF RECORD

Pursuant to 26 S.C. Code Ann. Regs. 103-845:

1. The Petitioner must prefile with the Commission 25 copies of the direct testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before March 3, 2008 (may be post-marked on this date).
2. The Respondents and the Office of Regulatory Staff (ORS) must prefile with the Commission 25 copies of the direct testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before March 17, 2008 (may be post-marked on this date).
3. The Petitioner filing Rebuttal Testimony must prefile with the Commission 25 copies of the testimony and exhibits of the witnesses it intends to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before March 24, 2008 (Rebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date).
4. The Respondents and the ORS filing Surrebuttal Testimony must prefile with the Commission 25 copies of the testimony and exhibits of the witnesses they intend to present and serve the testimony and exhibits of the witnesses on all Parties of Record on or before March 31, 2008 (Surrebuttal testimony and exhibits must be in the offices of the Commission and in the hands of the parties on this date).

Please be advised that failure to comply with the instructions contained herein could result in your proposed witnesses' testimony and exhibits being excluded in the subject proceeding.

Yours Truly,

Docketing Department



Randall Dong
Staff Counsel

The Public Service Commission State of South Carolina

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Mignon L. Clyburn, Sixth District

Phone: (803) 896-5176
Fax: (803) 896-5231
Randall.Dong@psc.sc.gov

November 8, 2007

VIA FACSIMILE TRANSMISSION AND U.S. MAIL
FAX (843) 774-2050

Mrs. Beatrice Weaver
1253 Harlees Bridge Road
Dillon, South Carolina 29536

Re: Recent Correspondence Regarding Docket No. 2004-219-E

Dear Ms. Weaver:

As Hearing Officer in Docket No. 2004-219-E, I am responding to your letters to Mr. Terreni dated October 17, October 29, and November 1, 2007, along with the accompanying memoranda and supporting documents.

In the memorandum faxed to us with the October 17 letter, you request that we identify the statutes governing the change of electric service providers, that we clarify the consumer's role in the process, and that we address your allegations concerning Progress Energy's conduct in connection with the mutual release and settlement agreement executed by you and Progress Energy on or about September 18, 2007. You further request that the Commission state in advance (1) whether it would approve a future petition for change of electric service provider prior to the petition being filed; and (2) that there will be no "complications" caused by Progress Energy in having your electric service provider changed. Subsequently, in your letters dated October 29 and November 1, 2007, you asked whether the Commission has jurisdiction to enforce the terms of the September 18, 2007 settlement agreement or to order Progress Energy to connect power to your residence.

The specific statute governing whether your electric service may be provided by a provider other than Progress Energy is found at S.C. Code Ann. §58-27-660. Subsection 1 of the statute provides that the change in service providers you would be requesting could be granted upon agreement of both affected electric service providers. In the event that the affected providers reach no such agreement, the Commission may, pursuant to Subsection 2 of the statute, order the change "upon a finding that service to such consumer by the electric supplier which is then furnishing service...is or will be inadequate or undependable, and cannot or will not be made adequate and dependable within a reasonable time, or that the rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory." I would

D-25

EXHIBIT D

Answer to Response
November 14, 2007

... Station

Mrs. Beatrice Weaver letter
November 8, 2007
Page 2

encourage you to seek legal counsel to advise you as to the meaning and effect of the statute upon your prospective request for a change of electric service providers. As you know, we cannot offer any legal advice to you.

Your petition for a change in electric service providers should be filed with our office in the same manner as any other complaint or petition for relief. Because this request was not a part of the initial claim and counterclaim contained in Docket No. 2004-219-E, and because the Commission has already ordered Docket No. 2004-219-E closed, it would be appropriate for the new petition to be assigned a new docket number. The Commission cannot prejudice your petition, just as it cannot promise any particular result to any party appearing before it. The Commission is bound to fairly adjudicate every case based upon the facts presented and the applicable law.

It would appear that action seeking interpretation or enforcement of the terms of the settlement agreement should be pursued in the Court of Common Pleas for Dillon County. The Commission generally ~~has the authority to enforce its regulations concerning the prerequisites for discontinuance of service and to order reconnection where those prerequisites have not been met.~~ However, actions regarding the enforcement of the September 18, 2007 settlement agreement in the Court of Common Pleas, even though pertaining to reconnection of your electric service, would appropriately be brought before that court.

*Adm.
Remedy
Exhausted
JP*

I hope this information has been helpful and responsive to your inquiries.

With continued kind regards, I am

Very truly yours

B. Randall Dong
B. Randall Dong
Hearing Officer

cc: Len S. Anthony, Esquire
Shannon B. Hudson, Esquire



September 27, 2007

Mr. Charles Terreni
Chief Clerk and Administrator
Public Service Commission of South Carolina
P. O. Drawer 11649
Columbia, South Carolina 29211

RE: Docket No. 2004-219-E

Dear Mr. Terreni:

Please find attached a settlement agreement entered into between Progress Energy Carolinas, Inc., Gary Weaver and Beatrice Weaver.

THIS DOCUMENT IS AN EXACT DUPLICATE, WITH THE EXCEPTION OF THE FORM OF THE SIGNATURE, OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

Yours very truly,

Ben S. Anthony

Ben S. Anthony
Deputy General Counsel-Regulatory Affairs

LSA:mhm

Attachment

256168

Progress Energy Service Company, LLC
201 Box 1551
Raleigh, NC 27617

(See Exhibit "A")

EXHIBIT G-1 Memo In Response
Amend Memo

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April 9, 2008

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
S.C. Public Service Commission
P.O. Drawer 11649
Colombia S.C. 29211
Ph: 1803 896 5113; Fx: 1 803 896 5231

Dear Mr. Terreni:

Subject: Notice and confirmation of Dismissals pursuant to paragraphs 3 and 4 of Mutual Release dated September 18, 2007, Dillon Court of Pleas.

Ref: Progress Energy Petition No. 2004-219-E
Case No. 2004-CP-232, Dillon Court of Pleas.
"Mutual Release" dated Sept. 18, 2007 by and between
Progress Energy and the Undersigned.
Docket No. 2007-401-E Re Change of Providers

Pursuant to the Court Order dated February 28, 2008, in Case No. 2004-CP-232 in the Dillon Court of Pleas, the undersigned parties hereby confirm to the commission and the Court, the dismissals of matters as provided for in paragraphs 3 and 4 of the Mutual Release ("Release") dated September 18, 2007, copy attached hereto as Exhibit A and by reference made part hereof.

Please acknowledge and certify your receipt hereof by return mail, with copy to The Hon. Paul M. Burch, Presiding Judge, Dillon Court of Pleas, and Ms. Gwen T. Hyatt, Clerk of Court at the addresses provided herein below.

For the record, in filing this dismissal your attention is directed to the said paragraphs 3 and 4, and the caveats cited herein below.

1. This notice and confirmation of dismissal pursuant to said para. 3 and para. 4, is filed under protest as redundant, and under objection duly filed with the Court, in order to strictly comply with the Court's Order, under threat of sanctions.

2. The Order issued by Judge Burch directing the Defendants to comply with para. 3 and 4 is incorrect based on the facts. In fact the order should apply only to **the Plaintiff who has the legal obligation to prepare stipulations for dismissal pursuant to Rules 40 (j), 41 (a) (1) (ii) and 43 (k) SCRPC and as agreed in said para. 3 and 4.** Moreover, by the very act of executing the Release, the undersigned agreed to dismiss action stated in para. 3 & 4. It was the Plaintiff's obligation to prepare any dismissal documents for filing if such were necessary.

3. The Release was prepared by Plaintiff's attorney. Para 3 and 4 are ambiguous as to when, where, who, how and exactly what, was being implemented. Any shortcomings are construed against the drafter of the documents. No time constraints, conditions, or

contingencies were imposed, or order of priorities set for carrying out the agreement, and especially para.3 and para.4. Thus in interpreting the Release agreement we resort to the procedures provided in S.C.R.C.P. as cited herein. Para. 1 and 2 on the other hand are precise and have been manifestly violated by PEC and complied with by Defendants.

4. Note that paragraph 3 requires that **all three parties** to the Release "...will dismiss any complaint and any response thereto relating to any matter currently pending before the S.C. Public Service Commission."

1. As of this date the undersigned have not received a copy of any such dismissal by Progress Energy Carolinas, Inc (PEC). If and when your Office receives PEC's notice of dismissal please ensure the undersigned each receive a copy for file.

2. Plaintiff PEC has not provided any stipulations for dismissal with the Commission or the Court pursuant to Rules 40 (j), 41 (a) (1) (ii) and 43 (k) SCRC.P.

3. At the time of executing the Release or since, there were no complaints and no responses or counterclaims currently pending before the Commission. PEC's attorneys provided no documentation that such pleadings existed neither at the settlement conference, nor at the Court Hearing on January 30, 2008, or since. None existed.

4. On the contrary, there is sufficient evidence that all matters were dismissed by the Commission five months earlier, and, at the undersigned's specific request to clarify the situation by the Commission, confirmed again in November 2007.

5. The Commission had dismissed any and all action before it as to the undersigned, confirmed in writing by formal Order and directive and letter of the Hearing Officer. There are no matters existing between the parties before the Commission to be dismissed, as of September 17, 2007. If by some strange regulatory alchemy, there are any such matters between the parties, they no longer exist pursuant to this confirmation of dismissal, subject of course to PEC's filing of the same dismissals as required by the Release. Documentation on the record of this claim is as follows:

1. Commission Order No. 2007-298 dated May 3, 2007
2. Hearing Officer Directive dated May 24, 2007
3. PEC Letter to the Commission dated September 27, 2007
filing a copy of the Mutual Release
4. Hearing Officer's letter dated October 9, 2007 confirming receipt of the dismissals.
5. Hearing Officer's letter dated November 8, 2007 confirming receipt of the dismissals.
6. Commission Order No. 2007- 835 dated November 13, 2007.
7. The undersigned forfeited any rights of appeal of the Commission Orders pursuant to S.C. Code. 1976 Ann. As Amend. Sect. 58-27-2150 and Sect. 58-27-2310.
8. The O.R.S. had dismissed any action back in 2005, under direct orders of PEC.
9. Last but not least, the undersigned Gary Weaver confirmed the dismissals under para. 3 and 4 with the Commission by letter dated January 24, 2008. Please refer to Item 6 and 7 (p.2.).

6. For good cause and on the grounds cited above, the undersigned reiterates herein for the Commission record that the Court's order as to para. 3 and para. 4 is incorrect, redundant based on the evidence, and mis- applied to the undersigned, and should be directed to Progress Energy who remains as of this writing, in continued violation of both paragraphs 3 and 4 and 1 and 2.

5. Para. 4, provides that "The parties will mutually release each other as to any matter... whatsoever which may exist between the parties as of September 17, 2007." Here again, the above comments apply with respect to para. 4, and PEC's obligations.

6. PEC has violated this para. 4 provision also. PEC has refused to file a stipulation for dismissal with the Court to facilitate a "mutual release" as required under para. 4 and the above-cited SCRCR rules.

Additionally, PEC has breached its contract with the undersigned Beatrice Weaver to provide electric power to a residence located at 1249 Harlees Bridge Road, Dillon S.C. by unilaterally converting, without any prior written notice or agreement to amend the contract, its status to "small commercial" in violation of Commission Reg. 103-442 as to agreements for service. Para. 4 was supposed to fix that situation with a return to "residential" status which has existed since 1994. PEC refuses to reverse that classification and continues in violation of para. 4. The undersigned has "mutually released" as required and shall look to the Court to enforce PEC to meet its obligations.

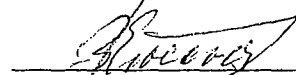
7. The Mutual Release applies only to the undersigned as separate individuals and to PEC.

8. The Release applies only to matters before the Court and the Commission as of and inclusive of September 17, 2007. Any matters that have or may occur between the three parties commencing as of September 18, 2007 are not covered by the terms and conditions of the Release.

9. The undersigned has requested a Jury Trial of the many issues related to PEC's violation of all of the terms and conditions of the Release. This may or may not involve concurrent jurisdiction of administrative matters referred to in para. 5 of the Release.

10. It is noted for future reference that PEC has stated categorically to the Commission that it will comply with any request for a change of providers with any qualified entity that comes forward. There is no time limit on this commitment, nor any restriction of the entity that may replace PEC. Your Office may note that issues relating to para. 5. of the Release are also to be placed before the jury on several grounds, particularly PEC's fraud, fraudulent inducement and fraudulent acts.

Respectfully submitted,


Beatrice Weaver
1253 Harlees Bridge Road
Dillon S.C. 29536
Ph: 843 841 1606
Fx: 843 774 2050


Gary Weaver
PO Box 7682
Florence SC
29502

Att: Exhibit A, Mutual Release

cc: The Hon. Paul M. Burch
Presiding Judge, Dillon Court of Pleas
P.O. Box 276,
Pageland S.C. 29728

The Hon. Gwen Hyatt
Clerk of Court, Dillon County
PO Drawer 1220,
Dillon S.C. 29536

Daniel H. Shine, Esq.
211 W. Hampton St,
Dillon S.C. 29536

Mark W. Buyck, Jr. Esq.
P.O. Box 1909
Florence S.C. 29503-1909

Ms. Shannon Bowyer Hudson, Esq.
Counsel, Office of Regulatory Staff of S.C.
1441 Main St, Suite 300
Colombia S.C. 29201

VIA TELEFAX AND US. CERTIFIED MAIL

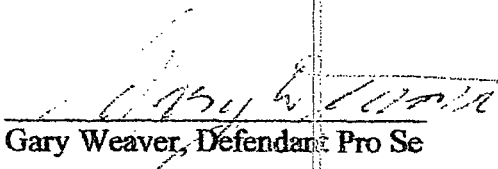
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	CASE NUMBER 2004-CP-17-232
Progress Energy Carolinas, Inc.,	)	NOTICE OF PLAINTIFF'S NON-
	)	COMPLIANCE WITH COURT
Plaintiff,	)	ORDER FILED FEBRUARY 28, 2008
	)	AND CONTEMPT OF COURT;
vs.	)	AFFIDAVIT OF GARY WEAVER;
	)	CERTIFICATE OF SERVICE
Gary Weaver and Beatrice Weaver,	)	
	)	
Defendants.	)	JURY TRIAL REQUESTED

**NOTICE OF PLAINTIFF'S NON-COMPLIANCE WITH COURT ORDER
FILED FEBRUARY 28, 2008 AND CONTEMPT OF COURT**

Comes now Gary Weaver Defendant Pro Se ("Defendant") and files this Notice of Plaintiff's Non-Compliance In Toto With Court Order Filed February 28, 2008 and Contempt of Court.

Pursuant to Rules 8, 9, and 46 of the South Carolina Rules of Civil Procedure ("SCRCP") this Defendant claims relief as provided in said Order, this Defendant's Motion for Enforcement filed on October 25, 2007 and the pleadings filed attendant thereto and Affidavit attached hereto.

DATED: Florence, April 14, 2008



Gary Weaver, Defendant Pro Se

(44)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2004-CP-17-232

Progress Energy Carolinas, Inc.,)
)
Plaintiff,)

AFFIDAVIT OF GARY WEAVER;

vs.)

Gary Weaver and Beatrice Weaver.)
)
Defendants.)

AFFIDAVIT OF GARY WEAVER

County of Dillon)
)
State of South Carolina)

SS

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant",
deposes and says as follows:

1. Affiant is a Defendant Pro Se in the above titled case.
2. This Affidavit is respectfully submitted as a supplement to Affiant's Notice of Plaintiff's Non-Compliance In Toto With Court Order Filed February 23, 2008 and Contempt of Court.
3. On January 30, 2008 the Court held a hearing on the respective motions of the Plaintiff and this Defendant to enforce the Mutual Release the parties executed on September 18, 2007 to compromise and settle the case.
4. The Court issued its Order on February 18, 2008 wherein it ordered that "...all parties are to abide by its (the Release) terms..."
5. Defendants were incorrectly ordered by the Court to comply with paragraphs 3 and 4 of the Release on or before 45 days of the Order date. This order was incorrect since there were no matters to be dismissed before the commission and Plaintiff never produced any evidence at any time that there were any such matters extant to be

dismissed. The Order was redundant in that all matters covered under para.3 and para. 4 were duly disposed of on the record by the Public Service Commission of South Carolina ("Commission") in May 2007, and confirmed again by the Commission at Defendants' request, in November 2007, duly documented to this Court in Affiant's pleadings. Affiant states that any stipulations for dismissals to be filed in this Court are the legal responsibility of the Plaintiff under the Rules of the Court as cited in Affiant's pleadings. (SCRCR Rules 40 (j), 41 (a)(1)(ii) and 43 (k), which do not permit Defendants' to file stipulations for dismissals..

6. Affiant filed a formal Request for Clarification of the Order on or about March 10, 2008. On or about March 26, 2008, The Court promulgated its Order in response that the terms of the February 28, 2008 Order "are crystal clear with no ambiguities." Affiant has or will shortly file a Motion for Reconsideration of the Order in order to correct the record and the Court's mistake as to para. 3 and para 4 which issue is relevant to the jury trial of issues, facts, relief and damages requested by this Affiant. The record clearly shows that Plaintiff and not Defendants are in violation of para. 3 and para. 4. which apply to all three parties.

7. Notwithstanding the objections, the application of the two paragraphs to all three parties, the several Court rules governing dismissals of action, and the factual record, in good faith and to be in strict in compliance with the Court Order under protest, Defendants duly filed the ordered dismissal with the Commission. See Letter addressed to the Commission dated April 9, 2008, copy filed for the record with the Court.

8. The Court's Order also stated that failure of all the parties to comply with the Court's Order "...shall subject the parties to the contempt of the powers of the Court..."

9. As of this date, Plaintiff has not complied with any of the five paragraphs, although the terms of Para. 5 of the Release are presently before the Commission for processing. In that Plaintiff committed fraud, fraudulent inducement and a fraudulent act with respect to para. 5 of the Release, the issue will be before this court in due course.

10. Accordingly, Plaintiff is not only in continued breach of the Mutual Release agreement, in continued breach of Commission Reg. 103-341 agreement, and the Court Order, it is also in contempt of the powers of the Court as stated in the Order.

11. Affiant also respectfully reminds the Court of its admonishment to the Plaintiff

at conclusion of the Hearing on January 30, 2008 as to the consequences of its not complying with the Court's Order. A transcript has been ordered by Affiant which has not arrived as of this writing and shall be filed under separate cover on receipt.

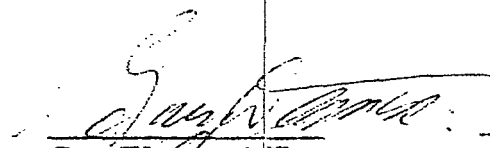
12. Affiant now looks to the Court to enforce its Order of February 28, 2008 against Plaintiff. Since the said Order is "crystal clear with no ambiguities" by the Court's directive, Plaintiff has no excuse for its non compliance with the Order and contempt of court.

13. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case; that he is competent to make this deposition; that he alleges and avers that the facts are well grounded as stated herein, and the exhibits attached hereto are true and correct copies of the original documents and by reference are made part hereof.

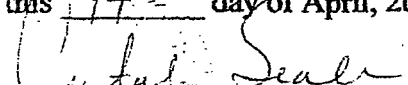
14. Affiant reserves the right to submit further evidence as may be necessary to support said memoranda and motion.

Further, Affiant sayeth naught.

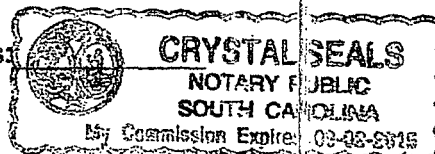
DATED: Florence, April 14, 2008


Gary Weaver, Affiant

Subscribed and sworn to before me
this 14th day of April, 2008


Notary Public, State of South Carolina

My Commission expires:



JL
cc

P.O Box 7682
Florence, S.C. 29502

April 29, 2008

The Hon. James E. Lockemy
Judge, Court of Pleas, Dillon County
P.O. Box 750, Dillon S.C. 29536

Dear Judge Lockemy:

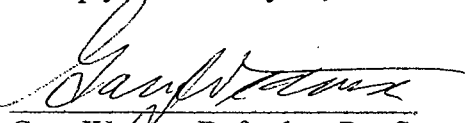
Subject: Response to Plaintiff's Letter dated April 24, 2008
Ref: Docket No. 2004-CP-17-00232
Progress Energy vs. Weaver

This morning the undersigned received a copy of Mr. Mark Buyck's letter addressed to you dated April 24, 2008. Once again to correct the record, I am forced to impose on the Court's time, and file the attached affidavit and formal response in rebuttal, given the pleadings pending the Court's further disposition.

Following is a summary of the response:

1. Characteristically, Mr. Buyck has again demonstrated his self serving misrepresentation and distortion of facts, and has committed an outright lie to the Court. Again he has neglected to include the Exhibits.
2. Progress Energy did not attempt to contact the Defendants before or between April 11 and April 22, 2008. That is an outright lie intended to cover up Progress Energy's violation of the Mutual Release terms and conditions, and Plaintiff's non-compliance and contempt of court by ignoring Judge Burch's Order.
3. Mrs. Beatrice Weaver did not "cancel" any connection of power to 1253 Harllees Bridge Road. As Mr. Cagle's letter states, she simply put the order on hold pending contact from her attorney and her prompt return call. Given the on-going litigation on outstanding matters, she claimed the proper procedure was to make arrangements through the respective attorneys and that Mr. Buyck should contact Mr. Shine. The Court should also know of this development given Plaintiff's contempt of court.
4. Mr. Buyck's claim that the case has been dismissed is incorrect, and there is a question about the status of the Docket complicating the filing of pleadings. See my motion for declaratory judgment.
5. The Court is again respectfully requested not to disburse the funds on deposit, until the case is finally settled. Plaintiff and its attorneys welched on their deal in September 2007 and ignored Judge Burch's Order to comply on February 28, 2008.

Respectfully submitted.


Gary Weaver, Defendant Pro Se

Attachments: Formal Response
Exhibits A-C

Cc: The Hon. Paul M. Burch
Daniel H. Shine, Esq.
Mark W. Buyck, III, Esq.

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AFFIDAVIT OF GARY WEAVER

County of Dillon)
)
State of South Carolina)
_____) SS.

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant,"
deposes and says as follows:

1. Affiant is a Defendant Pro Se in Docket 2004-CP-17-232, Dillon Court of Pleas,
and hereby files the document titled: "Defendant Gary Weaver's Formal Response to
Plaintiff's Letter Dated April 24, 2008 Filed by Mr. Mark W. Buyck, Jr., Esq.," attached
hereto and part hereof.
2. Affiant makes this affidavit from personal knowledge and belief of the facts of the
case, and not for any improper purpose or to cause unnecessary delay in proceedings, or
needless increase in the costs of this case. Affiant is competent to make this deposition.
Affiant alleges and avers that the facts are well grounded as stated herein, and any
exhibits attached hereto are true and correct copies of the original documents and by
reference are made part hereof.

Further, Affiant sayeth naught.



Gary Weaver, Affiant

Subscribed and sworn before me
this 30th day of April, 2006.



Notary Public, State of South Carolina

My Commission expires: My Commission Expires February 7, 2017

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**DEFENDANT GARY WEAVER'S FORMAL RESPONSE TO PLAINTIFF'S
LETTER DATED APRIL 24, 2008 FILED BY MR. MARK W. BUYCK, III., ESQ.**

Introduction

Once again, Mr. Buyck on behalf of his client Progress Energy comes to the Court with unclean hands, having sat on their hands for some seven months in violation of the Mutual Release dated September 18, 2008, and subsequently in contempt of court authority, ignoring Judge Burch's Orders dated on or about February 28, and March 28, 2008.

Even allowing for the broadest latitude to an attorney representing his client, Mr. Buyck's letter to the Court dated April 24, 2008 has again demonstrated his self serving misrepresentation and distortion of facts, and committing of an outright lie to the Court. Characteristically, he has also neglected to include the Exhibits.

I wish to place this situation on the record for future reference at trial, possible appeal, and more specifically for the Court's consideration in deliberating the matters referred to in Mr. Buyck's letter.

Mr. Buyck incorrectly claims that Judge Burch has issued orders ending the case. (p.2, para.2, line2). Thus, I have filed a separate motion for a declaratory judgment of even date referring to the status of the case on the Court's File Book of Dockets (See, **Rule 79, S.C.R.C.P.**)

This is of direct relevance since I have several pleadings on file pending Court disposition, and plan to file another. Furthermore, as of this date, the Plaintiff still has not complied with matters provided for in paragraph 4 of the settlement agreement. Mr. Buyck's reference to paragraph 3 is a mis-statement and mis-leading, (p1. para.1, line 5), as is the reference to Judge Burch's Order of March 28, 2008.

Case Background to the Mutual Release Compromise and Settlement Agreement.

Despite the pleadings on file, it has been observed that the Court may not be fully aware of all the facts of the background of the continuing dispute between the parties.

Thus it is believed relevant here to briefly review for the record the essential factors underlying the protracted differences that exist between the parties. Justification for this view lies in Plaintiff's continuing violation of the doctrine of laches, its breach of two agreements and its contempt of court, my request for jury trial and summary

judgment, the possibility of the need for appeal, and Mr. Buyck's mis-leading letter of April 24, 2008.

1. **Origin of Docket 2004-CP-17-232.**

This complaint originated in the Spring of 2004 when Progress Energy's Ms. Pam Hardy, unilaterally and illegally in violation of Commission **Regulation 103-341** which establishes an agreement between the utility and the customer, summarily changed the status of the building located on an adjacent property at 1249 Harllees Bridge Road, Dillon S.C. from "residential" to "small commercial." This breach of the service agreement was made arbitrarily without prior written or verbal notice to Mrs. Weaver, another violation of Commission regulations. The building had been "residential" for ten years prior since 1994.

Ms. Hardy not only illegally changed the "residential" status, she also cancelled an existing account with a credit balance. She issued a brand new "small commercial" account number with a debit balance showing, and ignored all protests to the contrary, to this day.

That is when Mrs. Weaver filed a complaint with the Commission in early Spring of 2004 regarding this involuntary change of status and incorrect billing procedure. She was assigned an "investigator" by the name of "Chad." Mrs. Weaver requested "Chad" to visit the property to verify the "residential" status of the building. Pursuant to Commission Regulation **103-345 (A)** a customer complaint concerning the charges, practices, facilities or service of the electrical utility "...shall be investigated promptly, thoroughly and professionally." Furthermore, under Reg. **103-345 (B)** the electrical utility "...shall refrain discontinuing the service of that account until the commission's investigation is completed and the results have been received by the electrical utility."

"Chad" required to undertake a prompt investigation pursuant to **Reg. 103-345**, took some **six months** to visit the property and "investigate" sometime in November the Fall of 2004. That is not a "prompt" investigation. And there never was a report filed or any corrective action taken by the Commission. Defendants exhausted administrative relief and efforts in mitigation of the damages.

Mrs. Weaver had also requested a test of the meter at that property to verify its accuracy. Regulations require an independent private sector third party to conduct the

test. Instead, "Chad" arrived with a small staff of Progress Energy employees and an "independent observer" in violation of the Commission regulations.

The meter test was done by Progress Energy staff with its equipment, in violation of the regulations, under the ostensible "observation" by the "independent observer." The meter was supposed to be done by a third party from the private sector. The party also trespassed on the adjacent property at 1253 Harllees Bridge Road, and removed the unused meter from Mrs. Weaver's residence, and took unauthorized photographs of Mrs. Weaver's property. None of these activities had anything to do with the ostensible purpose of the inspection of the residence and testing of the meter at the adjacent 1249 Harllees Bridge property.

The undersigned was present together with Mrs. Weaver's groundskeeper "Willy" as a witness. I told the Progress Energy staff they were not authorized to take photographs, that it was an invasion of privacy, to cease photographing the property, and to remit copies of the photographs to Mrs. Weaver, which they have refused to this date.

The undersigned personally showed "Chad" the main "front gate" to Mrs. Weaver's residence that is always closed but not locked as Progress Energy's Meter Readers always complained. I also showed him the correct designated gate for ingress and egress so that there could be no further confusion. There was a long history of Progress Energy's meter readers not using the correct ingress/egress gate as designated by Mrs. Weaver, thus violating **Regulation 104-344**. The Commission turned a blind eye to all of the regulatory violation which prevented Defendants from peaceful enjoyment of the property. Plaintiff's violations also placed a burden on Defendants.

For example, Mrs. Weaver requested me to be present every month between the 3rd and 5th days the designated time for the meter readers to visit the property and read the meters. Rarely did the readers stay within that designated schedule for reading the meters. The main reason for my presence was security and to prevent unidentified persons (especially non-English speaking employees) aimlessly wandering around the three properties, not knowing where to find the meters.

The record shows that the meter readers were poorly supervised, never properly briefed, usually could not find the three meters on the three separate properties, and never carried any identification when requested as required by Commission **Regulation 103-**

344. This led to a long repetitive series of aggravations and friction between the parties. Some of the meter readers and other field employees could not speak English and a security problem existed for elderly Defendants who have lost a lot of small tools, etc from theft. On a regular basis the meter readers made estimated billings in violation of Commission **Reg. 103-339 (6)** because they were too lazy to use the designated ingress/egress gate or unable to find the three meters, for which they had not been properly briefed by their supervisors.

I personally discussed the situation and conducted an inspection of the residential building with "Chad," the Progress Energy staff, and Mrs. Weaver's groundskeeper "Willy" who had prepared the residence for the inspection. The Commission's representative "Chad" and the Progress Energy staff were shown the kitchen, bathroom, living room and attic of the building which were the standard requirements for "residential" status according to Progress Energy's Customer Service Staff. That had been the status for ten years dating from 1994. Said "Chad" promised a "report" which to this day has not arrived, although the meter test results were remitted.

The Commission and later the Office of Regulatory Staff (ORS) did absolutely nothing to effect a change of status back to "residential" from "small commercial" under the auspices of Progress Energy, nor improve the meter reading problem.

Shortly after the inspection of the residence, **Ms. Hudson from ORS wrote an ex parte, harmful letter to "Dear Len" (Mr. Len Anthony, Counsel for Progress Energy) asking him if she should "close the book" on the case.** She did his bidding and closed the case without a hearing or any investigative reports.

Thus, since 2004, Progress Energy continues to bill Mrs. Weaver for electric service to 1249 Harllees Bridge Road at the higher rate and more inconvenient terms and conditions for "small commercial." Note that there has been absolutely no electric service directly connected to her residence at 1253 Harllees Bridge Road since December 21, 2001.

That is some of the background to the para. 3 and 4 settlement issues in the Mutual Release. Progress Energy was supposed to return the status of the property at 1249 Harllees Bridge Road back to "residential" under para. 4 of the Release. It has not, and refuses to do so.

Hence Progress Energy continues in breach of agreement under **Reg. 103-341**, and is in non compliance and contempt of court on that one issue alone. And under para. 1 and 2 of the Release, Progress Energy was supposed to connect electric power to the residence at 1253 Harllees Bridge which it has refused to do, until it precipitously contacted Mrs. Weaver on April 22, 2008 under threat of sanctions.

Accordingly, Defendants have sought injunctive relief and refund of the 2.5 cents per KWH overcharges since Spring 2004 to the present. **That is another reason why we ask the Court to retain control of the funds on deposit with the Court.**

2. **The Commission's Dismissal of Mrs. Weaver's Counterclaim on May 3, 2007.**

As further background to an understanding of Progress Energy's violation of the Mutual Release, we briefly report the Commission's processing of the case and Mrs. Weaver's Counterclaim. When Mrs. Weaver first requested a Hearing in 2004, it was scheduled first on the eve of Christmas when the Commission was actually closed, and then when she objected, it was re-scheduled for the "Passover" Holiday period when the Commission office was closed. Thereafter the Chairman of the Commission held a hearing when it was decided that Mrs. Weaver was "either unable or unwilling" to attend a Hearing. The Commission summarily dismissed her case on May 3, 2007, notwithstanding the medical reasons for continuances, which this Court accommodated.

Mrs. Weaver chose not to exercise any appeal rights pursuant to **S.C. Code Sect. 58-27-2150 for Rehearings, Sect. 58-27-2310 to vacate, etc., Sect. 38-27-2320 for stay**, etc. As of the September 18, 2007 date of execution of the Mutual Release there were no pleadings pending before the Commission and Defendants had forfeited any appeal rights. Moreover, Plaintiff never produced any proof of any pleadings pending before the Commission, then, during the negotiations, or since. There was nothing to "dismiss." And it was Plaintiff's legal obligation and duty to prepare the stipulations for dismissal pursuant to Rules 79, 40 (j), 43 (k) and 41 (a)(1)(ii), not Defendants.

Note that some 24 hours before the Commission Hearing took place in May 2007, ORS' Mrs. Hudson, issued a letter wherein she "fully approved" of the Commission's decision to dismiss the counterclaim. The issue had not even been heard when she remitted the letter to the Commission. This is further background to the processing of the

case and the issues covered under para.3 and 4 of the Release that Defendants request Progress Energy to comply with.

The crux of the matter in this case, is Progress Energy's documented violations of statutes and regulations, its cover up with the regulatory agencies' compliant support, and abuse and harassment of Mrs. Weaver. That is what has brought us to where we are today.

The utility continues in its unabashed contempt of court, breach of two agreements and takes for granted the regulatory agencies' compliant and accommodative support. Defendants' have exhausted administrative relief.

Pursuant to para. 3 and 4 of the Release, Progress Energy must: restore the "residential" status from "small commercial", refund the overcharges, install telephonic meters that do not require human meter readers, ensure its staff provide proper identification on request, and cease sending any meter readers and other personnel on to the property that Mexican workers who cannot speak English.

3. **Clarification of the intermittent use of Mrs. Weaver's legal names.**

"Mrs. Gary Weaver" or "Beatrice Weaver" is Defendant Beatrice Weaver's married name. Her professional name and title is: "Prof. B.E.A. Wallenstein, Ret."

The latter name is used for business and legal matters. The Defendants were married late in life and retained their respective professional names to facilitate separate professional and business activities.

Pursuant to Commission **Regulation 103-341** the original service agreement with Progress Energy was executed in 1994 by Mr. Shine on my behalf, in my name only. Mrs. Weaver was not in South Carolina at that time and was in fact thousands of miles away. She was not and it was not intended for her to be a signatory to that original contract which is the subject of this continuing dispute over collection of my alleged debt. That original contract executed pursuant to Commission **Regulation 103-341**, was terminated in 2002 two years before Plaintiff filed its action on July 9, 2004.

Negotiations for the new account for connection of electric power to 1253 Harllees Bridge Road, was actually originated in 2004 when Mrs. Weaver obtained a Business License to open her Renaissance Estate as a "B&B" enterprise in order to create income from a dormant capital asset. She applied to Progress Energy to connect electric

power to the property, and was refused on direct orders of Mr. Len Anthony, Counsel for the utility.

Mr. Len Anthony illegally and improperly denied her the use of her property to generate income in 2004; even though Mrs. Weaver never signed my contract with Progress Energy and was not liable for my alleged bill which was in dispute (See Commission **Regulations 103-342 (k)**), and which I never refused to pay upon receipt of a proper reconciliation and accounting, still not delivered to this day.

Adding insult to injury, as noted on July 9, 2004 Mr. Anthony then filed the subject complaint against her for my alleged bill, improperly claiming liability under the "doctrine of necessities" and of doubtful liability under the **statute of limitations** for breach of contract. My alleged liability originated in November 2000, more than three years before filing of the claim in this Court. (an alleged breach of contract for a disputed consumer debt claim).

As cited in my pleadings, recent case law promulgated by the S.C. Appellate Court related to the doctrine of necessities, requires a spouse to be a signatory to the contract in question for the doctrine to apply, and the constitutionality of applying the doctrine to a spouse is also questioned by the S.C. Appellate Court. Significantly, it is noteworthy that Mr. Len Anthony's fabrications have not been questioned by anyone anywhere, and will be an issue at the jury trial that has been requested, and/or on appeal.

To harass and abuse Mrs. Weaver in retaliation for the earlier complaints she filed with the S.C. Public Service Commission, Mr. Anthony also filed two frivolous and nuisance petitions with the Commission in 2004. He also improperly included my name in the petitions. The first petition was to excuse Progress Energy's violation of Commission regulations in making excessive and successive "estimated" bills on spurious grounds in violation of **Commission Reg. 103-339 (6)**. The second ridiculous petition was to permanently terminate service to Mrs. Weaver, (and myself), and for all her business enterprises, her heirs (and probably her pets), from ever getting electricity from Progress Energy.

It was this incredible, absurd and ludicrous petition that led to Mrs. Weaver filing a **counterclaim** against Progress Energy (not a "claim" as stated by Mr. Buyck in his letter). The Commission subsequently dismissed her counterclaim on May 3, 2007, and

confirmed the dismissal again on November 8/13, 2007 (per para.3 and 4 of the Release), on the technical grounds of her inability to appear for hearings due to her cancer and other ailments. It is this dismissal that Mr. Buyck claims should have been again dismissed by Defendants in this action. See **Exhibit A**.

At the settlement negotiations on September 18, 2007 this was the dismissal that Mr. Buyck wrenched out of Mrs. Weaver as a condition of settlement, even though the matter had already been dismissed. See **Exhibit A**.

Thus, Mrs. Weaver an ailing, ill, 80 year old woman, scheduled for surgery two days later, who never signed my contract with Progress Energy, and who never owed Progress Energy a red cent, was induced by a team of three lawyers to agree to the payment of a settlement amount that was my liability, which she did not owe, and to dismiss Len Anthony from his embarrassingly ridiculous petition which had already been dismissed by the Commission in May 3, 2007, five months earlier, and to accept a condition that Progress Energy fraudulently agreed to (para 5.).

4. **The Original Cause of the Dispute and Continuing Acrimony.**

At this point it is imperative to place on the record, that the illegal actions and disconnect of service on December 21, 2001, violated every single Commission regulation and rule governing disconnect of service to a residence. It also is the direct cause of a stroke for Mrs. Weaver in the Spring of 2002, and Mrs. Weaver is handicapped and disabled since that time. The following record is relevant to the jury trial that has been requested and possible appeal.

On Friday, December 21, 2001 on the eve of Christmas Holiday Season, after 1.00 p.m. when most businesses and banks were closed for the holidays, a Progress Energy truck and several persons, arrived at the front gate of the residence, together with a Deputy Sheriff.

Mrs. Weaver was in the estate office, when a telefax arrived from Progress Energy's Ms. Pam Hardy shortly after 1.00 p.m. at the same time as the Sheriff was making his way through the front gate. The telefax refused a **deferred payment plan** that had been proposed earlier in good faith. See, Commission **Regulation 103-352 (c)**. The telefax demanded a cash payment of \$3,000.00 by 12.00 noon that day into the

hands of the three Progress Energy representatives present. The telefax arrived shortly after the deputation at the front gate.

Of course it was a physical impossibility to comply with such a request at such short notice and it had the hand print of Mr. Len Anthony using "gangster-like" tactics. A Progress Energy linesman came to the office and asked Mrs. Weaver if he could use the phone. He called Mr. Gary Walsh, the then Executive Director of the Commission. Mr. Walsh was actually in his office after all the public offices were closed on that day for the season holidays. In the presence of Mrs. Weaver the linesman asked Mr. Gary Walsh if he should also disconnect the Area Security Lights and Surge Protector device. Mr. Walsh said to "disconnect them." So we have the Commission's Executive Director directly and personally involved in the disconnect action in illegal ex parte communications with the utility linesman that harmed Defendants.

Mrs. Weaver argued with the linesman informing him there were no outstanding bills on those separate accounts which were fully paid up. The linesman said: "when Mr. Walsh says to disconnect, I disconnect." Mr. Walsh was acting at the bidding of Mr. Anthony.

The December 21, 2001 raid to disconnect was carried out without any prior notice as required by the Commission regulations. The only notice was the telefax received at the same time as the raid. Cash is never carried in the residence for security reasons and banks were closed on the eve of Christmas.

The Progress Energy linesman proceeded to disconnect all the security lights, the surge protector and power to the residence. This caused the well water pump and the residential security alarm system to stop and eventually become dysfunctional, together with the refrigerators and freezer causing the loss of hundreds of dollars of food, etc. All the appliances and lights were off. The electric elevator to the upstairs rooms and Mrs. Weaver's bedroom ceased to operate as did the essential medical equipment. The old brick house became cold as a morgue as the heating units were off. And it happened to snow over that weekend and we were "snowed in" for three days against regulations.

Of course an elder ailing woman could not cope with such an assault on her very way of life and sometime in February 2002 she suffered a stroke from which she is still handicapped. Progress Energy has willfully, wantonly, negligently and recklessly

ignored all medical certificates of necessity, and since 2002 has steadfastly refused to provide power to Mrs. Weaver on the dubious grounds of the doctrine of necessities. Progress Energy has of course established on the record that electric power is a "necessary" of life and has placed itself in a position of *contradictio in adjecto* and is to be held accountable at trial.

These background facts underlie the intent and purpose for Defendants executing para. 3 and para. 4 of the Release and para. 5. Progress Energy wants to escape its liabilities to Mrs. Weaver, and Mrs. Weaver wants Progress Energy to cure the outstanding matters as described herein, which first occurred in December 2001 and since. That was the reason for agreeing to para. 4 of the Release which Progress Energy continues to ignore having agreed in writing to cure the outstanding matters on September 18, 2007..

Detailed Response to Mr. Buyck's Letter Dated April 24, 2008

Following is an issue by issue rebuttal.

1. First, I wish to point out Mr. Buyck's continuing practice of neglecting to include "the attached filing" referring to the S.C. Public Service Commission "ostensibly dismissing their (Defendants) PEC complaint which was a condition of the settlement agreement;" (p1, para.1, line 9). Mr. Buyck has a habit of leaving out his Exhibits. He did it with Exhibit A in his first complaint in this action, and again in his second amended complaint, and this Court let him get away with it. In September 2007, he neglected to include a copy of his draft stipulation for dismissal in his correspondence, and he knew it was his legal duty to file under Rule 41(a)(1)(ii).and Rule 79 SCRCF.
2. As noted, Mr. Buyck misleadingly refers the Court to "their PSC complaint." (p.1, para.1, last line). There never was a PSC "complaint" filed by Defendants, (either jointly or severally) with the Commission, to be dismissed by anyone. Mrs. Weaver had filed a **counterclaim** to the Plaintiff's frivolous and nuisance petitions that it filed in 2004 on three spurious grounds as retaliation for Mrs. Weaver's earlier request for the Commission to investigate certain of Plaintiff's accounting and billing practices. Those requests were discharged by the Commission and the O.R.S. at the behest of Progress Energy. The Commission dismissed Mrs. Weaver's counterclaim action on or about May 3, 2007 and confirmed the dismissal again in November 8, and 13, 2007 at her request in

compliance with paragraph 3 of the Mutual Release. This is all documented on the record. See the Offer of Proof filed at the January 30 Hearing. Both the Plaintiff and Judge Burch are wrong on this para 3 and 4 issue. And I shall file a **Rule 60 (b)** motion for reconsideration in due course, preparatory to trial or appeal.

3. Motion to reconsider or amend: I filed with Judge Burch a "Request for Clarification of the Order" following case law requirements cited by the S.C. Appellate Court. It was not intended to be a motion for reconsideration or amendment, per se. Judge Burch deemed it to be a **Rule 59 (e)** petition, stating his order was "crystal clear." On that basis, Plaintiff has no argument for its non-compliance with the Judge's order to do what it was supposed to be done in September 2007 and since February 28, 2008. As matters stand, Plaintiff is still in breach of two agreements and has failed to comply with curing matters provided for under para 4. of the Release.

On April 10, 2008 Defendants filed **Exhibit A** under protest and threat of sanctions. I continue to respectfully disagree with Judge Burch's ruling as to para 3 and 4 of the Mutual Release. It is contrary to the facts on record, the Court's rules of procedure, and Judge Burch's three Orders in this case. Please refer to my Motion for Declaratory Judgment on that issue filed of even date hereof.

4. **Mr. Buyck is outright blatantly and irresponsibly lying to the Court. He states categorically, without any documentation, that Plaintiff "since April 11, 2008 has been in contact on several occasions with Mr. And Mrs. Weaver concerning the re-connection of service to 1253 Harllees Bridge Rd, Dillon."(p.1. para. 2, line 1).**

First, not to put too fine a point on it, there is no "re-connection" of service involved. The Mutual Release provides that Progress Energy would make a new connection to the residence in the name of Beatrice Wallenstein only. The undersigned is not party to that matter.

Second, at no time since the September 18, 2007 signing of the Mutual Release, has anyone from Progress Energy contacted the undersigned, either in writing, verbally or with any pleadings filed with the Court, concerning the connection issue or the other outstanding matters that Progress Energy has neglected under paragraph 4 of the Release.

Since September 18, 2008, **Plaintiff's first contact with Mrs. Weaver concerning the connection issue was a telephone call on April 22, 2007, some seven**

months after it was supposed to connect in September 2007, and some eight days after Judge Burch's deadline date expired on April 14, 2008.

At no time between September 18, 2007 and April 22, 2008 has anyone from Progress Energy contacted Mrs. Weaver about the new connection. Nobody attempted to contact her on April 11, 2008 or since until April 22, 2007, the one and only contact made, to make arrangements for the new connection.

The Office computer automatically records all incoming phone and fax calls as to time, date, and originating number. See **Exhibit B** hereto. No such calls came from Progress Energy as stated by Mr. Buyck, and no agents came to her property since September 18, 2007 .

I challenge Mr. Buyck to offer to the Court and Defendants, documentary proof of the alleged efforts on April 11 to April 22, 2008 to contact Mr. and Mrs. Weaver about the new connection. On April 11, 2008 I was at the Court to obtain the address of the Court Reporter on duty at the January 30, 2008 Hearing in order to request a transcript. Mrs. Weaver was taken very ill and spent the day in retreat and did not take or make a single call on that day. The computer shows no record of any calls from Progress Energy from April 11 to April 22, 2008.

The significance of making an issue of the alleged the April 11, 2007 date used by Mr. Buyck is that the undersigned filed a notice of Plaintiff's non-compliance and contempt of Court, on or about April 14, 2007. The 45 day date certain for the parties to comply set by Judge Burch fell on April 14, 2007. I have filed a motion for summary judgment and sanctions.

Mr. Buyck is merely trying to "cover" for his client who negligently ignored Judge Burch's "crystal clear" order to comply with the terms of the Release which according to Judge Burch cannot be misunderstood by Plaintiff. Said notice of Plaintiff's non-compliance is the precursor to filing a motion for contempt pursuant to **Rule 79 (g)**. See below.

As a final comment on this issue for the record, since execution of the Mutual Release on September 18, 2007, the Plaintiff contacted Mrs. Weaver only twice. On or about October 2, 2007 a field agent came to the property to connect power and install a new meter. I personally escorted him to the meter base. He then told me he had come

"with the wrong meter" He promised to return with the right meter and install it the following week and never did. On October 4, 2007 I complied with Plaintiff's request for an inspection and approval by the Dillon County Building Department.

Several days later on or about October 5 or 6, 2007, another agent came to the residence claiming to be from the "Revenue Dept" of Progress Energy in Raleigh, N.C. He asked to see the owner of the residence, claiming he was there to collect \$5,500 owed to Progress Energy. He had no identification. I informed him of the earlier settlement agreement and sent him back to see Mr. Len Anthony and/or Mr. Cagle in Raleigh with my compliments, and the message to cease and desist from further harassment and abuse.

Until April 22, 2008 those are the only contacts with Plaintiff concerning connection of power or curing the other matters under para. 4 of the Release. Mr. Buyck is deliberately lying to the Court about any alleged April 11, 2008 contact with the Defendants simply to cover Plaintiff's manifest contempt of court and breach of agreements.

5. Connecting the service. At no time was Mrs. Weaver "cancelling a connect order." Again, Mr. Buyck is mis-stating the facts and mis-leading the Court. The undersigned happened to be present on April 22, 2007 when Progress Energy's Ms. Hill telephoned Mrs. Weaver at approximately 10.00 a.m. stating that she had an "order" to connect the electric service "tomorrow." Mrs. Weaver stated the call to be in violation of proper Court procedure given the litigation that still exists between the parties. See **Exhibit C** hereto.

Mrs. Weaver asked Ms. Hill when she received the Order and from whom, to connect service on April 23, 2008. Ms. Hill replied that she had received it "today" (April 22) from the Legal dept. This call followed the under-signed's filing of a motion for summary judgment for enforcement and contempt of Court against Plaintiff, just a few days earlier.

6. Mr. Cagle's letter referred to by Mr. Buyck, makes it very clear that Mrs. Weaver temporarily deferred the connection until she contacted her attorney on the matter since this was a legal issue and Progress Energy is in contempt of Court. **It was Ms. Hill who cancelled the order for the connection to take place the next day (April 23, 2008)**

pending further communication from Mrs. Weaver, and/or her attorney. See Exhibit C. A copy of the "order" to connect is needed showing when, and by who.

7. Mr. Buyck's distorted representations are second hand "hearsay" comments only. He never communicated directly with Mrs. Weaver and/or her attorney on these matters. He has conveniently and intentionally mis -construed the facts as discussed above to suit his purpose to cover up his negligence in failing to attend to the matter in due time as ordered by Judge Burch..

This is not to be a surprise. This is the Len Anthony-Mark Buyck III modus operandi- distort, mis-represent, twist the truth and the facts, and cover up violation of statutes and regulations.

8. Disbursement of funds on deposit. Mr. Buyck would have the Court believe that Progress Energy stands ready and willing to "re-connect, the Weaver's Harllees Bridge Road location in the normal course of business."

First, as noted above, the account is in the name of Mrs. Beatrice Wallenstein. It has nothing to do with the undersigned. And it is a new account, not a re-connect. Mr. Buyck has consistently abused the process in that direction.

Second, Mr. Buyck made these same promises and a commitment in September 18, 2007 to induce Mrs. Weaver to execute the Release; i.e., that upon payment of the first increment and the security deposit he would have Progress Energy promptly connect the electric power to the new Wallenstein account. These were the only two pre-conditions. Specifically, note that Progress Energy's performance was not contingent on any other performance by any party of any of the other matters addressed in the Mutual Release. Defendants timely and duly met the two pre-conditions and Progress Energy promptly reneged on its deal as usual for seven months and continuing.

Based on previous experience dating since 2004, and September 18, 2007, the undersigned does not trust Mr. Buyck or Progress Energy to keep their word. Moreover, Progress Energy has already shown its contempt for the Court by ignoring Judge Burch's "crystal clear" order to connect . Progress Energy should have installed the new account and connected the electric power on or about September 24, 2007 in the first place, and following the Judge Burch February "crystal clear" order, on or about March 2, 2008 in the second place.

If the funds on deposit are released prematurely before Plaintiff is forced by the Court to **comply with all the issues** provided for in the Mutual Release, it will find some way to renege, and circumvent the Judge's Orders which it has already ignored in contempt of court. **Thus, the funds on deposit should not be released at this time.**

Finally, I have filed a previous request to the Court to refrain from disbursing the funds until my claim for a full refund, and damages are adjudicated by the Court at trial. **Under the case law of contract cited in my pleadings, a party who unilaterally breaches an agreement forfeits the consideration and the other party is relieved of any further obligation under the agreement.**

In this case, Progress Energy has breached not one, but two agreements with Defendants and is liable for such claims. Whether or not there will be a further third breach under paragraph 5 of the Release, remains to be seen pending disposition of the change of providers by the Commission. I predict that issue will end up back before this Court on appeal.

I am also asking the jury and the Court to order Progress Energy to bear the cost of changing providers, and/or installing alternative energy sources as partial damages for its breach of the agreements, **gross criminal negligence**, and other claims of record.

Progress Energy knew and should have known the importance of the electricity for Mrs. Weaver due to her seriously ill health situation and the numerous medical certificates of necessity on file.

Since September 18, 2007 the denial and breach have been the direct and proximate cause of the current metastasis of her cancer; i.e., the lack of electricity for medical care, home health care, and the resulting physical and emotional stress. The undersigned is pursuing Plaintiff's gross **criminal negligence** and related claims pursuant to the demand for jury trial pending before the Court.

Summary and Conclusion

The background and history of this case is one of Plaintiff's arrogant and blatant recurring violations of the Commissions' Regulations and certain statutes, accommodated by liberal and compliant regulatory oversight, and bad faith negotiations and breach of its agreements. Progress Energy regularly abuses its right of access to private property, and regularly sends incompetent people to do its work, especially meter readers.

On the other hand, Defendants are the kind of people who refuse to accept such standard of conduct, whatever the consequences. Plaintiff has abused the legal and regulatory process with relative impunity from the regulatory agencies and the court to date.

It is rather tragic that Progress Energy did not keep its word in September 2007. Planned surgery could not take place as "post-op" medical care and home health staff required electric power. **Unfortunately cancer metastasis waits for no one and is caused by stress.**

Due to the physical and severe emotional stress caused to Mrs. Weaver by Progress Energy not keeping its word, the cold winter months, lack of physical comfort and medical needs provided by "plug in" operating appliances, inability to use necessary "plug in" medical equipment by an ailing elder woman, all caused stress on the human immune system. The water well pump and the security alarm system were dysfunctional.

At the settlement negotiations on September 18, 2007 this situation was made very clear to Plaintiffs who took advantage and subsequently refused to connect electric power as agreed to Mrs. Weaver's residence. Defendants met all the agreed on requirements necessary to trigger the power connect and Plaintiff violated para. 4 of the Mutual Release.

Thus we find a hiatus commencing September 18, 2007, to April 22, 2008, some seven months, before Progress Energy decided to meet its obligation and connect the power as agreed. This in fact was a direct response to the undersigned's charge of non-compliance with the Court Order, and contempt of court.

Defendants are pursuing Plaintiff for criminal neglect, since it knew and should have known the consequences of its willful, wanton, negligent and reckless violation of the Mutual Release and the Court Order. The harassment and abuse has continued for some seven years, and seven months too late. Ms. Weaver will shortly enter hospice as an in-patient, which situation will be discussed under separate cover, etc. The perpetrators face potential federal investigation for wrongful death.

On these grounds, for good cause I respectfully request that the Court not disburse the funds on deposit and retain control until the outstanding issues have been resolved including conclusion of the requested jury trial.

Further, that the court order Progress energy to meet the other terms of para. 4 of the Mutual Release as cited above, especially changing the “small commercial” status of 1249 Harllees Bridge Road, back to “residential” status, rep[air of the well pump and security alarm systems, etc.

Respectfully submitted.

DATED: Florence, May 2, 2008

Gary Weaver, Defendant Pro Se

Attachments: Exhibits A-C.

Cc: The Hon. Paul M. Burch
Daniel H. Shine, Esq
Mark W.. Buyck, Esq.

April 9, 2008

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
S.C. Public Service Commission
P.O. Drawer 11649
Colombia S.C. 29211
Ph: 1803 896 5113; Fx: 1 803 896 5231

Dear Mr. Terreni:

Subject: Notice and confirmation of Dismissals pursuant to paragraphs 3 and 4 of Mutual Release dated September 18, 2007, Dillon Court of Pleas.

Ref: Progress Energy Petition No. 2004-219-E
Case No. 2004-CP-232, Dillon Court of Pleas.
"Mutual Release" dated Sept. 18, 2007 by and between
Progress Energy and the Undersigned.
Docket No. 2007-401-E Re Change of Providers

Pursuant to the Court Order dated February 28, 2008, in Case No. 2004-CP-232 in the Dillon Court of Pleas, the undersigned parties hereby confirm to the commission and the Court, the dismissals of matters as provided for in paragraphs 3 and 4 of the Mutual Release ("Release") dated September 18, 2007, copy attached hereto as Exhibit A and by reference made part hereof.

Please acknowledge and certify your receipt hereof by return mail, with copy to The Hon. Paul M. Burch, Presiding Judge, Dillon Court of Pleas, and Ms. Gwen T. Hyatt, Clerk of Court at the addresses provided herein below.

For the record, in filing this dismissal your attention is directed to the said paragraphs 3 and 4, and the caveats cited herein below.

1. This notice and confirmation of dismissal pursuant to said para. 3 and para. 4, is filed under protest as redundant, and under objection duly filed with the Court, in order to strictly comply with the Court's Order, under threat of sanctions.

2. The Order issued by Judge Burch directing the Defendants to comply with para. 3 and 4 is incorrect based on the facts. In fact the order should apply only to **the Plaintiff who has the legal obligation to prepare stipulations for dismissal pursuant to Rules 40 (j), 41 (a) (1) (ii) and 43 (k) SCRCP and as agreed in said para. 3 and 4.** Moreover, by the very act of executing the Release, the undersigned agreed to dismiss action stated in para. 3 & 4. It was the Plaintiff's obligation to prepare any dismissal documents for filing if such were necessary.

3. The Release was prepared by Plaintiff's attorney. Para 3 and 4 are ambiguous as to when, where, who, how and exactly what, was being implemented. Any shortcomings are construed against the drafter of the documents. No time constraints, conditions, or

EXHIBIT A.

contingencies were imposed, or order of priorities set for carrying out the agreement, and especially para.3 and para.4. Thus in interpreting the Release agreement we resort to the procedures provided in S.C.R.C.P. as cited herein. Para. 1 and 2 on the other hand are precise and have been manifestly violated by PEC and complied with by Defendants.

4. Note that paragraph 3 requires that **all three parties** to the Release "...will dismiss any complaint and any response thereto relating to any matter currently pending before the S.C. Public Service Commission."

1. As of this date the undersigned have not received a copy of any such dismissal by Progress Energy Carolinas, Inc (PEC). If and when your Office receives PEC's notice of dismissal please ensure the undersigned each receive a copy for file.

2. Plaintiff PEC has not provided any stipulations for dismissal with the Commission or the Court pursuant to Rules 40 (j), 41 (a) (1) (ii) and 43 (k) SCRC.P.

3. At the time of executing the Release or since, there were no complaints and no responses or counterclaims currently pending before the Commission. PEC's attorneys provided no documentation that such pleadings existed neither at the settlement conference, nor at the Court Hearing on January 30, 2008, or since. None existed.

4. On the contrary, there is sufficient evidence that all matters were dismissed by the Commission five months earlier, and, at the undersigned's specific request to clarify the situation by the Commission, confirmed again in November 2007.

5. The Commission had dismissed any and all action before it as to the undersigned, confirmed in writing by formal Order and directive and letter of the Hearing Officer. There are no matters existing between the parties before the Commission to be dismissed, as of September 17, 2007. If by some strange regulatory alchemy, there are any such matters between the parties, they no longer exist pursuant to this confirmation of dismissal, subject of course to PEC's filing of the same dismissals as required by the Release. Documentation on the record of this claim is as follows:

1. Commission Order No. 2007-298 dated May 3, 2007
2. Hearing Officer Directive dated May 24, 2007
3. PEC Letter to the Commission dated September 27, 2007 filing a copy of the Mutual Release
4. Hearing Officer's letter dated October 9, 2007 confirming receipt of the dismissals.
5. Hearing Officer's letter dated November 8, 2007 confirming receipt of the dismissals.
6. Commission Order No. 2007- 835 dated November 13, 2007.
7. The undersigned forfeited any rights of appeal of the Commission Orders pursuant to S.C. Code. 1976 Ann. As Amend. Sect. 58-27-2150 and Sect. 58-27-2310.
8. The O.R.S. had dismissed any action back in 2005, under direct orders of PEC.
9. Last but not least, the undersigned Gary Weaver confirmed the dismissals under para. 3 and 4 with the Commission by letter dated January 24, 2008. Please refer to Item 6 and 7 (p.2.).

6. For good cause and on the grounds cited above, the undersigned reiterates herein for the Commission record that the Court's order as to para. 3 and para. 4 is incorrect, redundant based on the evidence, and mis- applied to the undersigned, and should be directed to Progress Energy who remains as of this writing, in continued violation of both paragraphs 3 and 4 and 1 and 2.

5. Para. 4. provides that "The parties will mutually release each other as to any matter... whatsoever which may exist between the parties as of September 17, 2007." Here again, the above comments apply with respect to para. 4. and PEC's obligations.

6. PEC has violated this para. 4 provision also. PEC has refused to file a stipulation for dismissal with the Court to facilitate a "mutual release" as required under para. 4 and the above-cited SCRCR rules.

Additionally, PEC has breached its contract with the undersigned Beatrice Weaver to provide electric power to a residence located at 1249 Harlees Bridge Road, Dillon S.C. by unilaterally converting, without any prior written notice or agreement to amend the contract, its status to "small commercial" in violation of Commission Reg. 103-442 as to agreements for service. Para. 4 was supposed to fix that situation with a return to "residential" status which has existed since 1994. PEC refuses to reverse that classification and continues in violation of para. 4. The undersigned has "mutually released" as required and shall look to the Court to enforce PEC to meet its obligations.

7. The Mutual Release applies only to the undersigned as separate individuals and to PEC.

8. The Release applies only to matters before the Court and the Commission as of and inclusive of September 17, 2007. Any matters that have or may occur between the three parties commencing as of September 18, 2007 are not covered by the terms and conditions of the Release.

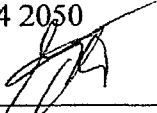
9. The undersigned has requested a Jury Trial of the many issues related to PEC's violation of all of the terms and conditions of the Release. This may or may not involve concurrent jurisdiction of administrative matters referred to in para. 5 of the Release.

10. It is noted for future reference that PEC has stated categorically to the Commission that it will comply with any request for a change of providers with any qualified entity that comes forward. There is no time limit on this commitment, nor any restriction of the entity that may replace PEC. Your Office may note that issues relating to para. 5. of the Release are also to be placed before the jury on several grounds, particularly PEC's fraud, fraudulent inducement and fraudulent acts.

Respectfully submitted,



Beatrice Weaver
1253 Harllees Bridge Road
Dillon S.C. 29536
Ph: 843 841 1606
Fx: 843 774 2050



Gary Weaver
PO Box 7682
Florence SC
29502

Att: Exhibit A, Mutual Release

cc: The Hon. Paul M. Burch
Presiding Judge, Dillon Court of Pleas
P.O. Box 276,
Pageland S.C. 29728

The Hon. Gwen Hyatt
Clerk of Court, Dillon County
PO Drawer 1220,
Dillon S.C. 29536

Daniel H. Shine, Esq.
211 W. Hampton St,
Dillon S.C. 29536

Mark W. Buyck, Jr. Esq.
P.O. Box 1909
Florence S.C. 29503-1909

Ms. Shannon Bowyer Hudson, Esq.
Counsel, Office of Regulatory Staff of S.C.
1441 Main St, Suite 300
Colombia S.C. 29201

VIA TELEFAX AND US. CERTIFIED MAIL

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Caller ID Report for
Birth
3 7742050
10/2008 7:24PM

Date/Time	Name	Phone Number
04-04 13:51	F RIBBON	4107748664
04-04 14:52	DILLON INTERNAL	8437741826
04-04 16:00	DURHAM COUNTY H	9194704000
04-04 16:21	MCLEOD HOME HEA	8436690992
04-04 19:57	S C STATE GOVT-	8437927000
04-07 10:07	SNRSE SVC ASSOC	4178860006
04-07 11:26	TOLLFREE NUMBER	8667201469
04-07 16:59	FISHER INVESTME	6503505950
04-07 19:59	AUTO PLUS	7025201276
04-08 08:52	CHARLESTON, SC	8435537801
04-08 10:31	TOLLFREE NUMBER	8667201469
04-08 10:34	TOLLFREE NUMBER	8667201469
04-08 11:06	TLC	2317322268
04-08 12:18	WIRELESS CALLER	8436160903
04-08 13:08	LIFE EXTENSION	9542027660
04-09 09:09	DILLON INTERNAL	8437742479
04-09 12:19	TOLLFREE NUMBER	8667201469
04-09 12:24	TOLLFREE NUMBER	8667201469
04-09 12:59	CHARLESTON, SC	8435537801
04-09 16:46	STOKES REGIONAL	8436642122
04-09 18:50	FISHER INVESTME	6503505950
04-10 09:29	TRUE VALUE HARD	8437744952
04-10 10:34	COMMUNITY LONG	8438410873
04-10 10:35	COMMUNITY LONG	8438410873
04-10 10:57	CLEMSON UNIVERS	8437748219
04-10 13:05	DILLON INTERNAL	8437742469
04-10 15:14	TOLLFREE NUMBER	8888222706
04-10 17:07	TOLLFREE NUMBER	8009224684
04-10 17:58	RPTI INC	4107748086
04-10 18:04	GHAFFAR, BOBBIE	8432508578

EXHIBIT B

VIA TELEFAX: 1 919 232 5601

**TO: MR GREGORY CAGLE
REGULATORY AFFAIRS
PROGRESS ENERGY CAROLINAS INC
RALEIGH NC**

FROM: BEATRICE WALLENSTEIN (AKA BEATRICE WEAVER)

**SUBJECT: ORDER TO CONNECT POWER TO 1253 HARLLEES BRIDGE
ROAD DILLON SC 29536**

**REF: CASE NO. 2004-CP 17 -232 DILLON COURT OF PLEAS.
COURT ORDERS FILED FEB. 28 AND MARCH 28, 2008.**

DATE: April 22, 2008

MESSAGE: (PP.2)

FOR THE RECORD:

**PURSUANT TO THE COURT ORDERS FILED FEBRUARY 28, 2008 AND
MARCH 28, 2008, PLEASE TELEFAX TO THE LAW OFFICES OF DANIEL H.
SHINE, ESQ THE FOLLOWING :**

- 1. COPY OF ORDER TO CONNECT ELECTRIC POWER TO THE ABOVE
ADDRESS, SHOWING:**
 - A. DATE OF ISSUE OF SAID ORDER;**
 - B. NAME AND TITLE OF THE PARTY ISSUING SAID ORDER**
 - C. TEXT OF SAID ORDER**
- 2. CUSTOMER SERVICE CONTACT NUMBER (FAX/PHONE) TO MAKE
ARRANGEMENTS FOR YOUR COMPANY FIELD AGENTS TO ENTER THE
PROPERTY AND COORDINATE WITH MY REPRESENTATIVE TO BE PRESENT.**
- 3. PROPOSED DATE AND TIME FOR CONNECTING METER AND
CONNECTING THE POWER.**
- 4. WILL THE METER BE READ MONTHLY BY FIELD METER READERS OR
TELEPHONICALLY ?**
- 5. PROVIDE FUL LEGAL DOCUMENTATION OF YOUR COMPLIANCE
WITH PARAGRAPH 4 OF THE MUTUAL RELEASE AND THE COURT ORDER RE
SETTLEMENT OF PROGRESS ENERGY'S VIOLATION OF COMMISSION
REGULATION 103-341 RELATING TO BREACH OF YOUR AGREEMENT TO**

EXHIBIT C

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PROVIDE ELECTRICITY TO THE RESIDENTIAL BUILDING AT 1249 HARLLEES BRIDGE ROAD (METER NO. V55826) WHICH YOU ILLEGALLY AND IN BREACH OF AGREEMENT CHANGED TO "SMALL COMMERCIAL." STATUS IN 2004 AND CONTINUE TO DATE DESPITE NUMEROUS OBJECTIONS AND REQUESTS FOR CHANGE.

6. YOU HAVE YET TO SETTLE THE ACCOUNTING FOR METER NO V55825 LOCATED AT 1261 HARLLEES BRIDGE ROAD (LITTLE ROCK STABLES). YOUR PREVIOUS ACCOUNTING OMMITTED SEVERAL MONTHS WHICH MADE FOR YOUR INCORRECT BILLINGS.

7. NOTE: YOU ARE SOME SEVEN MONTHS LATE IN COMPLYING WITH THE MUTUAL RELEASE AND MY NINE NOTICES IN MITIGATION OF DAMAGES WITH AN INCENTIVE OF A \$100 PER DAY LATE PENALTY. EFFECTIVE APRIL 19, 2008 THIS IS A TOTAL OF \$ 21,300 IN LATE PENALTY, AND COUNTING UNTIL YOU CONNECT POWER AS AGREED AND CORRECT THE STATUS OF THE PREMISES AT 1249 HARLLEES BRIDGE ROAD AS "RESIDENTIAL", NOT "SMALL COMMERCIAL." PLEASE REMIT YOUR CHECK TO MR. SHINE FOR REMITTANCE TO ME.

THANK YOU

CC: The Hon. Paul M. Burch
Presiding Judge
Dillon Court of Pleas
PO Box 750, Dillon SC 29536

Charles T. Terreni, Esq

Daniel H. Shine, Esq. (FAX: 843 774 1088)
Mark W. Buyck, Esq.

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1253 HARLLEES BRIDGE ROAD
DILLON S.C. 29536

APRIL 23, 2008

MR GREGORY CAGLE
REGULATORY AFFAIRS
PROGRESS ENERGY CAROLINAS INC
P.O 1551, RALEIGH NC 27602

DEAR MR. CAGLE:

SUBJECT: **ORDER TO CONNECT POWER TO 1253 HARLLEES BRIDGE
ROAD DILLON SC 29536**

REF: CASE NO. 2004-CP 17 -232 DILLON COURT OF PLEAS.
COURT ORDERS FILED FEB. 28 AND MARCH 28, 2008.
MY TELEFAX MESSAGE DATED APRIL 22 REQUESTING
INFORMATION, ETC

FURTHER TO MY COMMUNICATIONS RE THE SUBJECT MATTER,
PLEASE BE NOTICED AS FOLLOWS.

(PLEASE SEE MY TELEFAX MESSAGE OF APRIL 22, 2008. (PP2). COPY
ATTACHED FOR REFERENCE.)

1. THE CASE IS STILL OPEN AND THERE ARE PLEADINGS PENDING
DISPOSITION OF THE COURT, INCLUDING A DEMAND FOR A JURY TRIAL,
ETC.
2. THE PROPER LEGAL PROCEDURE TO FOLLOW WAS FOR YOUR
OFFICE (OR MR. ANTHONY'S OFFICE) TO TRANSMIT THE "ORDER" TO THE
OFFICE OF YOUR COUNSEL, MR. BUYCK WHO SHOULD INFORM MR. SHINE
MY COUNSEL OF YOUR INTENDED COMPLIANCE WITH THE COURT ORDER
AND THE RELEASE.

THAT WAS THE GIST OF THE MESSAGE THAT I LEFT ON THE VOICE
MAIL WITH MS. HILL. **I DID NOT CANCEL ANYTHING.** AT THIS STAGE I
SHOULD NOT HAVE BEEN DIRECTLY CONTACTED. THE IMPORTANT ISSUE
OF YOUR CONTEMPT OF COURT HAS BEEN DIRECTED TO THE ATTENTION
OF COURT.

MS HILL INFORMED ME THAT YOU INTENDED TO MAKE THE
CONNECTION "TOMORROW." GIVEN THE LEGAL SITUATION OF YOUR NON
COMPLIANCE WITH THE COURT'S ORDER, AND YOUR CONTEMPT OF
COURT, AND MY MEDICAL SITUATIO, I NEED MORE THAN ONE DAY'S
NOTICE OF YOUR INTENTION TO BE ON THE PROPERTY TO MAKE THE
CONNECTION.

3. THEREFORE, UNER THE CIRCUMSTNCES, FOR THE RECORD I FORMALLY OBJECT TO YOUR INFORMAL COMMUNICATIONS AND VERBAL NOTIFICATION (MS JOANNE HILL) ON TUESDAY, APRIL 22, 2008 (10.00 am)

4. FOR THE RECORD, THE APRIL 22 PHONE CALL IS THE FIRST COMMUNICATION I RECEIVED FROM PROGRESS ENERGY ON THE SUBJECT OF CONNECTION SINCE SEPTEMBER 18, 2007. AT THE SETTLEMENT NEGOTIATIONS YOUR ATTORNEY AGREED TO **PROMPTLY CONNECT THE POWER ON PAYMENT OF THE FIRST INCREMENT ON SEPTEMBER 19, 2007 AND THE PAYMENT OF THE SECURITY DEPOSIT ON SEPTEMBER 22, 2007.** THIS WAS DONE AND YOU PROMPTLY RENEGED ON YOUR AGREEMENT.

5. ON TUESDAY MORNING APRIL 22, 2008 (APPROXIMATELY 10.00 A.M.) AS NOTED, WHEN MS. HILL TELEPHONED ME ,SHE INFORMED ME THAT SHE HAD AN ORDER TO ARRANGE FOR THE CONNECTION OF THE ELECTRIC POWER AND IF I WANTED THE AREA LIGHTS ALSO HOOKED UP.

I INFORMED MS. HILL THAT I WISH TO CONTACT MY LEGAL COUNSEL, AND I WOULD CALL HER BACK. AS NOTED ABOVE, THIS IS AN OUTSTANDING LEGAL MATTER WITH UNRESOLVED ISSUES. AND LEGAL PROCEDURES REQUIRE THAT THE PARTIES COMMUNICATE THROUGH THEIR RESPECTIVE LEGAL COUNSELS.

INFORMAL PERSONAL CALLS ON THIS IMPORTANT ISSUE ARE NOT APPROPRIATE NOR PERMITTED UNTIL THE MATTER IS FINALLY SETTLED AND DISMISSED BY THE COURT. THAT HAS YET TO HAPPEN. AS NOTED, THERE ARE SEVERAL OUTSTANDING ISSUES OF RECORD. FURTHER YOUR ATTORNEYS HAVE YET TO FILE STIPULATIONS OF DISMISSAL, ETC.

6. ABOUT HALF AN HOUR AFTER RECEIVING MS. HILL'S CALL, I TELEPHONED HER BUT SHE WAS NOT PRESENT. I LEFT A MESSAGE ON HER VOICE MAIL TO THE EFFECT THAT I WOULD BE IN TOUCH WITH MY LEGAL COUNSEL WHO SHOULD BE IN CONTACT WITH YOUR COUNSEL MR.BUYCK. THESE PHONE CALLS ARE RECORDED ON MY COMPUTER AS TO TIME, DATE, PHONE NUMBER, ETC.

7. IT IS MY POSITION THAT AS A LEGAL MATTER, THE PROPER PROCEDURE UNDER THESE CIRCUMSTANCES IS FOR YOUR ATTORNEY MR. BUYCK TO FORMALLY NOTIFY MY ATTORNEY MR. SHINE, AS WELL AS MR. WEAVER THE THIRD PARTY IN THE LAWSUIT, OF YOUR INTENDED ACTION TO MEET YOUR OBLIGATIONS UNDR THE RELEASE AGREEMENT.

MR SHINE IN TURN SHOULD NOTIFY ME. THEN WE MAY MAKE ARRANGEMENTS SUITABLE TO ALL THREE PARTIES. THE COURT SHOULD ALSO BE INFORMED SINCE PROGRESS ENERGY IS ALREADY IN CONTEMPT OF COURT ON THIS AND OTHER ISSUES.

THIS PROCEDURAL VIOLATION SIMPLY DEMONSTRATES ONCE AGAIN, PROGRESS ENERGY'S ARROGANCE IN PRESUMING IT CAN JUST SIMPLY DECIDE WHEN AND WHERE IT WILL MEET ITS LEGAL

OBLIGATIONS, AND ITS DISDAIN FOR ALL PARTIES CONCERNED, INCLUDING THE COURT.

8. IN ADDITION TO THE "CONNECTION" ISSUE, THERE ARE ALSO OTHER OUTSTANDING MATTERS TO BE SETTLED BY THE PLAINTIFF PURSUANT TO PARAGRAPHS 3 AND 4 OF THE MUTUAL RELEASE.

CONNECTING THE POWER IS NOT THE END OF THE STORY AS TO PROGRESS ENERGY'S NON COMPLIANCE WITH PARAGRAPHS 3 AND 4 OF THE RELEASE.

IT IS MY POSITION THAT MR BUYCK SHOULD ALSO ADDRESS THE ISSUE OF THE PLAINTIFF RESTORING MY WELL WATER PUMP TO ITS ORIGINAL FULL FUNCTIONING CONDITION AS WELL AS THE SECURITY ALARM SYSTEMS. BOTH OF THESE ARE DEFUNCT AS A DIRECT RESULT OF YOUR DISCONNECT OF SERVICE AND SUBSEQUENT FAILURE TO CONNECT THE POWER AS AGREED. THESE AND OTHER ISSUES WERE DISCUSSED AT THE SEPTEMBER 18, 2007 MEEETING AND COVERED BY PARAGRAPH 4 OF THE RELEASE.

9. THERE IS ALSO THE MATTER OF YOUR VIOLATIONS IN CHANGING THE STATUS OF SERVICE FROM "RESIDENTIAL" TO "SMALL COMMERCIAL" AT 1249 HARLLEES BRIDGE ROAD, IN SPRING 2004 DESPITE MY PROTESTS TO THE CONTRARY. THIS CATEGORY OF SERVICE (AN OUTSTANDING MATTER) IS TO BE REVERSED PURSUANT TO PARA. 4 OF THE MUTUAL RELEASE.

10. FURTHER, THERE IS ALSO THE MATTER OF RECEIVING A PROPER ACCOUNTING FOR THE LITTLE ROCK STABLES ACCOUNT THAT REMAINS UNSETTLED. THERE ARE STILL SEVERAL MONTHS MISSING THAT IN THE ACCOUNTING CREATED THE DISCREPANCIES IN THE FIRST PLACE. PLEASE REFER TO MY PREVIOUS CORRESPONDENCE SPANING SEVERAL YEARS NOW AND STILL NO PROPER ACCOUNTING..

11. PROGRESS ENERGY HAS STILL NOT PROVIDED AN ACCOUNTING FOR THE PERIOD 1994 THROUGH 1996 AS REQUESTED ON NUMEROUS TIMES IN THIS CASE.

12. PROGRES ENERGY IS SOME SEVEN MONTHS LATE IN CONNECTING THE POWER TO THE NEW ACCOUNT AND TAKING CARE OF THE OTHER MATTERS AS AGREED IN THE SETTLEMENT AGREEMENT. I SUGGEST YOU EXPEDITE THE OUTSTANDING MATTERS AS YOU CONTINUE TO BE IN CONTEMPT OF COURT UNTIL YOU DO.

13. FINALLY, AS YOU WERE DULY NOTICED NINE TIMES SINCE SEPTEMBER 18, 2008, I AM CONTINUING TO ASSESS PROGRESS ENERGY 1A LATE PENALTY OF \$100 PER DAY AS INCENTIVE FOR MITIGATION OF DAMAGES CLAIMED AGAINST PROGRESS ENERGY AND UNTIL ALL THE

MATTERS ARE CLEARED UP TO MY SATISFACTION, INCLUDING THE CONNECTION. THE ACCUMULATED LATE PENALTY CLAIM (NOT INCLUDING DAMAGES) IS SOME \$21,000 AND COUNTING.

14. TIME IS OF THE ESSENCE FOR PROGRESS ENERGY'S COMPLETE COMPLIANCE WITH ALL FIVE PARAGRAPHS OF THE MUTUAL RELEASE, NOT JUST THE POWER CONNETION. THE COURT SAYS ITS FEBRUARY 28TH ORDER IS "CRYSTAL CLEAR" SO I SUGGEST YOU COMPLY.

PLEASE HAVE MR. BUYCK CONTACT MR. SHINE AND MR WEAVER, THE THIRD PARTY IN THIS ACTION, AND MAKE ALL THE LEGAL ARRANGEMENTS THAT MAY BE NECESSARY UNDER THE CIRCUMSTANCES.

MY OBJECTIVE IS TO EXPEDITE THE CONNECTION, BUT IT MUST BE DONE IN A MANNER ACCEPTABLE TO THE COURT, COUNSEL, AND ALSO CO-ORDINATED WITH MY MEDICAL SCHEDULE. I WISH TO BE PRESENT OR HAVE A REPRESENTATIVE PRESENT WHEN THE CONNECTION IS BEING ACCOMPLISHED.

15. PLEASE REFER TO THE ATTACHED COPY OF THE FAX MESSAGE I SENT YOUR OFFICE YESTERDAY, APRIL 22, 2008 I AWAIT YOUR RESPONSE WITH THE DETAILS OF THE ORDER TO MR SHINE OF WHEN (DATE) AND WHO (PERSON AND OFFICE) ISSUED THE ORDER FOR THE CONNECTION PURSUANT TO PARA 1 AND 2 OF THE RELEASE. THIS INFORMATION IS NEEDED FOR THE LEGALLY PROPER DISPOSITION OF THE CASE AS IT IS GOING TO BE AN ISSUE CONCERNING YOUR CONTEMPT OF COURT..

16. FINALLY, YOU DID NOT ADDRESS MY REQUEST THAT YOU INSTALL THE NEW METER TO BE READ ELECTRONICALLY RATHER THAN BY A METER READER.

THANK YOU.

BEATRICE WALLENSTEIN
(AKA BEATRICE WEAVER)

CC: The Hon. Paul M. Burch
Mr. Dan Shine.
Mr. Mark W. Buyck, Jr.

Encl: Copy of telefax message dated April 22, 2008.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	CASE NUMBER 2004-CP-17-232
Progress Energy Carolinas, Inc.,	)	MOTION FOR DECLARATORY
	)	JUDGMENT AS TO STATUS OF
Plaintiff,	)	DOCKET AND FOR SANCTIONS
	)	FOR PLAINTIFF'S NON-COMPLIANCE
vs.	)	WITH COURT ORDER AND CONTEMPT
	)	OF COURT; MEMORANDUM IN
Gary Weaver and Beatrice Weaver.	)	SUPPORT; AFFIDAVIT OF GARY
	)	WEAVER; EXHIBITS A-D; NOTICE OF
	)	MOTION; CERTIFICATE OF SERVICE
	)	

**MOTION FOR DECLARATORY JUDGMENT AS TO STATUS OF DOCKET
AND FOR SANCTIONS FOR PLAINTIFF'S NON-COMPLIANCE WITH
COURT ORDER AND CONTEMPT OF COURT**

Comes now Defendant Pro Se Gary Weaver, and pursuant to **Rules 40 (j), 41 (a) (1) (ii), 43 (k), 57 and 79, S.C.R.C.P. and S.C. Code 1976 Ann. As Amended, Sections 15-53-10 through Section 15-53-140**, hereby moves this Court, for good cause, for a declaratory judgment as to the status of the above entitled Docket and pursuant to **Rule 79 (g) S.C.R.C.P.** for sanctions and damages for Plaintiff's non-compliance with the Court Order filed February 28, 2008, copy attached hereto as **Exhibit A**.

This motion is based on the Memorandum in Support of Motion, the Affidavit of Gary Weaver, the Exhibits attached hereto, made part hereof, and the records and files herein, and such other and further oral and/or documentary evidence as may be presented.

DATED: Florence County, S.C. April 30, 2008.

Gary Weaver, Defendant Pro Se

(172)

Progress Energy Carolinas, Inc.,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION; EXHIBITS A-D
Plaintiff,	)	
	)	
vs.	)	
	)	
Gary Weaver and Beatrice Weaver.	)	
	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION

Introduction

The motion is for a declaratory judgment to establish the present status of Docket No. 2004-CP-17-232, and for sanctions for Plaintiff's non-compliance and contempt of court with respect to the court Order filed on or about February 28, 2008. **Exhibit A** attached hereto. Authority for the motion includes **Rules 40 (j), 41 (a) (1) (ii), 43 (k), 57 and 79, S.C.R.C.P., and S.C. Code 1976 Ann. As Amended, Sections 15-53-10 through Section 15-53-140**

In deliberating this motion, the Court is respectfully requested to take judicial notice of Movant's pending pleadings including the Demand for Jury Trial, Motion for Summary Judgment, Notice of Plaintiff's Non-compliance and Contempt of Court, and the on-going process before the Public Service Commission of South Carolina ("Commission") of the Application for Change of Provider filed pursuant to paragraph 5 of the Mutual Release which pleading has been duly filed for the record with this Court..

Discussion

1. On or about February 28, 2008 The Honorable Paul M. Burch, the Presiding Judge at a January 30, 2008 hearing on two motions to enforce the Mutual Release filed in this case, filed an Order ("first Order") requiring all parties to comply, etc. See, **Exhibit A** hereto and made part hereof. Nowhere in that Order is there a "final judgment"

entered into the record. Indeed, the Court stipulated a date certain for compliance; viz., 45 days from February 28, 2008. That date certain fell on Monday, April 14, 2008.

Defendants complied in full with all the requirements of the Mutual Release and the said Order. Plaintiff has not.

2. As of that date Plaintiff had not complied with any of the terms and conditions of the said first Order and had not communicated with Defendants concerning its compliance with that Order. Note in the attached **Exhibit A** (marked in red) that Judge Burch did not mark the Order as “dismissed” or “stricken.” He set certain conditions to be met by all three Parties to this action. Plaintiff did not comply.

3. In his second Order filed on or about March 28, 2008 in response to Movant’s Request for Clarification of the first Order, Judge Burch said his order was “crystal clear.” See, **Exhibit B** hereto. So Plaintiff has no excuse for its non-compliance with the Order and contempt of court.

4. On or about April 24, 2008, Counsel for the Plaintiff, Mr. Buyck filed a letter with the Court making certain claims. See **Exhibit D** attached hereto and made part hereof. Movant has filed a formal Response in rebuttal to the claims in Mr. Buyck’s letter of even date, and the Court is respectfully requested to take judicial notice of the Response with respect to deliberating this motion.

5. Inter alia, Mr. Buyck claims that Judge Burch has dismissed the case. (p.1. para. 2, line 2). This claim (together with Movant’s discussion with the Clerk of Court on or about April 22, 2008 referred to herein below), raises the issue of the status of the Docket and interpretation of Judge Burch’s Orders.

6. Apparently Mr. Buyck interprets Judge Burch’s first Order as dismissing the case. I do not believe that is correct. The first Order was to enforce the Mutual Release or face contempt of court, and the second Order related to Movant’s request for clarification of the first Order, deemed by the Court to be the “only issue” before the Court at this time. Movant does not see the words provided in **Rule 79 (f) SCRCF** anywhere in the two Orders, marked “dismiss,” “ended,” or “strike.” **Movant’s interpretation is that Plaintiff is in non-compliance and contempt of court pursuant to the two Orders.**

7. Thus we have more than one interpretation of the first Order, and hence a legally defined “ambiguity” on that and several other matters addressed by the first Order. That

is why Judge Burch was respectfully requested for a clarification to settle any ambiguities of this nature. There is also the specter of possible appeal on grounds of clear error, abuse of discretion and denial of process, to be considered.

8. On or about April 21, 2008, Movant filed with the office of the Clerk of Court a Motion for Summary Judgment requesting an order for connection of electric power pursuant to Para. 1 and para. 2 of the settlement agreement, Plaintiff's contempt of court and sanctions.

9. This filing was just one day before an April 22, 2008 telephone call from Plaintiff's Ms. Hill to Mrs. Weaver (as discussed in the formal Response document noted above), stating "out of the blue" that Progress Energy was ready to connect "tomorrow," on April 23, 2008. Whether or not that arrangement was convenient or practicable for Mrs. Weaver given her medical condition was typically of no concern to Plaintiff displaying its usual arrogant disdain for its customers' welfare. The unexpected phone call without prior notice to her attorney or Movant as party to the action and the Mutual Release, was obviously motivated by other considerations requiring prompt action to comply with the Court's Orders. This was too little, too late. Plaintiff should have connected the power initially in mid-September 2007, then the first days of March, 2008, not the third week of April following Judge Burch's first Order of February 28, 2008..

10. At the filing of the said Motion for Summary Judgment, the Clerk of Court informed the undersigned that the Docket had been removed from the Court's File Book and there was some question as to the filing of the motion for summary judgment and other pleadings under the Docket. The Clerk of Court was informed that the undersigned knew nothing about the situation, having had no formal notice or Order from the Court or any other party to that effect.

11. Conducting due diligence, the undersigned has since checked the file records of the case dating since September 18, 2007, the date the parties executed the compromise and settlement agreement. No reference was found in the undersigned's files to a dismissal of the Docket from the File Book.

12. The only reference found in the court record is that a copy of the Mutual Release compromise and settlement agreement was filed as an Exhibit in the two motions for enforcement that were filed respectively on October 24 and 25, 2007, by Mr. Buyck and

the undersigned. Subsequently, several additional pleadings were filed, then the hearing on January 30, 2008 of the two motions was conducted, and Judge Burch's two orders on February 28, and March, 28, 2008 were filed under the same Docket Number. See Exhibits A-C. Subsequently Movant has filed a demand for jury trial, a Notice of Plaintiff's Non-compliance and Contempt of Court, and a motion for summary judgment under the same Docket Number.

13. On Friday, May 2, 2008, Movant continued due diligence and enquired of the Clerk of Court again of the status of the Docket. A search of the record found the Court Order dated October 1, 2007, copy attached here as **Exhibit C. This was the first time that Movant had seen this Order. Until obtaining a copy of this Order, Movant did not know when, or how the case was officially removed from the Docket File Book.**

14. Apparently Form 4, Exhibit C, was filed by the Court on October 1, 2007 on the basis of informal notice of attorneys: "per attorneys case settled." Movant did not receive a copy of any formal notice to the Court from any of the attorneys. The Order then states: "Formal Order Forthcoming." Nor was Movant listed as a Defendant Pro Se.

15. Since October 1, 2007 to the present date, no such "formal Order" has been forthcoming, since Plaintiff's attorney did not follow through pursuant to the rules of Procedure cited herein. That has been Movant's complaint from the outset in the post settlement proceedings. Plaintiff has not carried out its legal duty under the Rules of Procedure to file formal stipulations of dismissals with the Court or the Commission.

16. In addition to not complying with the terms of the settlement agreement, ignoring the first and second orders, Plaintiff's attorney has also not complied with the initial Order on October 1, 2007 to formalize the dismissal of the case. Said Order does not state that the case is dismissed (see red markings). It simply states that "per attorneys, case settled -Formal Order Forthcoming."

17. Based on the rules, it is the responsibility of the Plaintiff's attorney to file the stipulations of dismissal as a formal requirement before the Court can file a "final; order."

18. Based on the undersigned's research, the situation is covered by **Rule 79 (f) S.C.R.C.P.** It provides that no action listed in the File Book which thereafter is settled or

disposed of in any manner, shall be dismissed, marked ended, or stricken from the File Book unless and until:

1. Plaintiff, in this case, Progress Energy, shall file and service a notice of dismissal or stipulation of dismissal pursuant to the provisions of Rule 41, S.C.R.C.P (which has been Movant's position from the outset, pursuant to para 3 and 4 of the release).; or

2. Counsel in the action shall have prepared and filed an order signed by the appropriate judge, or the Clerk of Court, and bearing the written consent of all interested parties to the action showing that it has been ended; (again Movant's position); or

3. Dismissal is ordered by the Court. (I have no record of a formal court dismissal, if any, having been filed as a follow through by the court pursuant to Exhibit C..). Judge Burch's three orders contain no markings as to being a "final order" dismissing the case.

19. This matter goes to the heart of the dispute over compliance with paragraphs 3 and 4 of the Mutual Release, and the undersigned's disagreement with Judge Burch's first Order on that issue; (dated February 28, 2008).

20. In this case, it is a matter of record that Plaintiff Progress Energy's counsel refused to prepare any stipulations for dismissal to file with this Court and the Public Service Commission, pursuant to **Rule 41 (a)(1)(ii); Rule 43(k) and Rule 40 (j), and now the newly discovered (by Movant) Rule 79**. Nor did they prepare and file an order signed by the appropriate judge, bearing the written consent and signatures of all interested parties, (Defendants.) Nor is there any record that Movant can find that the Docket was finally dismissed by order of the Court following up on the October 1, 2007 Order. Violation of rule 43 (k) renders the settlement non-binding.

21. Thus it seems the Docket is in some kind of procedural limbo. The Clerk of Court cannot accept the undersigned's pleadings to be filed under this Docket; which has been removed from the File Book pursuant to an Order; that was not a "final order." The Order was ignored by the Plaintiff whose responsibility it is to file formal stipulations of dismissal pursuant to Rule 40, 41 and 43 (k) and Rule 79, since the Court did not issue its Order as a "final order." On the other Hand, the Court's subsequent two Orders and a

hearing on two motions to enforce, were all processed under the same Docket. This is a clear signal that the Docket was not a "final order" of dismissed in October 1, 2007.

22. The situation has been brought on by Plaintiff's initial refusal to comply with paragraphs 3 and 4 of the Mutual Release since September 18, 2007, their gross negligence in not complying with Judge Burch's orders of October 1, 2007, February 28, 2008, March 28, 2008 and their violation of the cited Rules of procedure.

23. **Moreover, given the absence of a final order from the Court, Plaintiff is in violation of Rule 79 (g) which provides that failure to comply with the requirements of this Rule, shall subject the party so failing to penalties as for contempt of Court; which contempt shall be enforced by the Court on motion of any aggrieved party, or by the Court on its own motion. In addition to filing this motion, Movant has previously filed the said motion for summary judgment on this and related issues.**

24. The Mutual Release was a voluntary dismissal by the parties and is covered by Rule 41. See, Code Of Laws, Of S.C. 1976, S...C.R.C.P, Reporter's Note, Rule 79, last paragraph, p.206. **This has been my argument to the Court from the outset and my continued respectful disagreement with Judge Burch's first Order as to para 3. and 4. of the Release. The legal onus and duty is on Plaintiff, not Defendants as to filing the dismissals and the Court is not responsible to follow up on its October 1, 2007 Order.**

25. Thus we face two issues:

1. To promptly determine the present status of the Docket with respect to pleadings pending before the Court, and any additional pleadings that are necessary and will be filed, and

2. Plaintiff's continued refusal, gross negligence and non-compliance with the dictates of para. 3 and 4 of the Mutual Release, the Court's Rules of Procedure as cited, and Judge Burch's order to comply, and is thus in serious contempt of Court and in continued breach of two agreements with Defendants.

26. Based on the forgoing discussion, and especially **Rule 79 (g)**, the Court is respectfully moved for enforcement of Plaintiff's contempt of Court, for sanctions, penalties and censure, under **Rule 79(g)**, and Judge Burch's orders.

27. Since all pleadings to date have been processed under the subject Docket it remains for the Court to decide whether the existing and the proposed pleadings shall be filed under the existing Docket having been dismissed in error as a final order. Or whether or not the Court needs to re-instate the Docket on its own initiative and authority. If there is a procedural crisis or conundrum related to this matter, it is not of Movant's making.

28. Moreover, the Court is respectfully requested to take note that connecting electric power to Mrs. Weaver's residence is only one of the several matters outstanding that require Plaintiff's compliance under paragraph 4 of the settlement agreement.

29. Finally, because we are filing a contempt of court action against the Plaintiff, it is necessary to determine the documentary proof of the exact date and origin of the Order (endogenous –in-house, or exogenous –by the Court) for Progress Energy to connect electric power to the new Beatrice Wallenstein account, pursuant to para. 1 and 2 of the Mutual Release, seven months after it should have complied.

WHEREFOR, for good cause, Movant hereby moves this Court, for a declaratory judgment establishing the status of the above entitled Docket, processing of the pleadings on file, and pursuant to **Rule 79 (g)** S.C.R.C.P. for sanctions and damages for Plaintiff's non-compliance with the Court Order filed February 28, 2008, copy attached hereto as Exhibit A.

Respectfully submitted.

DATED: Florence, May 2, 2008.

Gary Weaver, Defendant Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2004-CP-17-232

Progress Energy Carolinas, Inc.,)
)
Plaintiff,)
)
vs.)
)
Gary Weaver and Beatrice Weaver.)
)
Defendants.)

AFFIDAVIT OF GARY WEAVER

AFFIDAVIT OF GARY WEAVER

County of Dillon)
)
State of South Carolina)
)

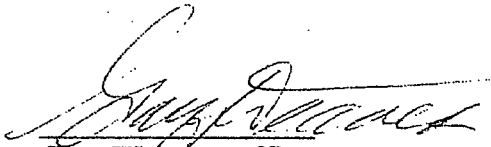
SS.

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant",
deposes and says as follows:

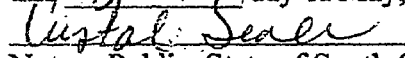
1. Affiant is a Defendant Pro Se in the above titled case.
2. There are contradictory views and some confusion among the parties as to the status of the above entitled Docket and interpretation of the Court Order filed February 28, 2008. The situation requires clarification given Affiant's existing pleadings pending disposition of the Court and additional pleadings to be filed.
- 3 Affiant can find no record of any "Final Order" of the Court dismissing the case as claimed by Plaintiff's attorney pursuant to Rules 79, 41 (a)(1)(ii), 43 (k), or 40 (j). Plaintiff has not timely complied with the terms and conditions of the Mutual Release or the said Order and is in contempt of court pursuant to Rule 79.
4. On Friday, May 2, 2008, at approximately 4.00. p.m, Affiant decided to conduct further due diligence on the issue. Upon enquiry of the Clerk of Court office, Affiant received a copy of Form 4, dated October 1, 2007. Exhibit D hereto.

5. That is the first time in these proceedings that Affiant became aware of the existence of this Form 4 Order. It was filed prematurely on notice to the Court by Plaintiff's attorney who knew and should have known that Plaintiff was in violation of the Mutual Release.
6. No formal order has been forthcoming from the Court, Plaintiff's attorney failed to file formal stipulations as noted above, and pleadings have been processed under the same Docket implying consent of the Court, and no final dismissal or rescission of Exhibit D has been processed by any party. See Exhibits A, B, C and D.
7. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case. This pleading is intended to accelerate, rather than delay the proceedings. Affiant is competent to make this deposition, and alleges and avers that the facts are well grounded as stated herein, and the exhibits attached to his pleadings of record are true and correct copies of the original documents and by reference are made part hereof.

Further, Affiant sayeth naught.


Gary Weaver, Affiant

Subscribed and sworn before me
this 2nd day of May, 2008.


Notary Public, State of South Carolina

My Commission expires:



184 (C)

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS

Progress Energy Carolinas)

ORIGINAL

PLAINTIFFS,)

-vs-)

200) -CP-17-0232

Gary Weaver, pro se)

DEFENDANT.)

EXCERPT OF NON JURY PROCEEDINGS HELD BEFORE

THE HONORABLE PAUL M. BURCH;

COMMENCING AT THE HOUR OF 10:15 AM, ON THE 30TH DAY OF
JANUARY, 2008, AT THE DILLON COUNTY COURTHOUSE, 4TH JUDICIAL
DISTRICT, CIRCUIT COURT, DILLON, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

EXHIBIT B

H. Eugene Buckner
Official Court Reporter at Large
15th Judicial Circuit
PO Box 1462, Conway, SC 29528-1462

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APPEARANCES:

Mark W. Buyck, Jr., Esquire
Willcox Buyck & Williams, PA
P.O. Box 1909
Florence , SC 29503

(843) 662-3258

.... ON BEHALF OF THE PLAINTIFF

Gary Weaver, pro se
P.O. Box 539
Little Rock, SC 29567

(843) 841-1606

.... ON BEHALF OF THE DEFENDANT

ALSO APPEARING:

Daniel Holt Shine, Esquire
Shine Law Offices
211 W. Hampton St.
Dillon , SC 29536

(843) 774-2400

NO WITNESSES TESTIFIED IN THESE PROCEEDINGS AND NO EXHIBITS
WERE MARKED BY THE COURT REPORTER.

18b

1 THE COURT:

2 Listen, I've heard enough.

3 MR. WEAVER:

4 Okay.

5 THE COURT:

6 I've got a question.

7 MR. WEAVER:

8 Yes sir.

9 THE COURT:

10 Does anybody here deny the execution
11 of this agreement?

12 In other words, Mr. Weaver, is this
13 your signature on this agreement, dated --

14 MR. WEAVER:

15 Yes, it is.

16 THE COURT:

17

18 -- uh -- September -- September
19 17th, 2007?

20 Mr. Shine, is that your client's
21 signature?

22 MR. SHINE:

23 Yes sir; and my signature.

24 THE COURT:

25 Mr. Buyck, is that yours?

1 MR. BUYCK:

2 Yes sir, Your Honor; that's my
3 signature.

4 THE COURT:

5 All right. All this other stuff's
6 not before The Court today.

7 This agreement right here is before
8 The Court today.

9 Everybody's acknowledged it. The one
10 thing that we're here before was the situation about the --
11 uh -- the pending matters that were before the Public
12 Service Commission -- uh -- at the time of the execution of
13 this agreement that was raised by Mr. Buyck.

14 Apparently, there's some other
15 problems.

16 I'm going to stop this hearing right
17 now; because I am going to issue an order that I'm going to
18 draw myself.

19 And I am going to tell you ahead of
20 time that I am going to enforce this agreement; and I am
21 going to give a time limit in there.

22 And if everything under this
23 agreement hasn't been met by that time limit, there is going
24 to be nothing humorous about this matter.

25 Now you can appeal it.

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1 You decide.

2 And I am going to warn everybody
3 now:

4 If they come in here and on any
5 further petition or rule to show cause in this court after I
6 issue this order that there has been a refusal to abide by
7 these terms, or there's been a violation after that order of
8 any of these terms, it's not going to be funny; because I am
9 going to come down as hard as I can with contempt powers.

10 Mr. Buyck, you understand that goes
11 to your folks?

12 MR. BUYCK:

13 Yes, sir.

14 THE COURT:

15 And I don't want to have to put you
16 in jail, but I want some officers of that company down here
17 if and when that happens; because somebody is going to jail,
18 most likely; because there's no sense in anything dragging
19 out as long as this has.

20 And as I said:

21 There is nothing humorous about
22 this whole matter.

23 You got taxpayers money involved in
24 this through the court system; whether it's the public
25 service commission or whether it's This Court.

1 MR. BUYCK:

2 I can understand, Your Honor.

3 THE COURT:

4 It's not cheap to run the court
5 system and you have to keep going round and round.

6 And Mr. Weaver?

7 MR. WEAVER:

8 Yes sir.

9 THE COURT:

10 And Mr. Shine, you better relay
11 this to your client.

12 MR. SHINE:

13 Yes sir.

14 THE COURT:

15 They can violate whatever I order
16 that's coming down and they can appeal it.

17 But I can tell you this, if they
18 appeal it, they can go to Columbia and try to get an appeal
19 bond because I don't want to see you; do you understand me?

20 MR. SHINE:

21 Yes sir.

22 THE COURT:

23 Now the last thing I want to do is
24 have to pop somebody with Contempt; but I will do it.

25 Now enough's enough.

1 This courtroom is not to play games
2 in, gentlemen.

3 I don't know what's going wrong
4 with this court -- the courts in this country right now.

5 It seems like people have been
6 using it to play games; and I'm not having any part of it.

7 So on the sole issues before The
8 Court that have been brought here today, I will issue an
9 order.

10 And if you don't agree with the
11 order, either appeal or abide by it; but either way, if you
12 lose, something is going to happen; and it is not going to
13 be funny. I can assure you of that.

14 Any questions Mr. Buyck?

15 MR. BUYCK:

16 No sir, Your Honor.

17 THE COURT:

18 Mr. Weaver?

19 MR. WEAVER:

20 Yes sir. Uh -- Will that include
21 -- uh -- submitting to the jury on damages?

22 THE COURT:

23 That's not before me today.

24 MR. WEAVER:

25 Okay.

1 THE COURT:

2 Mr. Shine?

3 MR. SHINE:

4 I have no questions, Your Honor.

5 THE COURT:

6 I'm only concerned with this
7 agreement. And I don't want to penalize anybody at this
8 point; because I already see there's been some
9 misunderstandings; and I want to give everybody an
10 opportunity to do what they agreed to do; okay?

11 All right.

12 MR. WEAVER:

13 Thank you, Your Honor.

14 MR. BUYCK:

15 Thank you, Judge.

16 MR. SHINE:

17 Thank Your Honor.

18 (WHEREUPON: There being nothing
19 further in this matter, these proceedings were ended at
20 12:41 p.m., January 30th, 2008.)

21

22

23

24

25

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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 30th day of January, 2008;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of May, 2008.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 CASE NUMBER:

Gary Weaver,)
 B. E.A. Wallenstein, and)
 B. E.A. Wallenstein Hospice)
 Inter Vivos Trust,)

MOTION TO CONSOLIDATE ACTIONS;
 AFFIDAVIT OF GARY WEAVER;
 EXHIBITS A, B, D-49; NOTICE OF
 MOTION; CERTIFICATE OF SERVICE

Plaintiffs Pro Se

vs.

Progress Energy Carolinas, Inc.,
 William Johnson, and
 John Does 1-20

Defendants.

A CERTIFIED
 TRUE COPY

[Signature]

CLERK OF COURT
 DILLON COUNTY

JURY TRIAL REQUESTED

CLERK OF COURT
 DILLON COUNTY

2008 MAY 30 PM 2:05

FILED
 GWENT HAYAT

MOTION TO CONSOLIDATE ACTIONS

Comes now Gary Weaver, Plaintiff Pro Se ("Plaintiff") and files this Motion to Consolidate Actions pursuant to **Rule 42 (a) of the South Carolina Rules of Civil Procedure ("SCRCP")**.

Plaintiffs in this action were Defendants in **Case No. 2004-CP-17- 232** wherein the Defendant Progress Energy Carolinas, Inc. named herein, was the Plaintiff (hereafter "Progress Energy"). Plaintiffs herein demanded a jury trial of the issues from the outset of **Case No. 2004-CP-17- 232**. The parties in that case eventually executed a Mutual Release compromise and settlement agreement on September 18, 2007 which Progress Energy has still not complied with as of this writing, and continue in contempt of court authority pursuant to the Court Order dated on or about February 26, 2008 in said case..

Pursuant to **Rules 40 (j), 41 (a) (1) (ii), 43 (k) and 79 (a)-(g), SCRCP**, and paragraphs 3 and 4 of the Mutual Release, Progress Energy is required to file stipulations for dismissal of **Case No. 2004-CP-17- 232**, and any matters it incorrectly alleged were before the Public Service Commission of South Carolina ("Commission") and the Office of Regulatory Staff of South Carolina ("ORS").

As of this date Progress Energy has still not filed any stipulations for dismissal of the case with the Commission, ORS or the Court. And Plaintiffs cannot predict if and when Progress Energy will do so. As matters stand, Progress Energy continues to be in violation *in toto* of the Mutual Release, the aforesaid Court Orders and the above cited Rules of SCRCP.

Because of this willful negligence and abuse of process on the part of Progress Energy, the Mutual Release became a non-binding instrument on Plaintiffs herein. See, **Rule 43 (k)**. Furthermore, at some point in the proceedings, the case was apparently removed from the Court's General Docket Roster. Plaintiff never received any formal notice of this removal from the Court or from counsel for any party. Plaintiff has no knowledge of how, when or why the case was removed from the Court Docket since no stipulation for dismissal had been filed by the Plaintiff.

It is assumed that the removal was made on the basis of the execution of the Mutual Release and one or both counselors of record verbally informed the Court of the settlement agreement. However to the best of Plaintiff's knowledge, the Court was only formally informed of this Release with the filing of the parties' two Motions for Enforcement respectively filed on October 24 and 25, 2007. **Progress Energy simply deliberately failed and neglected its legal obligation and duty to Plaintiffs herein (Defendants in that case) to file the stipulations for dismissal, etc.**

As noted, the stipulations for dismissal were not filed and have still not been filed, and Progress Energy continues in non compliance with all five paragraphs of the Mutual Release and the aforesaid Court Order, both of which have not been enforced by the Court as of this writing, and the status of the case on the Court's General Docket of Cases is unclear. Because the Court held a Hearing on January 30, 2008 of the two Motions to Enforce, this Plaintiff's Request for Clarification, and filed its two Orders under Docket No 2004-CP-17-232 Plaintiff has continued to file pleadings under the same Docket reference.

Hence the Court is respectfully referred to take judicial notice of Plaintiff Gary Weaver's Motion for Declaratory Judgment to establish the docket file status of the case, Demand for Jury trial, Notice of Plaintiff's Non compliance and Contempt of Court, and

Motion for Summary Judgment, duly and timely filed and still pending disposition of the Court as of this date of filing.

These circumstances suggest the Mutual Release in fact remains in a state of being non binding on the Plaintiffs in this action pursuant to **Rule 43 (k)** SCRCF. In addition to the damages caused Plaintiffs herein by Progress Energy's non compliance with the Mutual Release for the period September 18, 2007 through February 28, 2008, Plaintiffs herein have been further damaged by Progress Energy's non compliance with the Court's Order and contempt of that Order since February 28, 2008 to present date.

There are two recent examples of Progress Energy's negligence causing such damages. On or about March 22, 2008 Plaintiff B.E.A. Wallenstein suffered a serious fall and accident at her residence because she was unable to use an electric chair lift to mount 32 stairs to bedrooms and facilities for medical purposes. This event was a direct and proximate result of Progress Energy's continued non compliance with the Release terms and the Court's Orders, and its four year long refusal to honor medical certificates of necessity to connect power to her residence. Progress Energy knew and should have known of Plaintiff's medical needs for electricity. See the attached **Affidavit of B.E.A. Wallenstein**.

Plaintiffs are holding Progress Energy liable for damages resulting from its arrogant, willful, negligent and reckless action. Under the circumstances, Plaintiffs find the most appropriate efficient and expedient procedure for redress and relief is to file a new and separate complaint from Docket No. 2004-CP-17-232 and to consolidate the two actions under Rule 42.

On May 14, 2008, Progress Energy further violated paragraph 4 of the Mutual Release settlement and the Court Orders by illegally disconnecting power to Plaintiff's property located at 1249 Harllees Bridge Road, Dillon, S.C. The Court is respectfully requested to take judicial notice of Plaintiffs' formal complaint filed under separate cover with the Commission and the ORS protesting this malicious and unethical violation of Commission regulations. Again Plaintiffs hold Progress Energy liable for this violation and claim damages to be awarded by this Court since the Commission lacks the power to award damages and losses. Here again, the most efficient, expeditious and appropriate procedural approach is to file for consolidation of the actions.

As noted above, both parties filed motions to enforce the said Mutual Release agreement on October 24 and 25, 2007 respectively. On or about November 30, 2007, Plaintiff filed a **Memorandum In Response To Plaintiff's Motion To Enforce Settlement And In Support Of Defendant's Motion To Enforce Settlement**, respectively filed on October 24 and 25, 2007. On or about December 3, 2007, Plaintiff timely filed a pleading titled **Defendant Pro Se Gary Weaver's Supplemental Memorandum In Support Of Defendant's Motion To Enforce Settlement And For Redress Of Wrongs And For Equitable Relief**.

On or about January 22, 2008, Plaintiff filed a pleading titled **Memorandum In Support Of Supplementary Argument, Law And Amendments For Defendant's Motion To Enforce**.

The Court heard the two motions to enforce on January 30, 2008, and issued its Order on or about February 28, 2008. A subsequent Order was issued on March 28, 2008 in response to then Defendant Pro Se Gary Weaver's **Request for Clarification of the Order**. Both of the motions, and the Court's Orders were filed by the Court under the Case Docket No 2004-CP- 17-232.

Pursuant to the Court's February 28, 2008 Order, all three parties were ordered by the Court to comply with the terms of the Mutual Release agreement under threat of contempt of the Court's authority. The record filed in Case 2004-CP-17-232 clearly evidences that Plaintiffs herein did timely comply with the terms of the Release agreement and the Court Order. As of this writing, Progress Energy has not complied with the Mutual Release or the Court Order and continues in contempt of Court authority.

At the hearing on January 30, 2008, the Court declared that the only issue before the Court at that hearing was enforcement of the Mutual Release. On enquiry of this Plaintiff, the Court deferred comment on Plaintiff's Demand for Jury Trial or the other issues raised by Plaintiff's pleadings cited herein above. Plaintiff's demands contained in the above cited pleadings remain pending for trial by jury as to facts and damages.

On or about March 10, 2008, Plaintiff timely filed a **Demand For Jury Trial; Alternative Motion To Transfer Case To The Jury Trial Roster; Alternative Request For A Scheduling Order. (Priority Matter)** under Docket No. 2004-CP-17-

232. The Court did not object as of this date. Disposition of that and other pleadings of record remain pending as of this date.

Subsequently, Plaintiff filed several pleadings of record related to compliance with the Court Order and implementation of paragraph 5 of the Mutual Release by the Public Service Commission on South Carolina ("Commission"). **All of the pleadings timely filed with the Court deal directly with the case, and are directly relevant and related to disposition of the above entitled Complaint subsequently filed by Plaintiffs herein.**

In addition to the pending Demand for Jury Trial in **Case No. 2004-CP-17- 232**, on or about April 10, 2008, Plaintiff filed a **Notice of Plaintiff's Non Compliance with the Court's Order Filed on February 28, 2008 and Contempt of Court..** On or about April 22, 2008 Plaintiff filed a **Motion for Summary Judgment in Case No. 2004-CP-17- 232**, the disposition of which remains unclear as of this writing.

Given the foregoing circumstances and history of the case, and the recent damages caused by Progress Energy, Plaintiffs concluded that the proper course of action is to file their separate Complaint to seek justice for Progress Energy's transgressions under Docket No. 2004-CP-17-232, which has apparently been removed from the Court's Docket Roster, and the actions before the Commission which dismissed any such matters in May 3, 2007.

Therefore, in the interests of administrative efficiency, and to obviate any confusion over the status of the former case and Plaintiffs' pending pleadings, pursuant to **Rule 42 (a), SCRPC**, Plaintiff moves for consolidation with the above entitled Complaint of the outstanding pleadings pending disposition of the Court in Docket No 2004-CP-17-232, and by reference made part of this Complaint.

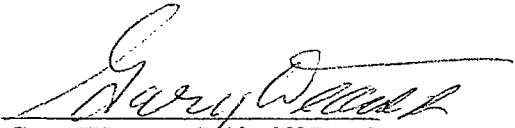
Rule 42 (a) SCRPC provides that when actions involving a common question of law or fact, are pending before the Court as in this case, it may order a joint hearing or trial of any or all the matters in issue in the actions. It may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Plaintiff respectfully submits for the Court's consideration that consolidation of Plaintiff's pleadings pending in Docket No. 2004-CP-17-232 with the above entitled

Complaint will achieve the objectives of Rule 42 (a). to eliminate duplications and unnecessary delays and costs, and facilitate administrative efficiency for the Court.

Respectfully submitted.

Dated: Little Rock S.C. on May 20, 2008



Gary Weaver, Plaintiff Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER:

Gary Weaver,)
B.E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)

AFFIDAVIT OF GARY WEAVER;
EXHIBITS A, B. AND D-49

Plaintiffs Pro Se)

vs.)

Plaintiff Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

JURY TRIAL REQUESTED

AFFIDAVIT OF GARY WEAVER

County of Dillon)

SS.

State of South Carolina)
_____)

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant",
deposes and says as follows:

1. Affiant is a Defendant Pro Se in Docket No. 2004-CP-17-232 and a Plaintiff Pro Se in the above entitled Complaint filed with Court of even date hereof. This affidavit is filed for the record in support of Affiant's **Motion to Consolidate Docket No. 2004-CP-17-232** pleadings, with the above entitled **Complaint** to which this affidavit refers.
2. On or about March 11, 2008, Affiant filed a Demand for Jury Trial as a "Priority Matter," pursuant to **Rule 40 (a) (2) SCRPC**. Affiant respectfully requested that the Court designate this demand as a "Priority Matter" since time is of the essence for Plaintiffs given the medical condition and needs of Plaintiff Pro Se B.E.A. Wallenstein as documented on the record.

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3. As pointed out in the pleading, B.E.A. Wallenstein's medical condition has seriously deteriorated in recent weeks. Her deteriorating serious medical condition is a direct and proximate result of continued physical and emotional stress and anguish caused by Defendant Progress Energy's (Defendant) willful, wanton, negligent, malicious and reckless violation of the Mutual Release, its continued refusal to connect electric power for the four years before September 18, 2007 and since, until April 22, 2008 (see below), forcing continued litigation, refusing to cure the matters referred to in paragraphs 3 and 4 of the Release, its fraudulent inducement relating to paragraph 5 of the Release, and more recently its illegal disconnect of electric power to the property located at 1249 Harllees Bridge Road on May 14, 2008 (see below), and related issues, etc., all of which were intended to be terminated by the settlement agreement.

4. A recent event has exacerbated B.E.A. Wallenstein's medical condition, specifically as a direct and proximate result of Defendant's continued arrogant, willful, wanton, negligent, malicious and reckless refusal to connect electric power to her residence as agreed, and in violation of five medical certificates of necessity. See, Affiant's **Proof of Service** filed with the Court on January 30, 2008, **Exhibits D-49-56**. **Exhibit D-49** is attached hereto for reference. Affiant had paid in full on time as required the settlement amount and security deposit provided for in paragraphs 1 and 2 of the Mutual Release and Progress Energy welched.

5. On Saturday, March 22, 2008 at approximately 12.30.p.m. B.E.A. Wallenstein suffered a serious fall at her residence because the electric chair lift on the 32 stairs leading up to the second floor bedrooms and medical facilities was not functioning because Progress Energy continued to refuse to connect power as agreed under paragraph 1 and 2 of the Release and as ordered by the Court on or about February 26, 2008.

6. As a result of the injurious fall, Plaintiff Ms. Wallenstein hurt her knees, right hip, and back. She was unable to pick herself up of the floor due to her disability, overall weakness and depleted medical condition. Affiant was not present at the residence at the time the accident occurred.

7. It took Plaintiff Ms. Wallenstein about one hour to manage to crawl and drag herself to the telephone and call the Dillon County Office of 911 emergencies. Because

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of the lack of adequate electricity, Plaintiff Ms. Wallenstein was not able to have an electrically operated "24/7 silent security alarm," common for disabled elderly persons.

8. Plaintiff Ms. Wallenstein therefore had to make the emotional and physically difficult and dangerous effort to call the office of 911 to contact Affiant and request assistance. She should not have moved after the fall. The 911 operator managed to locate Affiant at approximately 1.30 p.m. at a store in Dillon and relayed the message requesting an immediate return and assistance. Affiant immediately drove to Plaintiff Ms. Wallenstein's residence within five minutes; and found her prostrate on the floor unable to move.

9. Because of her injuries and disabilities it took another hour for Affiant to get Ms. Wallenstein off the floor on to her feet and assist her to her bedroom with great difficulty and stress due to her fall.

10. Following subsequent medical attention it was decided that Plaintiff Ms. Wallenstein requires extensive physical therapy, rehabilitation and other medical and chiropractic services.

11. **The accident and subsequent events and medical problems it created for Plaintiff Ms. Wallenstein are a direct result of Progress Energy's refusal to provide electric power for her basic necessities of life.**

12. In addition to the inability to use the electric chair lift, she is unable to use the oxygen machine, and other medical equipment for sleep apnea, hygiene, etc, related to her medical condition. Medical equipment requires being plugged into wall outlets which was not possible due to the absence of electric power to the residence.

13. Defendant Progress Energy is held liable for discrimination, prejudice and damages (physical, medical, emotional, mental anguish, expenses, denial of security and emergency services, etc.) resulting from this accident as a direct and proximate consequence of Defendant's willful negligent and reckless refusal to connect electric power to her residence capable of operating essential medical and security equipment and household appliances necessary for hygienic and medical purposes, not to mention a normal standard of living for an ill, elder woman.

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14. Additional liability to B.E.A. Wallenstein exists for the stress, costs and inconvenience caused by Defendant's violations relating to electric service to the property located at 1249 Harlees Bridge Road, Dillon:

A. On May 14, 2008 at approximately 0945 hours, Progress Energy field agents disconnected electric power service to the said property. This was done in violation of several Commission Regulations, paragraph 4 of the Mutual Release and the Court Order of February 26, 2008. Plaintiff B.E.A. Wallenstein was preparing to depart for emergency medical appointments in Florence at the time this event occurred.

Affiant was present and informed the field agents that they were trespassing, that their refusal to provide proper identification violated Commission regulations, that no advance notices were provided as required by regulations, they used the wrong ingress/egress gate to which they had a lock and key since 1994, the act was continued harassment and abuse by Progress Energy, etc. Affiant has filed a formal Complaint with the Commission and the ORS, a copy of which will be filed with this Court for judicial notice during the requested jury trial.

This event was a traumatic experience for Plaintiff B.E.A. Wallenstein who had emergency treatment at Medical University of South Carolina in Charleston the next day, May 15, 2008. See **Exhibit A** hereto and made part hereof. The prescription for treatment required inter alia, hot water showers three times a day which was not possible given the lack of electricity, followed by application of medications to her body.

B. Progress Energy continues to violate **Commission Regulation 103- 341 and paragraph 3 of the Mutual Release** by its breach of the original service agreement executed on or about mid 1994, to provide electricity to a "residence" and after ten years in 2004, its subsequent retaliatory, punitive, illegal, unilateral, arbitrary switch of the account to the "small commercial" category for rates and two week billing cycle; its refusal of many requests and objections to reverse the illegal switch back to the original agreed category of "residential" status for the past four years, and its continued refusal to dismiss these matters as agreed at the September 18, 2007 settlement negotiations and memorialized under paragraph 4 of the Release.

15. A more recent incident documents Defendant's continued discrimination, harassment and abuse of Defendant B.E.A. Wallenstein and the inconveniences caused by its violation of Commission Regulation 103-341 and paragraph 4 of the Release.

16. On Tuesday, April 1, 2008, Plaintiff B.E.A. Wallenstein telephoned Defendant's Customer Service office at approximately 1.30 p.m. to enquire about a payment arrangement. The computerized automatic answer informed her that "no payment arrangement is available for Plaintiff Ms. Wallenstein's account." Plaintiff Ms.

Wallenstein asked Affiant to confirm that message which was done at approximately 1.45 p.m. Affiant also spoke to an Customer Service Center representative for Progress Energy who confirmed that no such arrangement is available to Plaintiff Ms. Wallenstein; the representative was requested to confirm that in writing which she refused.

17. In summary, Defendant's liability to B.E.A. Wallenstein and Affiant flows from its continued violation of the Court's Order filed on or about February 26, 2008, its continued violation of **Commission Reg. 103-341**, continued violation of paragraphs 1 and 2 of the Mutual Release to provide for immediate connection of power, in September 2007, and its continued violation of paragraphs 3 and 4 of the Release agreement to dismiss matters between the parties as of September 17, 2007. These issues are to be put to the requested jury trial for finding of facts, law and damages.

18. **Defendant is being held liable at trial for endangering the life of B.E.A. Wallenstein and damages to her property, particularly for ignoring the medical certificates of necessity dating since 2004, and economic losses.**

19. These pleadings are filed in accordance with case law requiring Plaintiffs' due diligence to mitigate damages caused by Progress Energy as described at length in the many pleadings filed with the Court and the Commission.

20. Finally, Affiant respectfully reminds the Court of its declaration on the record at the completion of testimony at the Hearing held on January 30, 2008; viz., that if Defendant does not comply with its Order, the Court will demand the corporate officers responsible to appear before the bar, and "someone is going to jail."

21. In view of that Court declaration on the record, all parties are hereby given formal notice as follows: Since Progress Energy as of this writing has not complied with any of the five paragraphs of the Mutual Release, as ordered by the Court, Affiant intends to file

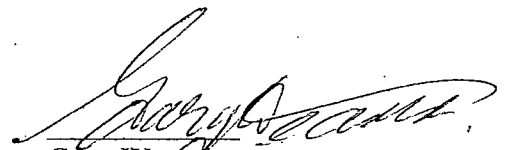
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a petition with the Court to demand the appearance of Defendant's corporate officers responsible for the transgressions documented in Affiant's pleadings filed in this case, and intends to petition the Court to honor its declaration as stated on the record. Please refer to the partial transcript of court record attached hereto as **Exhibit B**, by reference made part hereof.

22. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case; that he is competent to make this deposition; that he alleges and avers that the facts are well grounded as stated herein, and the pleadings filed in this suit, and exhibits attached thereto which are true and correct copies of the original documents and by reference are made part hereof.

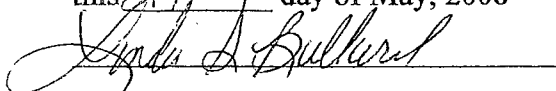
Further, Affiant sayeth naught.

DATED: Little Rock, May 20, 2008.


Gary Weaver
Affiant

Subscribed and sworn to before me

this 27th day of May, 2008



Notary Public, State of South Carolina

My Commission expires: 6/28/08

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Physician Name

Physician

Patient Name

Patient

Address:

Address

DEA#

Stamp/Date

Stamp/Date

Service:

Phone:

Allergies:

DATE: 5/15/08

REFILLS:

Pt condition 2nd by
3 shower 2 day followed by medication
application. Will need for at least 2-3 weeks

Indication:

Signature:

Signature:

DISPENSE AS WRITTEN

SUBSTITUTION PERMITTED

EXHIBIT A.

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W Beatrice Weaver
1253 Harllees Bridge Rd
Dillon, SC 29536

July 9, 2008

Mr. C. Dukes Scott
Executive Director
Office of Regulatory Staff of South Carolina
P.O. Box 11263
Colombia S.C. 29211
Ph: 803 737 0800; Fax: 803 737 0801

Dear Mr. Scott:

Subject: Complaint, Request for Investigation of Progress Energy
Actions and Relief.

Pursuant to Commission **Regulations 103- 316, 103-330, and 103-345**, your Office is hereby respectfully requested to investigate Progress Energy Carolinas, Inc's illegal disconnect of service without cause, to 1249 Harllees Bridge Road, Dillon S.C. 29536, on May 14, 2008 at approximately 0935 hours.

For the record, attached please find our report on the incident detailing the facts. In a continuing pattern and practice of violating Commission regulations at will, in perpetrating the disconnect, Progress Energy has violated at least, **Regulations 103-330 (a)-(j); 103-341; 103-342 (a)(g)(k); 103-344; 103-345B; 103-346; 103-352 (a) (b)(c)(g).**

Your Office is respectfully requested to take judicial notice of PSC **Docket No. 2007- 401-E Application for Change of Provider, Docket No 2008-CP-17-180 Complaint, Weaver et al vs. Progress Energy, et al.** pending in Dillon Court of Pleas, and paragraph 4 of the **Mutual Release for Docket No. 2004-CP-17-232** dated September 18, 2007. Copies attached for reference.

May I respectfully request that an informal hearing on the complaint be held in Dillon. The undersigned is physically unable to walk and has terminal cancer making it difficult logistically to travel to Colombia.

It is my view that Progress Energy, without the required notices and other arrangements pursuant to the regulations, capriciously, maliciously, negligently and recklessly, willfully and wantonly, deliberately planned and executed disconnect of the

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power to the said property. This was in retaliation for my filing for damages, and sanctions for violations of the Mutual Release, and non compliance and contempt of a court Order in Docket 2004-CP-17-232 in the Dillon Court of Pleas. PEC planned and organized its agents to disconnect, but deliberately planned and knowingly organized the action to violate the regulations as alleged herein, particularly the lack of required prior notices, prior demands for payment, etc.

The subject disconnect is a manifestation of Progress Energy's continuing harassment and abuse, and abuse of the regulatory and due process. Its action was undertaken totally without cause. Following completion of the regulatory review and exhausting administrative relief, the action will be adjudicated as part of Docket No 2008-CP-17-180 filed May 30, 2008 in Dillon Court.

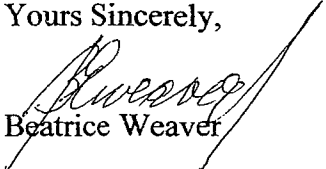
Finally, I respectfully request that Ms. Shannon Bowyer Hudson, Esq. who is a member of your legal staff, be excused from participating in this matter. The evidence shows that Ms. Hudson has too close a working relationship with the legal staff of Progress Energy, and is unduly influenced by Mr. Len s. Anthony, Counsel for Progress Energy, and has engaged in ex parte communications with Progress Energy that was harmful to the undersigned.

Ms. Hudson has also written to the Commission in advance approving a decision that had not yet been heard. For these documented reasons I respectfully request that Ms. Hudson recuse herself from involvement in this and any other matters involving the undersigned. These charges shall be processed under separate cover.

The prompt cooperation of your Office in this matter would be greatly appreciated.

Respectfully submitted.

Yours Sincerely,


Beatrice Weaver

Cc: Public Service Commission

Progress Energy

Clerk of Court (Docket 2008-CP-17-180; w'out pleading exhibits.)

**COMPLAINT, REQUEST FOR INVESTIGATION AND RELIEF
OF PROGRESS ENERGY CAROLINAS, INC ACTIONS ON MAY 14, 2008
AT 1249 HARLLEES BRIDGE ROAD, DILLON SC 29536**

1. THE COMPLAINT.

1.1 On May 14, 2008, at approximately 0935 hours, field agents for Progress Energy Carolinas, Inc ("PEC") disconnected electric service to the property located at 1249 Harllees Bridge Road, Dillon SC 29536, without cause, and without prior notices..

1.2 In so doing, PEC violated several Commission regulations as noted herein below.

1.3 PEC is in violation of paragraph 4 of the Mutual Release compromise and settlement agreement dated September 18, 2007, copy attached as **Exhibit A** hereto and made part hereof.

1.4 PEC's arbitrary and illegal action has caused Owner grievous and serious damages and losses, physical and emotional distress. PEC's action was retaliatory, capricious, deliberate, malicious, arbitrary, discriminatory, willful, reckless and negligent.

2. THE FACTS

2.1 The relevant facts of the disconnect incident occurring on May 14, 2008 are recited in the attached sworn affidavit of Gary Weaver, by reference made part hereof.

2.2 The basis on which PEC disconnected the power to the said property has to do with PEC's failure to honor its verbal payment arrangements with Affiant. That is, to pay \$144 on or before May 20, 2008

2.3 The relevant recent history of billings and payments relating to this Complaint are deemed to commence with the "Customer Bill" mailed as of **April 4, 2008**, and subsequently to the present date. Refer to **Exhibits G-1 through G- 7** attached hereto and part hereof. (Note: Not all checks paid to PEC's local agent "Carl's" are returned and hence not available herein.)

2.4 Any and all payments due were made by the Owner in good faith in accordance with PEC's monthly customer billing statements, and the several verbal

arrangements agreed with PEC Customer Service Center in April and May made necessary due to Owner's medical situation. May 20, 2008 was the stated date for the amount due at the time of disconnect on May 14, 2008.. See **Exhibit G-3** hereto and the sworn affidavit of Beatrice Weaver attached hereto and made part hereof concerning payments and the verbal payment arrangements she made with the Customer Service Center.

2.5 On the afternoon on May 14, 2008, as Attorney -in -Fact for Owner, Mr. Gary Weaver made payments under protest for the account in order to have the service reconnected. See **Exhibit H**, and **Attachment No. One** hereto. Mrs. Weaver had to cancel a medical appointment that afternoon. See **Exhibit I** hereto.

3. REQUEST FOR INVESTIGATION

Pursuant to Commission **Regulations 103-316, Reg. 103-330, and Reg. 103-345**, the ORS is respectfully requested to promptly and thoroughly investigate PEC's charges, practices, and services to the undersigned as discussed herein.

3.1 The purposes of this request are for the ORS to order PEC:

3.1.1 to reconnect of service to the subject property;

3.1.2 to change the incorrect classification of the said property back to "residential" from "small commercial;"

3.1.3 to reimburse the overcharges due the undersigned from the date of the illegal change of classification to the present;

3.1.4 to comply with the requirements of Regulation 103-330 (a)-(j);

3.1.4 to comply with its payments arrangements that it makes verbally with the customer and then ignores at its will at the customers inconvenience and cost;

3.1.5 to provide a copy of the PEC Order to its field agents to disconnect the power at the subject property, and confirm the names and titles of the field agents.;

3.1.6 to explain its request for a deputy Sheriff to be present at the disconnect, and

3.1.7 to disclose the original deposit made for the service at the said property.

3.2 It is necessary to exhaust administrative relief and mitigation relevant to prosecution of Docket 2008-CP-17-180, since the court has ruled in Docket No. 2004-CP-17-232 that these issues are not before it.

3.3 **PEC's Violation Of Commission Regulations**

The ORS is requested to investigate PEC's violations of the following regulations when it disconnected the power to the subject property on May 14, 2008:

3.1.1 **Reg. 103-330 (a)-(j):** PEC has violated all of these regulations with respect to its unilateral and arbitrary change of classification from "residential" to "small commercial" in early 2004 to the present, and paragraph 4 of the Mutual Release.

3.1.2. **Reg.103- 341:** PEC has violated its agreement with the undersigned to provide service to a "residential" property so classified since 1994 to 2004 when PEC illegally changed the status. This breach of agreement is an issue in Docket No. 2008-CP-17-180 Dillon Court of Pleas.

3.1.3 **Reg 103- 342:** PEC violated the first paragraph of this regulation providing that a customer shall be allowed a reasonable time in which to correct any discrepancy which may cause discontinued service. There was no cause, and no notice of PEC's intentions were provided customer, even assuming there may have been a cause.

3.1.4 **Reg 103- 342 (g):** PEC violated this regulation as follows:

- (1) PEC made no reasonable effort to effect collection of any alleged past due amount, and has not complied with Reg. 103-352 (see below).
- (2) **PEC did not give customer a written notice of five days in which to make settlement of an alleged amount due.**
- (3) PEC did not make provision to have someone available at the property to accept payment and reconnect service.

3.1.5 **Reg 103- 342 (k):** This has been a disputed account since early 2004 in that PEC is charging customer for "small commercial" rates which are about 2.5 cents per kwh more than the "residential" rate. PEC has been in violation of this regulation and has refused to comply with Reg. 103-330. (see above).

3.1.6 **Reg 103- 344.** PEC agents violated this regulation as follows:

- (1) PEC agents **refused** to identify themselves upon request, and only did so by order of the attendant Deputy Sheriff.

(2) PEC agents did not inform the customer of the purpose of necessary access to the said property **before entry as required by this regulation.**

3.1.7. **Reg. 103-345 B.** PEC has violated this regulation by discontinuing service while the matter remains in litigation in the cited Dockets.

3.1.8. **Reg. 103-346.** PEC has steadfastly refused to comply with this regulation and refused to make data available to the customer for inspection “in the local office of the electrical utility”, especially as to Commission filings concerning “residential” and “small commercial” classifications and charges, procedures, etc..

3.1.9. **Reg. 103- 352 (a)-(g).** Prior to termination of service pursuant to Reg. 104-342 (e)-(m), PEC shall follow procedures provided in this regulation, all of which it has violated in this case.

3.1.10. **Reg. 103-352 (a).** PEC did not provide a **ten day notice** to customer of its intent to terminate service, as follows:

Para. (1) PEC did not make arrangements with the customer for payment of an alleged amount due with an PEC employee authorized to accept payment.

Para. (2) PEC did not make arrangements with the customer for alternative methods of payment of the alleged amount due.

Para. (3). PEC has violated this provision since 2004.

Para. (4). PEC has ignored all efforts to resolve the dispute over the status of the said property as “residential;” or ”small commercial”.

3.1.11. **Reg. 103-352 (b).** PEC gave no **two day notice** of its intent to terminate either in person or by telephone. PEC did not give the alternative **three days notice by mail** to the customer of its intent to terminate.

3.1.12. **Reg. 103-352 (c)** This regulation requires that no termination shall occur unless the electrical utility has informed the customer that a deferred payment plan is available. PEC violated this provision.

3.1.12. **Reg. 103-352 (g).** PEC violated this regulation s follows:

- (1) Its agents were not authorized to accept payment;
- (2) One full day was not available to make payments of any alleged amounts.

3.4 Summary:

1. PEC disconnected service flagrantly and arrogantly without cause or explanation, or prior required notices, reneged on its verbal payments arrangements calling for payments due on May 20, 2008 (not May 14, 2008), and violated the following Commission Regulations with its usual and customary reliance on impunity from the regulatory agencies:

Regulations 103-330 (a)-(j); 103-341; 103-342 (a)(g)(k); 103-344; 103-345B; 103-346; 103-352 (a) (b)(c)(g).

2. PEC did not give the customer the requisite 2, 3, 5, and 10 day written, telephone or in person notices or opportunity to settle any claims prior to termination of service.

3. PEC field agents were not properly briefed and not authorized to accept payments of alleged amounts due.

4. Field agents carried no identification and refused to identify themselves on request, they did not use the designated ingress/egress gate and trespassed on customer's property and invaded her privacy, and were not given proper instructions from their managers.

5. No provisions were made for deferred payments or settlement of any alleged amount due, prior to disconnect, pursuant to regulations.

6. Pursuant to PEC billing statements, no payments were due until May 20, 2008, six (6) days after the date of termination.

4. CONCLUSION

This is a request for an ORS investigation and for regulatory relief pursuant to the substantive law requirement to exhaust administrative relief preceding action in the Circuit Courts. Although sanctions against PEC have been requested in this matter, it is understood that the demand for damages and other relief resulting from PEC's illegal actions are for the Circuit Court to adjudicate. Additional background information of relevance to this request is attached for the record with **Attachment No. Three**, a copy of a letter filed with the Dillon Court of Pleas on or about April 24, 2008.

Moreover, based on documented experience, the Owner has little faith or confidence in the regulatory agencies protection of consumers. The agencies operate under the undue influence of the utilities, especially PEC. Therefore in an effort to obtain some semblance of equitable jurisprudence, the Circuit Court of Dillon County has been requested to take concurrent jurisdiction of the administrative/regulatory matters in accordance with its inherent judicial powers. The Court has also been respectfully requested to consider issuing a Writ of Mandamus to the Commission related to execution of paragraph 5 of the Mutual Release presently before the Commission.

This request for an investigation of PEC's actions in disconnecting electrical power to the said property on May 14, 2008, falls into three separate although related events, as follows:

1. PEC's violation and ignoring the verbal payment arrangements agreed by and between the Owner and the Customer Service Center, pursuant to the instructions and procedures stated in PEC's regular monthly Customer Bills.
2. PEC's violation of Commission Regulations in executing the said disconnect without cause and without notice.
3. PEC's willful, reckless, wanton, malicious, capricious and negligent retaliation for Owner's filing a demand for damages and sanctions for PEC's violations of the Mutual Release and Court Order filed February 26, 2008 in Docket No. 2004-CP-17-232, and Docket No. 2008-CP-17-180 filed in Dillon Court of Pleas.

Finally, it is clear from the evidence that PEC deliberately orchestrated, organized and executed the disconnect event with advance planning and full knowledge of its violations of the Commission regulations. Field agents were organized, hired a Deputy Sheriff, access to the meter was arranged, the agents were issued instructions not to accept payment or make arrangements pursuant to regulations, and they disconnected without any prior notice to the Owner. Ipso facto, PEC's violation of the regulations was planned, deliberate, and with malicious intent. This is the second time PEC has conducted itself in this fashion. On December 21, 2001 PEC violated statutes and Commission Regulations, involving the Sheriff's office unnecessarily, with malicious intent under the supervision of the Commission..

5. **RELIEF**

5.1 The undersigned requests prompt administrative relief and mitigation in this matter preceding further prosecution by Plaintiff in Docket No. 2008-CP-17-180 for PEC's breach of contract, sanctions, damages, non compliance and contempt of court by PEC for violation of Dillon Court Order dated February 26, 2008 in Docket No 2004-CP-17-232, all of which are not subject to regulatory relief.

5.2 Order PEC to immediately reconnect service to the said property.

5.3 Order PEC to immediately change the classification from "small commercial" back to "residential", pursuant to Commission Regulation 341 and paragraph 4 of the Mutual Release dated September 18, 2007, Docket No 2004-CP-17-232.

5.4 Order PEC to reimburse the undersigned for the overcharges since the date of its unilateral and arbitrary change of status without cause and in violation of Commission regulations.

5.5 Impose sanctions if authorized, on PEC for its violations of said Commission regulations.

5.6 Order PEC to disclose the original deposit for service to the subject residential property in 1994.

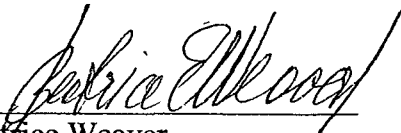
5.7 Order PEC to explain its request for a Deputy Sheriff to be present on the said property at the disconnect.

5.8 Order PEC to provide an accounting, explanation and justification for the "final account" dated July 7, 2008 (Exhibit B).

5.9 Order PEC to provide the Owner with a copy of the written order to the field agents to disconnect the service to the subject property and not to accept payments; alternatively, the name and title of the supervisor who gave verbal instructions and the date.

Respectfully submitted.

Little Rock, Dillon County, July 9, 2008


Beatrice Weaver.

Cc: Clerk of Court, Dillon County (for recordation in Docket No. 2008-CP-17-180)
Public Service Commission of South Carolina
Progress Energy Carolinas, Inc.

Attachments:

Attachment One: Copy of Telefax Correspondence with PEC dated May 14, 2008
Attachment Two: Copy of Docket No. 2008-CP-17-180 Complaint.
Attachment No. Three: Copy of Response Filed in Dillon Court of Pleas, April 24, 2008
Affidavit of Gary Weaver
Affidavit of Beatrice Weaver
Exhibit A. Mutual Release
Exhibit B. PEC Monthly Billing Statement as of May 20, 2008.
Exhibit C. Map of Ingress/Egress Gate
Exhibit D. Affidavit of Gary Weaver Docket No.2008-CP-17-180, May 20, 2008.
Exhibit E. Copy of Prescription
Exhibit F. Certificate of Medical Necessity.
Exhibits G-1-4: Copies of PEC Customer Bills
Exhibits G-5-9: Copies of Check Payments and Receipts
Exhibit H: Copy of Affidavit Appointing Agent and Attorney-in-Fact.
Exhibit I: Copy of Cancelled Medical Appointment on May 14, 2008

End.

AFFIDAVIT OF BEATRICE WEAVER

County of Dillon)
)
State of South Carolina)

)

SS.

BEATRICE WEAVER, being first duly sworn upon her oath, hereinafter
"Affiant", deposes and says as follows:

1. That on May 14, 2008 at approximately 9.30 a.m Affiant was preparing to leave for an medical appointment in Florence S.C. driven by Mr. Gary Weaver, when Progress Energy Carolinas, Inc ("PEC"), without prior notice or demands of any kind disconnected electric power delivered to the property located at 1249 (formerly 1253 B) Harllees Bridge Road, Dillon S.C. 29536 (hereafter "the property") that provided minimal electric power to 1253 Harllees Bridge Road which has no meter and no power.
2. The subject property is an adjacent 3 acre property designated in 2002 by the County of Dillon as 1249 Harllees Bridge Road. It is a fenced property with its own entry and exit road, with a residential structure of some 1,500 sq ft, its separate water, electric meter, and telephone lines, and several other smaller buildings. It is residential and most recently used by the live-in groundskeeper while Affiant was at Duke University Medical Cancer Center in 2004 and 2005.
3. In violation of Commission regulations, Affiant had received no prior notices or demands within Commission regulations from PEC as to its intended intention to disconnect electricity, nor of its action on May 14, 2008. Nor were there any requests for payment made. Only the regular monthly Customer Bill was in the regular mail indicating that the next payment due, was on or before May 20, 2008. **That was six days after the date of disconnect on May 14, 2008.** Thus Affiant was prevented from taking any appropriate actions that may have been necessary to cure any actual or created problems by PEC prior to disconnect.
4. Following an investigation of the disconnect, at approximately 10.30 a.m. Mr. Weaver informed Affiant that the disconnect was said to be made because of an alleged payment arrearage and that the field agents present on the property knew nothing about

the situation except their orders to disconnect. They had no documentation showing any specific amount due or when it was due, nor any identification contrary to Commission regulations requiring such documents and procedure for disconnect.

5. Pursuant to PEC's regular monthly customer billing statements and Affiant's payment arrangements with the Customer Service Center, the sole payment outstanding (\$143.00) was due on or before May 20, 2008, that is some six days subsequent to the surprise disconnect on May 14, 2008. See **Exhibit G-3** hereto, a true copy of PEC's billing as of May 6, 2008. Said payment was fifty percent of the last billing for \$143.00 included with the current due; i.e., \$286 for a total of \$439 due on or before May 20, 2008.

6. **Affiant had made prior verbal deferred payments arrangements with the Customer Service Center to pay the \$286 in two installments at "Carl's" its local agent as follows: first, pay \$143.00 on May 3, 2008 (paid by check # 3733), and pay the second amount with the current statement due May 20th, 2008; i.e., \$143.00 past due and \$270 current for a total of \$ 413.26. See Exhibits.**

7. **The current charges of \$270 due were stated to be paid by May 20, 2008.** Thus Payments were mad as agreed as follows: \$143.00 on May 3, \$143.00 on May 20, and \$270.00 on May 20 for a total payment of \$413.26 on May 20, 2008. Progress Energy agents disconnected service to the said property on May 14, 2008, without any prior 2, 3, 5, or 10 day notices or requests for payments as required by Commission Regulations or any justification.

8. On May 14, 2008 on the afternoon of the day of the disconnect, payments were made as demanded on Affiant's behalf and discussed in **Attachment One** hereto and made part hereof. Said Payment included: \$ \$270.26; \$143.00 (2nd payment) \$2.00 cash; \$13.26 and a \$15.00 reconnect fee, which the utility refused to accept and subsequently returned to the Affiant as overpayment. Subsequently, Affiant paid another \$15.00 reconnect fee to Progress Energy. Thus three reconnect fees were paid but PEC refused to reconnect. See **Exhibits G-6 and G-7**. Mr. Weaver agreed to handle my affairs and Affiant duly appointed him her agent and attorney-in-fact. See **Exhibit H** hereto and part hereof.

9. The account was serviced since 1994 some 14 years and the only problem during that period was caused by PEC in 2004 when its employee Ms. Pam Hardy arbitrarily changed the status from "residential" to "small commercial" without cause and without prior notice. To this date, PEC has refused and neglected to provide any justification for this arbitrary change without notice. A deposit of long standing exists on this account.

10. Another Customer Bill was issued to Affiant (**Exhibit G-4**) demanding a payment of \$43.07 due by June 3, 2008 after having already disconnected power. This amount was paid by check #3746 on June 3, 2008 for \$28.07 plus check #3745 dated May 22, 2008 for \$15.00. (**Exhibit G-6**) (**Third payment for reconnect.**)

11. On **July 7, 2008** Affiant received a letter from the utility remitting an amount of \$177.00 as a "... refund for the final account and service address..." of said property. Again no prior notices of intended actions, etc. See **Exhibit B** hereto and part hereof. No explanation has been forthcoming documenting this "final account."

12. On May 14, 2008, Affiant was scheduled for a medical appointment in preparation to enter into hospice care. Due to the disconnect Affiant had to cancel the said medical appointment which disrupted the medical care plans as such appointments are difficult to replace, especially on a prompt basis. PEC was made aware of this situation on the same day.

13. The unexpected incident was a complete surprise and caused severe physical and emotional stress since Affiant needed the medical services which she was unable to obtain due to this incident. The disconnect was simply another manifestation of PEC's continued harassment and abuse of Affiant, for which it will be held accountable before a jury in Docket No. 2008-CP-17-180 pending in the Dillon Court of Pleas.

14. Affiant is an 81 year old, ailing elder woman diagnosed with terminal cancer and other ailments. Several certificates of medical necessity for electrical power for the necessities of life and medical care have been duly filed on the record with PEC and the Commission since Fall 2005 and every year thereafter to the present. PEC's violation of the Commission regulations and continued denial for ten months of electrical power since September 18, 2007, illegal disconnect of the said property is willful, wanton, reckless, and gross negligence. Again these issues are before the Court in Docket No. 2008-CP-17-180. Attached exhibits are true and correct copies of the original documents.

15. Affiant seeks redress of wrongs committed by PEC. Its repeated arrogant and flagrant violations of statutes and regulations and unethical practices can only be accomplished with the sure knowledge of immunity or lip service from the regulatory agencies. Accordingly this pleading is filed for the purpose of exhausting administrative relief and mitigation with the steadfast belief that the only redress to be gained will issue forth from action before the Circuit Court. Hence this matter has also been brought before the Dillon Court with a request for concurrent jurisdiction and judicial notice of the pleading. The only recourse Affiant has is to place the issues before a jury.

Further, Affiant sayeth naught.



Beatrice Weaver, Affiant

Subscribed and sworn before me
this 29th day of July, 2008,
Jacquelyn L. McKee
Notary Public, State of South Carolina

My Commission expires: 2-8-16

AFFIDAVIT OF GARY WEAVER

County of Dillon)
)
 State of South Carolina) SS.
 _____)

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant",
deposes and says as follows:

1. At approximately 0935 hours on the morning of Wednesday, May 14, 2008, field agent employees of Progress Energy Carolinas, Inc (hereafter "PEC") illegally disconnected electric power service to a meter at the property located at 1249 Harllees Bridge Road, Dillon 29536 ("property") without good cause, and without prior notices and other provisions required by regulations of the Public Service Commission of South Carolina ("Commission").
2. This event was unexpected and came as a complete surprise to Affiant and Ms. B.E.A. Wallenstein (aka Mrs. Beatrice Weaver) the owner of said property and the customer of record (hereafter "Owner").
3. On Tuesday, May 13, 2008, the day preceding the date of disconnect, the Owner's medical condition had seriously deteriorated requiring emergency attention that same afternoon. As a result she had to cancel an inspection and testing of the electrical system by a licensed electrician at her adjacent and separate residence property located at 1253 Harllees Bridge Road, Dillon 29536.
4. The inspection and testing was recommended by PEC preparatory to PEC's connection of electric power to her residence pursuant to paragraphs 1 and 2 of that certain Mutual Release executed on September 18, 2007 to compromise and settle Docket No 2004-CP-17-232 Dillon Court of Pleas ("Release") See **Exhibit A** hereto. Said connection by PEC was supposed to have been done on or about September 24, 2007, **ten months ago**. PEC violated said Release and continues in contempt of court authority as of this writing. Paragraph 2 of the agreement provided that PEC would connect power "...upon payment of the first \$1,000.00 referenced above, and upon payment of the

normal and customary security deposit.” Affiant met both conditions and PEC immediately welched on its agreement until this date.

5. The next morning on Wednesday, May 14, 2008, Affiant was assisting said Owner who was preparing to depart the property for an medical appointment in Florence at that time. Because of the unannounced disconnect at 0935 hours and the need to cure the situation promptly, the medical appointment had to be cancelled causing the Owner extreme emotional and physical distress. On Thursday, May 15, 2008, Affiant had to drive the Owner to an substitute medical appointment at Medical University of South Carolina (“MUSC”) in Charleston. See **Exhibit E** hereto and by reference made part hereof.

6. The prescription for treatment (**Exhibit E**) could not be carried out because of PEC’s illegal disconnect of power on May 14, 2008 and its prior refusal to connect power in September 2007 ten months ago. PEC is held liable for damages resulting from its willful, wanton, malicious, reckless and gross negligent acts and omissions in Docket No 2008-CP-17-180 because the Dillon Court has ruled that these matters were not before it for enforcement of the Release agreement. Not only did PEC illegally disconnect power to the said property, in violation of Commission regulations, it violated paragraphs 1, 2, and 4 of the Release agreement and did not comply with the Court Orders dated February 26, 2008 and March 28, 2008. PEC knew and should have known of the Owner’s medical condition since it had received medical certificates of necessity over a four year period. See **Exhibit F** attached hereto and made part hereof.

7. When the illegal disconnect took place on the morning of May 14, 2008, Affiant went to the property and found three persons standing near the meter. Two were apparently PEC field agents and one was a Dillon County Deputy Sheriff.

8. Affiant asked the men “What is going on?” One of the PEC men said he had been ordered “by Raleigh” to disconnect the service at the property and had done so.

9. Affiant then asked for the identification of the two men. One said he was the supervisor, and the other said he was an electrician. **They both refused to provide their names. Affiant then reminded them that they were in violation of Commission Regulation 103-344.** Affiant then requested the Deputy Sheriff to take their names, as

Affiant was contemplating a citizen's arrest for trespassing, invasion of privacy, etc. The Sheriff did so, and handed the names on a piece of paper to Affiant.

10 Affiant then asked why they had a Deputy Sheriff with them. The "supervisor" said he had received a call "from Raleigh" while coming to the property, and was instructed to have a Deputy Sheriff accompany him. Asked why, he responded that "there had been some trouble in the past." Asked to explain what trouble, he could not.

11. Affiant then asked the "supervisor" why the service was disconnected. He responded that it was apparently for lack of payment of the bill. Affiant informed him that the bill was current and paid in accordance with PEC's monthly billing statements and Mrs. Weaver's arrangements with the PEC Customer Service Center. He said he knew nothing about the situation and was just following orders "from Raleigh" to disconnect. No documentation was available showing amount due, when due, and authority to accept payment.

12. Affiant then asked him how much was due; he did not know. Affiant then asked him if he was authorized to accept payment. He said he was not. Affiant then informed him that "Raleigh" was violating Regulation 103-342 which provides for such a solution.

13. Affiant then asked by which gate and route had the "supervisor" accessed the property. He said through the "front gate" and trespass across the adjacent property located at 1253 Harllees Bridge Road, and that he had to walk because he could not get his vehicle through the closed gate and did not know where the electric meter was located.

14. Affiant then informed him and pointed out the correct route and location of the designated ingress/egress gate, and of the map that had been filed with PEC on numerous occasions. See **Exhibit C** hereto and part hereof; that PEC had its own lock and key to the said gate since 1994 to the present, and that Affiant had met with PEC field staff, supervisors and managers over the years and made arrangements with them as to access. Affiant informed him that he was in violation of Regulation 103-.

15. Affiant then requested the "supervisor" if he had attempted to give Mrs. Weaver any "notice" of his intention to disconnect. He said he had tried to telephone her on his way to the property. The computer at the Owner's main residence records all incoming and outgoing telephone calls and telefaxes. There is no record on the computer of any

attempted incoming call from the "supervisor" between 7.00 a.m. and 11.00 a.m. on May 14, 2008. He said he did not attempt to approach the adjacent main residence at 1253 Harllees Bridge Road to contact and inform her of his intention to disconnect power at the said property next door, when he first arrived. He just trespassed across the property at 1253 Harllees Bridge Road to look for the meter at 1249 Harllees Bridge Road, without first informing the Owner of his presence or intentions.

16. Affiant then informed the "supervisor" that pursuant to the Customer Bill and payment arrangement made by the Owner with the PEC Customer Service Center that the next payments were due on May 20, 2008, six days hence; that Mrs. Weaver had received no advance notices from PEC as to its action to disconnect the service, and thus once again, PEC had violated regulations requiring 2, 3, 5, and 10 day notices, citing Regulation 103-342.

17. For the record, Affiant then informed the "supervisor" and the Deputy Sheriff that PEC's field staff had trespassed once again without any permission over the property at 1253 Harllees Bridge Road, and invaded the privacy of Mrs. Weaver. These violations are in addition to incorrectly disconnecting the power and violating the other regulations as noted herein.

18. Further, that since the field staff had not been given proper instructions as to their proper conduct under the circumstances and given their ignorance of the Commission regulations, that he would not prosecute a citizen's arrest on the spot and would not request the Deputy Sheriff to escort them to the county jail, but that he would have the matter investigated further.

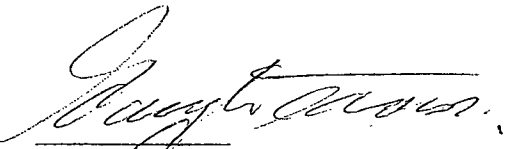
18. Affiant also informed the three persons present that he was in litigation with PEC, and that they may expect a subpoena to testify at trial and that Affiant shall file a complaint against PEC for the illegal disconnect. The Sheriff Deputy said he would have no objection to appearing to testify. Affiant then asked to receive a copy of the sheriff's field report.

19. At approximately 10.15 a.m., all three of the persons left through the "front gate" at 1253 Harllees Bridge Road, and Affiant informed them that he would take further action.

20. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of the proceedings; that he is competent to make this deposition; that he alleges and avers that the facts are well grounded as stated herein, and the pleadings filed in this suit, and exhibits attached thereto which are true and correct copies of the original documents and by reference are made part hereof.

Further, Affiant sayeth naught.

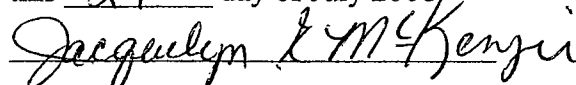
DATED: Little Rock, May 20, 2008.



Gary Weaver
Affiant

Subscribed and sworn to before me

this 29th day of July 2008



Jacquelyn L. McKenzie

Notary Public, State of South Carolina

My Commission expires: 2-8-16

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	CASE NUMBER 2008-CP-17-180
GARY WEAVER, BEA Wallenstein,	)	
and B.E.A. Wallenstein Hospice Inter	)	
Vivos Trust,	)	
	)	
Plaintiffs Pro Se,	)	
	)	RULE 12(b) MOTION TO DISMISS
vs.	)	
	)	
Progress Energy Carolinas, Inc.,	)	
William Johnson, and John Does 1-20,	)	
	)	
Defendants.	)	
	)	

The undersigned, appearing specifically for the limited purpose of presenting lack of jurisdiction issues, does hereby move for an Order of Dismissal pursuant to S.C.R.C.P. Rule 12(b)(2), S.C.R.C.P. Rule 12(b)(4), and Rule 12(b)(5). The grounds for the Motion are as follows:

1. The Plaintiff initiated a Pro Se Complaint against the Defendants Progress Energy Carolinas, Inc., William Johnson, and "John Does". The Complaint was filed with the Dillon County Clerk of Court on or about May 30, 2008.
2. The Plaintiff has ~~not affected service on~~ either the individual Defendant, Mr. Johnson, or the Corporate Defendant Progress Energy Carolinas, Inc., therefore this Court does not have personal jurisdiction of the Defendants.
3. The case now appears on the trial roster for a term of court in Dillon County commencing on August 10, 2009. Based on the foregoing it is requested that the Court dismiss

the pending action and remove the case from the trial roster.

RESPECTFULLY SUBMITTED.

WILLCOX, BUYCK & WILLIAMS, P.A.

By. 

MARK W. BUYCK, III

I.D. No.: 011902

PO Box 1909

Florence, SC 29503-1909

(843) 662-3258 - Tel

(843) 662-1342 - Fax

ATTORNEY FOR DEFENDANTS

Progress Energy Carolinas, Inc. and

William Johnson ✓

August 4, 2009

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKETING DEPARTMENT

NOTICE OF HEARING

DOCKET NO. 2007-401-E

Beatrice Wallenstein (a/k/a Beatrice Weaver), Complainant/Petitioner v. Progress Energy Carolinas, Inc. and Marlboro Electric Cooperative, Inc., Defendants/Respondents

PLEASE TAKE NOTICE that a hearing on the above matter pursuant to 26 S. C. Code Ann. Regs. 103-817 has been scheduled to begin **on Tuesday, August 5, 2008, at 2:30 p.m.**, before the Commission in the Commission's Hearing Room, Synergy Business Park, 101 Executive Center Drive, Saluda Building, Columbia, South Carolina.

Persons seeking information about the Commission's Procedures should contact the Commission at 803-896-5100.

Public Service Commission of South Carolina
Attn: Docketing Department
Post Office Drawer 11649
Columbia, South Carolina 29211

4/15/08
cba

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

MOTION FOR ENTRY OF DEFAULT;
FOR DEFAULT JUDGMENT;
FOR PARTIAL SUMMARY
JUDGMENT; MEMORANDUM IN
SUPPORT OF MOTION; AFFIDAVIT
OF GARY WEAVER; EXHIBITS A- ;
NOTICE OF MOTION; CERTIFICATE OF
SERVICE

OF GARY WEAVER; EXHIBITS A- ;
NOTICE OF MOTION; CERTIFICATE OF
SERVICE

SERVICE

JURY TRIAL REQUESTED

FILED
GWEN T. HYATT
2009 AUG -6 PM 4:22
CLERK OF COURT
DILLON COUNTY

Pursuant to Rule 55, S.C.R.P, Plaintiff respectfully moves the Court for an Order adjudging Defendants to be in default in this action for failing to file their Answer, and otherwise plead, defend, or appear (as defined by the courts), within the time required by law, and for entry of default by the Clerk of Court and Default Judgment.

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Pursuant to **Rules 55 and 56**, S.C.R.C. P, Plaintiff respectfully moves for partial default judgment for partial relief by the Court as discussed in the annexed Memorandum in Support of Motion for a partial summary award of damages as may be deemed appropriate by the Court and as claimed as relief in the Complaint. Due to Defendants continued abuse of the judicial process Plaintiff has been forced to expend inordinate time, effort and costs in adjudicating litigation cause by Defendants to the detriment of Plaintiff's other productive activities.

Under the doctrine of futility, Plaintiff moves for the Court to exercise its inherent power and jurisdiction to grant further partial relief for a summary Court Order to Defendants to pay for the costs, estimated by the utilities at \$100,000, and to change the electric provider from Defendant Progress Energy, to provide power to Plaintiff Beatrice Weaver's residence.

In granting partial summary judgment the Court is respectfully requested to take judicial notice of the facts of record and Defendants' abuse of process, breach of agreement, non-compliance with a Court Order, and contempt of court authority, etc, as noted in the Complaint in this action.

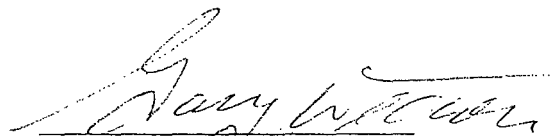
Pursuant to Rules 38 and 55 (b) (2), S.C.R.C.P., Plaintiff reserves and has not withdrawn the right of jury trial previously demanded in the Complaint for determination of damages for all Plaintiffs' claims for relief in the Complaint.

This motion is based on the records and files and on the annexed Affidavit of Plaintiff Gary Weaver, the Memorandum in Support of the Motion, and the annexed Exhibits.

Wherefore, for good cause, the Plaintiffs make application that the Defendants be defaulted pursuant to Rule 55 (b)(1), for partial summary relief, and a continued jury trial date for determination of damages and full relief as claimed in the Complaint..

Dated: Dillon County, August 1, 2009

Respectfully submitted.


Gary Weaver, Plaintiff Pro Se

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)

MEMORANDUM IN SUPPORT
OF MOTION

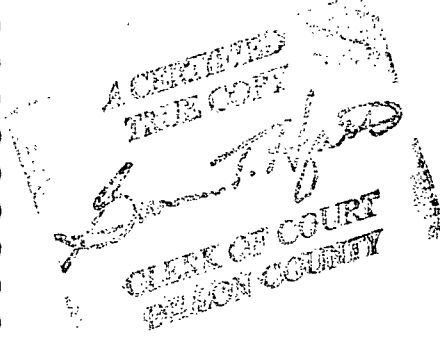
Plaintiffs Pro Se)

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

JURY TRIAL REQUESTED



FILED
GWEN T. HYATT
2009 AUG -6 PM 4:26
CLERK OF COURT
DILLON COUNTY

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

As noted in the annexed Affidavit of Plaintiff Gary Weaver, and proofs of service, Plaintiffs duly served process of the Complaint and Summons filed on May 30, 2008 with legal counsel for Defendants, on two separate occasions; to wit:

1. On or about July 24, 2008 to Attorney, Mark W. Buyck III who has represented Defendants in all litigation between the parties upon which this action is a derivative, and Attorney Len Anthony, General Counsel for Defendants; and
2. On or about April 18, 2009, Plaintiffs served Defendants a second time by mailing the complaint and summons directly to Mr. Anthony as counsel for the Defendants pursuant to the long arm law of South Carolina. The belief was that Attorney Mark Buyck no longer represented Defendants in this action, since no acknowledgment either way was received by Plaintiff in any shape or form from either counsel.

As of this writing, neither of the two attorneys for Defendants has responded to the two services of process. Proof of service on both occasions has been duly filed with the court. (see **Exhibits A, B, and C**).

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Accordingly, pursuant to **Rule 55, S.C.R.P.**, Plaintiff has respectfully moved the Court for an Order adjudging Defendants to be in default in this action for failing to file their Answer, and otherwise plead, defend, or appear (as defined by the courts), within the time required by law, and for entry of default by the Clerk of Court and Default Judgment.

Jurisdiction of the Court and Procedure for Default Judgment

There are two and sometimes three separate steps to obtain a default judgment: (1) the entry of default; (2) the discretionary hearing before entry of judgment, and (3) the actual entry of judgment.

The entry of default is the ministerial act recognizing that a party has not completed a required action in the time provided under the rules. See, **Beckham vs. Durant**, 300 SC 329, 331 n.2, 387 SE 2d 701, n.2, (Ct. App. 1989) Rule 55 requires a showing of the default by affidavit or otherwise, and the Clerk of Court simply notes the default in the court records. As in this case, the most common default is the failure to appear and failure to file a timely response to the complaint. Plaintiff's Affidavit and motion clearly document Defendants' failures to comply with the rules. There can be a default after entering an appearance for failure to meet other deadlines. See, **Goodson vs. American Bankers Ins. Co.**, 295 SC 400, 368 SE 2d 687 (Ct. App. 1988).

Pursuant to **Rule 12 (a)**, the Defendants have thirty days from the date of service to answer or otherwise plead. Thirty days is also required if the service is by mail as in this case, under **Rule 4 (d) (8)** whereby service is effective on date of delivery. Service is effective when made on an agent authorized by law to accept service, and not when the party actually receives the summons and complaint. Exhibits B and c hereto clearly show effective service on Defendants attorneys. See, **Holman vs. Warick Furnace C.**, 456 S.E.2d 894 (1995). The calculation of time is governed by **Rule 6** and the entry of default may be vacated on showing of a good cause.

A default judgment is a final order terminating the case, and establishing liability and damages. It is the same as any other judgment and entered pursuant to **Rule 58 S.C. R.C.P.** Only the Court may enter a default judgment. **Rule 54 (c)** however limits the default judgment for failure to appear, to the relief requested in the Complaint.

Plaintiff notes that there is no requirement that Plaintiff give notice of the application for a default judgment to a competent adult or corporation who has not appeared in the action, as in this Case. **Rule 5(a) SCRCP.** (no service on parties who have failed to appear). See, **Roche vs. Young Bros, Inc., 456 S.E. 2d. 897 (1995)**

Although not applicable in this case, three days notice of a default judgment is required if a Party has appeared in the action and subsequently defaulted and the Court schedules a hearing on the application. See, **Thomas & Howard Co. vs. T.W. Graham and Co. 457 S.E. 2d 340 (1995).** This situation does not apply in this case because Defendants have not appeared.

It has been stated that service of an untimely answer was an appearance requiring notice under **Rule 55 (b) (1).** See, **Dyman Inc., vs. Hyman, 305 S.C. 170, 406 S.E. 2d 388 (Ct. App. 1991).** Since Defendants have not appeared or filed an untimely answer this rule is moot as to this action.

Notice is not required if the Court can enter judgment without a hearing, as in the case of a liquidated amount. See, **Thomas and Howard Co. Op Cit.**

The last sentence of **Rule 55 (b) (1)** provides the Court discretionary authority to conduct a hearing before entering the default judgment. A hearing **must be held** when there is a claim for **unliquidated damages** as in this case. **Rule 5(a) See, Howard vs. Holiday Inns, Inc., 271 SC 238, 246 SE 2d 880 (1978).** By implication a hearing is not required if the damages are liquidated, although one is permissible. Once a hearing is ordered all parties must be notified.

A hearing on default judgment cases is **not a full adversary proceeding.** The Supreme Court has stated that the default is a concession of liability, but not the amount of the damages. See, **Thomas & Howard Co. Op cit.** The prayer for relief may not bear any relationship to actual damages suffered, so the Plaintiff must prove the damages. The Defendants' participation in the hearing however, is limited to cross examining the Plaintiff's witnesses and objecting to evidence. See, **Howard vs. Holiday Inns. Op Cit.** However the defaulting party is not entitled to cross examine Plaintiff on any issue relating to liability. See, **DOE vs. S.B.M., 327 S.C. 352, 488 S.C. 2d 878.** The Defendant apparently cannot introduce affirmative evidence.

Rule 54 (c) states that a default judgment cannot exceed the prayer for relief. The rationale is that it would be unfair to increase damages after the default. There is case law however that the original prayer is not binding when the default follows an appearance and the defaulting party participates in the damages hearing. This condition has yet to be played out in this action. See, **Mauro vs. Clabough**, 299 SC 184, 383 SE 2d 244 (Ct. App. 1989). (In addition the defaulter in this case did not object to the evidence of the increased damages.) Thus the defaulting Defendants in this case face the choice: accept judgment for the amount pleaded, or contest the amount and risk a higher verdict from the court or the jury.

Note that Federal commentators argue that the language of the Federal Rule 55 (c) the same as this State's rule, does not differentiate between defaults in which there is an appearance and those in which there is no appearance. See, **10 Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure, Sect. 2663 (1983)**. However in this State as noted herein, Rules 5 (a) and Rule 55(b) (1) do differentiate between types of default as is the situation in this case.

Pursuant to **Rules 54 (c), 55 and 56**, S.C.R.C. P, Plaintiff has respectfully moved for partial default judgment for partial relief by the Court for a partial summary award of damages as may be deemed appropriate by the Court and as claimed as relief in the Complaint. Due to Defendants continued abuse of the judicial process Plaintiff has been forced to expend inordinate time, effort and costs in adjudicating litigation cause by Defendants to the detriment of Plaintiff's other productive activities. It has been stated that the lower court on default, has the jurisdiction to render any judgment to which the plaintiff is entitled under the relief demanded in the Complaint. See, **Hopkins vs. Hopkins**, 221 S.E. 2d 113, 266 S.C. 23 (1975); **Mut. Sav. & Loan Ass'n vs. McKenzie**, 266 SE 2d 423, 274 SC 630

The Motion is for entry of default and default judgment. Legal Authorities state that if a party is clearly in default as in this case, and the other party has a right to a default judgment, the Court has no discretion but to enter the judgment, and mandamus will lie to compel such entry. See, **Am. Jur. 2d. Judgments, Para. 269, 289, et seq.** Therefore essential elements of the argument in support are:

1. Whether or not service of process was effected pursuant to the rules of procedure
2. Whether or not Defendants filed an Answer within the required thirty (30) days, and whether s delay exceeding one year is unreasonable.
3. Whether or not Defendants “appeared” or otherwise objected to the complaint or summons (a) before the 30 day period ended; (b) after that period but before trial date; (c) or sat on their hands and did nothing, as in this case at this writing.
4. Whether or not attorneys for Defendants were neglectful, or their conduct transcends mere neglect and is willful abandonment or withdrawal from the case.
5. Whether or not Defendants are chargeable with their attorneys’ negligent failure to answer the Complaint; or even if the attorneys were negligent in failing to answer the complaint, whether or not their negligence was imputable to Defendants under the doctrine of vicarious liability.
6. Whether or not Defendants are liable to Plaintiffs under the doctrine of laches.
7. Plaintiff’s right to entry of default and default judgment, given the no response from Defendants, the facts and circumstances of the case, and pursuant to the applicable Statutes, S.C.R.P, and Case Law.

Accordingly, this Memorandum is respectfully filed to document and justify Plaintiffs’ claims for relief and demands, as provided by law pertinent to entry of default and default judgment.

DISCUSSION

1. Service of Process was accomplished pursuant to the rules of procedure.

1. As noted, pursuant to **Rule 4 (a) S.C.R.C.P**, Plaintiffs properly issued copies of the original Summons and Complaint to Defendants through their respective attorneys of record.

2. Pursuant to **Rule 4(b)** Defendants were duly notified that the rules required them **to appear and defend**, and in case of failure to do so, **judgment by**

default will be rendered against them for the relief demanded in the complaint. See **Exhibit A**.

3. Pursuant to **Rule 4 (d)** the summons and complaint were properly served together. See **Exhibit A**. Service to **individuals** as defendants was accomplished "by delivering a copy to an agent authorized by appointment or by law, to receive service of process." **Rule 4 (d)(1)**. There were no minors, incompetents or confined persons named as defendants. **Rule 4 (d)(2)** Service to the **corporate defendant** herein was accomplished "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment, or by law to receive service and the statute so requires, by also mailing a copy to the defendant."

Rule 4 (d)(3)

4. Pursuant to **Rule 4 (7) and (8)**, Plaintiffs accomplished service as permitted by statute, with registered/certified mail, return receipt requested and delivery restricted to the addressee. Service was effective on date of delivery as shown on the return receipt. See **Exhibits B and C hereto**. This rule provides that service pursuant to this rule sub-para. (8), shall not be the basis for the entry of a default or a judgment by default, unless the record contains a return receipt, showing the acceptance by the defendant or his attorney. See **Exhibits B and C**.

5. Further, said rule provides that default shall be set aside if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.

6. The record shows that service of process in this case was properly conducted by delivering copies of the Summons and Complaint to the respective attorneys of record for the Defendants. In both cases, service was made by registered, return receipt mail duly returned to Plaintiff who duly filed Proof of Service with the Clerk, pursuant to **Rule 4 (g)**. See, **Exhibits B and C hereto**.

7. **Defendants' Acceptance:** **Rule 4 (j)** provides that no other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served, or his attorney, and delivered to the person making service. The acknowledgment shall state the place and date service is accepted. See **Exhibits B and C hereto** for proof of service to Defendants' attorneys of record.

8. Both attorneys were agents of record in litigation between the parties herein. **Both attorneys were specifically requested by Plaintiff to acknowledge that the service of process was accepted by the attorneys authorized parties, which demand was ignored by both legal agents for defendants.** Neither legal agent declared in any manner that they did not represent defendants. As Officers of the Court and legal representatives of record for Defendants, both attorneys had a legal obligation and duty to timely file an Answer to the Summons and Complaint. As discussed below, neither legal agent filed an answer within 30 days, or appeared subsequently as of this writing.

9. Accordingly, liability to Plaintiffs arises under the doctrines of default, vicarious liability, and laches, deliberate or negligent violations of the Rules of Procedure, and following an established pattern and practice in the history of litigation between the parties, their willful or negligent violation and abuse of the judicial process.

As discussed below, Defendants attorneys "sat on their hands," any delay in response is unreasonable, and to claim otherwise would cause them to come to the Court with unclean hands.

The Court should impose sanctions in favor of Plaintiffs as deemed appropriate by the court under the circumstances.

2. Defendants Failed to Timely Answer the Summons and Complaint.

1. **Rule 12 (a) S.C.R.C.P** requires categorically that "A Defendant shall serve his answer within 30 days after the service of the complaint upon him...." As noted this was not done.

2. **Rule 12 (b)** requires that every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, etc., shall be asserted in the responsive pleading thereto if one is required, or at the option of the pleader, be made by motion. Such a motion shall be made before pleading if a further pleading is permitted.

3. On July 24, 2008, Plaintiffs served process on Defendants attorney of record, Mr. Mark Buyck and Mr. Len Anthony. Receipt was acknowledged on July 29, 2008 by an authorized party of Mr. Buyck. See **Exhibit B**.

4. Pursuant to **Rules 12 (a) and (b)**, Defendants Answer and/or motion in defense or objections to the first service of process should have been filed within 30 days,

or on or before August, 28, 2008. As of this writing, Plaintiffs have received no such pleadings.

5. On April 18, 2009, a second service of process was made on Mr. Len Anthony, Counsel for Defendants. Acknowledgment of receipt was issued on May 4, 2009.

6. Accordingly, pursuant to **Rules 12 (a) and (b)**, Defendants Answer and/or motion in defense or objections in response to the second service of process, should have been filed within 30 days, or on or before Wednesday, June 3, 2009. As of this writing, Plaintiffs have received no such pleadings.

7. As noted Defendants' attorneys failed to respond with an Answer or a defense motion within 30 days as required under Rules 12 (a). Nor did they file any motions citing any of the defenses or objections designated in Rule 12 (b) within thirty days, or as of the date of this motion.

3. **Defendants failed to timely appear in this action.**

1. The failure to make a timely response as established by the entry of default, admits the well-pleaded facts in the Complaint, and waives all defenses that have not previously been asserted, except as to the amount of unliquidated damages. See, **Howard vs. Holiday Inns. Op cit. Code Sect. 15-13-80 and Rule 8 (d)** provide that averments in a pleading to which a responsive pleading is required, other than those to the amounts of damage, **are admitted when not denied in the responsive pleading.**

2. Thus the Defendants in this case may not challenge the Plaintiff's status as the real parties in interest. See, **Bardoon Properties vs. Eidolon Corp., 326 S.C. 166, 485 S.E. 2d 371, (1997).**

3. Defendants may not challenge Plaintiffs' right to a jury trial of damages and other relief. See, **Gossett vs. Gilliam, 317 S.C. 82, 452 S.E. 2d 6 (Ct. App.1994.)**

4. And defective allegations of a fact are cured by a default. See, **Gillian vs. Gillian, 65 S.C. 129, 132-33, 43 S.E. 386 (1902)**

5. Plaintiff takes note of legal authority that there is no requirement that the Plaintiffs give notice of the application for a default judgment to a competent adult or corporation **who has not appeared in the action**, as in this case. **Rule 5 (a) S.C.R.C.P.**

states "... no service need be made on parties in default for failure to appear..." Further, as of this writing, Defendants have not appeared, and no new or additional claims for relief against Defendants are asserted in this action other than as prayed for relief in the original Complaint. See, **Roche vs. Young Bros., Inc. 456 S.E. 2d 897 (1995).**

6.. Plaintiff also notes that pursuant to **Rule 55 (b)(1)** three days notice of a default judgment is required **if a party has appeared in the action** and subsequently defaulted and the Court schedules a hearing on the application. In this case, the Defendants have not appeared, the default judgment has not yet issued, and this part of Rule 55 (b)(1) does not apply in this action.

4. **The Effect of Defendants' Failure to Deny is Admittance of Plaintiffs' Claims**

1. As noted, under **Rules 12 (a) and (b)** Defendants are **required** to file an Answer or a defense motion within 30 days of service. The record shows that this requirement was not met and Defendants are in default pursuant to **Rule 55** as discussed herein and in the motion. It is now more than one year since service of process on Defendants Attorneys. Hence the question arises as to the legal effect of this negligence, oversight, willful abandonment, or deliberate avoidance of process, and Plaintiffs rights to default under the law.

2. As noted above, **Code Sect. 15-13-80** and **Rule 8 (d)** provide that averments in a pleading to which a responsive pleading is required, other than those to the amounts of damage, **are admitted when not denied in the responsive pleading.**

3. An Answer is required under **Rule 12 (a)** and under **12 (b)** a defense motion may be filed at the Defendants' option, within 30 days of service. Neither has taken place.

4. **Therefore, Plaintiffs need look no further for justification for entry of default, damages, other relief and default judgment.**

5. Either by negligence, oversight or deliberate willful non-action, Defendants through their attorneys, whichever one represents them, **by law have admitted Plaintiffs averments in the complaint.** Further, it has been stated that by suffering a default, the defaulting party is deemed to have admitted the truth of the Plaintiff's allegations and to have conceded liability. See, **Roche vs., Young Bros., Inc.,**

of Florence, 332 S.C. 75, 504 S.E.2d 311; Schenk vs. Nat. Health Care, Inc., 471 S.e.2d 736, 322 S.C. 316, Reh & cert. dnd.

6. Consequently, by definition and action of the law, there are no genuine issues of material fact (having been “admitted” under Rule 8 (d), and other Court rules of procedure), and Plaintiffs are entitled to partial or full summary judgment as a matter of law, and under Rule 54 (c) Rule 56 and/or Rule 12 (c) to its claims for relief in the Complaint.

5. **Defendants Have a Right to Entry of Default and Default Judgment.**

1. Having established that Defendants have violated the law by not timely filing an Answer or defense motion or other pleas within 30 days of service, or since, and not appearing at all in this action, let us examine Plaintiffs’ legal right to entry of default and default judgment.

2. Note that **Rule 12 (c)** provides Plaintiffs the right to file a motion for Judgment on the Pleadings. The motion is treated as one for summary judgment under Rule 56 and may be heard before or at trial.

3. **Rule 54** refers to Judgments in general and specifically to Demand for Judgments. **Rule 54 (c)** restricts a default judgment to that prayed for in the demand for judgment. An exception to full relief entitled is made for default judgments.

4. Plaintiffs’ rights of default, claims for damages and other relief are clearly stated in **Rule 55 S.C.R.C. P.** Plaintiffs’ right of **entry of default** is provided for in **Rule 55(a):**

“ When a party against whom a judgment for affirmative relief is sought, **has failed to plead or otherwise defend** as provided by these rules, and **that fact is made to appear by affidavit or otherwise**, the clerk shall enter his default upon the calendar (file book).” (emphasis added)

5. It has been stated that whether default was actually entered on the calendar is not of consequence since the entry of default is a purely ministerial act which the Clerk is required to perform once the default is made to appear by the Plaintiff’s affidavit. See, **Thynes vs. Lloyd**, 294 S.C. 152, 363 S.E.2d 122 (Ct. App. 1987). This rule is intended to expedite the default procedure when there has been no appearance.

6. **Rule 55 (b)(1)** indicates that “a court is unable to enter judgment until damages are determined. The entry of default is an official recognition of the failure to appear or otherwise respond, but it is not a judgment by default. See, **Ricks vs. Weinrauch**, 293 S.C. 372, 360 S.E 2d 535 (Ct. App. 197).

7. Plaintiff's Affidavit annexed hereto is a verified statement that process was served pursuant to the rules, and that Defendants have failed to defend or otherwise appear. Thus the next issue to be addressed relates to Plaintiffs' default rights under two conditions:

(1) Where the Defendants have not answered the summons within the time limit or appeared as in this case.

(i) Given the facts and court records of the case, and pursuant to **Rules 12 (a) and 55 (a)**, the question for the Clerk of Court and the Judge is whether or not the Clerk shall enter Defendants' default upon the calendar. It has been stated that entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. See, **Stark Truss Co, Inc., vs. Superior Constr. Corp.**, 602 S.E.2d. 99.360 S.C. 503. Plaintiff has met this condition with the annexed sworn Affidavit of default.. Thus it is submitted that the Clerk of Court can on its own initiative file an entry of default on the calendar. It would then be for Defendants to file a motion to set aside or vacate the entry at the sound discretion of the court. See, **McCall vs. Ikon**, 611 S.E. 2d 315, 363 S.C. 646. Pursuant to Rule 55 (b)(1) it is noted that while a clerk may make an entry of default, a judge is required to enter a default judgment and approve attorney's fees. See, **Wetzel vs. Woodside Devt. Ltd. Partnership** 615 S.E. 437, 364 S.C. 589

(ii) Under **Rule 55 (b)(1)** the issue goes to the Judge for adjudication whether or not there are liquidated, or unliquidated damages claims. This case has both.

(iii) The facts of the case show that Defendants' attorneys, whichever one represents them, have been negligent at a minimum. Case law is clear that an attorney's negligent failure to plead is no reason why an entry of default or a default judgment should be denied Plaintiffs. Rule 60 (b). See, **Stearns Bank Nat. Assoc'n vs. Glenwood Falls L.P.**, 644 S.E. 2d 793, 373 S.C. 331, reh dnd, cert. dnd; **Williams vs. Vanvolkenburg**, 440 S.E. 2d 408, 312 S.C 373.

(2) Where the Defendants “appear” after service of process and the legal time limit to Answer has expired, either before or at trial.

(i) The record shows that Defendants have failed to respond within the time limit, or since as of this date. The courts have stated that where a defendant failed to file an Answer, plea, or Affidavit or defensive motion within the time limit allowed under the applicable rules of procedure, and even though an Answer was filed before a motion for entry of default was filed, an entry of default was warranted. See, **Stark Truss Co, Inc., vs. Superior Constr. Corp., op cit.**

6. **Plaintiffs have met the standards for entry of default and default judgment**

1. In consideration of this motion for entry of default and for a default judgment, Plaintiffs have met the standards. The Court has personal and subject matter jurisdiction; proper venue; sufficiency of process; sufficiency of service of process, and excusable neglect for not enjoining “John and Jane Does” as defendants because Defendants failed to file an Answer or appear in any other way as required by the law.

2. In anticipation of Defendants’ opposition to this motion, the court is respectfully reminded of the established tests and factors set by the courts relating to default judgments. For example see, **Stark Truss Co. Ibid.; In re Estate of Weeks, 495 S.E.2454, 329 S.C. 251.**

1. The timing of any Defendants motion for relief. The first service of process was made on or about July 29, 2008, some 13 months ago. The second service of process was on April 18, 2009, some 4 months ago. No response of any kind to date. This delayed any discovery by Plaintiffs.

2. Whether or not Defendants would have a meritorious defense. The facts show there has been negligence and/or willful abandonment on the part of the attorneys, subjecting Defendants to a claim of liability under the doctrine of laches and default.

3. The degree of prejudice to Plaintiffs if Defendants were granted any relief from default. A review of Plaintiffs claims for relief in the complaint and herein, indicate the degree of prejudice if the default is not granted.

7. **Relief**

1. The default of Defendants and judgment for relief against each and all of Defendants, as prayed for in the Complaint, should be entered and for failure to Answer and appear, entry of default and default judgment are hereby applied for, together with demand for jury trial for damages and other relief as prayed for in the Complaint.

2. Pursuant to **Rule 12 (c), Rule 54, Rule 55 and 56 S.C.R.C.P.**, on the merits of the case, Plaintiff claims partial judgment for partial relief in the minimum of \$100,000 as compensatory damages as stated in the complaint. ,and an Order to Defendants to pay the Utility Company's stated costs of \$100,000 for changing the provider of electric power to the residence of Plaintiff Beatrice Weaver. On these issues the facts and circumstances are clear and established in the pleadings. On the latter issue Defendants committed fraud, fraudulent inducement and a fraudulent act. There are no genuine issues of material fact and the prayer may be granted as a matter of law. **Moreover, any defective allegations of a fact are cured by a default. See, Gillian vs. Gillian 65 S.C. 129, 132-33, 43 S.E. 386 (1902)**

8. **Defendants are iable to Plaintiffs under the doctrine of laches.**

1. The foregoing discussion has established that for whatever reasons, attorneys for Defendants have sat on their hands for more than one year, and have not filed an Answer or other defensive pleas or appeared in any way in this action.

2. Consequently this discussion must explore the application of the doctrine of laches to support Plaintiffs claims for relief in the complaint and herein.

3. It has been stated that failure to assert a right for purposes of determining laches, does not come into existence until there is reason or a situation that demands assertion for purposes of the doctrine of laches. See. **Mid State Trust vs. Wright, 47 S.E. 2d 421, 323 S.C. 303.** The discussion herein supports the view that there is ample reason and the situation is ripe for Plaintiffs to assert the right to damages under laches.

4. The length of time which will justify equity for laches depends on the facts of the particular case; laches connoting not only undue lapse of time, but also negligence and opportunity to have acted sooner. See, **Cook vs. Knight, 91 S.E. 312, 106 SC 310 (1917).** Plaintiff respectfully submits that the facts and evidence shows clearly

the time elapsed for Defendants to file an Answer and appear, is not only unreasonable and a violation of the law by definition, but also negligent. Defendants attorneys could have acted much sooner, but simply ignored the summons.

5. The court is vested with wide discretion in determining what is unreasonable delay for the purposes of applying the doctrine of laches. See, **Chambers of SC, Inc., vs. County Council for Lee County**, 434 S.E. 2d. 279, 315 SC 418. The length of delay which would justify an equity court in referring relief on the grounds of laches, cannot be definitely fixed, but the court is vested with wide discretion in determining such matter. See, **Ham Vs. Flowers**, 51 S.e. 2d 753, 214 SC 212, 7 A.L.R. 2d 1124.

6. Finally, application of laches requires inexcusable delay and prejudice, both of which apply in this case. See, **S.C. State Ports Authority vs. M/V Tyson Lykes**, 837 F.Supp. 1357, aff. 67 F.3d 59.

7. Case law is clear that the application of laches for Defendants liability to Plaintiffs for damages and other relief, is warranted in this case on the grounds of inexcusable and unreasonable delay, negligence, prejudice to Plaintiff and Defendants attorneys' unclean hands..

9. **Summary and Conclusion**

1. It is Plaintiffs' belief and understanding that the Clerk of Court's file on this action has no record of Defendants' filing a **Rule 12 (a) or (b)** Answer or Defense Motion or Plea of any kind to the Complaint and Summons, either within the 30 day time limit prescribed by law, or subsequently, as of this writing.

2. Nor is there any file record of any other of Defendants' pleadings, efforts to defend, or appear (as defined by the courts), within the time required by law or otherwise as of this writing. Plaintiff's annexed Affidavit confirms and documents Defendants failure to take any action in this matter within or without the legal time limit.

3. The facts are clear and documented, and the case for entry of default is prima facie. The court has jurisdiction of the person and subject matter. Plaintiffs are competent adults. The venue is proper. Service of process and process have been sufficient. A question to be addressed is whether or not the Clerk or the Court shall order the entry of default in the file pursuant to Rule 55 (a). Another issue revolves around

whether or not there are liquidated or unliquidated amounts for damages pursuant to **Rule 55 (b)(1)**. These issues are left to the Court to decide.

4. This action seeks judgment for the following liquidated amounts A demand for partial liquidated amount of \$100,000 (as stated by the electric utilities) in the motion to pay for the costs of a change of electric power provider for Plaintiff Beatrice Wallenstein.

5. Plaintiff prays for a partial award of compensatory damages of \$100,000 for Defendants abuse of process causing Plaintiff actual damages resulting from having to neglect other productive activities over the past five years. The additional relief sought in the complaint is largely unliquidated and go to the court or the jury for adjudication.

6. As noted, Defendants have failed to serve or file an answer or otherwise defend. The time within which Defendants were required to serve a responsive pleading or otherwise defend, has long since expired and beyond any reasonable period.

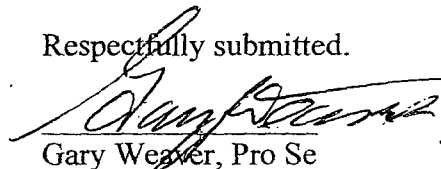
7. Defendants attorneys have continued their long documented history of a pattern and practice of litigation against Plaintiffs over the last five years for abuse of the judicial process causing unnecessary waste of tax payers funds, increasing the administrative burden on the court and its staff, and on Plaintiffs. Defendants' attorneys have shown continued contempt of the rules of procedure, and the court's authority, and noncompliance with the law.

8. Pursuant to application of the doctrines of default, vicarious liability, and laches, Defendants are liable to Plaintiffs as a result of their attorneys' lack of due diligence and negligence in this matter. There is no documented excusable neglect or other Rule 12 (b) or Rule 60 (b) defenses, by prominent and experienced professional counsel for Defendants. **Sanctions are requested for negligence or worse in this case.**

WHEREFORE, for good cause, Plaintiff makes application that the Defendants be defaulted, and respectfully requests the entry of Default, and full and partial default judgment as claimed, and for such other relief as the Court may deem just and proper.

Dated: Dillon County, August 3, 2009.

Respectfully submitted.


Gary Weaver, Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)
)
Plaintiffs Pro Se)

AFFIDAVIT OF GARY WEAVER

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)
)
Defendants.)



FILED
GWENT T. HYATT
2009 AUG -6 PM 4:26
CLERK OF COURT
DILLON COUNTY

AFFIDAVIT OF GARY WEAVER

County of Dillon)
)
State of South Carolina)
)

SS.

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant",
deposes and says as follows:

1. Affiant is a Plaintiff Pro Se in the above entitled case, an elder, and competent to make this affidavit and the Motion for entry of default judgment and default judgment.
2. This action was commenced by Plaintiff's Complaint and Summons filed on May 30, 2008 and duly served on Defendants. See attached copy hereto as **Exhibit A**.
3. Proof of **Service of Process** was duly filed with the Clerk of Court as documented by **Exhibits B and C** hereto. Said service of process by mail was duly made as follows:

1. On or about **July 30, 2008**, Affiant duly filed Proof of Service of the Complaint and Summons with the Clerk of Court. Note in **Exhibit B** hereto, that by letter dated **July 24, 2008**, a copy of the Complaint and Summons was duly mailed with return receipt to Mark W. Buyck, III, Esq. Attorney at Law who has represented the Defendants in all prior litigation by and between the parties herein. **At the same time a copy was also mailed directly to Mr. Len Anthony, General Counsel for Defendants.** See copies of mailing receipts in **Exhibit B**. Affiant had **assumed** that Mr. Buyck was the appropriate legal representative for Defendants for service. Said letter of transmittal specifically requested Mr. Buyck to attest that the copy was received by an authorized person of his law firm. Subsequently, other than receipt of the US Post Office Return Receipt showing Mr. Buyck received the Complaint and Summons, to this date there has been no Answer, pleadings, appearance, objections, communications of any kind, **in point of law**, filed by Mr. Buyck in this action.

Following the completion of the time within which an Answer and appearance are required under the statutes and rules, Plaintiff duly enquired of the case status of the Clerk of Court Office. It was confirmed that no Answer or appearance had been filed or forthcoming from Mr. Buyck or Defendants' legal counsel Mr. Anthony directly. Affiant decided to wait further for a response, and by April 2009 concluded that since there was no response of any kind from Mr. Buyck, that Mr. Buyck was not representing Defendants in this action. Affiant has received no indication of this matter one way or the other to date. Mr. Buyck has simply ignored the Complaint and Summons to date.

2. Accordingly, having waited the required time, and a respectable period of time for an Answer and appearance, on April 18, 2009, Affiant directly mailed a **second**

service of the Complaint and Summons to Mr. Len Anthony, Deputy General Counsel for each and all of the Defendants named in the Complaint; i.e., the Corporation and its employees. See **Exhibit C** hereto. Said letter of transmittal specifically requested Mr. Anthony to attest that the service was received by an authorized person of his law office on behalf of each and all of the Defendants.

On May 25, 2009 Affiant duly mailed a **second Proof of Service** of the Complaint and Summons to the Clerk of Court. Subsequently, other than receipt of the US Post Office Return Receipt showing Mr. Anthony received the Complaint and Summons, to this date there has been no Answer, pleadings, appearance, objections, communications of any kind, **in point of law**, filed by Mr. Anthony. Once again Affiant's routine enquiry of the Clerk of Court Office confirmed that no Answer or appearance had been filed or forthcoming from Mr. Anthony or his possible other legal representative Mr. Buyck.

3. The Court files show that both Mr. Anthony and Mr. Buyck, whoever is the legal representative of the Defendants, have simply ignored the Complaint and Summons and neither has indicated to Affiant or the Court which one of them, or both, represent the Defendants. Affiant has received no indication of Defendants' position on the Complaint from any quarter, one way or the other. This situation made it impossible for Affiant to continue with discovery procedures to prepare for trial and identify the named corporate "John and Jane Does", as potential material witnesses or additional defendants in the case.

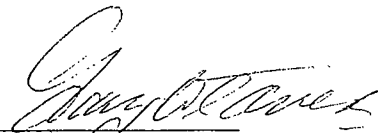
4. Based on the facts, the circumstances, and the substantive and statutory law of Default, Affiant therefore concluded that a motion for entry of default and a

default judgment, a partial summary grant of damages and a jury trial for further jury relief demanded in the Complaint were appropriate under the circumstances. Defendants are in default and as such admit the charges in the complaint and hence are liable for damages pursuant to **Rule 12 (c), Rule 55 (b)(1), Rule 56**, and pursuant to the **doctrine of latches**. Defendants have no legitimate recourse having sat on their hands from the outset, and any pleading for relief from default by Defendants would mean coming to the Court with unclean hands as have been their practice in the past.

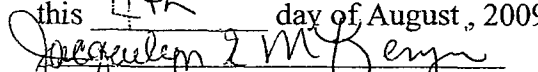
4. **The time for Defendants to appear, answer, plead, defend, or raise objections to the Complaint in point of law, has expired. The Court files show that Defendants have not appeared, have not answered, or raised any objections in point of law, by demurrer or otherwise as of this date.**

5. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case. This pleading is intended to accelerate, rather than delay the proceedings. Affiant is competent to make this deposition, and alleges and avers that the facts are well grounded as stated herein, and the exhibits attached hereto and to his pleadings of record are true and correct copies of the original documents and by reference are made part hereof.

Further, Affiant sayeth naught.


Gary Weaver, Affiant

Subscribed and sworn before me
this 4th day of August, 2009.


Notary Public, State of South Carolina

My Commission expires: 2-8-16

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B.E.A. Wallenstein Hospice)
Inter Vivos Trust,)

PLAINTIFF GARY WEAVER'S FIRST
MEMORANDUM IN OPPOSITION TO
DEFENDANTS' RULE 12 (b) MOTION
TO DISMISS

Plaintiffs Pro Se)

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

FILED
GWEN T. HYATT
2009 AUG 13 PM 3:51
CLERK OF COURT
DILLON COUNTY

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CLERK OF COURT
DILLON COUNTY

**PLAINTIFF GARY WEAVER'S FIRST MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

1. Introduction

1. Comes now Plaintiff Pro Se Gary Weaver, (hereafter "Plaintiff") and files this **First Memorandum in Opposition to Defendants' Rule 12 (b) Motion to Dismiss** this case (hereafter "Memorandum"). This first Memorandum is filed pursuant to the request of the Court at the preliminary Hearing conducted on August 10, 2009 Said Motion was continued, to be heard at the next session of the Court in September 2009 on a day as yet unknown to Plaintiff as of this writing.

2. This first Memorandum refers specifically to the several issues cited by Defendants in the said written Motion and not the issues orally presented to the Court at the August 10, 2009 hearing. This Plaintiff received a copy of the said Motion by mail at 11.30 a.m., Friday, August 7, 2009, just three days prior to the August 10, 2009 trial date set for this action. The Motion is the first **appearance** (as defined by the courts) by Defendants in this action in some 14 months, since the date Plaintiffs filed the original complaint and summons on May 30, 2009. Defendants have not filed an Answer pursuant

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to Rule 12 (a) SCRCP which is required to be filed within 30 days of service of summons on Defendants; that is, on or about August 28, 2008.

3. Defendants' being in default by definition, Plaintiff timely filed a Motion for Entry of Default, etc., on August 6, 2009. At the August 10, 2009 preliminary hearing, the Court also continued a hearing on that Motion until the next session of the court in September, 2009, together with Plaintiffs' Motion to Continue the Trial Date timely filed on August 4, 2009, 2009.

4. At the preliminary hearing on Defendants' motion to dismiss, Counsel for Defendants, Mr. Mark W. Buyck III, orally introduced two additional and erroneous defense arguments. In response to the Court's request for a written reply from Plaintiff, a **second** Memorandum in Opposition will be filed with the court's permission in due course following further research and documentation of Defendant's misleading oral arguments presented without any substantiation whatsoever..

5. The Court is respectfully requested to take judicial notice of the facts and argument presented in this Plaintiff's pending Motion for Entry of Default, etc. That motion deals specifically with the issues presented in Defendants motion to dismiss and should be read in conjunction with this Memorandum.

6. Therefore to summarize, in response to the Court's request for written reply to Defendants' arguments for dismissal, Plaintiff files this first Memorandum dealing with the issues cited in the written Motion to Dismiss received in August 7, 2009. A second supplementary memorandum replying to Defendants' erroneous oral arguments offered at the preliminary hearing on August 10, 2009 shall be filed in due course.

2. The Motion Confirms Entry of Default; Summary Judgment for Plaintiffs.

1. Defendants' motion to dismiss centers on service of process. This means whether or not the original complaint and summons were properly served as claimed by Plaintiffs and denied by Defendants. The determination then, rests on the documented facts. Plaintiff has discussed the issues at length in the Motion for Entry of Default, etc., pending before this Court and is respectfully referred to that motion with respect to review of the subject motion to dismiss.. As discussed herein below, Defendants have

made their charges with unsubstantiated allegations of facts or other documentation, nor supported by verified affidavit.

2. As discussed further herein below, the issues for court adjudication are:

1. Whether or not Plaintiffs' served the respective parties personally, by way of an authorized agent, or by way of their respective attorneys. (Yes)

2. Whether or not service of process can be effected by delivery of the complaint and summons to the respective attorneys. (Yes)

3. Whether or not the attorneys served in fact represented the Defendants. (Yes)

4. Whether or not the Defendants' motion to dismiss is actually a moot issue, based on the facts, circumstances and Defendants absence of any proof of its allegations. (Yes)

5. Whether or not the motion should be denied on the grounds of its failure to comply with **Rule 5 (b) (1) SCRCF** by not filing notice of the motion with all of the Plaintiffs, the parties of record in this action. (Yes)

3. Defendants' Motion to Dismiss was filed by Attorney, Mark W. Buyck III for the law firm of Willcox, Buyck & Williams, P.A. on August 4, 2009. See the signature on page 2, of **Exhibit A**. hereto. This representation continues the lawyer/client relationship and authority of the Defendant and Law firm during the five years that the parties herein have been litigants. Said Law Firm represented the Defendants in negotiating the Mutual Release, the Defendants' violation of which, inter alia, is the subject of this action.

4. Plaintiff respectfully submits that the very act of filing the motion on behalf of Defendants documents and confirms that Mr. Buyck represents each and all of the Defendants for service of process as their authorized attorney of record. And if not, then as an Officer of the Court, he had the legal duty to so inform the parties and the court in a timely manner. Since he did not, and instead has appeared by filing the subject motion, then Plaintiff and the Court may reasonably proceed on the understanding that Mr. Buyck as their attorney, received service of process on Defendants behalf as documented by Plaintiffs' Proof of Service duly filed with the Clerk of Court and referred to herein.

5. Further, Plaintiff submits that the filing of the motion to dismiss, documents that the complaint and summons were received by the respective attorneys and hence by the Defendants, pursuant to the Rules of Procedure and Case Law cited in Plaintiffs' Motion for Entry of Default, etc.

6. The subject motion is a deliberately belated "appearance" representing the Defendants, after 14 months, just three days before the trial.

7. The Proof of Service of Process is thoroughly documented in Plaintiffs' Motion for Entry of Default. See **Exhibits B and C** thereto.

8. **The motion for dismissal should be summarily denied.**

3. **Response to Defendants' Written Motion**

1. Para. 2. of the motion states that "the Plaintiff has not **affected** (sic) service on the individual Defendant, Mr. Johnson, or the corporate Defendant, Progress Energy Carolinas, Inc.; therefore this Court does not have personal jurisdiction of the Defendants and requests dismissal of the action on those allegations.

2. Defendants' motion is filed pursuant to **Rules 12 (b) (2) (4) and (5) S.C.R.C.P.** Apparently the Defendants neglected to read **Rule 12 (a)** for some 14 months, on their way to **Rule 12 (b)** on August 7, 2009. Plaintiffs' original complaint and summons was duly filed on May 30, 2008, and duly served on each and all of Defendants, as documented in Plaintiff's pending **Motion for Entry of Default, etc.** filed with the Court on August 6, 2009. The defects adhered to Defendants' motion may be submitted as follows by Plaintiff, in moving for summary denial of Defendants' unproven claims. Moreover, the Defendants come to the court with unclean hands in this matter.

3. **Rule 12 (b) SCRCPP** provides that a motion making any of the 8 defenses listed, **"shall be made before pleading, if a further pleading is permitted."** Legal authority states that the said motion should be made before answer, for early disposition of the case. See, S.C. Rules of Civil Procedure, 2007, Rule 12., Notes, Para. 2, p.280. (Thompson.West). The alternative, is imposition of a burden on the Court administration and Plaintiffs by delay of process.

4. **Rule 7 (a) SCRCPP** provides that there **shall be** a complaint and an answer. Defendants have no option to decline to make an answer, nor appear, without

suffering adjudicatory consequences, particularly if their declination is a deliberate planned abuse of process, not to mention reprehensible negligence.

5. **Rule 8 (b) SCRCP** requires Defendants to state the facts constituting the defenses to each cause of action asserted by Plaintiffs. Defendants chose the option to ignore this procedural requirement until August 7, 2009, three days before trial pursuant to Rule 12 (b) 2, 4, & 5. Notwithstanding, Defendants do not escape the consequences of their negligence in not responding to the Summons with an Answer, which is a summary entry of default. For proven "god cause" Defendants can apply to the court to vacate or set aside the entry of default pursuant to **Rule 55 (C). SCRCP**.

6. **Rule 8 (d) SCRCP** provides the effects for Defendants failure to deny the allegations made by Plaintiffs: **"Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading"**. Defendants' failure to respond, by rule has admitted the facts and Plaintiffs' allegations, and opens the door for Plaintiffs to demand entry of default and summary judgment which it has done in this action. There are other consequences that restrict Defendants rights under default to be presented at the jury trial.

7. As documented in Plaintiff's Motion for Entry of Default, Defendants **failed to Answer** the Complaint and Summons duly filed on the Defendants, within the required thirty (30) days as provided, and failed to "appear" in any manner before the Court, until three (3) days before the trial date set for August 10, 2009 by filing the said motion.

8. Defendants orally claimed at the preliminary hearing on August 10, 2009, that they deliberately chose to ignore that option, on spurious grounds, and filed a Rule 12 (b) motion at the last moment before trial. Defendants have deliberately and knowingly violated the spirit and letter of the Rules of Procedure as to process and service of process, including their neglect in not serving a copy of their motion to dismiss on all three of the Plaintiffs. . There is no excusable neglect nor mistake, etc involved in Defendants actions. The facts show that Defendants who deliberately "sat on their hands" for 14 months, now come to the Court with unclean hands. Hence they are liable to Plaintiffs pursuant to the doctrine of laches, notwithstanding their right to file a pre-trial

Rule 12 (b) motion. But the filing must be done in accordance with the rules and without abuse of the judicial process, which Defendants have a habit of doing.

4. **Defendants Motion to dismiss is without substance.**

Defendants' did not provide a Memorandum of fact or law or documentary proof of any kind, in support of the written allegations in the said motion. The motion before the court stands naked of any evidence of any kind that the facts or the law supports Defendants claims or allegations for dismissal That practice is another habit of Defendants in their appearances before the Court over the past five years.

5. **Defendants' Motion failed to give notice to all Plaintiffs of record in this action.**

1. **Pursuant to Rules 4 and 5 (a) SCRCF** Defendants are required to serve a copy of the written motion to dismiss upon each of the parties of record, either personally or by mailing it to their last known address. **Rule 5 (b) (1).**

2. Defendants' **Certificate of Mailing** of the said motion certifies that the motion was served on Plaintiff Gary Weaver by mail on August 4, 2009. It was received by said Plaintiff at 11.30 a.m. on Friday, August 7, 2009, just three days before the trial date on August 10, 2009. Mr. Buyck's letter of transmittal to the Clerk of Court dated Aug. 4, 2009 refers only to sending a copy to this Plaintiff. No mention is made of the other two Plaintiffs in this action. Further, said letter is incorrectly captioned. This action is not Progress Energy Carolinas, Inc vs. Gary and Beatrice Weaver as stated. We note that a copy of said letter was sent to Mr. Len Anthony, Counsel for Defendants.

3. The said Certificate of Mailing makes no mention of service of the motion on the other two Plaintiffs Pro Se in this action; viz., B.E.A. Wallenstein and the B.E.A. Wallenstein Hospice Trust. Nor does the Court's **Motion Cover Sheet** show service of the motion to the other two Plaintiffs Pro Se. See **Exhibits A, B and C** hereto and made part hereof.

4. Plaintiff Pro Se Gary Weaver is not the attorney for the other two Plaintiffs in this action and is not an authorized agent, and by law cannot represent the other Plaintiffs Pro Se in this action for service of process. The **Affidavit of B.E.A. Wallenstein** attached hereto attests that she and the Trust have not received a copy of the motion.

6. **Defendants Unsubstantiated Claims.**

1. Defendants' written motion and oral argument at the August 10, 2009 preliminary hearing, alleges, without any substantiation, several claims:

1. Lack of jurisdiction over the person. Rule 12 (b) (2)
2. Insufficiency of process. Rule 12 (b) (4)
3. Insufficiency of service of process. Rule 12 (b) (5).

Defendants claim the lack of jurisdiction of the person flows from the allegations relating to the alleged deficient service of process by Plaintiffs. **No proof of the alleged defective service is offered to the Court.**

2 In response to the allegations we must explore whether or not service of process was complete on the following:

1. Progress Energy Carolinas, Inc, a North Carolina, monopoly utility operating in a protected Dillon County franchise, and a for-profit public corporation.
2. Defendant William Johnson, President of the said corporation at the time of filing the summons, and during the period related to Plaintiffs' claims.

3 Note that Defendants omit any comment on service of process to the "John Doe" Defendants, included pursuant to **Rule 10 (a) (1) SCRCP**. Each and all of these unknown persons were duly served by deposit of the complaint and summons with the Clerk of Court on May 30, 2008, pursuant to **Rule 5 (b) (1) SCRCP**. Defendants have conceded no challenge lies on that issue.

7. **Service on the Corporation Was Effected.**

Service on the Corporation was effected as follows pursuant to the Rules of SCRCP and State statutes:

S.C.R.C.P. Rule 4:

1. Rule 4 (d) (2): Voluntary appearance of Mr. Buyck and his Law Firm as Attorney representing the Defendants is equal to personal service.
2. Rule 4(d) (3): Written notice of appearance by the attorney shall be effective upon mailing.
3. Rule 4(d) (3): Service effected by delivering a copy to the Attorney: Mr. Buyck on or about July 29, 2008 and to Mr. Len

Anthony, Counsel for Defendants on May 2009.

4. Rule 4(d) (8): Service by registered return receipt: service is effective as of the date shown on the return receipt. (See Plaintiffs' Proof of Service, Exhibits B and C on Motion for Entry of Default. etc.)
5. Rule 4(g) (h) (i) (j): Plaintiffs complied with each of these rules.

State Statutes:

The following State Statutes provide for service to the corporation:

1. S.C. Code Sect. 15-5- 30/40/50: As to Parties.
2. S.C. Code Sect. 15-5- 150: Service to the corporation
3. S.C. Code Sect. 15-9- 210: Service to the corporation agent.
4. S.C. Code Sect. 15-13- 390: Provides for notice to the attorney
5. S.C. Code Sect. 15-9- 920: Service on Attorney who represents the party
6. S.C. Code Sect. 15-9- 990: Service to the attorney. (p.261)
When the party shall have an attorney in the action, the service of papers is made upon the attorney instead of the party.

8. Service on the Individual Was Effected.

Service on the individual, the President of the Corporation at the time of serving the summons and complaint, was effected as follows pursuant to the Rules of SCRCF and State statutes:

S.C.R.C.P.

1. Rule 4 (d) (1): Service by delivering a copy to an agent authorized by appointment or by law to receive service. In this case by Mr. Buyck and/or Mr. Len Anthony.
2. Rule 5 (b) (1) Service to be made upon the attorney representing a Party, by mail

3. Rule 5 (d): Proof of Service was duly filed with the Clerk of Court. See Exhibits B and C of Motion for Entry of Default.

9. **Service on the John Doe Defendants Was Effectuated.**

As noted above, service on John Doe Defendants was complete on delivery of Complaint and Summons to the Clerk of Court on May 30, 2009. See, Rule 5 (b) (1).

10. **Proposed Disposition of the Motions.**

1. Plaintiff respectfully submits that the facts and circumstances clearly show Plaintiffs' right to a summary order for entry of default. Defendants are clearly in default and Plaintiffs have met all the requirements for service of process in this action. Defendants have submitted no memorandum of law or fact to support their motion to dismiss pursuant to Rule 12 (b).

2. Based on the facts and Plaintiffs review of the law, authorities and cases related to default judgments, it is respectfully submitted that the Court may consider to proceed as follows:

1. Summarily deny the subject motion to dismiss on the grounds filed herein.
2. Order entry of default.
3. At the court's discretion, conduct a hearing on Plaintiffs' claim for partial damages prior to the jury trial.
4. Defendants can file for relief from the entry of default before or at trial.
5. Conduct jury trial for damages claimed by Plaintiffs.
6. Issue default judgment order.

3. Rule 55 (c) governs motions for relief from default and has different standards for relief from entry of default and default judgment. Relief from the former may be to set aside or vacate upon a showing of "good cause" by Defendants. Relief from the default judgment granted at hearing or at trial, may be taken according to the standards of **Rule 60 (b) SCRC**P. However, Plaintiff respectfully submits that Defendants have no "good cause" for relief from their negligence, and they have not made a mistake (except one of judgment), inadvertence or excusable neglect or other

grounds under Rule. 60(b). Defendants' deliberately by conscious decision, delayed any avoidance of filing an Answer or appearing for some 14 months, just three days prior to trial. The delay was deliberate and calculated. We are dealing here with professional law firms who know or should know the rules of procedure, and to protect and preserve their clients' rights and obligations under the rules, by timely filing an answer and appearing.

4. **Accordingly, Plaintiff respectfully moves for a summary grant of entry of default, denial of the motion to dismiss and for continuance of the jury trial date for determination of damages.**

11. **Summary and Conclusion.**

The foregoing analysis of the facts and circumstances of the case, and the file records clearly show the following:

1. Mr. Mark W. Buyck and his Law firm represent each and all of the Defendants.
2. Mr. Len Anthony, as Deputy General Counsel for the corporation, represents the Defendants, including the President as a corporate officer and any John does employees that may be identified and enjoined in due course before the trial.
3. Both attorneys were duly and timely served with a copy of the Summons and Complaint on behalf of Defendants.
4. Proof of Service to both attorneys was duly filed with the Clerk of Court.
5. Both attorneys and especially Mr. Buyck, negligently failed to file an Answer within the required 30 days under Rule 12 (a) SCRCPP.
6. Defendants appearance (as defined by the courts) did not take place until August 7, 2009, 14 months after filing of the Complaint and Summons, just three days before trial with Mr. Buyck's Rule 12 (b) Motion to Dismiss.
7. Said motion was not served on Plaintiffs' B.E.A. Wallenstein and the B.E.A. Wallenstein Hospice Inter Vivos Trust. **And should be summarily denied on these grounds alone for violation of Rule 5 © SCRCPP.**
8. Defendants motion submits undocumented allegations and claims filed without any supporting facts, verified affidavits, or other materials necessary to document

the case for the court. **The burden of proof is on Defendants to support their claims, not on Plaintiff to rebut in response.**

9. The preponderance of the facts and evidence clearly favors Plaintiffs in this matter. And Defendants have come to the court with unclean hands and are liable to Plaintiffs under the doctrine of laches.

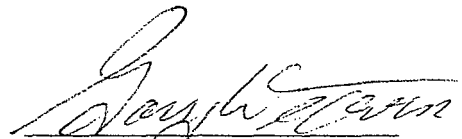
10. The record shows that Plaintiffs have complied with all relevant Rules of Civil Procedure and S.C. Statutes governing process and service of process in this action. On the other hand, the record shows that Defendants have not, and in fact have deliberately and knowingly abused the process, and as stated, come to the court with unclean hands.

11. **The final conclusion is that the evidence shows clearly that the Court has jurisdiction of the person, both the corporation and its President Mr. Johnson at the time of service of the Summons and Complaint.**

WHEREFORE, for good cause, the Court is respectfully requested to summarily deny Defendants Motion to Dismiss, grant Plaintiffs' Motion for Entry of Default, etc., and grant Plaintiff's motion for continuance of the jury trial date for determination of damages.

DILLON COUNTY: August 12, 2009

Respectfully submitted.


Gary Weaver, Plaintiff Pro Se

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	CASE NUMBER 2008-CP-17-180
Gary Weaver,	)	MOTION TO CONTINUE TRIAL
B. E.A. Wallenstein, and	)	DATE SCHEDULED FOR
B. E.A. Wallenstein Hospice	)	NOVEMBER 9, 2009; AFFIDAVIT
Inter Vivos Trust,	)	OF GARY WEAVER; EXHIBIT A;
	)	NOTICE OF MOTION; CERTIFICATE
Plaintiffs Pro Se	)	OF SERVICE
	)	
vs.	)	
	)	
Progress Energy Carolinas, Inc.,	)	
William Johnson, and	)	
John Does 1-20	)	
	)	
Defendants.	)	JURY TRIAL REQUESTED
	)	

MOTION TO CONTINUE TRIAL DATE SCHEDULED FOR NOVEMBER 9, 2009

Comes now Plaintiff Pro Se Gary Weaver ("Plaintiff"), and pursuant to **Rule 6 (b) (d), Rule 7 (b), and Rule 40 (i) (1) and (2)** South Carolina Rules of Civil Procedure ("SCRCP"), hereby moves this Court, for good cause, for an order continuing the trial date scheduled for November 9, 2009 and any extensions thereof, in this action.

This motion is based on the Affidavit of Gary Weaver, the Exhibits attached hereto, made part hereof, the records and files herein, and such other and further oral and/or documentary evidence as may be presented.

Plaintiffs are not in position to go to trial in this case which is pending the Court's disposition of Plaintiffs' Motion for Entry of Default, Defendants' Rule 12 (b) Motion to Dismiss, and Plaintiff's first and second Memoranda in Opposition to the said motion.

Plaintiff B.E.A. Wallenstein cannot appear as a plaintiff and a material witness in any trial at this time due to her serious medical condition as described in the attached Affidavit of Plaintiff Gary Weaver.

Pursuant to the doctrine of administrative relief under Administrative Law, Plaintiff Gary Weaver has not yet been able to complete administrative relief relating to

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certain issues for jury trial in the above entitled case, particularly for punitive damages; viz, relating to Defendants' fraud, fraudulent inducement and a fraudulent act pursuant to their non-compliance with Paragraph 5 of the Settlement Agreement of which Defendants stand accused in this action, inter alia, of abuse of process, breach of agreement, contempt of Court authority and non-compliance with a Court order issued by the Hon. Paul M. Burch, Judge, Dillon Court of Pleas on or about March 28, 2008...

Plaintiff Gary Weaver has identified two potential John Doe defendants for possible inclusion in this action pursuant to **Rule 10 (a)(1), Rule 17 (a) S.C.R.C.P, and S.C. Code 1976 As Amended Sect. 15-13-70**. Said potential defendants have come to light during recent administrative regulatory activity related to charges included in the Complaint herein. Following further discovery, Plaintiff will move the Court for an amendment of the Complaint as appropriate. Whether or not this will be necessary or appropriate, will also reflect the Court's disposition of the Motion to Dismiss and the Motion for Entry of Default, summary Default Judgment, and whether or not the Court will send the case to the jury for punitive damages.

Finally, as noted Plaintiffs have filed a Motion for Entry of Default and two Memoranda in Opposition to Defendants Rule 12 (b) Motion to Dismiss that are pending hearing by the Court on November 3, 2009. Plaintiffs plead on the grounds that Defendants have violated, inter alia, **Rule 6 (d), Rule 7 (a), Rule 8 (d), Rules 12 (a) and (b) S.C.R.C.P** Hence Defendants have by statutes, rules and case law documented in Plaintiffs' two memoranda and pursuant specifically to **Rule 8 (d), admitted all of the allegations in the Complaint by failure to file an Answer pursuant to Rules 7 (a) and 12 (a)**.

Accordingly, until these matters have been settled by the Court, Plaintiff submits that it is premature for trial scheduled for November 9, 2009, particularly as to whether or not there will be a trial on the full merits of the case or for punitive damages only for the jury to determine.

Due to these circumstances beyond Plaintiff's control, it has been, and will be physically and administratively impossible for Plaintiff to prepare for the trial without an extension of time as requested herein.

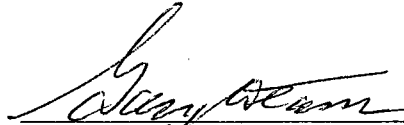
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Additionally, due to these unusual circumstances, Plaintiff has been unable to complete discovery and requires additional time for this process in order to properly prepare for the trial. Plaintiff believes that it would be in the interests of justice and efficient Court administration for this Honorable Court to grant an extension of time to set the subject trial date at a time and date convenient to the Court and Counsel any time after November 9, 2009 to the second quarter of 2010 for jury trial for punitive damages against Defendants or trial on the merits. This will permit Plaintiff B.E.A. Wallenstein's attendance at the trial and completion of further discovery, if default judgment is not granted Plaintiffs by the Court.

WHEREFORE, having fully set forth the grounds for the motion, for good cause, Plaintiff respectfully moves this Honorable Court for an order extending the time and to set the date for the subject trial at a date and time convenient to the Court and Counsel, any time after November 9, 2009 until the second quarter of 2010.

DATED: Little Rock, Dillon County S..C. October 19, 2009.

Respectfully submitted,


Gary Weaver, Defendant Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)
)
Plaintiffs Pro Se)

AFFIDAVIT OF GARY WEAVER

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

JURY TRIAL REQUESTED

AFFIDAVIT OF GARY WEAVER

County of Dillon)
)
State of South Carolina)
_____)

§§

GARY WEAVER, Plaintiff Pro Se in the above entitled action, being first duly sworn upon his oath, hereinafter "Affiant", deposes and says as follows:

1. On August 10, 2009 the Court heard oral argument from Defendants in support of their Rule 12 (b) Motion to Dismiss and Plaintiffs' Motion for Entry of Default, and Motion to Continue the Trial Date.
2. As a result of the discussion, the Court stated that it needed more information on the issues, and ordered Plaintiff Gary Weaver to file a Memorandum on the motions for the Court's further consideration.
3. On or about August 13, 2009 Affiant filed a first Memorandum in Opposition to Defendants Rule 12 (b) Motion to Dismiss. The Memorandum

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rebutted the two unsupported issues presented in Defendants written motion; viz, that there was insufficiency of process and service of process by Plaintiffs. As discussed in Plaintiffs' first Memorandum, Defendants submitted no evidence to prove their allegations. .

4. On or about October 2009, Affiant filed a first Memorandum in Opposition to Defendants Rule 12 (b) Motion to Dismiss rebutting the two unsupported oral allegations that the above entitled case had been dismissed, and that Defendants therefore did not file an Answer. Again no supporting evidence was submitted to prove the allegations.

5. Originally, Affiant was informed that the hearing on the pleadings would be held sometime in September, 2009. On or about October 7, 2009 Affiant received notice from the Clerk of Court that there would be a Common Pleas Non Jury and Motions Court to be held on November 3, 2009. The above entitled action was listed as the third case on the Motions Hearings Roster (p.1).

6. The said roster listed Defendants' Motion to Dismiss and Plaintiffs Motion for Partial summary Default Judgment.

7. On October 19, 2009, Affiant received notice from the Clerk of Court of Common Pleas Jury Court on November 9, 2009. This case is listed third on the Roster (p.1). This date is just six days after the Hearing date on November 3, 2009 the outcome of which is unpredictable for Plaintiffs and too short a time given the unusual circumstances of this case. The Clerk's Notice states that requests for continuances must be received by the presiding judge by 5.00 p.m., Wednesday, November 4, 2009. Accordingly the Motion to Continue the Trial Date, to which this affidavit is attached in support, is duly filed for good cause and the reasons cited in the motion and this affidavit.

8. Plaintiff B.E.A. Wallenstein cannot appear as a Plaintiff and a material witness at this time due to her serious medical condition. See **Exhibit A**. Her medical condition dating since 2004 is a matter of documented record in the litigation between the parties.

9. Affiant states that he knows that since before early 2004, Plaintiff B.E.A. Wallenstein, Prof. Ret., also known as Mrs. Beatrice Weaver has been unable to

take any active role in the prosecution of the lawsuit because of her medical condition, many treatments and stays at Duke University Medical Center in Durham, N.C., Medical University of South Carolina in Charleston S.C, Richland district Hospital in Columbia S.C., Mayo Clinic in Arizona, the Yuma Rehabilitation Hospital in Yuma, Arizona, St. Eugene Hospital in Dillon S.C, Health South in Florence, S.C., and numerous visits to McLeod Regional Hospital in Florence S.C.

10. Further, that for reasons beyond her control, based on recent developments she is unlikely to be able to participate in a trial before mid-2010 because of her existing medical condition and possible additional serious surgery.

11. In 2004, Ms Wallenstein an 83 year old elder, was diagnosed with cancer requiring a radical hysterectomy. During examinations it was also discovered that she had a serious hiatus hernia condition that required major and dangerous esophageal surgery. The several opinions of doctors in several hospitals concluded that she could not undergo surgery mainly because of the danger of prolonged anesthesia. The critical decision was made that the proliferating cancer should be treated first with radiation treatment, and the hernia situation deferred and controlled in the meantime with diet and other methods.

12. Following the radiation cure, in late 2005, a routine examination detected cancer in her breast that was removed with a partial mastectomy surgery. In 2008 it was then discovered that the cancer had returned in the uterus and it progressed from 6.00 mm in January to 16 mm in September. It is said that 20 mm is terminal.

13. Following further ineffective treatments, the critical decision was made to have the life threatening major hysterectomy surgery on April 30, 2009, just six months ago. The risk of her advanced age, and the anesthesia was weighed against the risk of doing nothing about the surgery. .

14. Just two months into recuperation from that surgery, following months of crucial stomach pains which six doctors and three hospitals could not diagnose, she then eventually had to undergo another serious surgery to remove gall stones and a gangrenous gall bladder.

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15. Meanwhile, the problem with the hiatus hernia has again appeared after a relative quiet period during the cancer treatments. A major esophageal surgery was scheduled for late in 2007, having been deferred several times by the surgeons since 2004 and 2006 because of her debilitated medical condition. At present she cannot walk without assistance and needs a wheel chair, and is effectively bed-ridden for the most part. All of these afflictions dating since 2004, have entailed numerous expensive tests such as MRI's, CAT Scans, Ultra sound tests, XRays, Blood tests, etc, all of which have taken their toll on her condition.

16. This history of major and serious life threatening surgeries have left their mark on an old lady who has tremendous spirit and strong state of mind. She needs some further time for recuperation before taking on a trial in which she is determined to participate before the hiatus hernia esophageal surgery if it is needed.. Defendants have done her major wrongs over the past five years and even before that and she is determined to have her day in Court before the Judge and the Jury. Fore this reason, Affiant respectfully requests the Court to continue the trial until mid 2010.

17. Due to the necessity of caring for Plaintiff B.E. Wallenstein (Mrs. Beatrice Weaver), on a full time basis, it has been difficult for Affiant to complete administrative relief from the regulatory agencies, which take an inordinate amount of time to do their regulating. Affiant has identified two potential John Doe defendants that require further discovery as to possible illegal ex parte communications harmful to Plaintiffs, defective "investigations" of regulatory matters related to this case, and the undue influence exercised by the Defendant over the regulatory staff. Plaintiffs have requested the court to take control of THE administrative regulatory issues outstanding, pursuant to the doctrine of futility under Administrative Law.

18. The Court's decisions on the pending pleadings will determine Plaintiff's further actions relating to their prosecution of this case.

19. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case; that he is competent to

make this deposition; that he alleges and avers that the facts are well grounded as stated herein, and the pleadings filed in this suit, and exhibit attached thereto which is a true and correct copy of the original document and by reference made part hereof.

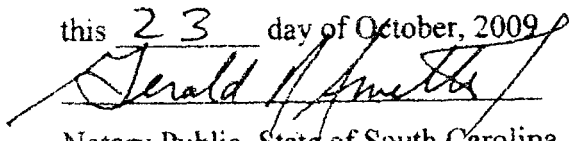
Further, Affiant sayeth naught.

DATED: Little Rock, Dillon County, October 19, 2009


Gary Weaver, Affiant

Subscribed and sworn to before me

this 23 day of October, 2009



Notary Public, State of South Carolina

My Commission expires: 11-20-2012

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DILLON INTERNAL MEDICINE ASSOCIATES, P.A.

MCLEOD-DILLON PROFESSIONAL BUILDING

705 NORTH 8TH AVENUE ~ SUITE 1A

DILLON, SC 29536

PHONE: 843-774-2478 FAX: 843-774-1826

PatientID: 253468W

Patient Name: BEATRICE WEAVER

Date of Birth: 10/03/1926

Date of Service: 08/04/2009

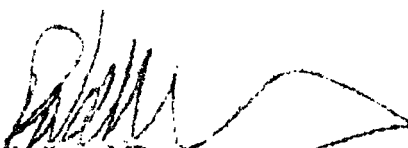
August 4 2009

To Whom It May Concern:

Beatrice Weaver has been a patient of mine for a number of years. On July 5, 2009, she was admitted to McLeod Medical Center-Dillon with abdominal pain. She subsequently underwent a cholecystectomy for acute and chronic cholecystitis with intensely symptomatic cholelithiasis. Approximately three months prior to this surgery she had extensive pelvic surgery. She is still in a state of recuperation. I respectfully request that you consider postponing her court date.

If further information is needed, please feel free to call or write.

Sincerely,



Phil Wallace, MD

EXHIBIT A-1

Re: 10/20/09

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

FILED
IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180
2009 OCT 20 PM 1:03

Gary Weaver
B. E.A. Wallenstein, and
B.E.A. Wallenstein Hospice
Inter Vivos Trust,

Plaintiffs Pro Se

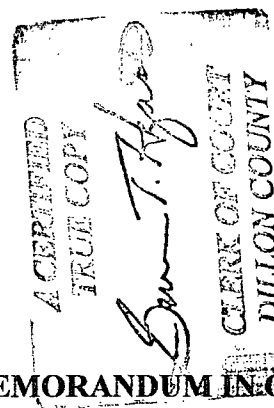
vs

Progress Energy Carolinas, Inc.,
William Johnson, and
John Does 1-20

Defendants.

CLERK OF COURT
DILLON COUNTY

PLAINTIFF GARY WEAVER'S
SECOND MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
RULE 12 (b) MOTION TO DISMISS;
AFFIDAVIT OF B.E.A. WALLENSTEIN



**PLAINTIFF GARY WEAVER'S SECOND MEMORANDUM IN OPPOSITION
TO DEFENDANTS' RULE 12 (B) MOTION TO DISMISS**

1. Introduction

1. Comes now Plaintiff Pro Se Gary Weaver, (hereafter "Plaintiff") and files this **Second Memorandum in Opposition to Defendants' Rule 12 (b) Motion to Dismiss** this case (hereafter "second Memorandum"). This second Memorandum is filed in response to the request of the Court at the preliminary Hearing conducted on August 10, 2009. Said Rule 12 (b) Motion to Dismiss was continued, to be heard at the next session of the Court currently set for November 3, 2009, instead of in September 2009 as originally scheduled.

2. The Court is respectfully requested to take judicial notice of the **First Memorandum** in relation to reviewing this **Second Memorandum**. As stated in the first Memorandum, Plaintiff decided to submit two Memoranda rebutting Defendants' arguments for dismissal of the suit; the first to rebut Defendants' written motion and the second memorandum rebutting Defendants' two erroneous and misleading oral arguments presented at the hearing on August 10, 2009. This second memorandum also covers certain additional issues not covered in the first memorandum.

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3. The first Memorandum in rebuttal referred specifically to the several issues cited by Defendants in their **written** Motion and not to the two issues orally presented to the Court at the August 10, 2009 hearing.

In summary, Plaintiff's first Memorandum submits that Defendants' Motion to Dismiss be summarily denied on the same grounds Defendants claim in their incorrect and defective motion; viz, insufficiency of process, and insufficiency of service of process pursuant to Rule 12 (b). Defendants' Motion lacks any documentation, verification or other evidence to support the allegations presented in their written motion to dismiss; the Motion was **not** served on all the Plaintiffs of record as required by S.C. Code 1976 Sections 15-9-910, 15-9-920 and 15-9-930. and Rules 5 (a), (b)(1) and 6 (d) SCRC.P. Rule 4 (g) was also violated in that Defendants have provided no Proof of Service, nor related Affidavits, Notices, etc. documenting service of the motion.

Rule 6 (d) S.C.R.C.P. was violated by Defendants who filed their motion Friday, August 7, 2009, only three (3) days before the August 10, 2009 hearing, instead of the required ten (10) days notice to the Court and Plaintiffs. **On this ground alone the motion should be denied.**

Defendants admitted at the August 10, 2009 hearing that they deliberately chose not to file an Answer at all, or to "appear" within the required thirty (30) days pursuant to Rules 7 (a) and 12 (a) S.C.R.C.P.

4. **Application of the Doctrine of Latches.**

1. Defendants are liable to Plaintiffs under the doctrine of latches **due to inexcusable delay, neglect, and hence come to the Court with unclean hands.**

2. The Court is vested with wide discretion in determining what is unreasonable delay for the purpose of applying the doctrine of latches. See, **Chambers of S.C., Inc vs. County Council for Lee County**, 434 SE2d 279, 315 SC 418. The length of delay which would justify an equity court in referring relief on grounds of latches, cannot be definitely fixed, but the court is vested with wide discretion in determining such matter. See, **Ham vs. Flowers**, 51 SE2d 753, 214 SC 212, 7 A.L.R. 2d 1124. Latches requires inexcusable delay and prejudice. See, **S.C. State Ports Authority vs. M/V Tyson Lykes**, 837 F.Supp. 1357, aff. 67 F3d 59.

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3. The length of time which will justify equity in refusing relief for laches, depends upon the facts of the particular Case; laches connoting not only undue lapse of time, but also negligence and opportunity to have acted sooner. See, **Cook vs. Knight, 91 SE 312, 106 SC 310**. Further, failure to assert a right for purposes of determining laches, does not come into existence until there is reason or a situation that demands assertion for purposes of the doctrine of laches. See, **Mid State Trust vs. Wright, 474 SE2d 421, 323 SC 303**.

4. Clearly, by any measure, Defendants delay of fourteen months in filing its motion to dismiss just three days before the hearing, is inexcusable, negligent, unreasonable and prejudicial to Plaintiffs. Further, by mis-informing the court with legal conclusions without facts is frivolous and a sham as discussed in detail below. The situation is now such that it is reasonable for Plaintiffs to assert relief under the doctrine of laches. Defendants come to the court with unclean hands. Under the doctrine of laches, Plaintiffs claim that Defendants motion must be dismissed and damages awarded.

5. Conclusion: **Good cause** exists for these grounds alone. Thus Defendants' Motion to Dismiss must be summarily denied or stricken from the record and Plaintiff's Motion for Entry of Default granted. The facts and evidence show that Plaintiffs' properly served process and there was sufficiency of process.

Therefore, based on the proven facts and the evidence, contrary to Defendants submittal, the Court has jurisdiction of the persons and the subject; there are no grounds for dismissal of the action.

The Case Against Defendants Oral Claims at the August 10, 2009 Hearing.

Let us now proceed to dispose of the oral arguments that Defendants offered at the August 10, 2009 hearing, without proof of any kind to support their contentions. Defendant present legal conclusions devoid of facts. The facts of record indicate that Defendants motion is frivolous, flagrantly deceitful, dishonest, and in fact a sham as defined by the Courts and the Statutes cited herein below, and were submitted in bad faith against the doctrine of laches and Rule 11, S.C.R.C.P.

Accordingly, this second Memorandum responds specifically to the two deliberately misleading allegations that Defendants offered at the hearing on August 10, 2009. Defendants' oral claims are an obvious, blatant attempt to excuse and cover up their negligence in failing to file an Answer as required by Statutes and the Rules of the Court, cited and discussed herein below. The following discussion responds to both of Defendants' oral allegations on the Court record; viz,

- (a) That the above entitled case has been dismissed, and
- (b) Defendants deliberately chose not to timely file an Answer or Appear.

2. Defendants have deliberately and erroneously misled the Court, and in fact have committed sham and a fraud upon the Court by incorrectly stating that the above entitled case has been dismissed.

1. As stated above, Defendants have submitted **no documentary, verified evidence** that the above entitled case has been dismissed. **It has not been dismissed.** There have been no settlement by the parties; and no prior Court hearings on the case except on August 10, 2009 for the three motions as stated below.

2. The case pleadings of record are: the two Proofs of Service of the Complaint and Summons on Defendants duly filed with the Court by Plaintiff as documented in Plaintiff's Motion for Entry of Default; Plaintiff's Motion to Continue the Trial Date because of Plaintiff Beatrice Wallenstein's continuing illnesses, and Defendant's Motion to Dismiss which is the subject of this second Memorandum. There are no other pleadings, orders, decrees, judgments or official findings of any kind relating to the alleged dismissal of the above entitled case, that are filed with the Clerk of Court on the record.

3. Since the case has not been dismissed, Defendants have no excuse for their gross negligence in deliberately failing to file an Answer, or other pleadings, or neglecting to "appear" as defined in case law, until three days before a Hearing on August 10, 2009, instead of ten (10) days under **Rule 6 (d) S.C.R.C.P.**

3. Given the fact that the case has not been dismissed as claimed by Defendants, and that Defendants are sophisticated, experienced, professional practitioners of law, it is submitted that Defendants' Motion to Dismiss, in

the absence of supporting facts, it is reasonable to claim that the motion is deceitful, frivolous, a sham and filed in bad faith, as defined by the Statutes and case law and sanctions are in order.

1. Given the facts of the case, Plaintiff's motion for default may be properly granted pursuant to **S.C. Code 1976 Sect. 15-35-60 and 70**. The facts are such that no argument is necessary to establish the frivolous character of the pleading. A sham pleading is one that is good in form, but false in fact, and not pleaded in good faith. See, **Scott vs. Meek, 228 S.C. 29, 88 S.E.2d 768 (1955)**. And being a mere pretense. See, **Blackwell vs. United Ins. Co. 229 S.C. 296, 92 SE 2d 702**. And Plaintiff objects to the motion in its entirety "so that nothing is left of it that can entitle a party to trial". See, **Tharin vs. Seabrook, 6 SC 115, (1875)**. The facts support the view that there is willful falsity in Defendants' claims and may be disposed of summarily by the Court as requested by Plaintiffs. See, **Scott vs. Meek, Op Cit**. Where the showing in support of the motion is susceptible of no reasonable inference other than that the pleading under attack is in fact sham, the motion to strike should be granted. **Ibid**.

2. It is clear from the facts that Defendants' Motion to Dismiss is frivolous and a sham. The motion is "good in form" but it is patently "false in fact." And the doctrine of laches shows that the motion is not pleaded in good faith having been filed three days instead of the required ten (10) days before the August 10, 2009 hearing, and some 14 months after Defendants' documented receipt of the Complaint and Summons, and their deliberate choice not to file an Answer or appear otherwise. (See below).

It has been stated that a pleading presenting only legal conclusions and no facts is frivolous. See, **Grayson vs. Harris, 37 SC 606, 16 SE 154 (1892)**. Defendants have stated no facts in support of their motion, and only declared legal conclusions based on fabrications as "facts"; viz, alleged lack of jurisdiction on the non existing "facts" of alleged insufficiency of process and alleged improper service of process, unsupported by any evidence and both proven to be false.

It is also clear that Defendants written and oral allegations in their Motion are material variances from the factual proof of record. And there is the actual or potential for misleading the Court or the jury as to the verity of Defendants' allegations. Defendants have forfeited any right to any amendments to their motion prejudicial to

Plaintiffs. See, S.C. Code Sect. 15-13-930, et. seq. Pursuant to Code Sect. 15-13-950, Plaintiffs have proven there is a complete “failure of proof” by Defendants in the entire scope and meaning of the **Rule 12 (b) Motion to Dismiss** and not a material variance, thus denying Defendants any recourse on those lines.

3. Sham is addressed in S.C. Code Sect. 15-13-440 providing that upon motion a sham may be stricken out by the Court upon terms at the Court’s discretion, including a judgment pursuant to Code Sect. 15-35-60. As used in the Code, “sham” is synonymous with “false” and is applicable to designate all pleadings which are in fact false, whether good or bad in substance, See, **Germofert Mfg. Co. vs. Castles**, 97 SC 389, 81 SE 665, (1914). A false pleading should be stricken out as sham. **Ibid**. If there is no defense as in this case, then the sham is stricken. See, **Hamilton vs. Patterson**, 236 SC 487. 115 SE 2d 68 (1960). It becomes the duty of the Court to strike out an Answer as sham when it appears to the Court that the pleading is manifestly sham and irrelevant or false, and is filed merely for the purpose of delay or without good faith. **Ibid**. **In this case there is no Answer only a defective motion that is false and a sham.**

4. The facts and evidence presented in this case to date clearly show the falsity of Defendants motion. Although the motion is an appearance and not an Answer, the case law which is applicable to false Answers is evident in Defendants belated false Motion to Dismiss in response to the Complaint. Their motion in its entirety, is a sham pure and simple.

5 Defendants Motion to Dismiss is in violation of Rule 12 (b) S.C.R.C.P which relates to the eight (8) defenses available to Defendants. Specifically, “**A motion making any of these defenses (2, 4 and 5 in this case) shall be made before pleading if a further pleading is permitted.**” Plaintiffs submit that Defendants’ Rule 12 (b) Motion to Dismiss should have been filed within the thirty (30) day limit for filing a response and before filing of an Answer. Defendants deliberately and negligently chose to ignore this Rule and prejudiced Plaintiffs action. (See discussion below citing authority for this claim.)

6. Plaintiffs further submit that Defendants have waived all of the other defenses available under Rule 12 which were not submitted in their motion. Thus, notwithstanding certain exceptions to the Rules, Plaintiffs claim that at any hearing

or trial on the merits, Defendants cannot introduce any other claims in Defense other than those stated in the Motion, and not even the verbal claims made at the hearing on August 10, 2009 that the case was dismissed. That claim was not included in the written motion and is a violation of the "particularity" requirement.

7. Plaintiffs submit that Defendants are in violation of **Rule 11 (a) and Rule 7 (b)(2), S.C.R.C.P.** and subject to appropriate sanctions to be imposed by the Court. **Rule 11 (a)** provides that the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay. Further, that if a motion is signed in violation of this Rule, the Court upon motion, or upon its own initiative, may impose upon the person who signed it, an appropriate sanction.

We have shown conclusively herein that Defendants with malice aforethought, have alleged **without proof** or any substantiation of any kind, not even a scintilla of evidence, that Plaintiffs did not properly serve process and further alleging orally that the case was dismissed, while knowing full well that the contrary was the fact in both situations. Defendants knew and should have known that their statements were deceitful and a sham and misleading for the Court, served to delay the action, and were prejudicial to Plaintiffs.

Accordingly, Plaintiffs appeal to the Court for an determination of the degree of Defendants' violation of **Rules 11 (a) and 7 (b)(2)**, and of the extent of sanctions. These can consist of: (a) summary denial of Defendants motion, (b) granting of partial damages as claimed in Plaintiffs pleadings of record, and (c) costs, etc. As deemed appropriate by the Court.

8. For good cause, on these grounds Defendants' Motion to Dismiss must be summarily denied and sanctions to be considered for Defendants' deliberate attempt to mislead the Court using deceitful, sham and misleading claims in an attempt to deny Plaintiff the justice they deserve in this action.

4. **Defendants deliberately chose not to file an Answer pursuant to Rule 7 (a) and Rule 12 (a) S.C.R.C.P By this failure to act Defendants thereby admitted the allegations in the Complaint, entitling Plaintiffs to Summary**

Judgment for the Relief claimed; there are no genuine issues of material facts, and Plaintiffs are entitled to the relief claimed herein as a matter of law, including default judgment on the pleadings.

1. The issues here are:

1. At the hearing on August 10, 2009, the Defendants admitted verbally on the Court record, that they knowingly and willingly chose not to file an Answer to the Complaint and did not.
2. As a consequence, what legal ramifications of this choice and Defendants' actual lack of response to the Complaint, are to be determined by the Court?
3. Are Plaintiffs entitled to Summary Judgment for the relief claimed?

2. **Defendants' Failure to File an Answer**

1. **Rule 7 (a) S.C.R.C.P** states: "There shall be a Complaint and an Answer ..." This Rule 7 (a) is identical to **S.C. Code 1976 Sect. 15-13-10, 15-13-80, 15-13-210, 15-13-310 and 15-13-610**. Defendants have no option. Filing an Answer is mandatory and failure to do so without any extenuating circumstances exposes Defendants to summary default as in this case.

2. **Rule 7 (b) (1) S.C.R.C.P** also adversely impacts Defendants in this case. This Rule states specifically:

"An application to the Court for an order shall be by motion which, unless made during a hearing or trial in open Court with a Court reporter present, **shall be made in writing**, shall state with **particularity** the grounds therefore, and shall set forth the relief or order sought...." (emphasis added).

Defendants **Rule 12 (b) Motion to Dismiss** refers only to allegations against Plaintiffs pursuant to Items 2, 4 and 5 in writing. The written motion makes no mention of Defendants charges that the case was dismissed and they deliberately chose not to file an Answer.

The written motion is defective and must be denied. It does not state with **particularity the grounds therefor to include the claim that the case was allegedly dismissed.**

Alternatively the motion must be adjudicated on the written claims only; namely, alleged insufficiency of process and service, for which of course Defendants have no proof. Thus, for this and other reasons discussed herein, the motion must be summarily denied.

3. **Rule 12 (a) S.C.R.C.P** requires specifically that the Defendants **shall** serve their Answer **within thirty (30) days after service of the Complaint upon them.** Defendants have no choice; they have no option. **They must file an Answer irrespective of their position on the case.** Here, Defendants chose not file. This choice was both deliberate and negligent, for which Defendants knew or should have known the consequences under the Rules, the Statutes and Case Law.

4. Defendants chose not to file an Answer addressing any of the defenses available to them pursuant to **Rule 8 (b) and (c) or Rule 9, S.C.R.C P.** or even **Rule 60 (b).**

5. Defendants have chosen not to file an Answer as stipulated in S.C. **Code 1976 Sect. 15-13-420** and pursuant to **Rule 8 (b) (c) SCRC P.** This means Defendants are required by statute and Rules to address in an Answer: (a) a general or specific denial of each material allegation of the Complaint, (b) or of any knowledge or information thereof sufficient to form a belief; and (c) a statement of any new matter constituting a defense or counterclaim, in ordinary and concise language without unnecessary repetition.

6. Putting aside the Court jurisdictional question, the relevance of this negligent and malevolent inaction is that pursuant to the law as cited below, failure to Answer the Plaintiffs claims required as stated above, means that Defendants have conceded and admitted the claims and opened the door for summary judgment in favor of Plaintiffs.

7. Rather, Defendants have chosen to file a motion based on false, undocumented allegations relating to process and claiming lack of jurisdiction as a derivative thereof. None of these arguments hold up under scrutiny of the facts and evidence.

3. **The Legal Consequences And Ramifications Of Defendants' Decision To Forego Filing An Answer To The Complaint.**

We may now turn to examine the law relating to the consequences flowing from Defendants' failure to file an Answer pursuant to **Code 1976 Sect. 15-13-80 and 15-13-420, and Rule 7 (a), Rule 8 (b) and Rule 12 (a) SCRCP.**

The Statutes and Rules cited herein clearly establish the Legislative intent that parties to an action must comply with certain requirements if justice is to prevail. In this case, the intent of the following Rules is quite clear. The facts appurtenant thereto, raise several questions, the Answers to which, clearly establish the right of Plaintiff's to default judgment in their favor, including partial summary judgment.

The main Rules to be addressed are as follows:

1. As noted, Rule 12 (a) S.C.R.C. P requires specifically that the Defendants **shall** serve their Answer within thirty (30) days after service of the Complaint upon them. There are two conditions to be met: (1) Defendants have to actually file an Answer, and (2) file it within thirty (30) days.

Question: Did the Defendants in this case file an **Answer** as required by **Rule 12 (a). S.C.R.C.P. ?**

Answer: **No.** Defendants knew and should have known to file an Answer to the averments in the Complaint. By choosing not to do so, Defendants exposed their defenses to the consequences of violating the Rules and Statutes in favor of Plaintiffs.

2. Rule 8 (d) SCRCP addresses "Effect of Failure to Deny". It is relevant to this discussion to report that provision in full:

"Averments in a pleading to which a responsive pleading is required, other than those to the amount of damage, are **admitted when not denied in the responsive pleading.** Averments in a pleading to which no responsive pleading is required, or permitted, shall be taken as denied, or avoided." (Emphasis added.)

Applied to this case, the Rule raises certain questions as follows:

Question: Pursuant to **Rule 8 (d)**, did the Defendants in this case timely file an Answer within thirty (30) days as required by **Rule 12 (a).S.C.R.C.P. ?**

Answer: **No.** As noted, in this case we have no responsive pleading filed to the Complaint, notwithstanding that an Answer is **mandatory** under the Rules. It is not optional. As noted, Defendants simply deliberately chose to neglect to file an Answer required under **Rule 12 (a)**.

Question: If Defendants failed to timely file a mandatory responsive **Answer** within, or without the required thirty (30) days, shall the averments in the Complaint be taken as admitted by Defendants ?

Answer: **Yes** as a matter of law pursuant to **Rules 8 (d) and 56 (c)**. The Complaint is a pleading to which a responsive pleading is required; i.e, an Answer. Defendants did not file a mandatory Answer in response to the averments in the Complaint. Therefore Plaintiff's averments in the Complaint, other than those to the amount of damage, are by Rule of law **admitted when not denied in the responsive pleading**. Thus by process of the rules, there are no genuine issues of material facts, and Plaintiffs are entitled to a judgment as a matter of law.

3. **Rule 55 (a) S.C.R.C.P provides for Default:**

Having established that Defendants intentionally did not timely file an Answer as required by **Rule 12 (a) and Rule 8 (d)**, the case is ripe for default judgment. **Rule 55 (a) S.C.R.C.P** provides as follows:

“When a party against whom a judgment for affirmative relief is sought, **has failed to plead or otherwise defend** as provided by these Rules, and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)”

Questions:

1. Did Defendants fail to plead or otherwise defend against the Complaint?
2. If not, was that fact made known to the Court by affidavit or otherwise?
3. Did Defendants “otherwise defend” against the Complaint?

Answers:

1. The discussion herein clearly shows that Defendants failed of their own volition, neglect or malice, not to file the mandatory Answer at all, let alone within the thirty (30) day time limit. For this there is no excuse, and no extenuating circumstances. Simply sheer neglect and failure to plead.
2. The fact of this failure was made known to the Court on a timely basis, by way of Plaintiffs’ Motion for Entry of Default, Affidavits of the Plaintiffs, and the two memoranda filed in Opposition to Defendants’ **Rule 12 (b)** Motion to Dismiss.
3. **For the purposes of default judgment**, as opposed to trial on the merits of the case, the question then remains as to whether or not Defendants’ Rule 12 (b) Motion to Dismiss is an act to “otherwise defend” against the Complaint?
4. Defendants’ motion may be considered an “appearance” which in this case was untimely filed and served on

Plaintiff Gary Weaver just **three (3) days** before the August 10, 2009 hearing. This violated **Rule 6 (d) SCRCF** which requires that all motions are to be filed ten (10) days before the time specified for the hearing.

5. Defendants motion was NOT served at all on the other two Plaintiffs, in violation of **Rule 5 (a)** and violated **Rule 12 (b)** for insufficiency of process and service of process.
6. Plaintiffs have demonstrated clear and convincingly that the motion is without substance or credible merit for consideration of the Court, as a credible defense for not filing an Answer. The facts and the evidence clearly establish that Defendants have nothing with which to defend against the Complaint to which they have admitted by Rule of Law as cited herein.
7. Plaintiff's first memorandum clearly proved that Defendants written motion was not only defective but misleading the Court. Plaintiff's Proof of Service adequately rebutted Defendants claim of insufficiency of process and service of process, which Defendants knew and should have known.
8. This second memorandum clearly shows that Defendants claim that the case has been dismissed is a sham and there are no credible excuses for their failure to file an Answer. To conclude, Defendants have simply made unfounded and unproven allegations in their attempt to "otherwise defend" against the Complaint, without providing any proof of facts or supporting evidence or sworn affidavits.

4. **Code Section 15-13-310** provides that Defendant shall answer within 20 (now 30) days after service of a copy of the Complaint. See discussion on **Rule 7 (a) SCRPC**.

5. **S.C. Code 1976. Section 15-13-80** provides inter alia, that every material allegation of a Complaint **not contraverted by the answer** as prescribed in **Sect. 15-13-420** shall for the purposes of the action be taken as true.

1. In this case we do not have an answer. In the absence of the pleading, it may reasonably be asserted that the allegations in the Complaint are not contraverted **by default**, and hence admitted, and “taken as true” for this case.

5. **Legal Authority supports Plaintiffs’ claim that Defendants’ Rule 12 (b) Motion to Dismiss is not timely filed and is in violation of case law and the Rules, and therefore for good cause must be denied on that ground alone.**

1. The above discussion asserts Plaintiffs’ claim that Defendants are in violation of the thirty (30) day period for filing an Answer under **Rule 12 (a)**, and the ten (10) day Notice filing requirements for motions pursuant to **Rule 6 (d) S.C.R.C.P.** In this section we refer to additional legal authorities that support the contention that Defendants motion must be summarily denied on the basis of these violations alone.

2. It is stated by one legal authority that under **Rule 12 (b)** a defense such as insufficiency of service of process as in this case, must be made either by a responsive pleading (an Answer), a motion (as in this case) **within the time period** allowed for responding. See **S.C. Jurisprudence, Rules of civil procedure, C.L.E., Vol. 24. Rule 12.2 Discussion, p.96, para. 2; Citing, Beckham vs. Durant, 300 SC 329, 387 SC2d 701 (Ct. App. 1989).** Further, that a party may not ignore a Summons, then move outside the thirty (30) day Answering period to set aside service as insufficient. **Ibid. at 333-334, 387 SE2d at 704.** All Rule 12 (b) motions, including a motion challenging sufficiency of service, **must be made** within the time period allowed for responding to the Complaint. **Ibid. See, Dunbar vs. Vandermore, 295 SC 493, 369 SE2d 150.(Ct. App.1988).**

3. Further, this authority states that the Rules permit the defending party to choose **how** to insert defenses, but not **when** to assert them. See **S.C. Juris. Op cit. Reporter’s Notes.**

4. In this case, Defendants have chosen not to file an Answer at all, and the motion was filed fourteen (14) months after proper service of the Summons and Complaint, and three (3) days instead of the required ten (10) days, before the hearing. This authority supports Plaintiffs position that the facts and evidence clearly shows that Defendants are in direct conflict with the above cited Rules, case law precedent and legal authority views.

5. On these grounds, for good cause, Defendants Motion to Dismiss must be summarily denied and Plaintiff granted summary default.

6. **Plaintiffs claims are prima facie, and Plaintiffs are entitled to summary denial of the Defendants Motion to Dismiss without trial of the merits of the case and a Summary Judgment by Default**

1. **Prior Law Assists Plaintiffs Argument for Denial**

S.C. Code 1976 Sect. 15-35-310 was repealed by SC Acts 100 Sect. 2 (1985). However the former law has probative value for discussing the issues of this case. It provides excellent guidance for discussion herein of Plaintiffs demand for denial of Defendants' Motion to Dismiss and for default judgment, and a reference source to relevant case law created under the former law.

The former law stated that judgment by default may be had, if the Defendant failed to Answer the Complaint, as follows: In any action on contract, the Plaintiff may file proof of lawful service of Summons and Complaint on one or more of the Defendants and that no appearance, or Answer has been served on the Plaintiff.

Further, that in **case notice of appearance in an action has been given by or on behalf of a Defendant, but no Answer or demurrer has been, or thereafter shall be served, within the time required by law, the Plaintiff upon filing proof of such facts shall have his judgment by default against such Defendant in the same manner and with like effect as in cases where no notice of appearance has been given.** In all other cases, the relief to be afforded Plaintiff shall be ascertained either by the verdict of a jury or in cases in chancery by the judge, with or without reference, as he may deem proper.

2. **Plaintiffs Evidence and Claims Against Defendants Are Prima Facie.**

These conditions directly apply in this case and support Plaintiffs' claims for default. The causes of the allegations in the Complaint are both *ex contractu* and *ex delicto*. The case against Defendants is a *prima facie* case in that the evidence in Plaintiffs' favor is sufficiently strong for Defendants to be called on to Answer it. Defendants chose not to. A *prima facie* case is one which is established by sufficient evidence and can be overthrown only by rebutting evidence adduced on the other side. Given the evidence here, the only question to be considered by the Court is whether there is a *prima facie* case or not. See. **Black's Law Dictionary, Rev. 4th Edit. P. 1353.**

Here we have a Defendant knowingly, willfully and neglectfully choosing to ignore the lawful requirement to rebut the Complaint with an Answer in any degree whatsoever concerning the allegations or merits. Instead it chose to belatedly resort to a false claim of Plaintiffs alleged violation of procedural law and an oral deceit presented at hearing claiming the case had been dismissed. In doing so, Defendants violated the very same Rule 12 (b) Rules that it falsely charged Plaintiffs for claiming dismissal; viz, Plaintiffs' alleged insufficiency of process and service of process, not to mention Defendants violation of **Rule 11. In choosing not to file an Answer, Defendants admit the allegations in the Complaint pursuant to Rule 8 (d) S.C. R.C.P..**

Plaintiffs submit that the evidence is such that the case against Defendants Motion to Dismiss is *prima facie* and the Court should summarily deny the motion and grant Plaintiffs their default judgment. Let us now explore the conditions for granting default judgment in this case.

3. **Rule 55 (a) S.C.R.C.P** provides for Default for Plaintiff:

“ When a party against whom a judgment of affirmative relief is sought, has failed to plead or otherwise defend as provided by these Rules, and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

4. **Rule 55 (b) S.C.R.C.P.** provides for default in favor of Plaintiffs in two cases, both of which apply to this action as stated in the Complaint and Plaintiff's Motion for Entry of Default: (1) Cases Involving Liquidated Damages Or Sum Certain Amounts; and (2) All Other Cases. Plaintiffs have made proper demand for a Jury trial for punitive damages pursuant to **Rule 38 SCRCPP**, and have not withdrawn that proper demand.

Pursuant to **Rule 55** the Court shall determine Defendants liability and make partial summary judgment upon denial of Defendants' Motion to Dismiss as requested herein.

5. This case relates inter alia, to Defendants violation of a Mutual Release by and between the parties; that is, Defendants violation of a Settlement Agreement deemed to be a contract by the Courts. Inter alia, the charges in the Complaint are:

- (a) Defendants violation or breach of the agreement,
- (b) Defendants non-compliance with a Court Order, and
- (c) Defendants contempt of Court Authority.

6. Plaintiffs have shown that proper service of the Complaint and Summons was made and duly and timely filed Proofs of Service with the Court. That is a matter of record.

7. Defendants have not filed an Answer by choice, failed to provide any proof of its claims of Plaintiffs' alleged Rule 12 (b) violations, made false and sham defenses to the Court at hearing, and did not timely file its Motion to Dismiss. **Default is therefore warranted.**

8. **Discussion**

1. It has been Ruled that when an Answer is not filed in time, default may be taken. See, **Johnson vs. Finger, 102 SC 354, 86 SE 673**. Similarly, where the Defendant which gave no notice of appearance to Plaintiff within 20 (now 30) days, after being served with the Summons in an action on account, and which likewise made no demand for a copy of the Complaint, became in default. See, **Morgan's Inc vs. Surinam Lumber corp. 160 SE2d 191, 251 SC 61; Bissonnette vs. Joseph, 170 SE 467, 170 SC 407**. And on the question of Defendants' admissions of the Complaint, it has been stated that a default by the Defendant, after being properly served (as in this case) is an admission of the allegations of the Complaint which binds him, though such allegations are untrue. See, **Firestone Tire and Rubber Co. vs. Marlboro Cotton Mills, 278 F.816, 43 S.Ct.248, 260 US 749**. In this case, Defendants' Motion to Dismiss is untrue as to the facts, not the Complaint.

2.. Defendant's violations of the statutes, Rules and case law in this action are not "slight technicalities" but major, flagrant defects deserving of the harshest treatment. The facts show that Defendants have knowingly abused the judicial process.

This is not for the first time in litigation between the parties. Defendants should be sanctioned accordingly.

3. Finally, it has been stated that a Motion to Dismiss cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case. See, **McCormack vs. England, 328 SC 627, 494 SE2d 431 (Ct. App. 1997)**. While this ruling related to challenging the allegations in a Complaint, it is submitted that the same legal principle applies in the instant case of challenging Defendants' Motion to Dismiss. Defendants have submitted no valid defense, flagrantly and deceitfully violated the Rules, and the facts alleged by Plaintiffs and the inferences reasonably deduced therefrom, entitle Plaintiffs to the relief sought in this action.

7. **Summary**

1. Defendants' **Rule 12 (b)** Motion to Dismiss came on for hearing on August 10, 2009 and was continued until the hearing currently scheduled for November 3, 2009, together with Plaintiffs Motion for Entry of Default, and Motion to Continue the Trial Date.

2. Due to conflicting testimony at the hearing, the Court requested Plaintiff to file a Memorandum in Opposition to Defendants' Motion. Plaintiff decided to file two Memoranda:

(1) The first Memorandum referred specifically to the several issues cited by Defendants in their **written** Motion per se. It does not address the issues that Defendants orally presented to the Court at the August 10, 2009 hearing.

(2). This second Memorandum addresses the only two issues presented during the Defendants oral testimony; i.e., that the case had been dismissed, and Defendants chose not to file an Answer as required pursuant to **Rule 12 (a) S.C.R.C.P.**

3. . In summary, Plaintiff's **first Memorandum** submits that Defendants' Motion to Dismiss be summarily denied on the same grounds claimed in Defendants' motion which is defective as follows:

1. That is, insufficiency of process, and service of process in that Defendants' Motion lacks any documentation, verification or other evidence to support the written allegations presented in the motion..

2. The Motion was not served on all the Plaintiffs of record as required by S.C. Code 1976 Sections 15-9-910, 15-9-920 and 15-9-930. and Rules 5 (a), (b)(1) and 6(d) SCRCF.

3. Rule 4 (g) was also violated in that Defendants have provided no Proof of Service, nor related Affidavits, Notices, etc.

4. Rule 6 (d) S.C.R.C.P. was violated by Defendants who filed their motion on Friday, August 7th, only three (3) days before the Monday, August 10, 2009 hearing, instead of the required ten (10) days notice to the Court and this Plaintiff. **On this ground alone the motion should be denied.**

5. Defendants "appeared" some fourteen (14) months after receiving service of the Complaint and Summons.

6. Plaintiffs' Proof of Service timely and duly filed with the Clerk of Court, shows that Plaintiffs' properly served process and there was sufficiency of process.

7. **Therefore, based on the proven facts and the evidence on record, contrary to Defendants submittal, the Court has jurisdiction of the persons and the subject in this case..**

8. For these grounds alone there is good cause, and Defendants' Motion to Dismiss must be summarily denied or stricken from the record and Plaintiff's Motion for Entry of Default granted

4. Defendants are liable to Plaintiffs under **the doctrine of laches due to their inexcusable delay, neglect, and hence come to the Court with unclean hands.**

5. This **second Memorandum** responds specifically to the two deliberately misleading allegations that Defendants offered at the hearing on August 10, 2009; viz,

(a) That the above entitled case has been dismissed, and

(b) Defendants deliberately chose not to file an Answer.

6. Defendants have submitted **no documentary, verified evidence** that the above entitled case has been dismissed. **It has not been dismissed.** There has been no

settlement by the parties; and no prior Court hearings on the case except on August 10, 2009.

7. **Since the case has not been dismissed**, Defendants have no excuse for their gross negligence in deliberately failing to file an Answer, or other pleadings, or neglecting to “appear” as defined in case law, until one business day before a Hearing on Monday, August 10, 2009, instead of ten (10) days, and some 14 months after receipt of the Summons and Complaint. Defendants are in direct inexcusable violation of **Rule 12 (a)**.

8. Defendants allegations are only legal conclusions and state no proven facts in support of their motion, either in writing or orally.

9. In view of the fact that that the case has not been dismissed, in the absence of supporting facts, it is reasonable to claim that Defendants’ Motion to Dismiss is deceitful and frivolous and a sham as defined by the Statutes and case law cited herein above. Given that Defendants are sophisticated, experienced, professional practitioners of law, the motion in its entirety is a sham, pure and simple, as defined by case law.

10. Plaintiff further submits that Defendants have waived all of the other defenses available under **Rule 12** that were not submitted in its motion. Defendants cannot introduce any other claims in Defense other than those stated in the Motion, and not even the verbal claims made at the hearing on August 10, 2009 that the case was dismissed. That claim was not included in the written motion and is a violation of the “particularity” requirement.

11. Plaintiffs have shown conclusively herein that Defendants have alleged **without proof** or any substantiation of any kind, not even a scintilla of evidence, that Plaintiffs did not properly serve process and further alleging orally that the case was dismissed, knowing full well that the contrary was the fact. Defendants knew and should have known that their statements were a sham and misleading for the Court, served to delay the action, and were prejudicial to Plaintiffs.

12. . Therefore, Plaintiffs submit that Defendants are in violation of **Rule 11 (a) and Rule 7 (b)(2), S.C.R.C.P.** and subject to appropriate sanctions imposed at the discretion of the Court for filing false and misleading testimony prejudicial to Plaintiffs.

13. Defendants deliberately chose not to file an Answer pursuant to **Rule 7 (a)** and **Rule 12 (a) S.C.R.C.P.** Pursuant to these Rules and cited case law, thereby **admitted** the allegations in the Complaint and entitled Plaintiffs to Summary Judgment for the Relief claimed. By legal definition, *ex legibus*, there are no genuine issues of material facts, and Plaintiffs are entitled to the relief claimed as a matter of law.

14. The **written motion** does not state with **particularity** the legal grounds therefor in order to justify their claim that the case was allegedly dismissed. Alternatively the motion must be adjudicated on the written claims only; namely, alleged insufficiency of process and service, for which of course Defendants have absolutely no proof. Thus, for this and other reasons discussed herein, the motion must be summarily denied for violation of **Rule 7 (b)(1)**.

15. Defendants chose not to file an Answer addressing any of the defenses available pursuant to **Rule 8 (b) and (c), Rule 9, S.C.R.C P.** or even **Rule 60 (b)**. In choosing not to Answer, Defendants admit by force of law, the allegations in the Complaint pursuant to **Rule 8 (d)**.

16.. Defendants have chosen not to file an Answer as stipulated in S.C. Code **1976 Sect. 15-13-420** and pursuant to **Rule 8 (b) (c) SCRC P.**

17. Plaintiffs are entitled to default relief on the grounds that Defendants are in violation of **Rule 12 (a), Rule 8 (d), and Rule 55 (a) S.C.R.C.P.**

18. Default judgment is due Plaintiffs pursuant to **Rule 55 (a) and (b)**.

19. It has been stated that a Motion to Dismiss cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case. See, **McCormack vs. England, 328 SC 627, 494 SE2d 431 (Ct. App. 1997)**.

Conclusion and Relief

1. Plaintiffs' arguments for denial of Defendants' Rule 12 (b) Motion to Dismiss, for documenting Defendants violations of the relevant laws and cases, and in support of their claim for summary default judgment, are based on the following statutes, rules and legal references:

1. **S.C. R.C.P:** Rules 4 (g); 5 (a)(b)(1); 6 (d); 7 (a)(b)(2); 8 (b)(c)(d);
11(a); 12 (a)(b); 38; 55 (a)(b); 56 (c) and 60 (b).

2. **S.C. Code 1976 As Amended:**

Sections: 15-9-910; 930; 950;
15-13-80; 420; 440; 930; 950;
15-35-60; 70;310

3. **References:** Black's Law dictionary, 4th Edit. Rev. p.1353
S.C. Jurisprudence, Vol. 24, S.C. R.C.P, C.L.E.

2. It has been demonstrated clear and convincingly that Defendants' Motion to Dismiss is without merit or substance for consideration of the Court as a credible defense for not filing an Answer to the Complaint and Summons that were properly served. The facts and the evidence clearly establish that Defendants have nothing with which to defend against the Complaint, to which allegations they have admitted by Rule of Law as cited herein. A party pleading an affirmative defense has the burden of proving it. **Pike vs. S.C. Dept. of Tptn, 540 SE2d 87 (2000)** Affirmative defenses are waived if not pled. **Howard vs. S.C. Dept of Highways. 343 SC149, 538 SE2d 291 (Ct. App. 2000)**

3. Plaintiffs submit further, that this case is ripe for a summary motion on the pleadings for default at the discretion of the Court pursuant to **Rule 12 (c)** and **Rules 55 (a) and (b)**, and to proceed with judgment for nominal and actual damages, etc. and trial for punitive damages. While judgment upon the pleadings is a drastic measure it will be granted in proper cases such as this case. See, **U.S. Cas. Co. vs. Heirs, 233 S.C. 333, 104 S.E. 2d. 561 (1958).**

4. Further, there are no genuine issues of material fact in that Defendants have admitted the allegations of the Complaint by force of law. And Plaintiffs are entitled to the relief requested as a matter of law pursuant to **Rule 12 (c), Rules 55 (a) and (b), and Rule 56 S.C.R.C.P.** at the discretion of the Court.

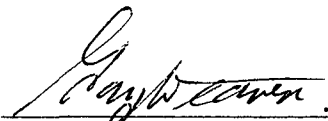
5. Having disposed of Defendants Motion on the grounds cited herein above, **for good cause** Plaintiffs respectfully request the Court to summarily deny the said Motion, and grant Plaintiffs Motion for Entry of Default Judgment and Motion to Continue the Trial Date for trial on the merits for punitive and other damages as deemed appropriate by the Court.

6. Plaintiffs seek sanctions against Defendants for violation of **Rule 11, S.C.R.C.P.** for the willful abuse of the judicial process in bad faith, wasting the Court's time with a frivolous and sham motion and false oral testimony, causing Plaintiffs undue stress, costs, time and effort. Under **Rule 11**, an attorney may be sanctioned for filing a pleading, motion or other paper in **bad faith** whether or not there is good ground to support. **See, Burns vs Univeral Health Services, Inc. 340 SC 509, 532 SE2d 6 (Ct. App. 2000).**

7. Finally, the Court is also respectfully referred to The Hon. Paul M. Burch's admonishment to Defendants at the hearing conducted in the Dillon Court of Pleas on January 30, 2008, on the subject Settlement Agreement. The Court informed Defendants on the record to the effect that any further abuse of process, contempt of Court Authority or Non-compliance with a Court Order, will result in "someone going to jail." That is what this case is all about, Defendants' abuse of process.

Respectfully submitted.

Dated: Dillon County, October 15, 2009


Gary Weaver, Plaintiff Pro Se

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)

AFFIDAVIT OF B.E.A.
WALLENSTEIN

Plaintiffs Pro Se)

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

AFFIDAVIT OF B.E.A. WALLENSTEIN

County of Dillon)
State of South Carolina)

SS.

B.E.A. WALLENSTEIN (aka Beatrice Wallenstein), being first duly sworn upon her oath, hereinafter "Affiant", deposes and says as follows:

1. Affiant is a Plaintiff Pro Se in the above entitled case, an elder, and competent to make this affidavit filed in opposition to Defendants **Rule 12 (b) Motion to Dismiss**.
2. This action was commenced by Plaintiffs' Complaint and Summons filed on May 30, 2008 and duly served on Defendants. Proof of **Service of Process** was duly filed with the Clerk of Court Said service of process on Defendants' legal counsel Mark W. Buyck III was duly made by mail during July 2008 and April, 2009.

3. On or about **July 30, 2008**, a first Proof of Service of the Complaint and Summons was duly filed with the Clerk of Court. On **May 25, 2009** a **second Proof of Service** of the Complaint and Summons was filed with the Clerk of Court.

4. As of this date there has been no Answer, pleadings, appearance, objections, and communications of any kind, in point of law, filed with Affiant by Mr. Buyck.

5. On August 7, 2009, affiant was informed by Mr. Gary Weaver, Plaintiff Pro Se, herein, that a copy of Defendants' "Rule 12(b) Motion to Dismiss" the complaint in this action was received by him at about 11.30 a.m in the mail on August 7, 2009.

6. Affiant as a Plaintiff Pro Se has not received a copy of said motion in her capacity as a person in interest, nor as Trustee for the other Plaintiff in this action, The B. E.A. Wallenstein Hospice Inter Vivos Trust.

7. Defendants motion to dismiss should be denied on the grounds that Defendants are in default pursuant to Rule 12 (a) S.C.R.C.P., and Rule 5, in that no answer has been filed, and no appearance was made by Defendants for some 14 months after service of process, until just three (3) days before trial set for August 10, 2009.

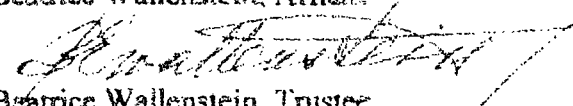
8. Additionally, as noted herein, pursuant to Rule 12 (b) there is insufficiency of process and service of process of Defendants said motion to dismiss.

9. The time for Defendants to appear, answer, plead, defend, or raise objections to the Complaint in point of law, ~~has expired~~. The Court files show that Defendants have not appeared, have not answered, nor raised any objections in point of law, by demurrer or otherwise until Friday, August 7, 2009 with a late, untimely motion to dismiss, of which Affiant and the Inter Vivo Trust have not received notice. Inter alia, Plaintiffs are entitled to entry of default by point of law, Rule 12 (a) SCRC.P.

10. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case. This pleading is intended to accelerate, rather than delay the proceedings. Affiant is competent to make this deposition, and alleges and avers that the facts are well grounded as stated herein, and the exhibits attached hereto and to his pleadings of record are true and correct copies of the original documents and by reference are made part hereof.

Further, Affiant sayeth naught.


Beatrice Wallenstein, Affiant


Beatrice Wallenstein, Trustee
The B.E.A. Wallenstein Hospice Inter
Vivos Trust.

Subscribed and sworn before me
this 7th day of August, 2009.

Gregory L. McHenry
Notary Public, State of South Carolina

My Commission expires: 2-8-16

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)

Plaintiffs Pro Se)

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

RULE 52 (B) MOTION TO RECONSIDER,
ALTER OR AMEND JUDGMENT; FOR
EXTENSION OF TIME TO FILE PLEADINGS
AND OBJECTIONS TO ORDER; AFFIDAVITS OF
GARY WEAVER; EXHIBITS A-I; NOTICE OF
MOTION; CERTIFICATE OF SERVICE

A CERTIFIED
TRUE COPY

Gwen T. Hyatt

CLERK OF COURT
DILLON COUNTY

JURY TRIAL REQUESTED

CLERK OF COURT
DILLON COUNTY

2009 DEC 18 AM 10:42

FILED
GWEN T. HYATT

**RULE 52 (B) MOTION TO RECONSIDER, ALTER OR AMEND JUDGMENT;
FOR EXTENSION OF TIME TO FILE PLEADINGS, AND
OBJECTIONS TO ORDER**

Comes now Plaintiff Pro Se Gary Weaver ("Movant"), and for good cause timely files this **Rule 52 (b) Motion** to Reconsider, Alter or Amend Judgment; for Rule 6 (b) Extension of Time to File Pleadings, and Objections, to the Final Judgment filed in this action on December 1, 2009 and received by Movant on Monday, December 7, 2009 (4.00 p.m.).

Additional authority for Court consideration resides in **S.C. Code 1976 Ann. As Amended ("S.C. Code") Sect. 15-27-130; and Rules 52, 59(e) and 60 (b)** of the South Carolina Rules of Civil Procedure ("SCRCP")

Pursuant to **S.C. Code Sect. 15-27-120, and Rule 6 (b) (d), and Rule 7 (b) SCRCP**, the Court is moved for good cause, for an order extending the time for filing further pleadings in support of the motion as discussed herein below.

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Movant's Objections and this motion for relief are filed for the record, and pursuant to **S.C. Code Sect. 15-13-920, 930 ; 15-27-130; 15-35-110, 120, 130, 140, and Rules 15, 46, 52, 59 (e), 60 (b), 62, 72 and 73, S.C. R.C.P.**

Movant objects to the Final Order in toto as an egregious miscarriage of justice and denial of Plaintiffs constitutional rights to due process and equal protection of the law, and contrary to the facts, laws, rules of procedure and case law.

Movant further objects to the arbitrary sanctions which are imposed on the wrong party for the wrong reasons and on the basis of insufficiency of evidence and in no relationship to the alleged facts, and objects to the alleged inflated legal fees.

These objections are filed *inter alia*, on the grounds of clear error of facts and law, abuse of discretion; improper and surprise application of the doctrine of res judicata and alleged frivolous suit without notice and as unfounded in fact and law, on insufficiency of evidence, and in violation of the Court Rules and cases; denial of Movant's constitutional rights to due process and equal protection of the law with the Court's unjustified and premature rush to judgment at the hearing on November 3, 2009 denying Plaintiffs a full hearing in open court on all the issues supporting Plaintiffs case in this action; denial of a hearing on the three motions filed before the Court.

These and related issues are further discussed with specificity in the annexed Memorandum In Support of the Motion and Affidavit and supplementary pleadings with permission of the Court.

As discussed in the annexed Memorandum and Affidavits, due currently to a unique set of unusual personal circumstances, Movant has experienced difficulties in filing this motion and believes he will be unable to file supplemental pleadings supporting this motion for relief in accordance with the time constraints provided in the cited Rules.

Movant therefore believes it is appropriate, prudent and timely to move in advance for the Court to extend the time for filing Supplemental Pleadings in support of the motion as provided by the cited Rules. Movant has ordered the transcript of the hearing on November 3, 2009 from the Court Reporter on duty. As of this writing the date of the availability of the transcript is unknown. The transcript is needed to prepare

supplemental pleadings for relief and for any appeal of the case that may be subsequently initiated.

As discussed in the annexed Memorandum and Affidavits, Movant is handicapped by the heavy medical schedule for the next several months of Plaintiff B.E. Wallenstein (Mrs. Weaver). Movant is a full time home care giver for the Plaintiff who is fully disabled and moves only in a wheel chair. This presents difficult, time consuming and arduous transportation problems once or twice weekly to and from Charleston, Columbia and Florence hospitals and for other scheduled medical consultations. Meeting the medical schedule is time consuming and physically demanding on both elderly Plaintiffs who are both ill.

Movant is also presently handicapped by the absence of personal transportation due to having to replace the recently destroyed motor on Movant's personal vehicles. . Thus due to the lack of transportation, Movant cannot have access to research facilities at the Florence and Darlington Law Libraries, since the Dillon Court does not have a Law Library. There is also the need to obtain the transcript.

As discussed on Movant's affidavit hereto dated December 14, 2009, as a result of injuries received during an armed robbery attempt at his residence during the early morning of December 6, 2009 he is presently under medical care and physically unable to proceed until his injuries heal within a month or so.

The unusual situation is such that it will be physically and administratively impossible and an extreme burden for Movant to prepare and file the necessary pleadings to support the motion for relief as stated herein within the time limits set by the respective Rules and to prepare for any appropriate hearings on the motion without an extension of time as requested herein. It is within the discretion of the Court to grant such extension of time to file the said pleadings.

Because of these factors, Movant believes it prudent to give ample advance notice to the Court and Defendants, and to timely file this motion for an extension of time. Movant is informed and believes that it would be in the interests of justice and efficient court administration for this Honorable Court to grant an extension of time for Movant to file the necessary pleadings.

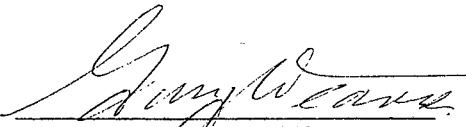
This motion is based on the annexed Affidavits of Gary Weaver, the Exhibits attached hereto, made part hereof, the annexed Memorandum in Support of Motion, the records and files herein, and such other and further oral and/or documentary evidence as may be presented. Movant reserves the right to file Supplemental Memoranda In Support of the Motion and hereby files for a full, open Court hearing with oral argument on the motion and for the three motions before the Court on November 3, 2009 that were denied Movant in the Court's precipitate rush to judgment.

WHEREFORE, having fully set forth the grounds for the motion, for **good cause** Movant respectfully moves this Honorable Court for an order for the relief as demanded herein and in the annexed Memorandum In Support of Motion, and for extending the time to file pleadings, and to set the date for any hearings on the motion at a date and time convenient to the Court and Counsel, any time after (60) days from the date of filing hereof. Time is not of the essence in this action, and no burden is imposed on Defendants.

On grounds of documented insufficiency of evidence, clear error of fact, and law, and the Court's abuse of discretion, Movant claims relief pursuant to Rule 52 (b), and for the Court on its own initiative to exercise its authority pursuant to Rules 59 (e) and Rule 60 (b) and vacate and set aside the Order, hear the three motions properly filed before the Court on November 3, 2009, and/or set the case for trial on the merits.

DATED: Little Rock, Dillon County, S.C. December 14, 2009

Respectfully submitted,


Gary Weaver, Plaintiff Pro Se

Gary Weaver,
B. E.A. Wallenstein, and
B. E.A. Wallenstein Hospice
Inter Vivos Trust,

Plaintiffs Pro Se

vs.

Progress Energy Carolinas, Inc.,
William Johnson, and
John Does 1-20

Defendants.

) MEMORANDUM IN SUPPORT OF RULE
) 52 (B) MOTION TO RECONSIDER, ALTER,
) OR AMEND JUDGMENT; FOR RULE 6 (B)
) EXTENSION OF TIME TO FILE PLEADINGS
) AND OBJECTIONS TO THE ORDER

A CERTIFIED
TRUE COPY

Erin T. Hyatt

CLERK OF COURT
DILLON COUNTY

FILED
GWENTHYATT
CLERK OF COURT
DILLON COUNTY

2009 DEC 18 AM 10:42

**MEMORANDUM IN SUPPORT OF RULE 52 (B) MOTION TO
RECONSIDER, ALTER OR AMEND JUDGMENT, FOR RULE 6(B)
EXTENSION OF TIME TO FILE PLEADINGS
AND OBJECTIONS TO THE ORDER**

Introduction.

This motion is timely filed pursuant to **Rule 52 (b), SCRCF** not later than ten (10) days after Movant's receipt by U.S. mail of written notice of entry of judgment dated December 1, 2009, on December 7, 2009 (4.00 p.m.); that is, on or before Thursday, December 17, 2009; provided however, that having received a copy of the entry of judgment by mail from Counsel for Defendants on December 7, 2009, pursuant to **Rule 6 (e)** SCRCF Movant claims the right to an additional five (5) days for filing as may be necessary under present circumstances as discussed herein.

This action was filed on May 30, 2009. Defendants did not file an Answer nor any other pleading until August 4, 2009, three days before the trial set for August 10, 2009, when they filed a Rule 12 (b) Motion to Dismiss on alleged insufficiency of process and service of process and lack

of jurisdiction. Plaintiffs had filed a Motion for Default Judgment and a Motion to Continue the Trial Date, set for August 10, 2009.

At the August 10, 2009 Hearing, the Honorable Paul M. Burch ordered Movant to file additional Memoranda in response to his request for more information. Movant duly filed two memoranda. A hearing on the three motions and the memoranda was set for November 3, 2009.

Thus at the hearing on November 3, 2009 the Court was to hear the three motions that were filed and continued from August 10, 2009. These were:

1. Plaintiffs' Motion for Default Judgment.

Inter alia, this motion was filed on Defendants failure to comply with the Rules of Procedure for filing an Answer and any affirmative defenses such as res judicata or alleged frivolous suit.

2. Plaintiffs' Motion to Continue Trial Date.

3. Defendants' Rule 12 (B) Motion to Dismiss

Defendants' motion was filed on grounds of insufficiency of process and service of process, and therefore alleging that the Court lacked jurisdiction. The subject matter of Defendants motion was not discussed during the November 3rd, 2009 hearing. Further, there was no written or oral motion filed by Defendants claiming a defense of res judicata, no allegation of an alleged frivolous suit filed by Plaintiffs or a demand for sanctions at any time before or during the November 3, 2009 hearing on its Rule 12 (b) motion.

The Court opened the hearing by requesting Defendants' Counsel to argue his motion to dismiss. Instead of arguing the alleged grounds Defendants had filed for dismissal (insufficiency of process and service of process and lack of jurisdiction), counsel presented a long discourse on the background to the litigation between the parties. No Offers of Proof presented to the Court were shown to Movant for review or comment.

Defendants' oral presentation was replete with errors and omissions and misrepresentations of fact, and as stated, no argument was presented in support of the original grounds that Defendants had filed for dismissal.

Movant objected on the record to the argument presented by Defendants as clear error and omissions and misrepresentation of facts and circumstances. The Court in a rush to judgment then denied Movant a full and open hearing of the motions filed by Plaintiffs and Defendants. Early in the proceedings, based on the Court's general demeanor, it was Movant's clear impression that the Court had already made up its mind on the outcome of the case.

Apparently the Court deemed Defendants initial oral argument to be presented as an oral motion for dismissal on the grounds of res judicata, over Plaintiffs clear objections. This was not only a surprise as defined in Rule 60 (b) SCRCF, but also a violation of the Court Rules of Procedure and other objections as discussed herein below. **Defendants motion before the Court was a Rule 12 (b) motion which did not include res judicata or a claim of frivolous suit, and Counsel did not make an oral motion for invoking res judicata or frivolous suit as a defense at the hearing. Plaintiffs were given no notice of these two alleged grounds by Defendants or the court.**

Having arbitrarily decided on res judicata over Movants objections, the Court then imposed sanctions on Plaintiffs, having denied them a full and open hearing on the merits of both parties' motions. Movant did not have an opportunity to rebut the arguments presented by Defendants as the Court peremptorily shut Plaintiffs off from further discussion.

The proceedings were such that the Court apparently implicitly converted a Rule 12 (b) Motion based on insufficiency of service and process and lack of jurisdiction to a Rule 56 Motion for Summary Judgment based on res judicata and frivolous suit. Since there were genuine issues of material facts, and Defendants were not entitled to judgment as a matter of law, as discussed below, inter alia, the Court abused its discretion, violated

the rules and denied Plaintiffs their constitutional rights to due process and equal protection of the law.

Although the matter did not come up for discussion during the hearing on Defendants motion, apparently the Court deemed that Plaintiffs Complaint was frivolous as stated in the final judgment, and thus justified sanctions. Further, the Court then criminalized the matter by threatening Movant with incarceration for exercising his Constitutional right to due process and equal protection of the law. As further discussion shows, inter alia, in an abuse of court discretion, Plaintiffs were unfairly and arbitrarily denied due process and equal protection of the law, in violation of their Constitutional rights.

In summary, for the reasons discussed below, this memorandum is submitted as a preliminary argument of fact and law in support of the Rule 52 (b) motion to which it is annexed. With the approval of the Court and pursuant to the relevant Court Rules, Movant shall file a Supplementary Memorandum in Support with further in depth argument of fact and law, following his recuperation from the injuries recently sustained during the December 6, 2009 armed robbery, and the other unusual circumstances as reported herein.

Accordingly, inter alia, this preliminary memorandum discusses the following issues and the related matters attendant thereto:

1. The defense of res judicata was not properly before the Court for hearing on November 3, 2009, and was not properly moved by Defendants during the hearing. Plaintiffs were without proper notice.
2. There is clear error of fact and law, and the Court abused its discretion in ruling against Plaintiffs on the defense of res judicata.
3. Notwithstanding the Courts arbitrary ruling, Defendants waived their right to claim any defense of res judicata by violating the Rules of Procedure.

4. There is clear error of fact and law, and the Court abused its discretion on ruling Plaintiffs' motions or case was frivolous. No prior notice was received by Plaintiffs for response.

5. The Court abused its discretion in ruling (excessive) sanctions against Plaintiffs for exercising their Constitutional rights to due process for redress of wrongs.

6. The Court abused its discretion in criminalizing Plaintiff Gary Weaver for exercising the Constitutional rights to due process for redress of wrongs, whereas the Court should have imposed sanctions on Defendants for their abuse of process as found by the Hon. Paul M. Burch on January 30, 2008.

7. The Court erred in implicitly converting the Rule 12 (b) Motion to Dismiss into a Rule 56 Motion for Summary Judgment.

8. The Court erred in denying Plaintiffs a full and open hearing on the three motions before the Court, denying due process, denial of equal protection of the law, and abuse of discretion.

9. During the November 3, hearing Plaintiffs were not afforded an opportunity to review and comment on Defendants Offer of Proof, either by the Court or counsel.

10. Plaintiffs were not given proper and timely notice of Defendants alleged res judicata or frivolous suit defense at the November 3, 2009 hearing by either Defendants or the Court.

Discussion

1. **The affirmative defense of res judicata was not properly before the Court for hearing on November 3, 2009 in violation of Rules 7, 8, and 12 (b) SCRCF and the Court Abused its Discretion by unilaterally applying the doctrine.**

1. Rule 7 (a) SCRCF requires that there shall be complaint and an answer. Defendants chose to ignore this rule and did not file an answer in this action.

2. Rule 7 (b) SCRCP required Defendants to file an application for an order for relief by motion and in writing with particularity. Defendants did not file a written Motion claiming res judicata. Nor did Defendants file an oral motion claiming res judicata during the November 3, hearing and its arguments for res judicata, if any, were without particularity. Plaintiffs were not shown the Offers of Proof.

3. Rule 8 SCRCP required Defendants to file their defenses and claims for relief. Defendants did not comply with Rule 8 (a) or 8(b). **Rule 8 (c) specifically provided for Defendants to file the affirmative defense of res judicata.** Defendants did not at any time prior to the November 3, 2009 hearing, and did not specifically file an oral motion for relief under the doctrine of res judicata. **Rule 8 (d) provides that Defendants admitted the averments in the complaint having not specifically denied them.** Denial of a hearing on Plaintiffs Motion for Default Judgment denied due process, denied equal protection of the law, and was an abuse of discretion.

4. Rule 12 (a) SCRCP required Defendants to file their answer within thirty (30) days after service of the complaint. Defendants did not and violated this rule.

5. Rule 12 (b) SCRCP required that every defense in law or fact in any pleading shall be asserted in the responsive pleading if one is required. Rule 12 (a) and Rule 7 (a) SCRCP required Defendants to file an answer and every defense claimed. The facts and the record show that Defendants violated all of these rules and did not file and answer, nor assert the affirmative defense of res judicata either in writing or orally. And it was the Court on its own initiative during the hearing on November 3, 2009 that invoked res judicata in favor of Defendants, contrary to the facts and the record which matters shall be discussed in-depth in Movant's Supplemental Memorandum and herein below.

6. Finally, Rule 12 (b) SCRCP provides that Defendants may file by motion the eight (8) listed defenses against the complaint. **None of**

these 8 defenses include res judicata as a defense that may be submitted by motion instead of the answer pursuant to Rule 8 SCRPC.

7. Pursuant to Rule 12 (b), Defendants motion claimed defense No. 4. insufficiency of process; No. 5. insufficiency of service of process, and thus No. 2. lack of jurisdiction over the person. These were the defenses for argument at the November 3, 2009 hearing; **not res judicata** which had not been properly brought to the Court before or during the hearing.

8. Based on the forgoing argument we may reasonably conclude and submit that the Defendants, having violated the cited rules; could not claim res judicata at the hearing, and that the Court abused its discretion in unilaterally ruling for Defendants and denying Plaintiffs on the false argument of res judicata.

9. Moreover, as we will discuss further, **Defendants waived any claim to a defense of res judicata by ignoring the above cited rules, and by virtue of the facts and law in any case. None of the allegations in the complaint were adjudicated by any Court in any action, anywhere, at any time.** Defendants mis-represented the facts at the hearing and Plaintiffs never got to see the Offers of Proof presented to the Court. These and other related issues will be discussed further in depth in Movant's Supplemental Memorandum.

Based on the foregoing discussion of Defendants failure to properly state a claim for a defense of res judicata, Movant submits that the grounds for reconsideration, alteration, amendment, or appeal are:

1. The Court's errors in ruling on Defendants defenses in point of law and error of fact.
2. The Court's admission of evidence that should have been precluded.
3. The Court's rejection of Plaintiff's valid evidence that should have been admitted and denied the opportunity to Plaintiffs.
4. The excessiveness of the ruling rendered by the Court.
5. The failure of the evidence to support the Court's ruling.

6. The Court's application of res judicata was a surprise pursuant to Rule 60 (b) SCRCF and a violation of Rule 8 SCRCF..

There are two points to be considered concerning the Court's errors or omissions in this case. This is because all appeals including this Rule 52 (b) motion have to be predicated upon the Court's errors and omissions, not upon the mistakes of the parties. Thus it follows that before filing an appeal to higher authority, this Court must have an opportunity to rule on the errors that Plaintiff alleges. Therefore this motion is filed on the basis of the following two points:

First, the Court's errors are prejudicial (harmful) to Plaintiffs and especially Movant. This means that Plaintiffs "lost the case" because of the Court's errors; for example ignoring the Rules cited herein above governing Defendants actions or inactions in this action, and incorrectly permitting res judicata and frivolous suit as a defense that was not properly brought before the Court or given prior notice. Or denying a hearing on the Motion for Default Judgment which would have ended the action and obviated any further discussion on res judicata or frivolous suit.

Second, the errors were brought to the attention of the Court by Plaintiffs' oral objections during the hearing on November 3, 2009 and the Motions before the Court for adjudication and denied without due process and equal protection of the law in abuse of discretion.

2. **Res Judicata is inappropriately applied in this case because contrary to the Court ruling, the parties have not litigated the same suit previously and a decision of the complaint averments has not been reached previously by any court.**

1. The Court Order incorrectly states: "This current action was filed in direct violation of previous Orders entered by the Court." (See, Order, Para.2, Line 3, p.1). Movant's Supplemental Memorandum will discuss this issue of fact and law at length. Here we rebut the ruling for the record.

2. At no time, in any venue has any Judge issued an order denying Plaintiffs their constitutional right to file and process this action.

3. During the November 3, 2009 hearing, Defendant's Offers of Proof to the Court were not shown for review or comment by Movant, in violation of the rules and denial of process.

4. Nor have the Plaintiffs "filed numerous motions in this case" The only motions filed in this case were the exercise of due process to seek a redress of wrongs caused by Defendants violation of its agreements with Plaintiffs; viz., the Motion for Default Judgment and Motion to Continue Trial Date. A motion to consolidate actions may have been a Rule 60 (b) mistake as a result of the unknown status of Case No. 2004-CP-17-232 because it had never been properly terminated pursuant to the Order filed on October 1, 2007 and Defendants violation of Rules 41 and 43 (k) SCRCF.

5. **None of the Orders cited in the Court Order, dismissed this case. There were two dismissals for Case No. 2004-CP-17- 232 only, not this case 2008-CP-17-180 which had a life of its own following the promulgation of the Order on October 1, 2007, a copy of which was not known by Plaintiffs until April 14, 2008 because of an error of the Court. See Exhibit attached.**

6. On September 18, 2007 the parties reached a settlement agreement titled a "Mutual Release." See **Exhibit E** hereto. This is a **contract** between the parties.

7. On October 1, 2007, the Hon. Paul M. Burch filed a Form 4 Order of Dismissal of Case No. 2004-CP-17-232, not this action. Said order was apparently based on a verbal notice received by the Court "per attorneys" that the case had been settled. See **Exhibit F** hereto. Said Order stated that a formal Order would be forthcoming, which never did materialize and Defendants did not file a Rule 41/43 (k) written stipulation.

8. Movant never received a copy of this Order until on or about April 14, 2008 some seven months later, following his routine enquiry of the Clerk of Court as to the status of the case. The Clerk showed Movant a

copy of the Order which was a surprise since he had not been given a copy previously. This was on April 14, 2008, some two and one half months after the January 30, 2008 hearing on the Motions for Enforcement of the Settlement Agreement filed by both parties on February 25, 2008.

9. During the hearing on the enforcement motions on January 30, 2008, Movant was not aware that the case had been dismissed on October 1, 2007, three months earlier by Judge Burch. The Court and the two attorneys present at the hearing knew about the case dismissal, but not this Movant. Incredible as it may seem, during the lengthy hearing on January 30, 2008, not once was it stated in Court that the case had been dismissed. The dismissal was because of the settlement agreement, and not on the merits of the case.

10. On receipt of a copy of the said dismissal from the Clerk of Court on April 14, 2004, Movant noted that the formal order had not been filed and that Defendants' counsel (then Plaintiff) had not filed a written Stipulation pursuant to **Rule 41 (a)(1)(b) and Rule 43 (k) SCRPC** requiring a written stipulation signed by the parties and entered in the record.. In its absence the settlement agreement was rendered to be not binding, so Plaintiff was not sure of the status of the settlement agreement.

11. At this point, Movant was also not clear on the exact status of the case, since **Rule 43 (K) SCRPC** provides that no settlement agreement shall be binding unless reduced to the form of a consent order, or written stipulation signed by counsel and **entered in the record**. There was nothing in the record that these conditions had been met by Counsel for Defendants, the (then) Plaintiffs.

12. Following the hearing on January 30, 2008, the Court issued a Form 4 Order on February 28, 2008. See **Exhibit G** hereto. Defendants in this case deliberately mis-represented the February 28, 2008 ruling to this Court in this action omitting the ruling in favor of Plaintiffs. The Order omits a full recitation of Judge Burch's Order in favor of (now) Defendants. (See, Order, para.3. p.2.; Exhibit G)

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13. Judge Burch ruled that the settlement agreement shall be enforced and that **all parties** are to abide by the terms of the agreement. This meant that (now) Defendants were to connect power to Plaintiffs residence within forty five days of the Order date, and Plaintiffs were to file a letter of dismissal with the Public Service Commission. Failure to comply by the parties would subject them to the contempt powers of the Court.

14. As noted above, at the January 30, 2008 hearing Movant was not aware that Judge Burch had filed a Form 4 preliminary dismissal of the case on October 1, 2007, and had proceeded on the belief that the case was still active and would go to trial since he had not received any notice of dismissal or a written stipulation from Counsel for signature and filing. Following conclusion of the hearing Movant enquired of the Court about the trial date and was informed that the only issue before the Court was enforcement of the settlement agreement, and no other issues.

15. Thereafter, being confused about the status of the case, Movant filed a request for clarification of the Order from Judge Burch who deemed it to be a Rule 59 (e) motion. On March 26, 2008 Judge Burch filed an Order in response. It stated that the terms of the February 28, 2008 Order "are crystal clear with no ambiguities." This meant the Court had granted both parties' motions to enforce the settlement agreement. See **Exhibit H** hereto.

16. Notwithstanding, Movant was still not clear about the status of the case as noted above. **However, Judge Burch made it "crystal clear" that Defendant Progress Energy was to connect power to Plaintiffs residence within forty five days or be in contempt of Court.** No other preconditions existed in the settlement agreement in September 18, 2007 or in the order of March 26, 2008. Movant had met all of the conditions cited in the September 18, 2007 settlement agreement for connection of power as provided therein, and Progress Energy did not and defaulted on the agreement until April 22, 2008, some 7 months later See **Exhibit I**, para.1 and 2) herein.

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17. On April 14, 2008, after the duration of the said 45 days, Movant filed with the Court a formal "Notice of Non-compliance with the Court Order" by Progress Energy.

18. Following its receipt of the said Notice, 8 days later on April 22, 2008 (10.00 a.m.) Progress Energy telephoned Plaintiff Mrs. Weaver and told her they would connect power the next day.

19. They were informed that because the parties were still in litigation, and a County Ordinance required an inspection by the County Code Enforcement authorities that the power could not be connected that next day and respective Counsel for the parties should be informed of the matter.

20. At that time Defendants were in non compliance with Judge Burch's Order and in contempt of Court authority pursuant to his Order of February 28, 2008. (**Exhibit G**)

21. Movant was still not sure of the status of Case. No. 2004-CP-17-232 even though Judge Burch had ordered enforcement of the settlement agreement by both parties. As noted above, no formal Order of dismissal had been forthcoming, and counsel had not prepared a written stipulation for entry in the record.

22. Defendants had violated the Settlement Agreement and Judge Burch's February 28, 2008 Order, and had not connected power as agreed in good faith on September 18, 2007, some eight (8) months duration. Plaintiffs had suffered damages as a result thereof. The reason Plaintiffs had executed the settlement agreement in the first place was because Mrs. Weaver had a serious life threatening surgery scheduled on or about September 22, 2008, just four days later.

23. Plaintiffs therefore filed this action Case No. 2008-CP-17-180 on May 30, 2008. The averments therein relate specifically to the events occurring and related directly to the settlement agreement only, during the period of eight (8) month spanning from September 18, 2007 the execution date of the settlement agreement, and the three months from

February 28, 2008 until May 30, 2008 the date of filing the Complaint when Defendants were in violation of Judge Burch's Order to connect power within 45 days and it was not done without good cause. Defendants had committed fraud, fraudulent inducement and a fraudulent act on Plaintiffs pursuant to the inducement of para. 5 of the Mutual Release which they subsequently reneged on before the S.C. Public Service Commission when Plaintiffs filed for a change of providers as provided. See **Exhibit E, para. 5)**

24. The complaint and each of the counts cited in the complaint refer only to the events and issues related to the damages caused Plaintiffs by Defendants during that period. The complaint specifically does not refer to any issues between the parties dating before September 18, 2007 the date of settlement which was Progress Energy's action on open account that was in dispute and settled on September 18, 2007. That action was in fact an abuse of process by Defendants for filing against Plaintiff Beatrice Weaver who was not a party to the contract between Movant the Defendants which was in fact executed on behalf of Movant by his Attorney Daniel H. shine in 1994. As to the doctrine of necessities, the S.C. Appellate Court has in fact ruled such a case as being unconstitutional where a spouse is not a party to a contract. That issue was not brought before the Court in this action, so res judicata does not apply.

25. None of the issues in this action are present in the previous Case No. 2004-CP-17-232. Any Court order dismissing the latter case is not applicable to this case which refers only to the Settlement Agreement which is a contract by and between the Parties.

26. **Res judicata does not apply and cannot be construed to apply since none of the issues dismissed in the former case are present in the instant case.**

27. By May 30, 2008, Movant was still unsure of the exact status of Case No. 2004-CP-17-232 and therefore decided to file a Motion to Consolidate the two cases and let the Court decide the status of the latter

case vis a vis the instant case. **Pursuant to Rule 60 (b)(1) this may have been a mistake by Movant, but the pleading was not a frivolous motion as discussed herein.**

28. The motion came on for hearing before the Hon. James E. Lockemy on June 3, 2008 at the Georgetown County Court House. On June 27, 2008, Judge Lockemy ruled that the issues of Case No. 2008-CP-17-180 was not before him, only Case No 2004-CP-17-232. Judge Lockemy deferred to the two Orders of Judge Burch of February 28, 2008 and March 24, 2008 concerning this Case No. 2004-CP-17-180, neither of which dismissed this action.

29. Judge Lockemy confirmed the dismissal of Case No. 2004-CP-17-232, but did not dismiss this Case No. 2008-CP-17-2008. See **Exhibit I** hereto. The order states: "This motion attempts to consolidate this case with an action that has ended. Therefore, it (the motion) is denied respectfully. If Plaintiff disagrees with the dismissal of 2004-CP-17-232, he should appeal the same." The Order did not refer to this action and did not dismiss it, since that issue was not before the Court, only the question of consolidation and the status of Case No. 2004-CP-17-232.

30. In summary:

1. None of the Court's Orders dating since September 18, 2008 have dismissed this Case No. 2008-CP-17-180.
2. None of the issues addressed in this case occurred prior to September 18, 2008. This case refers to all issues and events that happened in the three and eight month periods between September 18, 2008, February 28, 2008, and May 30, 2008.
3. Movant exercised his constitutional rights to pursue due process and seek equal protection of the law, both rights of which have been denied.
4. Movant may have made a Rule 60 (b) excusable mistake in filing the Motion to Consolidate, but it was the result of confusion over the exact status of Case No. 2004-CP-17-232 since no

formal dismissal or stipulation had been filed pursuant to the October 1, 2007 Order and Court rules. The facts, issues, circumstances and Movant's objectives are sufficient evidence that this complaint, the motion to consolidate, the motion for default judgment and to continue trial date, were certainly not frivolous pleadings by any measure against the standards..

5. **The settlement agreement was a contract.**

Dismissal of the underlying case 2004-CP-17-232 does not and did not terminate the contract. When Judge Burch filed a Form 4 dismissal of 2004-CP-17-232 on October 1, 2007 unknown to Movant until April 14, 2008 by accidental discovery, the contract took on a life of its own.

6. Defendants violation of the contract, and subsequent violation of Judge Burch's Orders filed on February 28, 2008 and March 28, 2008 became the subject of this new action, 2008-CP-17-180. This was a good faith filing by Movant to seek redress of wrongs, not a frivolous suit as defined by the law. See below discussion.

6. The Court cannot terminate a binding contract, only interpret it terms and enforce it one way or the other. **At no time during this action was the contract, or this action based on Judge Burch's February 28 or March 28, 2008 Orders, ever terminated or dismissed.**

7. There was ambiguity and no meeting of the minds on paragraphs 3, 4 and 5 of the contract recognized by Judge Burch in his findings and Order of February 28, 2008. See **Exhibit E**). And he made it "crystal clear" on March 28, 2008 that Progress Energy should comply with the contract terms or be in non compliance and contempt of Court. (See **Exhibit H**) **Judge Burch did not terminate this case at any time.** It never came before him for adjudication. Neither did Judge Lockemy.

8. **This action is about Defendants breach of the contract, non-compliance and contempt of Court authority pursuant to the Order of February 28, 2008, and Defendants fraud as to paragraph 5 of the agreement. All the claims flow from this basic situation.**

9. The foregoing discussion shows clearly that there is no basis for a res judicata defense and dismissal of this case; nor that the pleadings have been frivolous and sanctions imposed on Movant.

3. **The Order is clearly erroneous based on the facts and the applicable law, and the findings of alleged repetitive and frivolous filings are clear error of fact and law, and hence imposition of sanctions is an abuse of discretion.**

1. Finding No.1 of the Judgment Order is clearly in error of fact and law and against the preponderance of evidence. (See, Item 1, p.4) The evidence clearly shows that **this case** and all the allegations herein have NOT been previously addressed in case 2004-CP-17-232 which was a case for payment of an alleged amount that was in dispute. It was settled on September 18, 2007.

Judge Burch's October 1, 2007 Form 4 Order filed a preliminary dismissal of the case. Judge Burch's February 28, 2008 Order referred specifically to limited enforcement of the contract and no other issues were under consideration. (See Transcript of January 30, 2008 hearing). Both parties were ordered to comply within 45 days of the order upon a penalty of non compliance and contempt of Court authority. That is the subject matter of this case 2008-CP-17-180. Judge Burch specifically declared that the other issues under Case 2004-CP-232 were not before him for adjudication. And he warned Defendant Progress Energy against its continued abuse of the judicial process. See **Transcript**.

2. Judge Burch's March 28, 2008 Order simply made it "crystal clear" that enforcement of the contract terms was the only issue addressed by him, and not the other issues raised by Movant for clarification of the status of the case.

Defendant Progress Energy was ordered to comply and connect power to Plaintiff's residence within 45 days without conditions. It did not, and that is one of the issues addressed in this action. Clearly this is not a frivolous matter placed before the Court

and res judicata does not occur.

3. Judge Lockemy Ordered case 2004-CP-232 ended in June 27, 2008, again deferring a ruling on this case as not before him for adjudication. Furthermore, the case had been dismissed by Judge Burch on October 1, 2007 some eight months earlier and Judge Lockemy merrely confirmed that the case had ended.

Here again, the Court could not terminate a contract of which compliance by Defendant Progress Energy remained in dispute. Plaintiffs herein have a legitimate cause for redress of wrongs and a constitutional right to due process and equal protection of the law, both of which it has been denied by this Court.

4. Since the **preponderance of the evidence** clearly reveal that the issues raised in this action; viz, Defendants non compliance and contempt of Court authority pertaining to Judge Burch's February Order of February 2008, and the issues raised in case 2004-CP-17-232 were not addressed in this action, application of the doctrine of res judicata as a defense for Defendants and a basis for a ruling of dismissal of an alleged frivolous suit, is a clear abuse of discretion, particularly since res judicata and frivolous suit allegations were not properly brought before the Court in the first place.

5. Judge Lockemy's June 27, 2008 Order referred only to case 2004-CP-17-232 which dealt with Defendant's claim for payment of an alleged amount due and settled on September 18, 2007. The judge specifically deferred this case to Judge Burch's Orders, none of which dismissed this case, only the earlier case 2004-CP-17-232. Defendants' non compliance with Judge Burch's February Order is the subject of this case. **And Defendants' breach of agreement and fraud upon Movant, have never been adjudicated by any Judge in this or any other action.**

6. Even more egregious is the error of ruling this action to be a frivolous suit and imposition of sanctions. It is clear from the evidence that contrary to the Court Order, **Plaintiffs did NOT continue to pursue these**

matters at the trial level in direct contravention of the Court's Orders. (See, Order, Item 1, line 3, p.4). Judge Lockemy's Order terminated further proceedings on the earlier case no 2004-CP-17-232. The Judge had no authority or jurisdiction to invalidate or terminate a contract, Defendants' violation of which and Judge Burch's Orders are the subject of this action. Let us now examine the claim that this suit is a frivolous pleading.

4. **The Court Order that the continued pursuit of "these matters" constitutes repetitive and frivolous filings is clear error of fact and law and an abuse of discretion. Both the Court and Defendants are in violation of the S.C. Frivolous Civil Proceedings Sanctions Act. ("the Act")**

1. The question to be addressed is whether or not this action is a frivolous suit pursuant to the S.C. Frivolous Civil Proceedings Sanctions Act. ("the Act") and if sanctions are warranted against Movant.

2. Plaintiffs in this action have complied fully with the procedural requirements of the Act as designated in S.C. Code Sect. 15-36-10. et seq.

3. **S.C.Code Sect.15-36-10 (C)((2)** provides that unless the Court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party or pro se litigant shall not be sanctioned.

4. We have shown above that the Defendant did not file a motion or properly bring the defense of res judicata or frivolous suit before the Court. We have shown that the Court has not previously dismissed this action in any order, nor addressed the issues of Defendants non compliance with a Court order and contempt of Court authority which have never been adjudicated by any Court in any order.

5. It may reasonably be claimed that Defendants have violated the Act, specifically **S.C.Code Sect.15-36-10 (C)((1)(a)** by failing to comply with one of the three conditions stated therein. We have shown

above with sufficient evidence and argument that clearly the claim of res judicata was not warranted under existing law and the facts, and that a good faith or reasonable argument did not exist for the extension, modification or reversal of existing law.

6. **S.C.Code Sect.15-36-10 (D)** protects Plaintiff from the Court's arbitrary abuse of discretion **without due notice of a ruling of frivolous suit and imposition of sanction.**

This section provides that a person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section.

The Court or party proposing a sanction pursuant to this section **shall notify the Court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed.**

Upon notification the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty (30) days to respond to the allegations as that person considers appropriate including but not limited to by filing a motion to withdraw the pleading, motion, document or argument or by offering an explanation in mitigation.

7. At the conclusion of the hearing on November 3, 2009, the Court abused its discretion and imposed a sanction on Movant **without notice or declaring a finding of a frivolous suit.** No notice was given to Movant pursuant to **S.C.Code Sect.15-36-10 (D)** other than an erroneous oral ruling of res judicata which was not properly before the Court for adjudication as discussed above. **Movant was not given thirty days to respond.**

8. Defendants did not file a motion before the hearing nor an oral motion for a ruling of a frivolous suit during the hearing. Defendants Counsel approached Movant before the commencement of the November 3, 2009 hearing and offered a settlement whereby Plaintiffs would dismiss the suit and Defendants would not seek sanctions. That was the first time

Movant heard of that matter and it was not introduced by prior written motion or by oral motion during the hearing.

It was therefore a surprise (Rule 60 (b)) and apparently more than coincident that the Court should summarily rule Defendants suit to be frivolous. Implicitly, this was a conversion of Defendant's Rule 12 (b) motion to a summary judgment on the court's own initiative and abuse of discretion. There are genuine issues of material fact and Defendants are not entitled to judgment as a matter of law, which neither the Court nor Defendants complied with in this instance. It is not known whether or not there were ex parte communications between the Court and Defendants concerning this matter. This has happened in previous hearings involving the litigants, at court and before the Public Service Commission and the Office of Regulatory Staff..

9. Since the matter of a frivolous suit never came up formally before or during the hearing on November 3, 2009, Movant never had an opportunity pursuant to **S.C.Code Sect.15-36-10 (E)(6)** to respond to any allegation of the Court or Defendants that Plaintiffs violated the provisions of this section.

10. Pursuant to **S.C.Code Sect.15-36-10 (J)** the provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification or reversal of the existing law.

11. The foregoing discussion clearly establishes a good faith basis for this action as to Defendants violation of Judge Burch's Court Order of February 28, 2008; i.e., Defendants deliberate bad faith non compliance and contempt of Court authority, breach of agreement and Defendants fraud (para. 5 of the contract). None of Plaintiff's pleadings have been filed in bad faith; all were reasonably founded in fact and law, and were not interposed for the purpose of delay, or merely brought for purpose other than securing adjudication of Plaintiffs claims upon which the

proceedings were based. And res adjudicata does not exist and is inapplicable in this matter.

12. The preponderance of the evidence on this matter clearly supports Plaintiffs not Defendants who have in fact violated this Act, along with the Court's abuse of discretion as to the error of facts and the law. **No notice either written or oral was provided Plaintiffs of any claim for a finding of a frivolous suit and for sanctions.** And the evidentiary basis for the ruling was not stated during the November 3, 2009 hearing, or shown to Plaintiffs.

5. **Imposition of Sanctions on Movant is improper, and criminalization of the alleged frivolous actions is in error, inappropriate and should be vacated and set aside by the Court. The sanctions are excessive.**

1. The defense of res adjudicate is in error under the circumstances, facts and law relative to this action, and the Court has violated the provisions of the frivolous suit Act, as discussed herein above.

2. Therefore, pursuant to S.C.Code Sect.15-36-10 (E)((7) Movant petitions the Court to consider other factors that are just, equitable or appropriate under the circumstances. For example, the violations of the Act which are prejudicial to Plaintiffs.

3. Movant may have filed a Motion to Consolidate the two cases under discussion as a good faith mistake, or possibly excusable neglect pursuant to Rule 60 (b) SCRPC, as a result of the unsettled status of case 2004-CP-17-232 and the settlement agreement, on May 30, 2008. But it was not frivolous as the motive was to clarify the status of the pleadings.

4. All other pleadings were good faith exercise of Plaintiffs constitutional right to due process and equal protection of the law, for redress of wrongs committed by Defendants and which were not addressed in any Order of the Court.

Throughout the course of this action, Plaintiffs have duly researched the issues and matters involved and found support for their

positions in judicial opinions including dissenting opinions, legal authorities and law review articles. This is a matter of record in this case. These issues will be discussed in depth as may be appropriate in a Supplemental Memorandum In Support of this motion.

5. **Therefore pursuant to the provisions of the frivolous suit Act, Movant respectfully requests the Court to reverse its ruling that this action is a frivolous suit and rescind the imposition of sanctions which are excessive and to be amended in the alternative.** The argument of fact and law relating to these issues will be further discussed in a Supplemental Memorandum.

6. Finally, the Court has abused its discretion in criminalizing the sanctions against Movant. Movant is a respectable, retired professional and objects to being addressed by the Court during the November 3, 2009 hearing as being some kind of common criminal. Threatening incarceration on a Court ruling that is dubious, a precipitate rush to judgment in violation of the Court rules and the frivolous suits Act, in error of fact and law, is an abuse of discretion, given the facts and circumstances of this case. Movant as a pro se litigant has filed all pleadings in this action in good faith to seek justice which this Court has repeatedly denied, and with the recent ruling, continues to deny.

7. From the outset this Court has favored Defendants in this case, and previous litigation, recognized by the Hon. Paul M. Burch during the hearing on January 30, 2008. (See Transcript .)

While in China, Movant was informed of a maxim promulgated by a legendary Chinese Magistrate a member of the fabled Chinese Administration during an earlier Dynasty. The dictum stated to the effect that when one sips from the cup of justice, no matter which way the cup is tilted, the level of justice remains flat and true. In this case, the Court (and the Public Service Commission) has tilted not only the cup but also the level of justice, out of true, unfairly in favor of Defendants.

8. The preponderance of the evidence clearly demonstrates that Plaintiffs have always reasonably believed that their claims are valid and not lacking in legal sufficiency. Plaintiffs have not filed false or irrelevant claims. Thus this motion and earlier pleadings are a good faith effort to seek redress of wrongs. At no time have Plaintiffs in this action filed any pleadings to harass or injure the other party or delay process.

9. On the other hand, the preponderance of the evidence shows that in violation of the Act, Defendants have harassed Plaintiffs and injured them. Plaintiffs have not received proper notice from the Court or Defendants, and have not had an opportunity to respond to a charge of frivolous acts as provided in S.C.Code Sect.15-36-10 (D) of the Act.

10. **The Court is respectfully requested to rescind its ruling of a frivolous suit and rescind imposition of sanctions because the preponderance of the evidence favors Plaintiffs in this matter.** Plaintiff objects to the imposition of sanctions per se, and the specific excessive amount of the attorney fees claimed.

11. The standard on appeal is the Court's abuse of discretion in awarding sanctions and the specific sanctions awarded under the Act. The determination of whether sanctions should be awarded under the Act is treated as one in equity. See, **Rutland vs Holler et al, (law firm), (S.C. App. 2006) 371 S.C. 91, 637 S.E. 2d 316.**

Finally the Judgment Order is contrary to the findings of previous Court orders as to dismissal of this suit, and frivolity and sanctions.

Argument and Case Law

This **Rule 52 (e) SCRPC** motion is filed on the grounds, inter alia, of the Court's clear error of fact and law, abuse of discretion, and denial of due process and equal protection of the law. Having discussed the facts herein above, it is germane to argue the law of the grounds for the record

and consideration of the Court in ruling on this Rule 52 (b) motion for reconsideration, alteration and amendment of the Order.

1. Plaintiffs constitutional right to due process of law and equal protection of the law has been denied by the Court.

1. Article I, Section 3 of the S.C. Constitution provides that Plaintiffs shall not be deprived of life, liberty or property without due process of law, nor denied the equal protection of the law. Similarly Amendment V and Amendment XIV, Art, XIV, Sect. 1 of the U.S. constitution also provide Plaintiffs with the same protections.

2. Movant claims that the pleadings filed in this action are founded on Plaintiffs inherent constitutional right to exercise due process to seek redress of wrongs caused by Defendants, and to expect the Court to administer justice with equal protection of the law. It has not.

3. Movant claims that the preponderance of the evidence as discussed herein, documents that these constitutional rights have been denied by the Court.

4. Inter alia, Plaintiffs were given no notice of Defendants defense of res judicata which was improperly before the Court on November 3, 2009. Defendants Rule 12 (b) Motion to Dismiss on grounds of insufficiency of service and process and lack of jurisdiction was not heard by the Court. Plaintiffs were given no notice of a claim for frivolous suit or imposition of sanctions, pursuant to the Act. Plaintiff's motions were ignored by the Court. Plaintiff did not receive, review or comment on Defendants Offer of Proof to the Court on November 3, 2008. The Court rushed to judgment and denied Plaintiffs an opportunity to a full and open argument against Defendants presentation which was replete with errors, omissions and misrepresentations, or to present Plaintiffs claims for default judgment which would have ended the suit.

5. In short, Plaintiffs were denied due process of law and equal protection of the law and hence the Court violated their constitutional rights

under Art.1. Sect 3 of the S.C. Constitution and Amend. V and XIV of the U.S. Constitution, as cited above.

2. **Denial of Due Process.**

1. It is necessary to briefly review application of the due process doctrine to support Plaintiffs claim that their constitutional rights have been denied by this Court.

2. The due process of law is the fundamental, constitutional guarantee that persons involved in all legal proceedings will be treated fairly and that their individual rights will be protected. This has not been the case in this action and by the Court's Order. Since Plaintiffs claim that their due process rights have been violated, the Courts must determine whether or not Plaintiffs are being deprived of life, liberty, or property and provide protections for them.

3. Legal Authorities researched by Movant, generally divide Due Process into "substantive due process" and "procedural due process." **Substantive law** creates, defines and regulates rights. **Procedural law** enforces individual rights or seeks redress for their violation.

4. Thus procedural due process ensures such rights as protection against deprivation of life, liberty or property, adequate notice of lawsuits and related pleadings, a fair and public trial before an impartial and competent judge, prohibition against excessive fines, and the right to **demand that the Court prove any charges beyond a reasonable doubt.** In this case we are concerned here mostly with the violations of procedural due process by the Court and Defendants as discussed herein above. Each of these rights has been violated in this case denying Plaintiffs their right to due process in this action.

5. Case Law supports Movants argument that this Court has abused its discretion and denied Plaintiffs their constitutional right to due process on several levels as discussed above.

6. Due process means a fair procedure, See, **160 C.J.S. Sect. 1139, p.6**. It is stated that it is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in Court, or opportunity to be heard, and that without due notice and opportunity to be heard a Court has no jurisdiction to adjudicate such personal rights. See, **Blanton vs. Stathos (S.C App. 2002) 351 S.C. 534, 570 S.E. 2d 565; Brown vs. Malloy (SC App.2001) 345 S.C. 113, 546 S.E. 2d 195**. Requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. See, **Ogburn-Mathews vs. Loblolly Partners Ricefields Subdivision), (S.C. App. 1998) 332 S.C. 551, 505 S.E. 2d 598**. Due process encompasses all rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice and includes procedural rights of citizens against government actions that threaten the denial of life, liberty or property. **Ibid**. Due process prohibits estopping some litigants who never had a chance to present their evidence and arguments on a claim, despite one or more existing adjudications of the identical issue which stand squarely against their position. See, **Roberts vs. Recovery Bureau, Inc. (S.C. App. 1994) 316 S.C. 492, 450 S.E. 2d 616**.

7. As noted above, at the November 3, 2008 hearing on the motions, Movant never had a chance to properly or fully present argument for Plaintiffs Motions or against Defendants presentation. The Court cut off prematurely all discussion in a rush to judgment. As noted above, no oral or written notices of the defense of res judicata, a claim for sanctions or frivolous suit, were provided Plaintiffs before or during the hearing. Defendant's proof of service submitted to the Court was not provided Plaintiffs. There was no judicial review of Plaintiffs motions. The hearing was biased and unfair and violated the S.C. Rules of Civil Procedure, and Plaintiffs were presented an unfair surprise at the biased conduct of the November 3, 2009 hearing. Plaintiffs did not have an adequate opportunity

to prepare which is a crucial element in due process. See, **16D C.J.S.**

Constitutional Law, Sect. 1176. FN 62. p. 141

8. The standard on appeal is the preponderance of evidence, or clear and convincing evidence. On both standards, the evidence clearly shows that Plaintiffs were denied their constitutional right to due process of law. On this issue alone the Order must be rescinded and new hearing on the issues set, or the case be sent to jury trial on the merits.

3. **Denial Of Plaintiffs Right To Equal Protection Of The Law.**

1. Established by the 14th Amendment to the U.S. Constitution, the right to equal protection of the law is guaranteed to all residents of the United States. The State cannot deny any person the equal protection of the laws. This means the Courts must apply the rules of the Court equally to all parties, which is not the case in this action.

2. The basic idea of the equal protection clause is that the law should not treat one person differently from another. The sine qua non of an equal protection claim is a showing that similarly situated persons received disparate treatment. See, **Grant vs. S.C. Coastal Council (S.C. 1995) 319 S.C. 348, 461 S.E. 2d 388.**

3. This is exactly the case in this action. As noted above, the evidence clearly shows that Plaintiffs did not receive equal protection of the law from the Court. Defendants were allowed to violate the S.C. Rules of Civil Procedure, as did the Court itself. In its rush to judgment, the Court was permissive to Defendants and denied Plaintiffs their right to fully argue their case or rebut Defendants case or have access to Defendants offers of proof, etc. This leads us to consideration of the Court's abuse of discretion in the conduct of the hearing and the Order.

4. **Abuse of Discretion**

1. According to legal authorities, abuse of discretion means that the ruling of the trial Court was without reasonable factual support, resulted

in prejudice to the rights of a party, Plaintiffs in this case, and therefore amounted to an error in law. See, **Bridges vs Wyandotte Worsted Co.**, 239 S.C. 37, 121 S.E. 2d 300 (1961). Abuse of discretion occurs when the trial Judge's ruling is based upon an error of law, or, if based on factual conclusions, is without evidentiary support. See, **Fontaine vs. Peitz**, 291 S.C. 536, 354 S.E. 2d 565 (1987).

2. The exercise of judicial discretion will be disturbed if it deprives a party of a substantial right to which the party is entitled under the law. See, **Alcorn vs. Ford Motor Co.**, 276 S.C. 180, 276 S.E. 2d 925 (1981). And the abuse of discretion must be clear in order to cause reversal. See, **Mauro vs. Clabaugh**, 299 S.C. 184, 383 S.E. 2d 244, (Ct, App. 1988)

3. The foregoing discussion of the facts, the errors of fact and law, and the evidence clearly supports Plaintiff's contention that the Court has abused its discretion in its conduct of the November 3, 2009 hearing and the rulings promulgated in the Order as discussed herein above.

4. For example, on its own initiative the Court arbitrarily and implicitly converted Defendants Rule 12 (b) Motion to Dismiss on grounds of insufficiency of process and service of process and lack of jurisdiction, into a Summary Judgment hearing on grounds of alleged res judicata and frivolous action **without notice** on any of the issues, and denied Plaintiff the opportunity for full and open discussion. It is stated that even when there is no dispute as to evidentiary facts (which there is in this case), but only as to conclusions or inferences to be drawn from them, summary judgment should be denied. See, **Koester vs. Carolina Rental Center, Inc.**, 313 SC 490, 443 SE 2d 392. Further, there are genuine issues of material fact and Defendant is not entitled to judgment as a matter of law. **Moreover, the Court's Judgment is contrary to and inconsistent with the findings and rulings of previous courts in this action.**

5. A circuit court may not grant summary judgment on a claim without permitting the adverse party a reasonable opportunity to submit

pertinent material. See, **Carr vs. Michael Motors, Inc., 557 SE 2d 294, 210 W.Va 240.**

Here there was insufficiency of notice of proceedings pertaining to res judicata or frivolous suit, Plaintiffs were not given full and fair notice and opportunity to respond, prior to entry of the Judgment, and Plaintiffs did not waive the right to notice. The court has clearly abused its discretion to the prejudice of Plaintiffs, and set aside relief is justified as demand herein.

Conclusion

The foregoing discussion of the case clearly establishes clear error of fact and law and abuse of discretion. The preponderance of the evidence shows violation of Plaintiffs constitutional rights to due process and equal protection of the law by the Court and Defendants.

The Court's ruling is without reasonable factual support and has prejudiced the rights of Plaintiffs. Error of law resides in the Courts violation of the Rules of Procedure and the Fraudulent Practices Act, regulating the management of motions, requirements for proper notices to Plaintiffs, and other related procedural requirements discussed above, that were prejudicial to Plaintiffs.

For these reasons the Court must reconsider the Order pursuant to this motion and is respectfully requested to grant the relief requested by Movant.

Relief

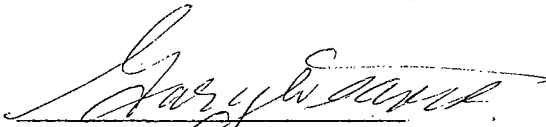
WHEREFORE, having fully set forth the grounds for the motion, for **good cause** Movant respectfully moves this Honorable Court for an order for the relief as demanded herein and for extending the time to file pleadings, and to set the date for any hearings on the motion at a date and time convenient to the Court and Counsel, any time after sixty (60) days from the date of filing hereof.

Time is not of the essence in this action, and no burden is imposed on Defendants.

On grounds of documented insufficiency of evidence, clear error of fact, and law, and the Court's abuse of discretion, Movant claims relief pursuant to Rule 52 (b), and for the Court on its own initiative to exercise its authority pursuant to Rules 59 (e) and Rule 60 (b) and vacate and set aside the Order, hear the three motions properly filed before the Court on November 3, 2009, and/or set the case for trial on the merits.

DATED: Little Rock, Dillon County, S.C. December 16, 2009

Respectfully submitted,



Gary Weaver, Defendant Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)

AFFIDAVIT OF GARY WEAVER

Plaintiffs Pro Se)

vs.)

Progress Energy Carolinas, Inc.,)
William Johnson, and)
John Does 1-20)

Defendants.)

A CERTIFIED
TRUE COPY

Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

FILED
GWEN T. HYATT
CLERK OF COURT
DILLON COUNTY

2009 DEC 18 AM 10:42

AFFIDAVIT OF GARY WEAVER

County of Dillon)

SS.)

State of South Carolina)
_____)

GARY WEAVER, being first duly sworn upon his oath, hereinafter "Affiant",
deposes and says as follows:

1. Affiant is a Plaintiff Pro Se in the above entitled case, an elder, and competent to make this affidavit.
2. On the evening of Sunday, December 6, 2009, at 3.00 a.m in the morning, three armed robbers broke into Affiant's residence. Affiant was awakened by a flashlight and a hit to the head three times with a gun in the pitch black of the night. The robbers demanded money, a safe, and any guns. It was pitch black and Affiant could not identify the robbers. Three times the robbers threatened to shoot Affiant
3. As a result of the extensive head wounds, Affiant suffered lacerations to both his lips and inside his mouth. The bottom row of his teeth was knocked loose; one tooth was broken and one tooth knocked out. Affiant's left eye was blackened and is swollen

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and he is presently suffering blurred vision. Since that date Affiant has had a persistent and painful headache all day, every day and has difficulty concentrating. Face and neck muscles and left eye are bruised. Affiant has difficulty eating or sleeping.

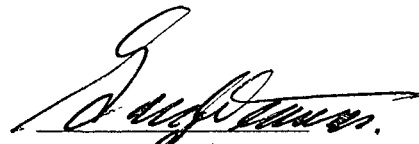
4. Appointments are scheduled for medical treatments and consultations, MRI and "CAT Scans" of Affiant's head; dental treatment and with an eye specialist.

5. Affiant is unable to perform efficiently and according to the doctors, his return to normal will take about one month or so. See **Exhibit D** hereto.

6. Accordingly, affiant is not able to participate in this action for some weeks and respectfully requests the Court for an extension of time of sixty (60) days from date of filing a motion for reconsideration for any hearings to be held..

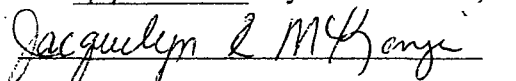
7. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case. This pleading is intended to accelerate, rather than delay the proceedings. Affiant is competent to make this deposition, and alleges and avers that the facts are well grounded as stated herein, and the exhibits attached hereto and to his pleadings of record are true and correct copies of the original documents and by reference are made part hereof.

Further, Affiant sayeth naught.


Gary Weaver, Affiant

Subscribed and sworn before me

this 17th day of December, 2009.


Notary Public, State of South Carolina

My Commission expires: 2-8-16

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

Gary Weaver,)
B. E.A. Wallenstein, and)
B. E.A. Wallenstein Hospice)
Inter Vivos Trust,)

AFFIDAVIT OF GARY WEAVER

Plaintiffs Pro Se)

vs.)

A CERTIFIED
TRUE COPY

Progress Energy Carolinas, Inc.,
William Johnson, and
John Does 1-20

Defendants.)

CLERK OF COURT
DILLON COUNTY

FILED
GWEN T. HYATT
CLERK OF COURT
DILLON COUNTY

2009 DEC 18 AM 10:42

AFFIDAVIT OF GARY WEAVER

County of Dillon)

SS

State of South Carolina)
_____)

GARY WEAVER, Plaintiff Pro Se in the above entitled action, being first duly sworn upon his oath, hereinafter "Affiant", deposes and says as follows:

1. On August 10, 2009 the Court heard oral argument from Defendants in support of their Rule 12 (b) Motion to Dismiss and Plaintiffs' Motion for Entry of Default, and Motion to Continue the Trial Date.
2. As a result of the discussion, the Court, the Hon. Paul M. Burch presiding, stated that it needed more information on the issues, and ordered Plaintiff Gary

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Weaver to file a Memorandum on the motions for the Court's further consideration.

3. On or about August 13, 2009 Affiant filed a first Memorandum in Opposition to Defendants Rule 12 (b) Motion to Dismiss. The Memorandum rebutted the only two unsupported issues presented in Defendants written motion; viz, that there was insufficiency of process and service of process of the Complaint by Plaintiffs. **As discussed in Plaintiffs' first Memorandum, Defendants submitted no evidence to prove their allegations, nor was any claim submitted to a defense of res judicata.**

4. Contrary to **Rules 8 (b) and (c), and Rule 12 (a) and (b)** Defendants did not propose res judicata as an affirmative defense and waived it as a further defense. Moreover pursuant to **Rule 8 (d) (and Rule 15) SCRC**P, Defendants waived any defense of res judicata since by this rule, and Defendants failure to file an Answer pursuant to **Rule 7 (a) and Rule 12 (a) ,** they **admitted** the averments in Plaintiffs' Complaint and waived any right to a defense of res judicata under **Rule 15 SCRC**P.

5. On or about October 23, 2009, Affiant filed a second Memorandum in Opposition to Defendants Rule 12 (b) Motion to Dismiss rebutting the two unsupported oral allegations that the above entitled case had been dismissed, and that Defendants therefore did not file an Answer. Again no supporting evidence was submitted to prove Defendants' allegations. **In fact the Complaint in this action had not been dismissed by any court at any time anywhere, as claimed by Defendants and in the proposed Order a copy of which was received by Plaintiff on Saturday, November 21, 2009.**

6. The motion to vacate and for extension of time to file and Objections to the Court's November 3, 2009 judgment to which this Affidavit is annexed, is the result of a number of unforeseen circumstances that prompt the necessity to file the motion to protect Plaintiffs' constitutional rights for redress of wrongs.

7. The first complication relates to Plaintiff B.E.A. Wallenstein heavy medical schedule for the next several months with at least one trip per week to a hospital or medical appointment for one purpose or another. Her medical condition dating

since 2004 is a matter of documented record in the litigation between the parties. Affiant states that he knows that since before early 2004, Plaintiff B.E.A. Wallenstein, Prof. Ret., also known as Mrs. Beatrice Weaver, has been unable to take any active role in the prosecution of the two lawsuits filed respectively by Defendants in 2004, and by Plaintiffs in 2008, and previous regulatory matters filed by both parties. This because of her medical condition, many treatments and stays at the Morris Cancer Center and Eye Center, Duke University Medical Center in Durham, N.C. ("DUMC"), the Hollings Cancer Center, and Storm Eye Institute at the Medical University of South Carolina in Charleston S.C ("MUSC"), Richland District Hospital in Columbia S.C. for major life threatening cancer surgery by Oncology Associates, Mayo Clinic in Phoenix Arizona, the Yuma Rehabilitation Hospital in Yuma, Arizona, major surgery at McCloud Hospital in Dillon S.C, Health South hospital in Florence, S.C., and numerous visits to McLeod Regional Hospital in Florence S.C.

8. In 2004, Ms Wallenstein an 83 year old elder was diagnosed with cancer at DUMC. Following the radiation cure, in late 2005, a routine examination detected a further cancer and she underwent a partial masectomy surgery. In 2008 it was then discovered that the original cancer had returned and progressed from 6.00 mm in January 2008 to 16 mm in September. It is said that 20 mm is terminal.

9. Following further ineffective treatments, the critical decision was made to have the life threatening major cancer surgery on April 30, 2009, just seven months ago. The risk of her advanced age, and the anesthesia was weighed against the risk of doing nothing about the cancer surgery. .

10. Just two months into recuperation from that surgery, following months of crucial stomach pains which six doctors and three hospitals could not diagnose, she then eventually had to undergo another serious emergency surgery to remove gall stones and a gangrenous gall bladder on or about July 6, 2009 at McCloud Hospital. She is presently still recovering from these two major surgeries.

11. Meanwhile, an earlier problem has re-appeared and a major esophageal surgery, having been deferred several times since 2004 and 2006 because of her debilitated medical condition may be again indicated. At present she cannot walk

without assistance and needs a wheel chair, and is effectively bed-ridden for the most part and requires the use of home medical equipment and home care..

12. Consequently, due to the unavailability of third party assistance, Plaintiff Gary Weaver is now a home care health giver which has become an all day full time activity ("24/7") which includes the necessity for home health care use of medical equipment on a daily basis. Through December and January 2010, Mrs. Weaver's medical schedule calls for an average of one trip per week, sometimes twice, visits to hospitals and doctors in Charleston, Colombia and Florence.

13. This situation has become a major burden for Affiant who is 76 years of age and suffers from chronic asthma and diabetes, high blood pressure and cholesterol. The latter disease has affected his feet and ability to stand for long periods of time. In recent years, the former disease has put him in emergency hospital on two occasions by ambulance with late night asthma attacks. He uses medicines and equipment three times daily. Consequently, this situation complicates matters further and is time consuming as well as physically demanding on Affiant to attend to rigorous matters on a timely basis such as researching, preparation and filing pleadings..

14. Due to the unpredictability of the situation, and the necessity of caring for Plaintiff B.E. Wallenstein (Mrs. Beatrice Weaver), on a full time basis, management of her health care as well as his own, with the various medical institutions and staff, and meeting her medical hospital schedule and other requirements, **Affiant will not be able to file a motion and pleadings on a timely basis to protect Plaintiffs' interests within the ten day time limits imposed by the appropriate Court Rules, particularly Rule 59 (e) and rule 60 (b).**

Therefore it is necessary and appropriate to file for an extension of time to file Motions for Relief in order to protect Plaintiffs' rights for redress of wrongs.

15. The situation is further complicated by the fact that on or about October 2, 2009, the motor in Affiant's automobile was completely destroyed by a failing oil pump while returning from a hospital visit to MUSC in Charleston. The motor has to be completely replaced. This has proven to be a time consuming and difficult

process to find a motor with warranty for a 20 + year old car classified as an "antique." It will take some time to accomplish, from 4 to 6 weeks. Meanwhile Plaintiffs do not have personal transportation and rely on friends for necessities in the short term. See **Exhibits A, B, and C** hereto.

16. The lack of transportation has imposed an extreme short term burden on Plaintiffs preventing their ability to meet the Court Rule's deadlines for the near term of several months. To visit the hospitals in Charleston and Columbia, Plaintiffs must make all-day trips lasting some 10 to 12 hours of travel, consultations, tests, examinations, etc. Mrs. Weaver must sit in a wheel chair for some 2 to 3 hours each way, in a specially designed van vehicle for handicapped patients in wheel chairs. It is extremely uncomfortable and physically burdensome for her. Each medical trip is a grueling and exhausting experience for both elders. Each trip takes one or two days for preparation and several days from which to recover after return from hospital. These conditions further restrict Plaintiffs' present physical ability to meet any Court deadlines on a timely and predictable Basis.

17. Further, of significance to the conduct of Plaintiffs' case, Affiant is unable to conduct any legal research needed to present and argue his case, since the Dillon Court does not have a law library and Affiant has to use the Law Library at the Florence and Darlington Courts. Here again it makes it difficult for Plaintiffs to meet the time limits set by the rules to file pleadings.

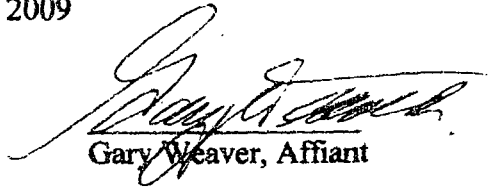
18. Affiant states that the proposed Order filed by Defendants is replete with errors, omissions, mis-representations and abuse of discretion all of which are prejudicial to Plaintiffs. It is necessary for Affiant to conduct further legal research to protect Plaintiffs' interests in this case which have been inappropriately adjudicated by the Court on the basis of Defendants' mis-information and unproven facts and law as will be shown by Plaintiffs..

19. Because of these unusual circumstances, and for good cause, in addition to the motion to vacate the order, Affiant considers it prudent to file the motion to extend the time to file pleadings in order to prevent any unforeseen possibility of failing to meet the ten day time limit deadlines set by the appropriate Court Rules.

20. Affiant makes this affidavit from personal knowledge and belief of the facts of the case, and not for any improper purpose or to cause unnecessary delay in proceedings, or needless increase in the costs of this case; that he is competent to make this deposition; that he alleges and avers that the facts are well grounded as stated herein, and the pleadings filed in this suit, and exhibits attached thereto which are true and correct copies of the original documents and by reference made part hereof.

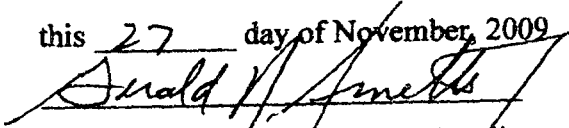
Further, Affiant sayeth naught.

DATED: Little Rock, Dillon County, November 23, 2009


Gary Weaver, Affiant

Subscribed and sworn to before me

this 27 day of November, 2009



Notary Public, State of South Carolina

My Commission expires: 11-20-2012

FILED
STATE OF SOUTH CAROLINA HYATT IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON 2010 JAN 27 AM 9:06 FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2008-CP-17-180

CLERK OF COURT
DILLON COUNTY

Gary Weaver,
B. E.A. Wallenstein, and
B. E.A. Wallenstein Hospice
Inter Vivos Trust,

Plaintiffs Pro Se

vs.

Progress Energy Carolinas, Inc.,
William Johnson, and
John Does 1-20

Defendants.

MEMORANDUM OF OBJECTIONS
TO ORDERS FOR THE RECORD

RECEIVED
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CLERK OF COURT
DILLON COUNTY

MEMORANDUM OF OBJECTIONS FOR THE RECORD

On January 14, 2010, (3.00 p.m.), Plaintiff Pro Se Gary Weaver received a copy of the Court's Order Denying Plaintiff's Motion to Reconsider, Alter, or Amend Judgment and for Extension of Time to File Pleadings.

Plaintiff notes that no hearing on the said Motion has been set by the Court. Plaintiff objects to the ruling for previous litigation to be successive, vexatious and directly violative of previous court Orders and thus a finding of res judicata. This is contrary to the facts and the law, and the standards for such findings before the Appellate Court.

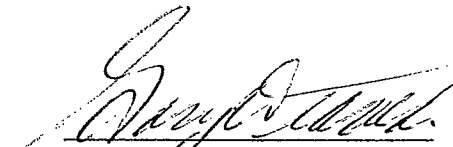
The preponderance of the evidence supports Plaintiff's arguments in the said Motion. No previous Court Order dismissed this action at any time. None of the Appellate standards for vexatious or frivolous litigation have been violated by Plaintiff. In particular the Court should have ordered criminal contempt and non-compliance findings against the Defendant Progress Energy Carolinas, Inc for its violation of Judge Burch's Order of February 28, 2008 relating to the Settlement Agreement in Case No. 2004-CP-17- 232. The contemptuous conduct in this case was perpetrated clearly and

specifically by the Defendants, not Plaintiff. See, **Miller vs. Miller, 652 S.E. 2d. 754.** Moreover with respect to the alleged conduct of this Plaintiff the burden of proof standard is a reasonable doubt, which is the case here.

Accordingly, for the formal record, Plaintiff hereby files objections to the said Order and reiterates previously filed objections to the Judgment filed on or about December 1, 2009; viz; abuse of discretion based on error of fact and law; violation of Plaintiff's constitutional rights; and the court has not complied with the Court's rules of civil procedure as to the rights of this Plaintiff.

Dated: Dillon County, January 22, 2010

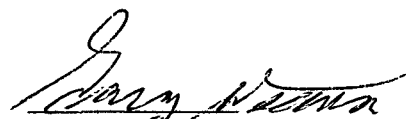
Respectfully submitted.


Gary Weaver, Plaintiff Pro Se

Certificate of Counsel

The undersigned hereby certifies that the **Record on Appeal** contains all materials proposed to be included by any of the parties and not any other material.

March 31, 2011

A handwritten signature in cursive script, appearing to read "Gary Weaver", written over a horizontal line.

Gary Weaver.
Appellant Pro Se
P.O. Box 539
Little Rock S.C.
29567
Ph: 843 841 1606
Fx: 843 774 2050

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2008-CP-17- 0180

Gary Weaver, BEA Wallentstein, and B.E.A
Wallenstein Hospice Inter Vivos Trust,

Plaintiffs,

Of whom Gary Weaver is the,

Appellant,

v.

Progress Energy Carolinas, Inc, William Johnson,
and John Does 1-20.....

Respondents.

PROOF OF SERVICE

PERSONALLY appeared before me, Gary Weaver, who being duly sworn, deposes and says that he has served the **Record on Appeal** on the Respondent's counsel, Mark W. Buyck, III, by depositing a copy of the same document in the United States Mail, postage prepaid, to:

Mr. Mark W. Buyck, Jr.
Attorney-at-Law
Post Office Box 1909
Florence S.C. 29503-1909
Fax: 843 6621342
Attorney for Respondents

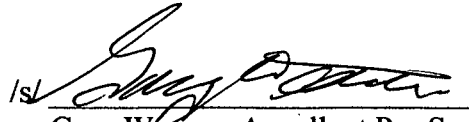
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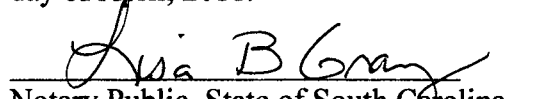
SC Court of Appeals

Date of Mailing: April 21, 2011

DATED: April 21, 2011, Little Rock S.C.


Gary Weaver, Appellant Pro Se
P.O. Box 539
Little Rock S.C. 29567
843 841 1606

Sworn to before me this 21st
day of April, 2011.


Notary Public, State of South Carolina
My commission expires: 02-22-2015 -

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2008-CP-17- 0180

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MAY 20 2011

SC Court of Appeals

Gary Weaver, BEA Wallentstein, and B.E.A
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Mr. Mark W. Buyck, Jr.
Attorney-at-Law
Post Office Box 1909
Florence S.C. 29503-1909
Fax: 843 6621342
Attorney for Respondents

Date of Mailing: April 21, 2011

DATED: May 18th, 2011, Little Rock S.C.

/s/ Gary Weaver
Gary Weaver, Appellant Pro Se
P.O. Box 539
Little Rock S.C. 29567
843 841 1606

Sworn to before me this 18th
day of May, 2011.

Reginald L. McKenry
Notary Public, State of South Carolina
My commission expires: 2-8-16

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UN BOUND

RECEIVED

APR 25 2011

SC Court of Appeals