

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

RECEIVED

FEB 02 2021

SC Court of Appeals

Case No. 2020-001445

Mr. Randy Gilchrist and Mrs. Cheryl Gilchrist  
Appellants

v.

Duke Energy Carolinas, LLC  
Respondent

DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL

Mr. and Mrs. Randy Gilchrist  
3010 Lake Keowee Lane  
Seneca, SC 29672  
Phone: 864.903.0375  
Appearing Pro Per/Appellants

Attorneys for Respondent, Duke Energy Carolinas, LLC:

Samuel J. Wellborn, Esq.  
Heather Shirley Smith, Esq.  
Katie Michelle Brown, Esq.

Attorneys for Duke Energy Carolinas, LLC  
Robinson Gray Stepp & Laffitte, LLC  
P.O. Box 11449  
Columbia, SC 29211

Appellants propose the following be included in the Record on Appeal:

A. Copy of individual complaint form filed with the Public Service Commission of South Carolina

B. Public Service Commission Directives/Orders

1) Docket No. 2019-230-E, Order No. 2019-686 dated Sept. 25, 2019

Directive

2) Docket No. 2020-147-E dated July 29, 2020

Directive

3) Order Dismissing Complaint, Docket No. 2020-147-E

Order No. 2020-562 dated August 24, 2020

4) Order Denying Rehearing, Docket No. 2020-147-E,

Order No. 2020-644 dated October 1, 2020

C. Correspondence between Duke Energy Carolinas, LLC, Public Service Commission of South Carolina, and Mr. and Mrs. Randy and Cheryl Gilchrist

1) Fax dated 7-3-2017 from Randy Gilchrist to Duke Energy –

Requests Smart Meter to be replaced with analog meter

2) Letter from Duke Energy to Ralph Gilchrist dated April 10, 2018 –

Duke Energy letter announcing upgrade and opt-out option and regarding threat to install meter without customer's consent

3) Letter from Duke Energy to Ralph Gilchrist dated May 18, 2018 –

Includes hand-outs/fact sheets from Duke Energy, explaining Smart Meters; includes admissions that Smart Meters do in fact have privacy issues

- 4) Letter from Ralph Gilchrist to Duke Energy dated June 7, 2018 – Gilchrists' notice of no consent and includes notice of liability
- 5) Letter from Ralph Gilchrist to Duke Energy dated July 18, 2018 – Demands removal of all digital electric meters; Includes notice of no consent and notice of liability
- 6) Letter from Randy Gilchrist to Duke Energy dated Aug. 25, 2018 – Notice of right of self-defense and demand to cease and desist
- 7) Affidavit of Randy Gilchrist to Duke Energy Corporation dated Oct. 4, 2018
- 8) Copy of door hanger card left by Duke Energy at the residence, the subject of this case, threatening disconnect if customer fails to consent
- 9) Letter from Randy and Cheryl Gilchrist to Senator Thomas Alexander dated Nov. 24, 2018 – Discusses installation demands by Duke Energy over objections of Randy and Cheryl Gilchrist
- 10) Letter from Duke Energy to Ralph Gilchrist dated Dec. 4, 2018 – Explains Duke Energy wants to upgrade meters and threatens to disconnect service if Gilchrists do not consent ("Final Notice")  
Letter from Randy and Cheryl Gilchrist to Duke Energy dated Dec. 14, 2018 – Regarding threatened cut-off of electricity

11) Letter from Randy and Cheryl Gilchrist to Duke Energy dated Oct. 23, 2019 – Regarding Smart Meter installation

12) Letter from Duke Energy to Mr. and Mrs. Randy Gilchrist dated Nov. 11, 2019 – Explains the benefits of smart meters and acknowledges that a meter was installed on October 10, 2019, without the consent of the Gilchrists

13) Letter from Mr. and Mrs. Randy Gilchrist to Public Service Commission of South Carolina dated Nov. 29, 2019 – Regarding Duke's Smart Meter installation over our objections

14) Letter from Duke Energy to Mr. Brad Kirby, Investigator, Office of Regulatory Staff, dated Dec. 12, 2019 –

- Ignores privacy concerns

- Informs Gilchrists of option to opt-out for a fee

D. Motions and Correspondence with Public Service Commission of SC

1) Randy and Cheryl Gilchrist's Objection to Defendant Duke Energy Carolinas, LLC, Motion to Dismiss and Plaintiff's Demand for a Hearing, Docket No. 2020-147-E dated July 13, 2020

2) Randy and Cheryl Gilchrists' letter to David Stark, Hearing Examiner for the Public Service Commission of SC dated July 18, 2020 –

Requests a hearing; Includes copy of letter from Duke Energy's Attorney to David Stark, Hearing Examiner for the Public Service of SC dated July 14, 2020

- 3) Randy and Cheryl Gilchrist's second Objection to Defendant Duke Energy Carolinas, LLC, Motion to Dismiss and Plaintiff's second Demand for a Hearing, Docket No. 2020-147-E dated July 24, 2020 –  
Includes Duke Energy's Motion to Dismiss dated July 20, 2020
- 4) Randy and Cheryl Gilchrist's Petition for Rehearing to the Public Service Commission dated August 6, 2020 –  
Commission informed Gilchrists that this petition was filed prematurely. So, on August 27, 2020, Gilchrists refiled their petition for rehearing
- 5) Randy and Cheryl Gilchrist's letter to Jocelyn G. Boyd, Chief Clerk/Executive Director of the Public Service Commission of SC dated Sept. 20, 2020 –  
References a letter from Duke Energy attorneys, dated Sept. 15, 2020, and again requests a hearing
- 6) Randy and Cheryl Gilchrist's letter to Jocelyn C. Boyd, Chief Clerk/Exec. Dir. Public Service Commission of SC which requests transcripts

#### E. Transcripts

- 1) Transcript/Minutes of Utilities Agenda Item #2, Commission Business Meeting dated July 29, 2020 –  
Commission members vote to dismiss Gilchrist's complaint
- 2) Transcript/Minutes of Utilities Agenda Item #9, Commission Business Meeting dated Sept. 16, 2020 –

Commission members vote to deny rehearing of Gilchrist's complaint

F. Copy of Constructive Contract posted on Gilchrist's meter box

- 1) Informs anyone that any attempt to install a smart meter without consent of the owner subjects the company to major liability and obligation to the property owner
- 2) *Carpenter vs. United States*, a United States Supreme Court ruling on the Fourth Amendment Privacy Rights regarding data collection
  - a) Privacy Attorneys Ropes & Gray: Analysis of Supreme Court's decision of *Carpenter vs. United States* regarding Fourth Amendment implications of data collection
  - b) National Security Agency (NSA) Cyber Security Information Sheet, discusses data collection devices and privacy issues
  - c) Defense Intelligence Agency (DIA) document dated Jan. 15, 2021, discusses the *Carpenter vs. United States* case and the collection of data

G) Articles

- 1) European Molecular Micro Biology Organization –  
Privacy, publicity and security: the American context:  
Privacy is not only a right but also an obligation
- 2) Motherboard –  
Your Smart Electricity Meter Can Easily Spy On You, Court Ruling Warns describes a 7<sup>th</sup> Circuit Court of Appeals ruling that

the Fourth Amendment does in fact protect energy consumption data collected by smart meters, relying heavily on *KYLLO vs.*

*United States* precedent

3) PPJ Gazette –

Regarding smart meters there is no federal mandate

4) Smart Meter Data Belongs to the Customer –

“Texas Utilities Code, Sec. 39.107(b) states (in relevant part):

All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information.”

5) Duke Energy accounts hacked

Published by Associated Press Dec. 6, 2017

6) Duke agreed to pay record fine for lax security

Published E & E News reporters Feb. 1, 2019

7) Seventh Circuit decision says 4<sup>th</sup> Amendment applies to smart meter data

Published by Technocracy News

8) The Indiana Lawyer –

Analysis of 7<sup>th</sup> Circuit ruling regarding smart meters and Fourth Amendment, March 5, 2019

## H. Cases

### 1) Syllabus Supreme Court of the United States

Carpenter vs. United States, No. 16 – 402, June 22, 2018

### 2) United States Court of Appeals for the Seventh Circuit

Naperville Smart Meter Awareness v. City of Naperville

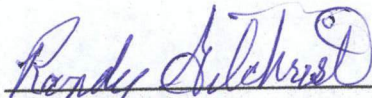
No. 16 – 3766, August 16, 2018

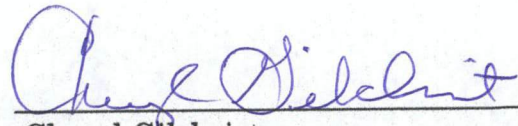
**Certification of Matter to be Included in the Record on Appeal**

I certify that this designation contains no matter which is irrelevant to this appeal.

Feb 1, 2021

Randy and Cheryl Gilchrist  
Appearing Pro Per/Appellant

  
\_\_\_\_\_  
Randy Gilchrist

  
\_\_\_\_\_  
Cheryl Gilchrist

Mr. and Mrs. Randy Gilchrist  
3010 Lake Keowee Lane  
Seneca, SC 29672  
Phone: 864.903.0375

**Parties of Record:**

Honorable Jocelyn C. Boyd, Chief Clerk/Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Suite 100  
Columbia, SC 29210

**Attorneys for Respondent, Duke Energy Carolinas, LLC:**

Samuel J. Wellborn, Esq.  
Heather Shirley Smith, Esq.  
Katie Michelle Brown, Esq.

Robinson Gray Stepp & Laffitte, LLC  
P.O. Box 11449  
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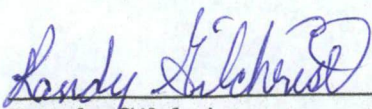
Duke Energy Carolinas, LLC  
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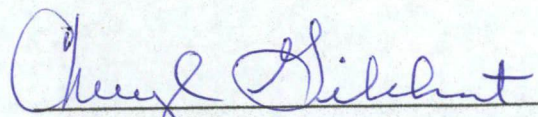
PROOF OF SERVICE FOR DESIGNATION OF MATTER TO BE  
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We certify that we have served a copy of the Designation of Matter to be Included in the Record on Appeal on all the parties of record by depositing it in the United States mail, postage pre-paid on Feb 1, 2021, sent to the addresses below.

Feb 1, 2021

Randy and Cheryl Gilchrist  
Appearing Pro Per/Appellant

  
Randy Gilchrist

  
Cheryl Gilchrist

**Parties of Record:**

**Honorable Jocelyn C. Boyd, Chief Clerk/Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Suite 100  
Columbia, SC 29210**

**Attorneys for Respondent, Duke Energy Carolinas, LLC:**

**Samuel J. Wellborn, Esq.  
Heather Shirley Smith, Esq.  
Katie Michelle Brown, Esq.**

**Robinson Gray Stepp & Laffitte, LLC  
P.O. Box 11449  
Columbia, SC 29211**

LETTER TO THE APPELLATE COURT CLERK  
FILING THE INITIAL BRIEF  
AND DESIGNATION OF MATTER

February 1, 2021

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SC Court of Appeals

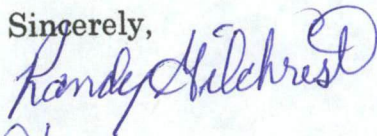
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211


Re: Mr. Randy Gilchrist and Mrs. Cheryl Gilchrist, Appellants  
v. Duke Energy Carolinas, LLC, Respondent  
Case No. 2020-001445

Dear Ms. Kitchings:

Enclosed for filing are an Initial Brief, Designation of Matter, and Proofs of Service on Respondent for each. Enclosed also are copies of each that I request that you stamp and return to me in the enclosed, self-addressed stamped envelope. Thank you for your attention to this matter.

Sincerely,



  
Randy and Cheryl Gilchrist

Appearing Pro Per/Appellants

Mr. and Mrs. Randy Gilchrist  
3010 Lake Keowee Lane  
Seneca, SC 29672  
Phone: 864.903.0375

Cc:

Honorable Jocelyn C. Boyd, Chief Clerk/Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Suite 100  
Columbia, SC 29210

Attorneys for Respondent, Duke Energy Carolinas, LLC:

Samuel J. Wellborn, Esq.  
Heather Shirley Smith, Esq.  
Katie Michelle Brown, Esq.

Robinson Gray Stepp & Laffitte, LLC  
P.O. Box 11449  
Columbia, SC 29211

Enc.: Proofs of Service  
Designation of Matter, original and one copy  
Initial Brief, original and one copy

Mr. and Mrs. Randy Dilchrist  
 3010 Lake Keowee Lane  
 Seneca, SC 29672

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 SC Court of Appeals

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Mr. + Mrs. R. Gilchrist  
 3010 LAKE KEOWEE LANE  
 SENECA, SC 29672

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The Honorable Jenny Abbott Kitchings  
 Clerk, South Carolina Court of Appeals  
 P.O. Box 11629  
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Date Accepted (MM/DD/YY) 2/1/21	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 3:00 PM <input checked="" type="checkbox"/> 12 NOON	Insurance Fee \$
Time Accepted 12:45 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	10:30 AM Delivery Fee \$	Return Receipt Fee \$
Special Handling/Fragile \$	Sunday/Holiday Premium Fee \$	Live Animal Transportation Fee \$
Weight <input type="checkbox"/> Flat Rate lbs. 13 ozs.	Acceptance Employee Initials RP	Total Postage & Fees \$ 26.75

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