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Feb 25 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

South Carolina Public Service Commission Docket No. 2020-147-E

Appellate Case No. 2020-001445

Randy and Cheryl Gilchrist.....Appellants,

v.

Duke Energy Carolinas, LLCRespondent.

**RESPONDENT’S REPLY TO
APPELLANTS’ RETURN TO MOTION TO STRIKE DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent Duke Energy Carolinas, LLC (the “Company”) submits this reply in response to Appellants’ Return to its Motion to Strike various documents and materials in Appellants’ Designation of Matter to be included in the Record on Appeal. The Company opposes Appellants’ motion to “admit [the documents and materials] as an offer of proof per Rule 103, Rulings on Evidence.” As stated in the Company’s Motion to Strike, the Court’s review “must be confined to the record”—S.C. Code Ann. § 1-23-380(4); *Argabright v. Argabright*, 398 S.C. 176, 179, 727 S.E.2d 748, 750 (2012)—which itself may contain only matter that was “presented to the lower court or tribunal.” Rule 210(c), SCACR. Appellate courts are unable to accept new evidence. *See, e.g., State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (“On review, we may

not make our own findings of fact.”); *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 490 n.8 (Ct. App. 2000) (“Exhibit A is not a part of the record so we may not take judicial notice of it.”). While appellate courts will occasionally take judicial notice of certain facts, such judicial notice “should be limited to matters which are indisputable.” *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984).

Appellants in this case should not be permitted to augment the Record on Appeal with materials they have gathered up that have not been vetted by a lower tribunal. While some of the documents Appellants attempt to include in the Record on Appeal may be correspondence between Appellants and the Company, these documents have not been authenticated, have not been presented to and accepted into the record by the lower tribunal, and are not part of any evidentiary record in this case. The same defects apply to the “scholarly articles” Appellants propose to include in their Designation of Matter. Further, as stated, these materials are not relevant to the sole issue on appeal, which is whether the Public Service Commission correctly dismissed the Complaint.

Because the offending documents and materials should not be included in the Record on Appeal pursuant to the Appellate Court Rules, the Company requests that the Court strike the documents from Appellants’ Designation of Matter as listed in Respondent’s Motion to Strike filed with the Court on February 10, 2021.

Respectfully submitted,

s/Samuel J. Wellborn
Frank R. Ellerbe, III, Esquire (Bar No. 1866)
Samuel J. Wellborn, Esquire (Bar No. 101979)
Robinson Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
803.929.1400

Attorneys for Respondent
Duke Energy Carolinas, LLC

Columbia, South Carolina
February 25, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

South Carolina Public Service Commission Docket No. 2019-290-WS

Appellate Case No. 2020-001445

Randy and Cheryl Gilchrist.....Appellants,

v.

Duke Energy Carolinas, LLCRespondent.

PROOF OF SERVICE

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson Gray Stepp & Laffitte, LLC have this day served a copy of Respondent’s Reply to Appellants’ Return to Motion to Strike Designation of Matter to be Included in the Record on Appeal by placing a copy of same in the United States Mail, postage prepaid, to Appellants (as addressed below) and by electronically filing a copy with the South Carolina Public Service Commission.

Randy and Cheryl Gilchrist
3010 Lake Keowee Lane
Seneca, SC 29672

South Carolina Public Service Commission
(via electronic filing)

Dated at Columbia, South Carolina, this 25th day of February, 2021.

Toni C. Hawkins



ROBINSON
GRAY

Litigation + Business

SAMUEL J. WELLBORN

DIRECT 803 231.7829 DIRECT FAX 803 231.7878

swellborn@robinsongray.com

February 25, 2021

Via Electronic Mail: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk, Court of Appeals of South Carolina
1220 Senate Street
P.O. Box 11629
Columbia, South Carolina 29211

RE: Randy and Cheryl Gilchrist v. Duke Energy Carolinas, LLC
SCPSC Docket No. 2020-147-E
Appellate Case No. 2020-001445

Ms. Kitchings:

Attached for filing please find Respondent's Reply to Appellants' Return to Motion to Strike Designation of Matter to be Included in the Record on Appeal along with Proof of Service.

Kind regards,

Sam Wellborn

SJW:tch

Enclosure

cc w/enc: Randy and Cheryl Gilchrist (via U.S. Mail)
S.C. Public Service Commission (via electronic filing)
Heather Shirley Smith, Deputy General Counsel (via email)
Katie M. Brown, Counsel (via email)

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