

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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Jun 02 2021

SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
COURT OF COMMON PLEAS
THE HONORABLE DONALD B. HOCKER
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2021-000338
CIVIL ACTION NO. 2017-CP-20-00458

Fairfield County,

RESPONDENT,

versus

South Carolina Electric &
Gas Company,

APPELLANT.

PETITION FOR REHEARING

The Appellant, South Carolina Electric & Gas Company n/k/a Dominion Energy South Carolina, Inc. (“Dominion”), respectfully petitions the Court, pursuant to Rule 221(a), SCACR, for a rehearing of its Order filed May 4, 2021 granting Respondent Fairfield County’s Motion to Dismiss the Appeal. The Court previously granted Dominion’s request for an extension until June 3, 2021 to file and serve this Petition due to additional time required by the parties to finalize a settlement. The parties are continuing to finalize the settlement, but it will not be complete by June 3, 2021. Accordingly, Dominion is filing this Petition to protect its appellate rights. This Petition is based upon the following points overlooked or misapprehended by the Court:

1. The Court failed to examine the substance, nature, and effect of the appealed order - the Circuit Court's Order denying Dominion's Motion to Dismiss Fairfield County's Amended Complaint - to determine whether such Order is appealable under S.C. CODE ANN. § 14-3-330 and instead only considered the title and label of the Order in determining appealability.

2. The Court failed to consider that the Circuit Court's Order denying Dominion's Motion to Dismiss for lack of subject matter jurisdiction over Fairfield County's common law contract and tort claims seeking the collection of past and future taxes and related fees – claims which are subject to the exclusive procedures, remedies, and jurisdiction prescribed by the General Assembly, pursuant to the authority given to it by the South Carolina Constitution in Title 12 of the South Carolina Code of Laws of South Carolina 1976, as amended ("Title 12"), including the South Carolina Revenue Procedures Act (Chapter 60) ("RPA") – is immediately appealable because it denies Dominion of its constitutional and substantial right to have this tax dispute heard in a non-jury proceeding before the applicable administrative tribunals as prescribed pursuant to the authority given to the General Assembly under S.C. CONST. art. X over taxation and under the General Assembly's directives in Title 12 of the Code and the provisions of the RPA. The Circuit Court's Order denying Dominion's Motion to Dismiss thereby abridges Dominion's right to a certain mode of trial which thus affects a substantial right and is immediately appealable.

3. The Court failed to consider that, because mode of trial issues must be appealed immediately or else such issues are forever barred from appellate review, the Court's Order dismissing this appeal will prohibit Dominion from subsequently

challenging the submission of Fairfield County's claims to a jury in an appeal after trial. There is no other effective review of the Circuit Court's decision to deny Dominion a non-jury proceeding except for an immediate appeal to this Court.

4. The Court failed to consider that the Circuit Court's Order presents novel and exceptional questions of law which warrant immediate review because this case presents the unprecedented issue of whether a taxing unit can allege common law claims to circumvent the procedures of the RPA, thereby authorizing a taxing unit to litigate claims for taxes and related fees before a jury of its own resident-citizens who will benefit from the recovery of such taxes and fees.

For the reasons set forth herein, Dominion respectfully requests that the Court grant its Petition for Rehearing, deny the Motion to Dismiss the Appeal, and consider the issues on appeal following briefing.

Respectfully submitted,

/s Carmen V. Ganjehsani

Steven J. Pugh (S.C. Bar No. 14341)

Anthony E. Rebollo (S.C. Bar No. 70488)

Benjamin P. Carlton (S.C. Bar No. 101142)

Carmen V. Ganjehsani (S.C. Bar No. 73515)

RICHARDSON, PLOWDEN & ROBINSON, PA

1900 Barnwell Street (29201)

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

spugh@richardsonplowden.com

trebollo@richardsonplowden.com

bcarlton@richardsonplowden.com

cganjehsani@richardsonplowden.com

and

I.S. Leevy Johnson (S.C. Bar No. 3020)
George C. Johnson (S.C. Bar No. 9308)
JOHNSON TOAL & BATTISTE, P.A.
1615 Barnwell Street
Columbia, South Carolina 29201
(803) 252-9700
islj@jtbpa.com
george@jtbpa.com

**ATTORNEYS FOR APPELLANT
SOUTH CAROLINA ELECTRIC & GAS
COMPANY n/k/a DOMINION ENERGY
SOUTH CAROLINA, INC.**

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant, South Carolina Electric & Gas Company n/k/a Dominion Energy South Carolina, Inc. do hereby certify that I have this date served the foregoing Petition for Rehearing, dated June 2, 2021 pursuant to Section (g)(3) of the Supreme Court's Amended Order dated May 29, 2020, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

John F. McKenzie
Robert A. McKenzie
MCDONALD, MCKENZIE, RUBIN, MILLER
& LYBRAND, LLC
1704 Main Street
P. O. Box 58
Columbia, SC 29202
jackm@mmrml.com
mckenzie@mmrml.com

Edward J. Westbrook
Jerry H. Evans
Theodore (TAC) Hargrove, II
RICHARDSON PATRICK WESTBROOK
& BRICKMAN, LLC
1037 Chuck Dawley Blvd., Bldg. A
Mount Pleasant, SC 29464
ewestbrook@rpwb.com
jevans@rpwb.com
thargrove@rpwb.com

Terry E. Richardson, Jr.
Brady R. Thomas
Daniel S. Haltiwanger
RICHARDSON THOMAS HALTIWANGER
MOORE & LEWIS, LLC
1730 Jackson Street
Barnwell, SC 29812
terry@richardsonthomas.com
brady@richardsonthomas.com
dan@richardsonthomas.com

ATTORNEYS FOR RESPONDENT FAIRFIELD COUNTY

[signature on following page]

/s Carmen V. Ganjehsani

Carmen V. Ganjehsani

S.C. Bar No. 73515

RICHARDSON, PLOWDEN & ROBINSON, PA

1900 Barnwell Street (29201)

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

ATTORNEYS FOR APPELLANT

SOUTH CAROLINA ELECTRIC & GAS

COMPANY n/k/a DOMINION ENERGY

SOUTH CAROLINA, INC.

Dated: June 2, 2021.