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IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph K. Anderson, III, Chief Administrative Law Judge

**RECEIVED**

JAN 07 2022

SC Court of Appeals

Case No. 19-ALJ-17-0153-CC  
Appellate Case No. 2020-001542

Duke Energy Corporation..... Appellant,

v.

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

**THE SOUTH CAROLINA CHAMBER OF COMMERCE'S  
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF  
IN SUPPORT OF APPELLANT, DUKE ENERGY CORPORATION**

Pursuant to Rule 213, SCACR, the South Carolina Chamber of Commerce (the “Chamber”) moves for leave to file an *amicus curiae* brief in this action urging this Court to reverse the decision of the Administrative Law Court (“ALC”). In that Order (“ALC’s Order”), the ALC improperly held that the South Carolina Department of Revenue (the “Department”) can retroactively change its interpretation of the tax law to limit investment tax credits to a *lifetime* amount of \$5 million without any warning, public hearing, due process, or change in the law.

The Chamber is a leading voice and advocacy organization, with a mission of creating an environment in which the State of South Carolina and its businesses can prosper. The Chamber dates back to 1940, and for more than eighty years, it has been a trusted resource and advocate for South Carolina businesses. The Chamber’s membership is comprised of businesses from across the State and across industries, from startups and family-owned businesses to multi-national

enterprises—all of whom call South Carolina home. The Chamber is a non-profit and non-partisan group that advocates for a fair, balanced, and predictable tax system. Through its advocacy, the Chamber identifies issues hindering South Carolina’s business and economic growth and works to remedy them, including by filing *amicus curiae* briefs in appellate cases that affect its membership. The Chamber has a keen interest in advancing tax policy that is clear, administrable, and announced prospectively.

The Chamber’s members are especially interested in ensuring that the South Carolina business community can rely on the Department of Revenue’s longstanding interpretations of the tax law. The lack of consistent tax policies and the ability of revenue agents to retroactively change longstanding policies without the assent of the legislature, and without following the South Carolina Administrative Procedure Act (“APA”), makes future investment decisions difficult and undercuts confidence in the business climate more generally. Unfortunately, the ALC’s Order in this case permits exactly the type of retroactive change in the Department’s longstanding interpretation of the tax law that most concerns the Chamber’s members.

For the foregoing reasons, the Chamber respectfully requests that the Court grant leave to present an *amicus curiae* brief. A copy of the Chamber’s proposed *amicus curiae* brief is attached hereto as **Exhibit A** and is being conditionally filed with this motion in accordance with Rule 213, SCACR.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

C. Mitchell Brown (SC Bar No. 12872)  
E-Mail: mitch.brown@nelsonmullins.com  
1320 Main Street / 17th Floor  
Post Office Box 11070 (29211-1070)  
Columbia, SC 29201  
(803) 799-2000

John C. von Lehe, Jr. (S.C. Bar No. 5719)  
E-Mail: john.vonlehe@nelsonmullins.com  
Bryson M. Geer (S.C. Bar No. 13606)  
E-Mail: brysongeer@nelsonmullins.com  
151 Meeting Street  
P.O. Box 1806 (29402-1806)  
Charleston, SC 29401-2239  
(843)843-5200

*Counsel for the South Carolina Chamber of Commerce*

Charleston, South Carolina  
January 5, 2022

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Duke Energy Corporation..... Appellant,

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**PROOF OF SERVICE**

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I hereby certify that I have served via electronic mail a copy of the foregoing **South Carolina Chamber of Commerce’s Motion for Leave to File *Amicus Curiae* Brief in Support of Appellant, Duke Energy Corporation; the South Carolina Chamber of Commerce’s *Amicus Curiae* Brief in Support of Appellant, Duke Energy Corporation (conditionally filed); and Certificate of Compliance** on parties’ counsel of record at the following e-mail addresses:

Counsel Served:

Samantha K. Trencs, Esq.  
EVERSHEDS SUTHERLAND (US) LLP  
700 Sixth Street, NW Suite 700  
Washington, DC 20001-3980  
samanthatrencs@eversheds-sutherland.com

Eric S. Tresh, Esq. (Admitted *Pro Hac Vice*)  
Maria M. Todorova, Esq. (Admitted *Pro Hac Vice*)  
EVERSHEDS SUTHERLAND (US) LLP  
999 Peachtree Street, NE, Ste. 2300  
Atlanta, GA 30309  
erictresh@eversheds-sutherland.com  
mariatodorova@eversheds-sutherland.com

C. Anthony Harris, Esq.  
Jason P. Luther, Esq.  
South Carolina Department of Revenue  
300A Outlet Pointe Blvd.  
Columbia, SC 29210  
charles.harris@dor.sc.gov  
jason.luther@dor.sc.gov

*Counsel for Respondent, South  
Carolina Department of Revenue*

*Counsel for Appellant, Duke Energy Corporation*

*Bryson M. Geer*

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Bryson M. Geer

January 5, 2022



NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

Bryson M. Geer  
(Admitted in NC & SC)  
T 843.534.4306  
bryson.geer@nelsonmullins.com

151 Meeting Street | Sixth Floor  
Charleston, SC 29401-2239  
T 843.853.5200 F 843.722.8700  
nelsonmullins.com

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SC Court of Appeals

January 5, 2022

Vis E-mail (ctappfilings@sccourts.org) and U.S. Mail

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
PO Box 11629  
Columbia, SC 29211

RE: Duke Energy Corporation v. South Carolina Department of Revenue  
Appellate Case No.: 2020-001542  
Our File No.: 006247/01501

Dear Ms. Kitchings:

Enclosed for filing via e-mail in the above matter, please find the South Carolina Chamber of Commerce's Motion for Leave to File *Amicus Curiae* Brief in Support of Appellant, Duke Energy Corporation; the conditionally filed *Amicus Curiae* Brief of the South Carolina Chamber of Commerce in Support of Appellant, Duke Energy Corporation; Certificate of Compliance; and a Proof of Service. Enclosed via U.S. Mail is a check in the amount of \$50.00 as the required filing fee.

By copy of this letter to all counsel, we are hereby serving them with a copy of the above documents. We ask that, at your convenience, you return a copy of the attached documents to us bearing the Court's file stamp.

Thank you for your assistance, and please do not hesitate to contact us should the Court require any additional information.

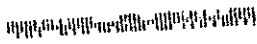
With kind regards,

Bryson M. Geer

BMG:ls


Enclosures

cc: Samantha K. Trencs, Esq.  
Eric S. Tresh, Esq.  
Maria M. Todorova, Esq.  
C. Anthony Harris, Jr., Esq.  
Jason P. Luther, Esq. (all via e-mail w/ enclosures)



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 **NELSON MULLINS**  
Post Office Box 1806  
Charleston, SC 29402-1806

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The Honorable Jenny Abbott Kitchings  
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Columbia, SC 29211

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