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Memo To: 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

From: Beatrice Weaver
1253 Harllees Bridge Rd
Dillon S.C. 29536
Ph/Fax: 1 843 841 1606

Subject: Objections To Hearing Officer's Directive Dated May 24, 2007 And Petition To Vacate, Reconsider, Rescission Or Amend Directive, copy attached.

Ref: Case No: 2004-219-E; Order No. 2007-298 dated May 3, 2007.

Date: May 28, 2007 VIA US POSTAL CERTIFICATE OF MAILING

Mr. Terreni:

I am transmitting herewith the subject pleading for consideration of the Hearing Officer and/or the Commission as may be appropriate.

The Commission's internal procedure for handling "Directives" escapes me, so I leave it to your administrative discretion to direct the pleading as appropriate.

Please note that by any standard the S.C. statutes and regulations clearly document that the Petition filed on May 17, 2007 was timely, contrary to the errors and omissions of the Hearing Officer on this issue. The Hearing Officer's Directive appears to be in clear error, and more, as discussed in the attached Memorandum in Support of the Petition.

For the record, as previously notified, I shall also be filing additional supplemental memoranda supporting my petition to vacate the Order.

Thank you,

Beatrice Weaver
Respondent Pro Se

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

May 28, 2007

In the Matter of	)	**DOCKET NO. 2004-219-E**
	)	
Petition of Progress Energy Carolinas, Inc	)	**RESPONDENT BEATRICE**
To Terminate Service	)	**WEAVER'S OBJECTIONS**
	)	**AND PROTEST TO**
	)	**HEARING OFFICER'S**
	)	**DIRECTIVE DATED MAY 24,**
	)	**2007; PETITION TO VACATE,**
	)	**RECONSIDER, RESCISSION,**
	)	**OR AMEND DIRECTIVE;**
	)	**MEMORANDUM IN SUPPORT**
	)	**OF PETITION; AFFIDAVIT OF**
	)	**BEATRICE WEAVER;**
	)	**EXHIBIT A; NOTICE OF**
	)	**PETITION; CERTIFICATE**
	)	**OF SERVICE**
	)	

RESPONDENT PRO SE BEATRICE WEAVER'S OBJECTIONS TO HEARING OFFICER'S DIRECTIVE DATED MAY 24, 2007 AND PETITION TO VACATE, RECONSIDER, RESCISSION OR AMEND DIRECTIVE

Comes now Respondent Pro Se Beatrice Weaver ("Respondent") and timely files these **Objections** to the Public Service Commission of South Carolina (Commission) **Hearing Officer's Directive** dated May 24, 2007 (Directive), and Respondent's **Petition to Vacate, Reconsider, Rescission, or Amend the Directive,** and to grant the relief requested herein.

Said Objections and Petition are filed for good cause, and pursuant to the case records and files, **S.C. Code. Ann. Reg. 803-842, Reg. 103- 881 & 885** for reconsideration of the subject, **Reg. 103- 862, Reg. 103-880 B** for Rescinding, Modifying or Amending Orders; **S.C. Code Ann. Section 58- 27-2040, 2100, 2110,**

2120, 2130, 2310, and 2340; and South Carolina Rules of Civil Procedure (SCRCP) **Rules No. 6 (a) (b)(d) and (e), Rule 7, Rule 12 (b)(4), Rule 40 (i) (1) and (2), Rule 56 (c) and Rule 60 (b) (1).**

Based on serious errors and omissions of law and procedure to which this Petition hereby objects, the said Directive summarily rejects Respondent's Petition for Reconsideration, etc., of Commission Order No. 2007-298 (Order), as being allegedly "untimely." As discussed in the attached memorandum in Support, said Petition in fact was duly and timely filed on May 17, 2007.

The Objections and grounds for this Petition are summarized as follows:

1. Clear error of facts, findings and conclusions.
2. Abuse of discretion on several issues.
3. .Denial of due process; insufficiency of process.
4. Denial of equal protection of the law.
5. Negligence, and/or deliberate denial of due process
6. Cumulative violations of Federal and State Constitutions, State Statutes and Regulatory Rules.
7. The Directive is biased in favor of the Petitioner.

Respondent does not waive any other objections or defenses that may be claimed following further discovery, or have been cited in prior pleadings already filed in this case. This Petition is based on the objections and grounds discussed above and in Respondent's pleadings previously filed with the Commission and by reference incorporated herein as referred to hereinabove, the **Memorandum in Support, Affidavit** and original **Exhibit A** attached hereto, and the records and files of this case. Respondent reserves the right to submit supplementary memoranda of law and argument in this matter.

As of this date, due to circumstances beyond the control of Respondent (the documented medical conditions), the Commission has not yet received Respondent's Brief or evidence, nor has it deliberated on Respondent's Counterclaims in this action. Conversely, in processing this case, the Commission has consistently acted affirmatively on the allegations, misrepresentations and undue influence of the Petitioner almost exclusively, and condoned without question or investigation, Petitioner's original

misrepresentative, frivolous and nuisance Petition that initiated this action and which should have been summarily dismissed by the Commission on its own initiative. Respondent objects to the continued bias of the Commission towards the Petitioner as exhibited by the clearly prejudicial Directive based on procedural errors and omissions.

The Commission's summary dismissal, *sua sponte*, of Respondent's Counterclaim violates **SCRCP Rule 56 (c)** in that there are genuine issues of material fact in dispute that the Commission knew of, or should have known. To date these genuine issues have escaped the Commission's deliberation of the facts, evidence and the merits of Respondent's case.

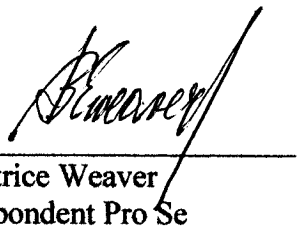
The Directive seeks to summarily dismiss Respondent's petition for **reconsideration,** etc of the Commission's **Order No. 2007-289** thereby furthering the documented damages and procedural abuses already perpetrated against Respondent. This Petition seeks correction of the mistakes and procedural abuses underlying the misguided Directive, and the restoration of Respondents legal rights in this case, pursuant to the applicable laws and regulations cited herein.

Moreover, the attached Memorandum in Support, clearly documents the Hearing Officer's errors and omissions in the determinations of the Directive, and either negligence, undue influence of third parties, or abuse of discretion by way of deliberate denial of Respondent's right to due process of law.

Relief:

For just cause and good reasons as described herein, pursuant to the Constitution, State Statutes, Commission's regulations, and SCRCP Rules as cited hereinabove and the attached supporting documents, Respondent hereby moves the Commission to vacate, reconsider, rescind, or amend the subject Directive and grant the relief requested in the Respondent's Petition that was timely filed on May 17, 2007; or such other relief deemed appropriate by the Commission.

Respectfully submitted.



Beatrice Weaver
Respondent Pro Se

Dated: Little Rock, Dillon County, S.C., May 28, 2007

In the Matter of	)	**DOCKET NO. 2004-219-E**
	)	
Petition of Progress Energy Carolinas, Inc	)	**MEMORANDUM IN SUPPORT OF PRO SE RESPONDENT'S OBJECTIONS TO HEARING OFFICER'S DIRECTIVE DATED MAY 24, 2007 AND PETITION TO VACATE, RECONSIDER, RESCISSION OR AMEND DIRECTIVE**
To Terminate Service	)	
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MEMORANDUM IN SUPPORT OF PRO SE RESPONDENT'S OBJECTIONS TO HEARING OFFICER'S DIRECTIVE DATED MAY 24, 2007 AND PETITION TO VACATE, RECONSIDER, RESCISSION OR AMEND DIRECTIVE

FACTUAL BACKGROUND

1. This pleading is timely and duly filed for the record for future reference, to conform to the prescribed appellate procedures and process requiring the exhausting of administrative relief for good cause, and as predicate for appeal as may be appropriate to the circumstances.

2. At one of its regular weekly business meetings, on May 3, 2007, the Public Service Commission of South Carolina (Commission) summarily issued **Order No. 2007-298** denying Respondent Pro Se Beatrice' Weaver's (Respondent) earlier Motion for continuance of the scheduled hearing on April 13, 2006. Further, on the basis of an alleged "lack of prosecution" because of five (sic) requests for continuances by Respondent for good cause due to medical reasons, the Commission erroneously decided that Respondent was "unwilling or unable" to attend a Hearing because of the requested continuances. In violation of South **Carolina Rules of Civil Procedure (SCRCP) Rule 56**, the Commission, ***sua sponte***, issued a summary judgment dismissing the case without prejudice, and without a hearing.

Respondent has definitely been "unable" to appear at any Hearing **for good cause**; viz., documented medical reasons duly filed for the record with the Commission. But as the record clearly shows, Respondent is also definitely more than "willing" to

appear at a Hearing, her medical condition permitting. The record shows that Respondent has repeatedly demanded the right to confront Petitioner in open court to defend its frivolous and nuisance Petition and Respondent's counterclaims filed for "Administrative Relief" as required by the courts.

Petitioner's motion to withdraw its Petition granted by the Commission was also based on fraudulent misrepresentations to the Commission, stating that its original allegations no longer existed. In fact, the allegations never existed in the first place. Petitioner was simply creating a diversion covering up its violations of certain Commission regulations, which acts have yet to be accounted for despite the Commission's turning"blind eye" to Petitioner's actions.

3. Despite the existence of genuine issues of material fact and no summary judgment Motions pending from either Party, by abusing its discretion and with a unilateral administrative "sleight of hand", the Commission's erroneous summary dismissal of the case conveniently accommodated the Petitioner's pending Motion to close the docket, its frivolous and nuisance Petition in the first place.

The latter request was a necessary administrative prerequisite for Petitioner to receive from the Commission so that it may prosecute its case against Respondent which is presently pending in the Dillon County Court of Pleas. That claim addresses issues raised in Respondent's Counterclaim in this action; as acknowledged by the Commission. Notwithstanding, in violation of State statutes and rules of procedure as discussed herein, the Commission accommodated Petitioner and summarily denied Respondent's Counterclaim, as discussed in Respondent's pleadings duly filed with the Commission.

4. Pursuant to **S.C. Code Ann. Reg. 103-881 and 881 (B)** Respondent duly and timely filed formal Objections and a Petition for **Reconsideration of the Order**, etc., on May 17, 2007. This date was based on the belief that Monday, May 7, 2007 (not Sunday, May 6,2007) was the first day to commence tolling for the twenty day period for the due date for filing a response under **S.C. Code Ann. Reg. 103-881 (B)** and the additional five days pursuant to **SCRCP Rule 6 (e)** as discussed below.

In fact as discussed below, it did not matter whether or not intermediary Saturdays and Sundays were included or not in the calculations. Nor did it matter which statute or

regulation was chosen for tolling the response period as the filing of Respondent's Petition on May 17, 2007 was timely filed in either case as discussed below.

Respondent claims that the exceptions cited in **S.C. Code Ann. Reg. 103-881 and 881(B)** did not apply in this instance. **S.C. Code Ann. Sec. 58-27-2150 for Rehearing** is not the governing statute relative to a motion or petition for **Reconsideration**, even though such a petition shall be subject to the same statutory parameters as a Petition for Rehearing. Here, no "prior hearing" was involved in this matter.

5. On Saturday, May 26, at approximately1.30 p.m., Respondent received by postal service a copy of **"Commission Hearing Officer Directive"** dated May 24, 2007. The said Directive states that Respondent's Petition for **Reconsideration** filed pursuant to **S.C. Code Ann. Reg. 103-881 and 881(B)** (see, paragraph 2 of the said Petition), is rejected as being not timely filed under **S.C. Code Ann. Sec. 58-27-2150 for Rehearing** which provides a ten day due date for filing relief. The Hearing Officer incorrectly selected the latter (ten days) rather than the former controlling law (twenty days) for tolling the filing due date. In fact, Respondent actually timely filed under both **S.C. Code Ann. Reg. 103-881 and 881(B)** and **S.C. Code Ann. Sec. 58-27-2150 for Rehearing** as discussed below.

6. On the morning of Saturday, May 26, 2007, Respondent had coincidently filed a **supplemental memorandum** in support of the Petition, prior to receipt of the said Directive later that day. That Supplemental Memorandum focused specifically on the issue of the Commission's denial of a Hearing continuance, and denial of free exercise of religion under the S.C. Constitution and statutes cited and argued in the document.

7. The said Directive states that the proof of service of the notice of the May 3, 2007 Order indicates that Respondent's receipt of the document was on Saturday, May 5, 2007. For the purpose of this pleading we proceed on that basis. This pleading is duly and timely filed in direct response to the Directive.

8. Pursuant to **S.C. Code Ann. Reg. 103-881 and 881 (B)** providing for objection and Reconsideration, Respondent is filing this pleading requesting that the Directive be put aside or amend as appropriate, and Respondent's demands for relief in the aforesaid pleadings be granted.

SUMMARY OF THE ARGUMENTS CITED IN THE DIRECTIVE

1. The Hearing Officer's Directive states that Respondent's request for Reconsideration, etc, is rejected as **untimely** (i.e., by two days including weekend days), and therefore denied on the basis of **S.C. Code Ann. Sect. 58-27-2150** related to **Rehearing,** rather than **S.C. Code Ann. Reg. 103-881 and 881 (B)** related to Reconsideration, there being no prior "Hearing" involved in this matter.

2. The finding relies on the argument that Respondent was served a copy of the said Order on May, 5, 2007, and not May 7, 2007 as Respondent inadvertently claimed in good faith in communicating with the Commission.

3. The Directive acknowledges that Respondent's Motion was in fact mailed and telefaxed to the Commission on May 17, 2007, 12 days after receipt of the Order on Saturday, May 5, 2007. (including weekend days).

4. Incorrectly relying on **Code Sect. 58-27-2150** instead of **S.C. Code Ann. Reg. 103-881 and 881 (B),** the Motion is summarily rejected, claiming the statutory requirement for filing the Motion for relief within ten days of notice of entry of the Order or decision from which the applicant seeks relief, instead of the regulatory requirement of twenty days for filing. As it happens, Respondent in fact complied in both cases.

THE ISSUES

Based on the foregoing summary of the facts, the following issues require examination for the record, in rebuttal of the Directive findings:

1. Was the service of the said Order on Saturday May 5, 2007, or Monday May 7, 2007, allowing for the statutes relating to service on Saturdays and Sundays?

2. In either case, what is the **first day after the service date**, to commence the tolling of the ten day or twenty day period as may be, for the due date for filing a response? Sunday, May 6th, or Monday, May 7th, 2007?

3. Given the **SCRCP Rule 6 (e)** five day addition for mailing, does it make any material difference with respect to Respondent's timely filing of the subject pleadings, contrary to the Hearing Officer's conclusions? No!

4. Whether or not Respondent's filings of subject Objections, etc., were in fact timely filed pursuant to **S.C. Code Ann. Sect. 58-27-2150** for Rehearings? It was!

5. Whether or not **S.C. Code Ann. Sect. 58-27-2150** is the appropriate statute governing the determination of timeliness of the subject filings? It is not!

6. Whether or not Respondent's filing was timely pursuant to **S.C. Code Ann. Reg. 103-881 and 881 (B), S. C. Code Ann. Sect. 58-27-2120** and other statutes and Commission regulations? It was!

7. Whether or not the Commission Directive denies Respondent due process and abused discretion in finding Respondent's filing of the subject pleadings to be untimely, pursuant to **S.C. Code Ann. Sect. 58-27-2150 for Rehearing,** versus **S.C. Code Ann. Reg. 103-881 and 881 (B), for Reconsideration,** or other Statutes and Regulations?

LEGAL AUTHORITY

To rebut the Directive's findings, it is necessary to review and summarize the appropriate legal authorities that bear on analysis of the issues.

1. Relevant State Statutes.

1. The Directive acknowledges that the Commission's Order was **mailed** by registered return mail to Respondent who acknowledged receipt thereof on May 5, 2007 according to the U.S Postal Service. The Directive also formally acknowledges that Respondent telefaxed and **mailed** the subject pleadings to the Commission on May 17, 2007.

2. Pursuant to **S. C. Code Ann. Sect. 58-27-2120,** the said Order shall take effect and become operative twenty (20) days after the service thereof, "unless otherwise provided"; i.e., May 25th, 2007, plus five days under **SCRCP Rule 6 (e).**

Note that **S. C. Code Ann. Sect. 58-27-2150 for Rehearing** is not the governing statute and does not fall under the said "otherwise" condition; and **S.C. Code Ann. Reg. 103-881 and 881 (B) for Reconsideration** provides twenty days for filing.

3. The Commission may at any time rescind or amend any of its Orders pursuant to **S.C. Code Ann. Sect. 58-27-2130,** except for Motions filed pursuant to **S.C. Code Ann. Sect. 58-27-2150** selected by the Hearing Officer as the governing statute on this matter. However, Respondent filed the pleadings under **S.C. Code Ann. Reg. 103-881 and 881 (B) for Reconsideration,** as the controlling statute, and other regulations as well, and claims the twenty day period rights pursuant to **S. C. Code Ann. Sect. 58-27-2120.** .

4. As noted, **S.C. Code Ann. Sect. 58-27-2150** relates to Motions for **Rehearings.** It requires a Motion for a "Rehearing" to be filed within ten days after service of notice of the entry of the Order or decision. As is noted below, Respondent rejects this as the governing statute applicable to the subject of timely filing for reconsideration.

5. **S.C. Code Ann. Sect. 58-27-2100** provides that **only after "the conclusion of a hearing"** shall the Commission make and file its findings and Order with its opinion in sufficient detail to enable the court on review to determine the controverted questions and proper weight given to the evidence.

6. And pursuant to **S.C. Code Ann. Sect. 58-27-2040,** a party shall be entitled to be heard and to introduce evidence in person or by attorney.

7. **S.C. Code Ann. Sect. 58-27-2310** specifically requires the necessity of filing a prior Petition for Rehearing as a prerequisite for filing an appeal to set aside or vacate a Commission Order. Pursuant to **2006 Act No.387, Sect. 53** the provisions of this act are controlling to the extent of any conflicts with an existing statute or regulation. As noted, no prior hearing was held as to the issuing of the contested Order of summary dismissal of the case.

8. Pursuant to **S.C. Code Ann. Sect. 58-27-2340** Respondent has the burden of proof to attack the Commission's Order and the subject Directive. **That is the precise purpose of this Memorandum.**

2. S.C. Rules of Civil Procedure (SCRCP)

In addition to the SCRCP Rules cited in the discussion herein, particularly **SCRCP Rule 6**, Respondent also relies on the following **SCRCP** Rules in rebuttal of the Directive: **Rule 7, (b)(1); Rule 9 (b), Rule 40 (i) (1) and (2)**

3. Relevant Commission Regulations

This Motion for relief from the Directive is based on **S.C. Code. Reg. 103- 880 B,** that provides for rescinding, modifying and amending the Order and Directive.

As discussed further below, **Regulation 103-881 (B)** provides that unless otherwise provided by law, any party of record may **within twenty days** after the date of the Order, Petition the Commission for **Rehearing or Reconsideration**. Compare that condition the ten day period provided under **S.C. Code Ann. Sect. 58-27-2150** relating to Rehearing, but **not Reconsideration.** See also, **S.C. Code Ann. Sect. 58-27-2120.**

Respondent duly complied with all of the regulatory requirements under these Regulations for vacating or amending both the original Order and the Directive.

Respondent argues that **S.C. Code Ann. Sect. 58-27-2150** relating to Rehearing, but **not Reconsideration.** is not governing in this matter since no prior Hearing has been involved leading to the issuance of the contested Order, or the issuance of the Directive, the subject of this petition and memorandum.

In this instance, the evidence and the rules are so compelling in favor of Respondent, and so compelling against the Commission position, as to mitigate the need for a hearing on this limited issue.

DISCUSSION

1. THE UNDERLYING QUESTIONS RELATED TO THIS MATTER.

The basic issues to be addressed in this Memorandum are:

1. The timeliness of the filing of Respondent's pleadings.
2. Whether or not **S.C. Code Ann. Sect. 58-27-2150** is or should be the controlling statute?
3. Whether or not **S.C. Code Ann. Sect. 58-27-2120,** and more specifically, **S.C. Code. Reg. 103- 881 (B),** govern in this instance?
4. Whether the issue should be argued on the basis of Respondent's original filing of a Petition for Reconsideration **under S.C. Code. Reg. 103- 881 (B)** and **S.C. Code Ann. Sect. 58-27-2120,** or **S.C. Code Ann. Sect. 58-27-2150** for a Rehearing as selected in the directive?
5. Whether or not the Directive's finding of an untimely filing is erroneous, based on the facts, the law, and has denied Respondent due process, and thus the Commission has abused its discretion?

2. THE TIMELINESS ISSUE.

1. Introduction

The Directive claims that Respondent was duly served a copy of the Commission's Order on **Saturday, May 5, 2007**. In preparing the subject pleadings for filing with the Commission, Respondent was of the belief that the first day to commence tolling the filing period was **Monday, May 7, 2007,** and not Sunday, May 6, 2007. Also,

that **S. C. Code Ann. Reg. 103-881 (B)** and **S.C. Code Ann. Sect. 58-27-2120** provided twenty **(20)** days from the day of service of the Order, to file a Motion for **Reconsideration of an Order**. See discussion below. However, Respondent submits that the matter of the service date is actually moot.

First, even under **SC Code Ann. Sect. 58-27- 2150** incorrectly elected by the Hearing Officer, the actual ten day period due date including five day allowance under **SCRCP Rule 6 (e)** falls on Monday, **May 21, 2007**, not May 15, 2007 as claimed in the Directive. May 20, 2007 is a Sunday, and the next day Monday, May 21st is the last day of the due date under **SCRCP Rule 6 (a).**

Second, **based on Reg. 103-881 (B)** and **S.C. Code Ann. Sect. 58-27-2120** as filed by respondent, the due date would have been **Wednesday, May 30, 2007,** twenty days after the date of service on May 5th, 2007, plus five days for mailing under **SCRCP Rule 6 (e). Under SCRCP Rule 60 (b) (1)** a Motion for relief based on mistake or excusable neglect shall be made within a reasonable time within one year after the Order.

2. <u>Respondent's Harmless Error</u>

Nevertheless, for the record, and to the extent that it may be relevant to the Commission, Respondent's reference in good faith to May 7th instead of May 5th, 2007 as the date of service is excusable neglect, and harmless error or mistake, for good cause. May 5, 2007 was inadvertently confused with Sunday, May 6, and Monday May 7th, 2007 as the first day for tolling the due date. This was due to the stress of the due date deadline conflicting with the stress documented medical activities and related burdens, as shown in **Exhibit A** hereto. As such, to the extent that it may be relevant, Respondent claims relief for any such inadvertence pursuant to **SCRCP Rule 6 (b) (2)**, Rule **9 (b), Rule 60 (b) (1).**

Moreover, Respondent respectfully refers the Commission to **S.C. Code Ann. Reg. 103-803** which provides relief in this matter by way of a **Waiver of Rules: In** any case where compliance with any of these rules and regulations produces unusual hardship or difficulty, the application of such rule or regulation may be waived by the Commission upon a finding by the Commission and a Commissioner thereof, respectively.

As shown in **Exhibit A** hereto, Respondent was under undue stress during the week of May 7th and in fact during the month of May leading into June 2007 for medical

reasons, as has been duly documented with the Commission. While Respondent is of the view that the rules and argument cited herein are in her favor on this issue, if needed, she claims additional relief under **Reg. 103-803**.

For this memorandum, Respondent confirms May 5, 2007 as the date service of the Order was completed; and Sunday, May 6th, 2007 constitutes the first day to commence the tolling periods for filing relief papers.

3. **Tolling the Permitted Period for Filing Pleadings.**

May 5, 2007 is a Saturday. The question arises as to which day thereafter is the first day to commence tolling of the ten day time limit for filing for relief under **S.C. Code Ann. Sect. 58-27-2150** related to Rehearing, or the twenty day period provided under **S. C. Code Ann. Reg. 103-881 (B) for Reconsideration.**

SCRCP Rule 6 (a) and **S.C. Code. Reg. 103-842** excludes Saturday May 5, 2007 from the tolling period; it is not included in the count being the day of the act or event (service of the Order to Respondent.

4. Determination must be made as to whether or not weekend days and holidays are included for this case, to determine the tolling of the period and the deadline for filing a responsive pleading to a **rehearing** as claimed in the Directive, or a **reconsideration** as claimed by Respondent. The issue of course turns on the fact of no prior hearing by the Commission, versus its Order being issued, *sua sponte*, following a regular business meeting. Since no prior hearing was involved and it is assumed that no parties were present, the subject Order was not issued ex parte.

5. **The Five Day Allowance for Mailing of Pleadings.**

As noted, SCRCP Rule 6 (e) provides relief for Respondent in this instance by allowing an **additional five days** time after service by mail for filing the subject pleadings. Specifically it is stated under this rule:

> **"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him, and the notice or paper is served upon him by mail, five (5) days may be added to the prescribed period."**

It has been stated that this provision is intended for the benefit of the party upon whom the service is made, and not for the party making the service. See, **Sullivan vs. Speights. 12 SC 561 (1879).**

And it has been further stated with respect to **"Rehearings"** before the Commission that:

> The time computation statute is inapplicable in proceedings before the Public Service Commission; thus, there being no statute or other provision of law governing the computing of the ten day period within which a utility must file a petition for a **rehearing** of a commission order, the Commission was free to promulgate a time computation rule extending beyond a terminal Saturday, Sunday or holiday, the time for filing or serving a required pleading. See, **S.C. Elect. & Gas Co. vs. Public Service Comm. (SC 1979) 272 SC 316, 252 SE 2d 753.**

6. **The Adjusted Correct Due Date for Filing Respondent's Pleadings**

Based on **SCRCP Rule 6 (e),** Respondent submits that the ten day due date used by the Hearing Officer, was in fact **extended to fifteen (15) days** after the service by mail date of May 5, 2007 for the Order in question. Based on this rule and including Sundays, **the adjusted due date was in fact Sunday, May 20, 2007 under S.C. Code Ann. Sect. 58-27-2150.** See the discussion in **Witzig vs. Witzig (SC App.1996) 325 SC 363, 479 SE2d 297.**

7. However, **SCRCP Rule 6 (a),** states that the period which ends on a Sunday (15 days for mailing under **SCRCP Rule 6 (e)),** runs until the end of the next day which **is not a Saturday, Sunday or holiday**.

It has been stated that when the last day falls on Sunday, service on the day following is sufficient. Further that depositing in the post office on the day after the last day prescribed for service, is a good and legal service where such last day falls on Sunday. See, **Royal Exchange Assurance vs. Bennettesville & C.R. Co. 95 SC 375, 79 SE 104 (1913).**

Therefore in this instance, the actual due date for filing under **S.C. Code Ann. Sect. 58-27-2150** (if it in fact applies here), **was Monday, May 21, 2007.** Thus, Respondent's filing was timely on May 17, 2007.

8. **Respondent's Pleading Was Timely Filed.**

Accordingly, by its own admission in the subject Directive, **Respondent's filing on May 17, 2007 was in fact timely filed, four days in advance of the actual adjusted due date** under **S.C. Code Ann. Sect. 58-27-2150** relating to Rehearing Motions.

Thus the subject Directive was issued in clear error and omission, and the Commission has abused its discretion and denied Respondent due process of law.

9. **Respondent's filing on May 17, 2007 was in fact timely filed, thirteen (13) days in advance of the due date of May 30, 2007** under **SC Code Ann. Reg. 103-881(B),** and **S.C. Code Ann. Sect. 58-27-2120** relating to **Reconsideration** Motions. Clearly, in accordance with this provision, the Directive is in clear error and omission, and the Commission has abused its discretion and denied Respondent due process.

10. Strengthening Respondent's argument further on this issue we turn to **SCRCP Rule 6 (b) (2).** This rule provides Respondent the right to file a Motion **after** the expiration of the specified period, and permits the Commission to provide relief where the failure to act was the result of excusable good faith mistake. As noted above and in **Exhibit A** hereto, Respondent had to attend long standing appointments in Charleston S.C. during the week of May 7, 2007. Thus, Respondent claims further relief for good cause pursuant to **S.C. Code Ann. Reg. 103-803** which provides relief in this matter by way of a **Waiver of Rules**. See **Exhibit A** hereto and made part hereof.

11. Commission Negligence and/or Malevolence and Undue Bias

The facts of this case indicate that the Commission has been negligent in its public duty to protect Respondent's interests. The case law tests for such negligence are:

1. A duty of care owed by the Commission to Respondent under its mandate of public trust;
2. A breach of that duty by the Commission's negligent acts, errors or omissions;
3. Resulting in damages to Respondent, and
4. The damages proximately resulted from the breach of duty.

See, **Bergstrom vs. Palmetto Health Alliance (S.C. App. 2002) 352 SC 221, 573 SE2d 805, 358 SC388, 596 SE2d. 42.**

It is not the purpose of this memorandum to discuss any claims at this time. However, Respondent states **for the record** that the Commission has been negligent and prejudicial by not protecting Respondent's interests in this case in a fair and reasonable way. In fact, throughout the conduct of this case and this specific matter, it has been

biased in favor of the Petitioner on all issues, as the record shows, at all times since the inception of this case.

In that vein, Respondent submits that the Commission's Hearing Officer is an experienced professional attorney specializing in public regulatory and administrative law. As such, he **knew or should have known** of, and included reference thereto in his ruling, the five day time extension provided under **SCRCP Rule 6 (e).**

Furthermore, as discussed below, the Hearing Officer knew or should have known the provisions under **SC Code Ann. Reg. 103-881(B) and** **S.C. Code Ann. Sect. 58-27-2120** allowing for twenty days, plus five under **SCRCP 6 (e)** for filing the pleadings after the date of service on May 5, 2007. As discussed below, he should also have distinguished between the application of **SC Code Ann. Reg. 103-881(B)** relating to Respondent's Motion for **Reconsideration,** as opposed to **S.C. Code Ann. Sect. 58-27-2150** relating to a Motion for a **Rehearing,** particularly where no prior Hearing was involved in this matter.

The Conclusion from the Facts:

Under the facts, applicable law, and circumstances of this case, and the seriousness of the burden that the Directive's rejection of the filing presented to Respondent, it can only be concluded that:

(1) The Hearing Officer was grossly negligent in his public trust and duty to provide a fair and unbiased review of the matters before him; and/or,

(2) The Hearing Officer acted under the undue influence of third parties, and deliberately avoided the cited ameliorating provisions for extending the filing time, so as to seriously prejudice Respondent's case in these proceedings.

With respect to these matters, in light of the responsibilities and authority for reviewing this case, the Hearing Officer as representative of the Commission, owed a duty of care to Respondent in handling this one issue and related matters concerning continuances, and a *sua sponte* summary dismissal of Respondent's counterclaims (Test #1); there has been demonstrated herein that there has been a breach of that duty by the negligent acts, errors or omissions (Test #2); there has been damages to Respondent (for example, inter alia, having to prepare this Memorandum and the stress caused by the

has filed an initial frivolous and nuisance suit that should have been summarily dismissed by the Commission in the first place, pursuant to **SC Code Ann. Sect. 58-27-1990.**

4. Respondent in fact filed the pleading for relief under the statutes and rules related to Motions for **Reconsideration, etc**. See the original Petition as directly acknowledged in the Directive. See, line one of the "Hearing Officer Action" section of the Directive referring to Respondent's plea seeking "Reconsideration or Rehearing." As noted above, Respondent's reference to Rehearing was premature, as no prior hearings were involved in this matter, and the Hearing Officer abused discretion in relying on a Rehearing as opposed to a Reconsideration procedure.

5. Respondent submits that adjudication of the issue under the statutory and regulatory provisions related to **Reconsideration** are controlling in this case, rather than those for a **Rehearing** where no hearing was in fact involved in the first place. **SC Code Ann. Sect. 58-27-2150** only applies following a decision or Order **after** a Hearing (s) has been completed. Thus we turn to the statutes, rules and regulations **controlling Reconsideration** as discussed above.

6. **SC Code Ann. Sect. 58-27-2130** provides the Commission authority to rescind or amend a prior Order or decision at any time. Respondent has claimed Reconsideration pursuant to this and other statutes by exception to the application of **S.C. Code Ann. Sect. 58-27-2150** for Rehearing.

7. **SC Code Ann. Reg. 103-881(A)** provides Respondent the right to file a Petition **for Reconsideration, which is exactly what was done in this matter**. Significantly, under this regulation for Reconsideration, Respondent has a less stringent time constraint to file for relief (20 days) than under **SC Code Ann. Sect. 58-27-2150 for Rehearing (10 days)** which does not apply in this instance in any case.

8. To reiterate, **SC Code Ann. Reg. 103-881(B)** allows for **twenty days**, plus five under **SCRCP 6 (e)** for filing the pleadings after the date of service on May 5, 2007, whereas under **SC Code Ann. Sect. 58-27-2150** the time constraint for filing for relief is exactly half, ten days, plus five under **Rule 6 (e)..**

9. This comparison brings to bear the focus here on Respondent's right to due process, the Commission's abuse of discretion related to that issue and the errors and omissions. The comparison shows the relevance of distinguishing between the

application of **SC Code Ann. Reg. 103-881(B)** and **S.C. Code Ann. Sect. 58-27-2120** relating to Respondent's Motion for **Reconsideration,** as opposed to **S.C. Code Ann. Sect. 58-27-2150** relating to a Motion for a **Rehearing (not applicable).**

10. Thus, pursuant to **SC Code Ann. Reg. 103-881(B) and SCRCP Rule 6 (e),** the due date for filing the subject pleadings was twenty five days following May 5, 2007 the date of service of the subject Order. This means **Wednesday, May 30, 2007** compared to **May 21, 2007 under Code Ann. Sect. 58-27-2150,** a difference of nine days that are important to Respondent.

11. In summary, Respondent reiterates that the facts and argument clearly support the conclusion that the Commission's Hearing Officer was negligent and erred in not considering these issues and evidence in the light most favorable to Respondent in processing this matter unfairly in favor of the Petitioner. And thus by any reasonable measure, test, or standard, has denied Respondent fair and unbiased treatment, violated due process of law, and committed abuse of discretion. The question is why and how?

4. <u>SUMMARY</u>

1. The Directive was served on Respondent on May 5, 2007. The Directive **incorrectly** and negligently states that the due date for filing Respondent's pleadings was May 15, 2007, including Sundays in the count of days.

2. The due date period for filing Respondent's pleadings for Reconsideration, etc. was ten (10) days under **Code Ann. Sect. 58-27-2150**, for **Rehearings**, and twenty (20) days under **SC Code Ann. Reg. 103-881(B and S.C. Code Ann. Sect. 58-27-2120 for Reconsideration.**

3. **SCRCP Rule 6 (e)** provides Respondent an additional five (5) days for filing by mail. Sunday as an end day for tolling, is not counted. **SCRCP Rule 6 (a).**

4. Therefore, the **actual adjusted due date** for filing the pleadings with the Commission, not including intermediary and end Sundays, are:

1. May 21, 2007 under **Code Ann. Sect. 58-27-2150**, for **Rehearing** as incorrectly applied by the Commission.
2. May 30, 2007 under **SC Code Ann. Reg. 103-881(B) and S.C. Code Ann. Sect. 58-27-2120 for Reconsideration,** relied on by Respondent.

5. The subject Order from which Respondent is seeking relief was not duly issued at the conclusion of a formal scheduled Hearing of the Commission. It flowed from a regular, formal **meeting** of the Commission which, *sua sponte*, summarily dismissed Respondent's case without Hearing and denied Respondent's rights.

6. Respondent argues that SC **Code Ann. Sect. 58-27-2150, for Rehearing** is therefore inappropriate for applying to a Motion for Reconsideration of this matter and denies due process to Respondent. Further, that Respondent should be afforded the rights provided under **SC Code Ann. Reg. 103-881(B) and S.C. Code Ann. Sect. 58-27-2120 for Reconsideration.**

7. However, the issue of which law to rely on becomes moot. Both laws, properly adjusted pursuant to the exceptions allowed by the rules for mailing, have facilitated Respondent's timely filing of the pleadings on **May 17, 2007** as acknowledged by the Hearing Officer. **Thus the filing was timely some four (4) days and thirteen (13) days before the respective due dates as provided above.**

8. Finally, Respondent argues that the Hearing Officer knew or should have known of the time extension for filing provided **SCRCP Rule 6 (e)** five day allowance for mailing, and the ten day difference between the two due date time periods available to Respondent to file for relief, pursuant to SC **Code Ann. Sect. 58-27-2150, for Rehearing** and **SC Code Ann. Reg. 103-881(B) and S.C. Code Ann. Sect. 58-27-2120 for Reconsideration,** as well as the technical difference between the two legal concepts.

9. On that basis, Respondent argues that the facts and circumstances of the situation and the foregoing analysis, lead to the reasonable conclusion that the Hearing Officer was either negligent in protecting Respondent's legitimate concerns in this case, or malevolently, deliberately ignored due process and abused discretion in reviewing the case in Order to favor the Petitioner. In either case, this Respondent has been harmed again by the Commission.

5. CONCLUSION

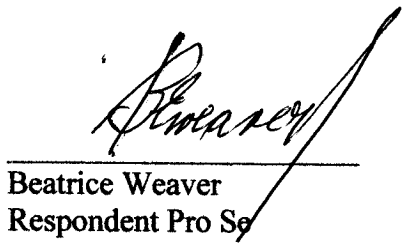
1. **SCRCP Rule 6 (e)** provides Respondent **a** five day allowance for mailing.
2. **SC Code Ann. Reg. 103-881(B) and S.C. Code Ann. Sect. 58-27-2120** for Reconsideration, both provide Respondent the right to a twenty (20) day period for filing a response.

3. The Hearing Officer denied Respondent this right, thereby denying due process of law, and abuse of discretion.
4. **S.C. Code Ann. Sect. 58-27-2150** for Rehearing provide Respondent only ten (10) days for filing.
5. Incorrect application of **S.C. Code Ann. Sect. 58-27-2150** prejudiced Respondent's rights, and unfairly favored Petitioner. No prior hearings were involved.
6. The conclusion is clear that the pursuant to **SC Code Ann. Reg. 103-881(B and S.C. Code Ann. Sect. 58-27-2120,** the correct due date was twenty five days after May 5, 2007; viz., May 30, 2007.
7. Notwithstanding that **S.C. Code Ann. Sect. 58-27-2150** is inapplicable, even under application of that Statute, Respondent had fifteen (15) days to file; viz., May 21, 2007 (allowing for exclusion of Sunday, May 20, 2007), as opposed to May 15, claimed in the Directive..
8. Respondent's rights have been prejudiced, and the Commission has engaged in abuse of discretion, denied due process of law and prejudiced Respondent's case causing her reprehensible harm and damages.

6. RELIEF.

Based on the facts, laws and arguments presented herein, for good cause, Respondent respectfully requests the Commission to set aside, vacate, rescind, reconsider or amend the Directive findings as appropriate, and grant Respondent's Petition for relief as timely filed.

Respectfully submitted.



Beatrice Weaver
Respondent Pro Se

Dated: Little Rock, Dillon County, S.C., May 28, 2007

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

May 28, 2007

In the Matter of	)	DOCKET NO. 2004-219-E
	)	
Petition of Progress Energy Carolinas, Inc To Terminate Service	)	AFFIDAVIT OF BEATRICE WEAVER
	)	
	)	
	)	

AFFIDAVIT OF BEATRICE WEAVER

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

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

1. I make this affidavit in support of Respondent's **Objections To Hearing Officer's Directive Dated May 24, 2007 and Petition to Vacate, Reconsider, Rescind, or Amend the Directive** as appropriate (hereafter referred to as Directive and Petition respectively) and Respondent's **Memorandum in Support** thereto (Memorandum), to which this affidavit is attached. I affirm that the statements submitted in each of the said documents are 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. I am competent to make this affidavit. I allege and aver that the facts as stated are true and correct and the exhibits attached hereto are true and correct copies of the originals.

2. Affiant affirms that on May 5, 2007 she received a copy of Commission Order No.**2007-298** dated May 3, 2007. Affiant's reference to May 7th, 2007 was inadvertent, harmless and excusable.

3. Affiant believed that Monday, May 7th, 2007 was the first day after Sunday, May 6th, 2007, to commence tolling the period and the due date for filing a response to the Directive. In good faith, Affiant believed that Thursday, May 17, 2007 was a timely filing due date for either the ten day or twenty day period for filing responsive pleadings. This included allowance for the additional five day period pursuant to SCRCP Rule 6 (e). See the full discussion on this issue in the Memorandum.

4. Affiant strenuously objects to the errors and omissions contained in the said Directive that are prejudicial to her case. As discussed in the Memorandum, Affiant believes that the Petition in question was timely filed on May 17, 2007, and that the Directive is negligent and damaging to Affiant.

5. Affiant is a Respondent Pro Se in the above titled Petition. I have resided at 1253 Harllees Bridge Road, Dillon, S.C. 29536 since about January 1995. My mailing address is P.O. Box 539, Little Rock SC 29567. I am a retired Senior citizen over 80 years of age, and in extremely poor health. Notice of these serious, extensive adverse medical conditions were formally duly filed on a timely basis with the Commission and Petitioner in previous pleadings including the fact that the actions of the Petitioner in this case are the cause of and exacerbated these conditions.

Further, Affiant sayeth naught.

Beatrice Weaver

Beatrice Weaver, Affiant

Subscribed and sworn before me
this 31st day of May, 2007

Jacquelyn L McKenzie

Notary Public, State of South Carolina

My Commission expires: 2-8-16

PERSONAL AND CONFIDENTIAL – NOT FOR RELEASE

NOTES ON MEDICAL APPOINTMENT SCHEDULE OF BEATRICE WEAVER
PERIOD: MAY 2007 THROUGH JUNE 2007
As of May 28, 2007

1. The medical appointments schedule for May 2007 through June 2007 for Beatrice Weaver are at Medical University of South Carolina (MUSC) in Charleston, S.C.--Storm Eye Clinic and Hollings Cancer Clinic, and Surgery Dept., Duke University Medical Center (DUMC) in Durham, N.C., and Yuma Rehabilitation Hospital in Yuma, Arizona (Yuma). Note that appointments change on a regular basis due to doctor schedule changes, usually involve one or more days stay and one or more days travel, and require considerable time and effort in managing the appointment schedules.

2. Over the past year, there have been some fifty scheduled appointments at various hospitals and clinics in both North and South Carolina. For May and June 2007, the appointments are for medical consults, tests, pre-op, surgery, post-radiation, and related matters.

3. I am scheduled for cardio pre-op on Monday, June 11th and for esophageal surgery on June 14, 2007. The surgeon cancelled the surgery originally scheduled for May 14th, 2007. He decided that I may not sustain it due to my deteriorated physical condition.

4. The eye surgery scheduled for April 27th, 2007 was also cancelled by the surgeon and deferred. This surgery is to correct problems resulting from the **April 13, 2006 eye** surgery.

5. The surgery done on March 30th, 2007 was not successful and I suffered heart problems coming out of the anesthesia.

6. Other medical treatments in process relate to neuro/orthopedic/vascular problems.

Beatrice Weaver

Little Rock S.C. May 28, 2007

EXHIBIT A

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

May 28, 2007

In the Matter of	)	**DOCKET NO. 2004-219-E**
	)	
Petition of Progress Energy Carolinas, Inc	)	**NOTICE OF OBJECTIONS**
To Terminate Service	)	**AND PETITION DATED**
	)	**MAY 28, 2007**
	)	
	)	

NOTICE OF RESPONDENT PRO SE BEATRICE WEAVER'S OBJECTIONS TO HEARING OFFICER'S DIRECTIVE DATED MAY 24, 2007 AND PETITION TO VACATE, RECONSIDER, RESCISSION OR AMEND DIRECTIVE

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

Ms. Shannon Bowyer Hudson, Esq.
Office of the General Counsel
Office of Regulatory Staff of S.C.
1441 Main St, Suite 300
Colombia S.C. 29201

Gary Weaver, Respondent Pro Se
PO Box 7682, Florence SC 29502

Notice Is Hereby Given Of Respondent Pro Se Beatrice Weaver's timely filed **Objections To Hearing Officer's Directive Dated May 24, 2007 And Petition To Vacate, Reconsider, Rescission Or Amend Directive, copy attached.**

DATED: Little Rock S. C. May 28, 2007

Beatrice Weaver, Respondent Pro Se

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

May 28, 2007

In the Matter of	)	**CERTIFICATE OF SERVICE**
	)	
Petition of Progress Energy Carolinas, Inc	)	
To Terminate Service	)	
	)	
	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original copy of Respondent Pro Se Beatrice Weaver's **Objections To Hearing Officer's Directive Dated May 24, 2007, and Petition To Vacate, Reconsider, Rescission or Amend the Directive and Memorandum in Support, Affidavit of Beatrice Weaver, and Exhibits** thereto dated May 28, 2007, will be or have been served upon the S.C. Public Service Commission, and true copies to all the interested parties of record in this action, at their respective addresses, by means of U.S. Postal Service mail, on or before May 30, 2007.

DATED: Little Rock, Dillon County, South Carolina, May 28, 2007

Beatrice E. Weaver, Respondent Pro Se
1253 Harllees Bridge Road,
Dillon S.C. 29536
Ph: 843 841 1606
Fax: 843 774 2050