



South Carolina

DEPARTMENT OF CONSUMER AFFAIRS

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February 27, 2026

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk/Executive Director
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Docket No. 2025-191-A
Rulemaking Proceeding Related to Amended and/or New Procedural Requirements
Contained in Act No. 41 of 2025 Established Pursuant to Commission Order No. 2025-391

DCA Comments on Proposed Regulation

Dear Ms. Boyd:

On behalf of the South Carolina Department of Consumer Affairs (“DCA”), please accept these comments in response to the Commission’s proposed regulation issued on January 9, 2026. DCA appreciates Commission staff’s efforts in this process, including prior opportunities to submit comments and participate in workshops. DCA previously submitted comment letters on November 4, 2025, and December 5, 2025. The prior comment letters are attached to this letter for consideration.

The Commission incorporated many of DCA’s prior comments into the proposed regulations. The primary concern remaining from DCA’s prior comments is the creation of a new form of testimony, response to surrebuttal, with the addition of 103-845(G). The Commission previously proposed similar language for 845(F), therefore the attached letters will reference (F) instead of (G). The current proposal in 103-845(G), particularly the addition of “as allowed by law”, reflects a compromise position discussed in the prior workshops; however, the proposal still provides for a party to “present responsive testimony where new matters or testimony are introduced in surrebuttal.”

Act No. 41 is unambiguous and does not create an entirely new type of testimony called “responsive testimony.” To reiterate the main points of DCA’s prior comments about responsive testimony:

1. “[A]llowing ‘responsive testimony’ in this context is an overly broad interpretation of Act 41”¹
2. “Act 41 does not include any provisions allowing responses to surrebuttal testimony”²
3. “Act 41 references responsive testimony in the context of an applicant’s rebuttal responding to direct testimonies. Act 41 does not provide for responses to surrebuttal.”³
4. “If the legislature intended to give the party with the burden of proof the right to respond to surrebuttal testimony, it could easily have stated the applicant ‘shall have the right to prefile testimony responsive to the surrebuttal testimony of other parties.’”⁴
5. “[P]roposed revisions to S.C. Code Ann. Reg. 103-842 appropriately address the new language in Act 41 that the party with the burden of proof has the right to open and close its case. For example, the proposed 103-842 would allow the applicant or petitioner to present its evidence last (i.e., “close its case”), whereas prior to Act 41, the regulation allowed the Office of Regulatory Staff to present last.”⁵
6. “[P]roposed revisions to S.C. Code Ann. Reg. 103-842 appropriately address the new language in Act 41 that the party with the burden of proof has the right to open and close its case.” and “make the addition of 103-845(F) unnecessary.”⁶

Please see the attached letters for additional information. Based on these and prior comments, 103-845(G) “Responsive Testimony” should be removed from the proposed regulation.

DCA appreciates the Commission’s consideration of these comments in its review of Act 41 and proposed regulations. We also look forward to participating in the March 17, 2026, workshop.

Signature on Next Page

¹ See DCA November 4, 2025, comments.

² See DCA December 5, 2025, comments.

³ See DCA November 4, 2025, comments.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* As already noted, the Commission previously included responsive testimony provisions in 103-845(F), therefore the attached letters will reference (F) instead of (G).

Regards,

A handwritten signature in blue ink, appearing to read "Jacob Edwards".

Jacob Edwards, Esq.
Assistant Consumer Advocate



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November 4, 2025

VIA ELECTRONIC FILING

The Honorable Jocelyn Boyd
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RE: **Docket No. 2025-191-A**
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Requirements Contained in Act No. 41 of 2025 Established Pursuant to
Commission Order No. 2025-391

DCA Comments on Proposed Regulation

Dear Ms. Boyd:

On behalf of the South Carolina Department of Consumer Affairs (“DCA”), please accept these comments in response to Commission Staff’s proposed regulations in the Notice of Follow-Up Workshop issued on October 21, 2025. DCA’s comments below do not address all proposed regulation sections, but it reserves its right to provide additional comments at the November 10, 2025, workshop or in response to other parties’ comments. I will attend that workshop on behalf of DCA.

103-831. Computation of Time.

DCA agrees with the proposed revisions to strike the statement “The provisions of Regulation 103-831 do not apply to Petitions for Rehearing or Reconsideration”. Rule 6 of the South Carolina Rules of Civil Procedure provides a foundation for calculating the time to make filings. Striking the exemption for rehearing petitions creates uniformity with other filings. Given the importance of Petitions for Rehearing and Reconsideration in the Commission’s appellate process, the additional time afforded by Rule 6 when the last day of a period falls on a weekend or holiday would also be valuable to all parties in assessing potential petitions.

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103-833. Written Interrogatories and Request for Production of Documents and Things.

Section B of the proposed regulation addresses interrogatories and Section C addresses requests for production; however, Section C states “The procedural schedule for each contested case proceeding shall include dates for completion of written interrogatories for each phase of discovery...” The phrase “written interrogatories” in this sentence of section C should be replaced with “requests for production”.

Section B and C both include language regarding the time period to respond to discovery requests. The language from Section B is below and DCA notes Section C contains the same language, but substitutes “requests for production of documents and things” for “interrogatories”.

The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the Commission’s discovery procedural schedule party of record submitting the interrogatories, but not less than 20 days after the service thereof, unless a shorter time period is agreed to by the party with the burden of proof and the party responding to the interrogatory and/or unless the time is extended or shortened by the Commission for good cause shown.

The phrase “unless a shorter time period is agreed to by the party with the burden of proof and the party responding to the interrogatory” should be revised. Discovery may be issued among intervenors or other parties who do not necessarily have the burden of proof. For example, in Docket 2023-388-E, a DEC rate case, DCA and SCEUC sent discovery to ORS. For that discovery, whether DEC, the party with the burden of proof, agreed to a shorter or longer discovery response time was irrelevant. Therefore, DCA suggests revising the quoted language above to say- “unless a shorter time period is agreed to by the applicable parties serving and responding to the interrogatory.” The same revisions should be made in Section C for requests for production.

103-842. Order of Procedure.

The Commission Staff’s proposed revisions to S.C. Code Ann. Reg. 103-842 appropriately address the new language in Act 41 that the party with the burden of proof has the right to open and close its case. For example, the proposed 103-842 would allow the applicant or petitioner to present its evidence last (i.e., “close its case”), whereas prior to Act 41, the regulation allowed the Office of Regulatory Staff to present last. However, the Department does not believe this means the party with the burden of proof has unfettered ability to present any testimony it chooses in closing its case. As discussed further below, this revision also makes the addition of 103-845(F) unnecessary.

103-845. Witnesses. (E. Supplemental Testimony and Testimony Responsive to Supplemental Testimony.)

The proposed regulation states a party’s right to respond to supplemental testimony is “subject to the right of the party with the burden of proof to present responsive testimony.” Act 41 does not include the quoted language.¹ As discussed further below regarding 103-845(F), allowing “responsive testimony” in this context is an overly broad interpretation of Act 41.

¹ Act 41 states “The commission may allow supplemental testimony in cases where new matters arise after the filing of direct testimony, provided that parties shall have the right to respond to such supplemental testimony.”

Supplemental testimony issues often arise when a utility company or other party updates financial figures after filing its direct testimony. In those instances, an opposing party has been, and should be, allowed to file its own supplemental rebuttal or surrebuttal testimony to address the changes. These additional testimonies can, and have, follow(ed) the normal course of direct, rebuttal, and surrebuttal without the need to resort to the creation of a new form of testimony (i.e., “responsive” testimony). Therefore, the quoted portion in the paragraph above should be deleted.

If the Commission believes additional clarification regarding the presentation of supplemental testimony is needed, the quoted provision above could be replaced with “subject to the right of the party with the burden of proof to open and close its case”. While Act 41 confirms a party’s ability to close its case, with regard to supplemental testimony, this should only mean the party with the burden of proof is allowed to present its supplemental rebuttal during the closing portion of its case.

103-845. Witnesses. (F. Responsive Testimony.)

This proposed regulation is an entirely new section which states:

The party with the burden of proof may present responsive witness testimony, not only in the form of rebuttal testimony, but also in response to surrebuttal, if presented, consistent with the right of the party with the burden of proof to close its case. Such responsive testimony may, but need not, be prefiled. Further, the party with the burden of proof shall have the right to provide live responsive testimony where new matters or testimony arise at the hearing, including new testimony solicited upon cross-examination from the parties or questions from the Commission.

The proposed regulation language above appears to adopt Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s (together, “Duke”) comments filed on August 13, 2025. The proposed regulation is an overly broad interpretation of Act 41. Act 41 revised S.C. Code Ann. § 58-3-140(D) to state:

(D) The commission must promulgate regulations to require the direct testimony of witnesses appearing on behalf of utilities and of witnesses appearing on behalf of persons having formal intervenor status, such testimony to be reduced to writing and prefiled with the commission in advance of any hearing. In contested case proceedings, the applicant seeking relief from the commission shall have the right to prefile rebuttal testimony responsive to the direct prefiled testimony of other parties. The commission may allow supplemental testimony in cases where new matters arise after the filing of direct testimony, provided that parties shall have the right to respond to such supplemental testimony.... The party with the burden of proof must be permitted to open and close its case, including the presentation of responsive witness testimony.

Emphasis added.

Act 41 Did Not Provide for Responses to Surrebuttal or New Live Testimony

The first two sentences of the proposed regulation create a new type of testimony-response to surrebuttal. This proposed response to surrebuttal would not have to be prefiled and is not restricted to new matters. The proposal also creates new, live responsive testimony if new matters are raised during a hearing. The proposal does not provide any limitation on what a party could present in such responsive testimony, thus opening the door to a party presenting new matters in live, responsive testimony that should have been presented in earlier prefiled testimony. Finally, the proposed regulation would allow live testimony even if there were time to pre-file it.

This new form of testimony extends beyond the revisions made in Act 41. As noted by the underlined provisions above, Act 41 references responsive testimony in the context of an applicant's rebuttal responding to direct testimonies. Act 41 does not provide for responses to surrebuttal.

The proposed language would also allow a response to surrebuttal even if no "new" matters are raised in surrebuttal. With the language proposed in 103-845(D) and prior Commission orders, the appropriate response to inappropriate surrebuttal is to strike it, not to allow additional responsive testimony.²

Further, by granting a "right" to live responsive testimony, the proposal removes all Commission discretion and ignores the preferences for prefiled testimony in S.C. Code Ann. § 58-3-140(D), which was retained under Act 41. This preference is also currently found in Reg. 103-845(C) which states "All parties of record, insofar as it is practicable, should prefile with all other parties of record copies of prepared testimony and exhibits that the party of record proposes to use during a hearing." The proposed regulation retains this language.

Existing Court Rules and Case Law

The proposed language in 103-845(F) is in direct conflict with existing South Carolina court rules and case law, which provide limitations on the use of responsive testimony. The following rules and case law (emphasis and comments added) contemplate responsive testimony only for replying to new matters. The rules and case law further provide that responsive testimony may not be used to introduce new matters, particularly when such matters should have been raised in a party's case in chief.

SCRCP 43(j)- (j) Right to Open and Close. The moving party upon a motion shall have the right to open and close argument, and the plaintiff shall have the right to open and close upon the trial; except that a party admitting the adverse party's claim in his pleading, and taking upon himself the burden of proof, shall have the like privilege. The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter.

² DCA notes that with the proposed addition of 103-845(D), Commission Staff also appear to be memorializing the Commission's prior orders that find "the theory and purpose of surrebuttal testimony is to respond to any new matters brought up by the moving party in its rebuttal testimony." Order 2022-58. See also *Camlin v. Bi-Lo, Inc.*, 311 S.C. 197, 200, 428 (Ct. App. 1993) and Commission Order 2022-245 (stating "The right to file surrebuttal testimony is discretionary with the Commission").

SCRE 611(d)- **(d) Re-examination and Recall.** A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.

Daniel v Tower Trucking, 205 S.C. 333, 351 (1944) – “He upon whom lies the burden of proof has the right to offer reply (rebuttal) testimony to that of his adversary and the latter's witnesses, provided it is in the nature of true reply and not such as should have been offered in the case in chief. The latter may also be allowed, but only in the discretion of the Court.”

(Duke’s comments filed on August 13, 2025, quote this case, but Duke does not include the underlined portion in its comments.)

State v. Beaty, 423 S.C. 26, 39 n.8(2018) – “Rule 43(j), SCRCP, controls the content and order of argument in civil cases. This rule essentially provides that the plaintiff shall have the right to open and close at the trial of the case and must open in full, and in reply may respond in full but may not introduce any new matter.”

(Duke’s comments filed on August 13, 2025, quote footnote 8 from this case, but Duke does not include the underlined portion in its comments.)

Act 41 is Unambiguous

The plain language of Act 41 provides a right for a party with the burden of proof to file responsive rebuttal testimony to another party’s direct testimony. The language also establishes a right for the party to present this responsive rebuttal testimony in closing its case. The language says nothing about responding to surrebuttal testimony or presenting new, live testimony. Because the statute’s language is unambiguous, one need not look past the statute’s plain language. Further, “[w]here there is no ambiguity, words must not be added to or taken from the statutes” *Harling v Board of Comm’rs* 205 S.C. 319 (citing *Home Building & Loan Ass’n v. City of Spartanburg et al.*, 185 S.C. 313); See also *Darlington v Kilgo*, 302 S.C. 40, 46 (1990) (Goolsby A. dissenting) (“Courts are not free to add words to a statute when interpreting it and they may not enlarge upon a statute's legislative design by giving the words used in the statute too broad a meaning.” (citing *Harling*)).

Additionally, “[t]he canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" *Isaac v Onions* 445 S.C. 525 (2025) (quoting *Hodges v. Rainey*, 341 S.C. 79). If the legislature intended to give the party with the burden of proof the right to respond to surrebuttal testimony, it could easily have stated the applicant “shall have the right to prefile testimony responsive to the surrebuttal testimony of other parties.” And, if the legislature intended to allow new, live testimony, it could have stated “[t]he party with the burden of proof must be permitted to open and close its case, including the presentation of live, responsive witness testimony.” The legislature did not do either, and neither should the Commission.

Potential Alternative Language if Commission Finds Act 41 Ambiguous

As noted above, the proposed revisions to Reg. 103-842 satisfy the plain language of Act 41 and make the addition of 103-845(F) unnecessary. However, if the Commission believes the legislature’s addition of “the right to open and close its case” or “responsive witness testimony” is ambiguous, then it should ensure any new language is consistent with the existing South Carolina rules, regulations, and case law discussed above. In that case, the Commission could consider the following language instead:

103-845. Witnesses. (F. Responsive Testimony.)

Subject to SCRCP 43(j) and SCRE 611(d), the party with the burden of proof may provide live responsive testimony where new matters or testimony arise at the hearing, including new testimony solicited upon cross-examination from the parties or questions from the Commission.

Again, DCA does not believe this is necessary or warranted. However, if the Commission disagrees, this alternative language would retain a party’s ability to present testimony responsive to new matters raised in a hearing, but also restrict responsive testimony from raising new matters.

This alternative language also aligns with comments previously made by Duke in this docket on August 13, 2025 (“Allowing the party with the burden of proof to present a case in reply to respond to matters that come up during the hearing is both required under Act 41 and consistent with civil trial practice.”) and in Docket ND-2025-19-A regarding Act 41 on May 23, 2025 (“By pairing the applicant’s right to close with the right to present responsive testimony, the General Assembly aligned the Commission’s practice with the Supreme Court of South Carolina’s holding that applicants must be given a meaningful opportunity to respond to new evidence.” (citing *Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 107 (2011)³)(emphasis added))

Summary of Review

DCA supports the proposed changes to S.C. Code Reg. 103-831 and 842. DCA has proposed alternative language for S.C. Code Reg. 103-833 and 845(E) and 845(F). These proposed changes address discovery response timeframes and the presentation of responsive testimony and are summarized below.

103-833-

Section C states “The procedural schedule for each contested case proceeding shall include dates for completion of written interrogatories for each phase of discovery...” The phrase “written interrogatories” in this sentence of section C should be replaced with “requests for production”.

The discovery response deadlines in B and C should also be revised to say “unless a shorter time period is agreed to by the applicable parties serving and responding to the” interrogatory and request for production.

³ Note that DCA does not agree with Duke’s characterization of *Utilities Services* in this quote and only includes it here to summarize Duke’s previous arguments regarding the need for responsive testimony.

103-845(E)

The proposed regulation states a party's right to respond to supplemental testimony is "subject to the right of the party with the burden of proof to present responsive testimony." This quoted portion should be deleted. Alternatively, the quoted provision could be replaced with "subject to the right of the party with the burden of proof to open and close its case".

103-845(F)

Delete the entire proposal as other proposed regulations already address the requirements of Act 41.

Alternatively, delete the first two sentences of the proposed regulation and replace the third sentence with:

Subject to SCRCP 43(j) and SCRE 611(d), the party with the burden of proof may provide live responsive testimony where new matters or testimony arise at the hearing, including new testimony solicited upon cross-examination from the parties or questions from the Commission.

Conclusion

DCA appreciates the Commission's work in this process and the opportunity to provide comments on the proposal. We also look forward to additional discussion at the November 10, 2025, workshop.

Regards,



Roger Hall, Esq.
Deputy Consumer Advocate

CC: Parties of Record (via email)



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December 5, 2025

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DCA Follow-Up Comments

Dear Ms. Boyd:

During the November 10, 2025, workshop on proposed revisions to S.C. Code Ann. Reg. 103-800 et seq., you requested parties submit follow up comments to alternative language proposals from the Department of Consumer Affairs (“DCA”) and Duke Energy Carolinas/Progress (“Duke”). DCA has reviewed the revisions Duke provided for 103-845(E) and 103-845(F) during the November 10th workshop and believes they are overly broad or unnecessary for the same reasons provided in DCA’s November 4, 2025, comments.

Regarding 103-845(E), DCA’s November 4, 2025, comments remain applicable for the additional language proposed by Duke. After reviewing Commission staff’s initial proposal for this section, DCA submitted alternative language for this section in its prior comments. However, DCA would also agree with comments made by counsel for Dominion Energy South Carolina during the prior workshop that, because Act 41 includes language regarding supplemental testimony and a party’s right to respond to it, the proposed section (E) is not needed.

Regarding Duke’s proposed revisions to DCA’s alternative language in 103-845(F), DCA’s prior comments also address why they are not appropriate and overly broad. Namely, Act 41 does not include any provisions allowing responses to surrebuttal testimony. During the prior workshop, Duke counsel noted that Act 41 does mention surrebuttal in the context of discovery. The fact that Act 41 specifically mentions surrebuttal in the context of discovery, but not in the context of responsive testimony, further supports DCA’s prior position. The discovery schedule

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provisions in Act 41, including the surrebuttal language, were new additions to this section of the code. If the legislature intended to give the party with the burden of proof the right to respond to surrebuttal testimony, it could easily have stated that. The legislature did not include such language, and the Commission should not add it. Therefore, DCA maintains its prior recommendation to delete 103-845(F) as other proposed regulations already address the requirements of Act 41.¹

DCA continues to appreciate the Commission's work in this process and the opportunity to provide comments.

Regards,



Roger Hall, Esq.
Deputy Consumer Advocate

CC: Parties of Record (via email)

¹ During the November 10, 2025, workshop, counsel for Dominion Energy South Carolina also found 103-845(F) was not needed.