Dear Ms. Boyd:

Please find attached our response to SCE&G’s motion to strike the testimony of Sarah E. Leverette, which is Appendix A in my submission to the Commission for Docket 2017-305-E. I ask that you enter the revised testimony of Ms. Leverette into the record for this docket.

Lynn Shuler Teague
teahueynnn@gmail.com
803.556.9802
December 17, 2017

VIA EMAIL AND HAND DELIVERY

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company’s Rates Pursuant to S.C. Code Ann. § 58-27-920 Docket No. 2017-305-E:
SCE&G Motion to the Strike the Testimony of Sarah E. Leverette

Dear Ms. Boyd:

Please find enclosed for filing and consideration amended testimony in response to SCE&G’s Motion to Strike the Affidavit of Sarah E. Leverette. Ms. Leverette’s testimony is a statement concurring with the September 26, 2017, opinion of the Attorney General and citing the text of the Constitution and the argument presented in that opinion, which is grounded in official documents associated with the West Committee. Removal of references to her service on the West Committee makes no alteration in the substance of her statement. Accordingly, I am submitting an amended affidavit from Ms. Leverette, without reference to her service on that Committee.

We hope that the Commission will accept this amended submission for inclusion in the record regarding Docket Number 2017-305-E.

Sincerely,

Lynn S. Teague

Encl.

Cc: cc: Alexander G. Shissias (via email)
Christopher S. McDonald (via email)
APPENDIX A

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-305-E

IN RE: Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920

AFFIDAVIT OF SARAH E. LEVERETTE, ATTORNEY AT LAW

Sarah E. Leverette, being duly sworn, deposes and says:

The petition to PSC gives rise to numerous factual and determinant legal issues. However, the scope of this statement is limited to the issue of constitutionality of the legislative measure known as the Base Load Review Act (2007) as determined under Article IX, Section 1 of the South Carolina Constitution of 1895, as amended (1971) with emphasis on the language of the revision made by the West Committee.

The West Committee was created for the purpose of updating and reorganizing the South Carolina Constitution of 1895 often referred to as the “peoples” document.

It is significant to the present issue that the committee in the process was directed to address the problem of “over constitutional legislation” (emphasis added) by acting to restrict the legislative branch in areas of fundamental importance – an issue vital to the determination of the constitutional status of the Base Load Review Act.

The relevant portion of the Constitution as drafted by that Committee reads as follows:

Article IX, Section 1

_The General Assembly shall provide for all appropriate regulation of... publicly owned utilities and privately owned utilities serving the public as and to the extent required by the public interest._

The well analyzed and researched September 26, 2017, opinion of the South Carolina Attorney General addresses an important addition that was made to the language of this provision:
APPENDIX A

A Blue Ribbon Panel, the West Committee, chosen to make a study of the South Carolina Constitution of 1895 formulated the language of this provision.

The revision was taken from the Kentucky Constitution but it is most important to the issue that the Committee itself insisted on adding the language “to the extent required by the public interest.”

There is no question that the language was intended by the committee to be a limitation on the power of the General Assembly. (See West Committee minutes 11,287) It is not bad constitutional policy to say that the constitution is concerned that utilities are properly managed for the public interest. Our Supreme Court typically affords considerable weight to the West Committee in interpreting the Constitution.

Conclusion

I concur with September 26, 2017, opinion of the SC Attorney General’s Office. Their review of the historic background of the constitutional provision contained in Article IX, Section 1 as well as the South Carolina case law both previous and subsequent to the West Committee revision leaves little doubt that enactment of the Base Load Review Act exceeds the bounds of constitutionality in failing the requirement that it be “required by the public interest.” However, a legal declaration can only be made by a court.

Sarah E. Leverette

December 15, 2017

Appeared before me December 15, 2017.

Margaret C. Miller, Notary Public

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