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SOUTH CAROLINA PUBLIC SERVICE COMMISSION

HEARING OFFICER DIRECTIVE

DOCKET NOS. 2017-370-E, 2017-207-E, and 2017-305-E **ORDER NO. 2018-73-H**

JUNE 21, 2018

David Butler
Hearing Officer

DOCKET DESCRIPTION:
Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans

Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent

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

MATTER UNDER CONSIDERATION:
Motion to Compel Filed by the Office of Regulatory Staff

HEARING EXAMINER ACTION:

This matter comes before the Hearing Officer on the Motion to Compel Discovery Responses and Production filed by the Office of Regulatory Staff ("ORS") against South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion") (collectively, the "Joint Applicants") in Commission Docket Nos. 2017-370-E, 2017-207-E and 2017-305-E (collectively, the "Nuclear Dockets.") 10 S.C. Code Ann. Regs. 103-835 states that the South Carolina Rules of Civil Procedure govern all discovery matters not covered in Commission Regulations. Accordingly, Rule 26, SCRCP governs the scope of discovery in Commission proceedings. The Rule states in part: "Parties may obtain

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discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action…It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence." Therefore, the standard governing the scope of discovery is very broad. Viewed in light of this standard, the Motion to Compel filed by the Office of Regulatory Staff in these Dockets is granted in part and denied in part as explained below.

I. Requests Nos. 2-5, 6-6, 6-7, 6-8, and 6-9: Bechtel Materials

ORS has sought the production of the Bechtel Report and "its drafts, alternative reports, working papers, references, responses, and other related documents, including all communications relating to the assessment of the Report." Although ORS and the Joint Applicants have presented a wide-ranging discussion about privilege, waiver of privilege, the circumstances behind the production of the Report and other matters, the Joint Applicants also state that SCE&G will produce these materials sought by ORS. Accordingly, SCE&G shall produce the responsive documents and the previously promised privilege log on or before July 6, 2018. As requested by ORS, and as shall be the case for all documents ordered to be produced herein, SCE&G shall produce said documents in "native format" as much as possible, i.e. the original electronic format of the information, with image and text "load files." (Although the background discussion presented by the two parties concerning the Bechtel Report is helpful for purposes of the disposition of this Motion, this Hearing Officer takes no position on the matters asserted.)

II. Request 5-25: Request for Government Productions

ORS Request 5-25 requests production of all documents provided to the various state and federal agencies and officials conducting criminal and regulatory investigations during the past two years into acts and omissions on the Project by SCE&G and others working on the V.C. Summer Project. ORS asserts that the investigations of various agencies and law enforcement officials into potentially illegal acts on the Project, and particularly the information and documents provided in these investigations, are directly related to the Commission's prudency

determinations. In response, the Joint Applicants characterize the ORS Request as requesting "all documents provided to various federal and state agencies in connection with pending criminal and regulatory investigations," and call it a "Cloned Request for Government Productions." The Joint Applicants stated that they have already agreed to produce material relevant to the claims at issue in this proceeding and other proceedings involving ORS, and that ORS has requested materials whether they are relevant to proceedings involving ORS or not. The Joint Applicants cite various cases where the Courts have refused to enforce a "Cloned Request."

ORS clarifies that Request 5-25 only seeks information from investigations arising out of the V.C. Summer Project, and that ORS is not seeking information on government investigations that do not arise out of the Project. ORS states that governmental investigations regarding the problems at the Project are likely sources of information regarding the prudency of SCE&G's decisions and thus relevant and reasonably calculated to lead to the discovery of admissible evidence. I agree with ORS that the material is relevant and reasonably calculated to lead to the discovery of admissible evidence. A further generalized claim by the Joint Applicants of "burdensomeness" is likewise unavailing. SCE&G shall produce the requested responses and documents on or before July 6, 2018.

III. Requests Nos. 4-27, 4-69, 5-26, 6-16, and 6-30

The Joint Applicants had previously agreed to the provision of a privilege log with regard to these requests. The privilege log shall be provided on or before July 6, 2018.

IV. Requests 3-24, 3-25, and 3-26

These requests call for information and the production of documents relating to the applicability of South Carolina law requiring the use of South Carolina certified Professional Engineers on the V.C. Summer Project. The Joint Applicants assert that South Carolina law is preempted by Federal law in this matter. This assertion raises a question of law related to the construction of the V. C. Summer Project, and further discussion of this issue is appropriate. The Joint Applicants should produce the responses and documents related to the stated requests, so that the matter can be examined further. This question may well be presented to the

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Commission for decision during the course of the hearings. Accordingly, responses and documents related to these Requests shall be provided to ORS on or before July 6, 2018.

V. Requests Nos. 1-22, 1-23, 1-29, 1-44, 1-45, 1-147, 2-3, 2-7, 4-26, 4-27, 4-43, 4-44, 4-66, 4-69, 4-72, 4-73, 4-74, 6-10, 6-11, 6-12, 6-13, 6-25, 6-31: Requests for Confidential and Sensitive Information

The issue with these requests is whether or not ORS is willing to be bound by its original 2009 Master Agreement on confidentiality in the present proceedings before the Commission. If so, the Joint Applicants have stated that they will withdraw their objections based on the lack of a sufficient confidentiality order. ORS has now agreed that the Master Agreement is still in effect and applies to information produced in these proceedings, provided that the Joint Applicants will promptly produce the requested information that they have now promised to provide.

The Hearing Officer would note that SCE&G had agreed to make many of the requested documents available to ORS at its corporate office, and Dominion Energy had agreed to make its confidential documents available to ORS at the law offices of Nexsen Pruet, LLC, pending execution of a confidentiality agreement. Response to Motion to Compel at 34. This agreed-upon production shall also occur on or before July 6th, unless otherwise agreed by the parties. If there are issues still outstanding regarding this group of requests, the parties should notify the Hearing Officer as soon as possible for resolution.

In conclusion, this Hearing Officer urges prompt compliance with this Directive by all involved parties, so that the entire litigation process may continue without further delay.

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