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**BEFORE**
**THE PUBLIC SERVICE COMMISSION OF**
**SOUTH CAROLINA**
**DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

IN RE:

Friends of the Earth and Sierra Club,

Complainants/Petitioners,

v.

South Carolina Electric & Gas Company,

Defendant/Respondent.

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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.

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IN RE:

Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., 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 plan.

**JOINT APPLICANTS' MOTION TO DISMISS AND STRIKE PRE-HEARING BRIEF OF THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY**

Joint Applicants South Carolina Electric & Gas ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy") (collectively, "Joint Applicants"), by and through the undersigned counsel and pursuant to 10 S.C. Code Ann. Regs. 103-829, hereby move the Public Service Commission

of South Carolina (the "Commission") to dismiss and strike the Pre-Hearing Brief filed by the South Carolina Public Service Authority ("Santee Cooper") on October 26, 2018, as untimely, unlawful, and unsupported by evidence.

On January 12, 2018, Joint Applicants initiated this Docket and sought the Commission's: (1) acceptance of the Customer Benefits Plan; and (2) approval of Joint Applicants' combination. A number of parties, including Santee Cooper, then moved to intervene in this matter. Santee Cooper petitioned to intervene on April 12, 2018, and the Commission granted that motion on April 25, 2018. Over the following six months, the parties to these Consolidated Dockets pre-filed hundreds of pages of testimony and supporting exhibits. Santee Cooper, however, did not pre-file any testimony did not submit any other evidence, and did not assert any claims. In fact, Santee Cooper did not make ***any*** requests of the Commission until October 26, 2018, when it filed its Pre-Hearing Brief, which included a request that the Commission require Joint Applicants to put $351 million into a "Public Interest Fund" to be used for the benefit of Santee Cooper's customers. Santee Cooper made this request only six days before the hearing in these Consolidated Dockets is scheduled to start. Santee Cooper's request is untimely, unlawful, and unsupported by evidence. For the reasons set forth below, the Joint Applicants respectfully request that the Commission deny Santee Cooper's request for the creation of a $351 million Public Interest Fund outright, strike that request from the record, and bar Santee Cooper from pursuing such a request at the upcoming hearing through argument or examination of witnesses.

## ARGUMENT

Santee Cooper's request for a $351 million Public Interest Fund should be denied and stricken as untimely because it was filed more than six months after Santee Cooper intervened in this matter, and only six days before the start of what will likely be the most complex and



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difficult proceeding that the Commission will hear in decades. Significantly, Santee Cooper only made its request after the deadline had passed for all parties to pre-file direct testimony in this docket. Santee Cooper has not, however, provided any justification for this delay, nor is any possible. Santee Cooper's concealment of this request until now shows an utter lack of respect for the Commission, the process, and the other parties. Setting aside the disrespect Santee Cooper's conduct exhibits, its concealment of this $351 million claim until the deadlines for both discovery and the pre-filing of direct testimony have closed is unlawful and inexcusable because it represents a blatant attempt to violate Joint Applicants' due process rights. The intended result can only be to deny Joint Applicants and other parties meaningful notice of the issues to be heard in the upcoming hearing, and to prevent them from having a meaningful opportunity to present evidence on those issues.

The Commission's regulations explicitly require parties filing petitions – including petitions to intervene – to disclose any relief they intend to request in their initial intervention documents: "Petitions shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought." 10 S.C. Code Ann. Regs. § 103-825. Santee Cooper's petition for intervention did not include any request for relief, and Santee Cooper did not subsequently update its request to intervene in a timely way.

The Commission's regulations also state that:

> All parties of record, insofar as it is practicable, should prefile with all other parties of record copies of prepared testimony and exhibits which the party of record proposes to use during a hearing. In proceedings involving utilities, the Commission shall require any party and the Office of Regulatory Staff to file copies of testimony and exhibits and serve them on all other parties of record within a specified time in advance of the hearing.

10 S.C. Code Ann. Regs. § 103-845. In its apparent eagerness to prejudice Joint Applicants, Santee Cooper concealed its request until the time for pre-filing direct testimony by all parties



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had long-since expired. By so doing, Santee Cooper is caught in a snare of its own devising. It is too late for Santee Cooper to provide meaningful evidentiary support for its claim because it has forfeited its right to file the necessary testimony.

Santee Cooper's request should also be denied and stricken because it is without any justification in law or established regulatory policy. This Commission "is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly." *Kiawah Property Owners Grp. v. Pub. Serv. Com'n of S. Carolina*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (S.C. 2004). It has the "power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." S.C. Code Ann. § 58-3-140(A), *see also* S.C. Code Ann. § 58-27-140 (setting forth the general powers of the Commission). The Commission does not, however, have regulatory jurisdiction over Santee Cooper, which is a state agency, or over Dominion Energy, which is an out-of-state utility, because neither of these entities is a public utility or an electric utility as defined in the Commission's enabling statutes. *See* S.C. Code Ann. §§ 58-3-5(6) (defining "public utility" in a way that excludes Santee Cooper and Dominion Energy), 58-5-10(4) (same), 58-27-10(7) (defining "electric utility" in a way that excludes Santee Cooper and Dominion Energy). Similarly, Santee Cooper's request does not involve the "just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed," which defines the Commission's jurisdiction over utilities. S.C. Code Ann. § 58-3-140(A); *see also* S.C. Code Ann. § 58-27-140(1). Nor is it justified, as is required



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to produce rates to SCE&G's customers which are "just and reasonable." S.C. Code Ann. §§ 58-27-810, 58-27-860. Santee Cooper's request is simply outside of the Commission's jurisdiction.

Even if S.C. Code Ann. § 58-27-1300 did apply here (which arguably it does not), the Commission still would not have the power to demand that a company like Dominion Energy – which falls outside of the purview of the Commission's regulatory jurisdiction – to pay hundreds of millions of dollars to a state-owned corporation for the privilege of effecting a merger that is otherwise within the public interest and the best interest of its customers. In short, Santee Cooper's request is a legally unjustified attempt at regulatory extortion, and represents a confiscation of private property in contravention of the Takings Clause of South Carolina and United States Constitutions. Additionally, a state agency like the Commission cannot exact cash payments from a private entity to support another branch of state government because doing so would constitute an unauthorized tax levied in violation of S.C. Const. art. X, §§ 4- 5, and other constitutional and statutory limitations on the State's taking power.

**DOMINION'S ENERGY'S PROPOSAL**

Dominion Energy is aware of the State's interest in lowering Santee Cooper's rates and reducing its cost of operations. To that end, Dominion Energy's Chairman, Mr. Tom Ferrell, II has written his counterpart at Santee Cooper, by letter dated October 29, 2018, "to offer a proposal to Santee Cooper to enter into a unique management arrangement that we believe will save Santee's electric customers hundreds of millions of dollars in overhead, fuel and capital related costs, providing significant cost savings on an ongoing basis for years to come." By operating and managing Santee Cooper as part of its extensive utility operation, Dominion can achieve efficiencies, rationalize structures, and generate extensive economies of scale. A copy of Mr. Ferrell's letter, which provides further details of the proposal, is attached as ***Exhibit 1*** to this



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filing. Dominion Energy proposal represents a lawful, practical and constructive response to the issues Santee Cooper seeks to address with its misguided request. This proposal is submitted for information only. It is not a proposal that Dominion Energy asks the Commission to mandate or adopt.

## CONCLUSION

The Commission may well ask why, if Santee Cooper were serious about its claim for a $351 million Public Interest Fund, it would conceal that claim until six days before hearing in this matter, when no discovery is possible, when no direct testimony can be submitted to support it, and when entirely justifiable claims of prejudice and surprise can be expected to undermine any pretense of Santee Cooper's good faith in asserting its request. The Commission may well ask if the intent of this claim is principally to disrupt these proceedings and prejudice the ability of Joint Applicants to respond to this unjust and unjustified request. A different reason for Santee Cooper's decision to wait to make this claim at this late hour is hard to imagine.

For the reasons set forth here, Joint Applicants respectfully request that the Commission deny Santee Cooper's request for the creation of a $351 million Public Interest Fund outright, strike that request from the record, and bar Santee Cooper from pursuing such request at the upcoming hearing through argument or examination of witnesses.



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This 30th day of October, 2018.
Cayce, South Carolina

*/s/ Belton T. Zeigler*

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