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Chief Legal Officer

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February 12, 2019

VIA ELECTRONIC FILING

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

RE: South Carolina Electric & Gas Company Request for Approval of Forbearance Agreement or in the alternative, Acknowledge Consent of the Forbearance Agreement
Docket No. 2019- 27-E

Dear Ms. Boyd:

By letter dated January 11, 2019, South Carolina Electric & Gas Company ("SCE&G" or "Company") filed a request with the Public Service Commission of South Carolina ("Commission") seeking approval of a Forbearance Agreement ("Agreement") that SCE&G entered into with the South Carolina Public Service Authority. On January 30, 2019 the Commission issued a Directive in which it requested that the Office of Regulatory Staff ("ORS") "report to the Commission within 30 days regarding their assessment of the impact of the Company's request for the Commission to acknowledge its consent to the Forbearance Agreement."

ORS has no objection to the approval of the Agreement, subject to conditions. Since the Commission Directive was issued, ORS has conducted an extensive review of the Agreement and surrounding facts to formulate a response to the Commission's request in Order No. 2019-99.

SCE&G abandoned the V.C. Summer Units 2 and 3 Project ("Project") on July 31, 2017. The Company's abandonment of the Project was approved by the Commission in Order No. 2018-804 issued on December 21, 2018. The Agreement represents the finalization of the treatment of all Project assets by terminating all of SCE&G's rights to the assets named in the Agreement.

Approval of the Agreement would further SCE&G's efforts to assert its right to obtain its desired tax treatment of the abandoned Project assets. This tax treatment, if granted by the Internal Revenue Service ("IRS"), would benefit SCE&G Ratepayers.

However, while ORS supports approval of the Agreement, we believe that the Commission should condition its approval. Specifically, it is not certain whether the IRS will ultimately accept the tax treatment sought by SCE&G for its abandonment.[i] ORS believes that Customers should be protected from any negative impact on rates if the IRS does not accept the tax treatment proposed by the Company. As the Commission is aware, SCE&G made an independent management decision to abandon the Project and assert a claim for a specific federal tax treatment. In its "Plan B-Levelized", which was presented at the Merger hearing by SCE&G/Dominion and ultimately adopted in Commission Order No. 2018-804(A), SCE&G assumed the risk that the tax treatment may not be realized by the Company. It did so by including a $600 Million Net Operating Loss Carry-Forward in the construction of the 1,000 kWh $125.26 rate proposed in Plan B-Levelized which was subsequently approved by the Commission.[ii]

In conclusion, ORS does support approval of the Agreement to further the Company's efforts to obtain a positive ruling from the IRS. However, Customers should be held harmless and the Company prohibited from seeking any adjustment in rates should the tax treatment proposed by the Company not be accepted by the IRS.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

Jeffrey M. Nelson

[i] During an Allowable Ex Parte presentation by SCE&G on November 9, 2017, in response to a question from Commissioner Bockman questioning what would happen if the IRS denied SCE&G's write down of the abandoned assets, SCE&G's James Swan testified that "We would have to pay the tax." Docket No. ND-2017-27-E, Transcript Pg. 59, lines 8 – 25.

[ii] Dockets 2017-207-E, 2017-305-E and 2017-370-E Transcript, Vol. 15, Pg. 4222, lines 2 – 24.

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