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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.

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.

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.

SCE&G'S AND DOMINION ENERGY'S POST-HEARING BRIEF IN THE FORM OF A PROPOSED ORDER

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

SCE&G'S AND DOMINION ENERGY'S POST HEARING BRIEF IN THE FORM OF A PROPOSED ORDER

EXECUTIVE SUMMARY

These dockets place two principal issues before this Commission: (1) whether to approve the proposed business combination between Dominion Energy, Inc. ("Dominion") and SCANA Corporation ("SCANA"), and (2) how to address the issue of cost recovery for SCE&G's $5 billion of incurred New Nuclear Development ("NND") costs for the V. C. Summer Project now that it has been abandoned. These questions are necessarily related. The history of the NND Project is part of this story, but more importantly, the Commission's resolution of these questions will significantly impact the future of SCE&G; its operations, rates, and service to over one million electric and gas customers; and the economic well-being of its service territory and the state of South Carolina as a whole.

Needless to say, there is a great responsibility placed upon the Commission to address these issues in a way that carefully considers the benefits of various proposals before it; the reasonableness of such proposals; and the risks and likely outcomes associated with such proposals.

As to the proposed merger, no party to this proceeding has directly opposed the combination between Dominion and SCANA. There is no question that due to the abandoned NND project and its fallout SCE&G is suffering from a weakened financial condition. There is no question that Dominion offers for SCE&G a strong partner with deep financial resources, broad operational scale and expertise, a superior record of utility service,

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outstanding leadership, and strong core values. The Office of Regulatory Staff ("ORS") acknowledges that a merger with Dominion is likely to lead to improved service and lower costs for SCE&G customers over time. While there may be some natural trepidation over an independent South Carolina institution such as SCE&G combining with a national entity like Dominion, the advantages of this transaction, particularly under the present circumstances, have been largely uncontested.

As to the NND cost recovery issue, there are, effectively, two choices before the Commission.[1] The first is the Dominion merger plan. The Joint Applicants have presented three Customer Benefits Plans ("CBPs") – Plans A, B, and B Levelized. Each of these plans involves Dominion contributing approximately $2 billion of its shareholders' resources to directly benefit SCE&G's customers through refunds and bill reductions over time, along with up to another $2.5 billion in balance sheet write-offs for the benefit of customers. These benefits are contingent on the merger. SCE&G cannot provide such benefits standing alone. And no other entity has proposed customer benefits and concessions of this magnitude.

While the Joint Applicants originally proposed Plan A, with a significant $1.3 billion up-front refund component, there has been noteworthy support during the course of this proceeding for additional long-term bill relief that prompted the development of Plans B and Plan–B Levelized. Plan–B Levelized, with its levelized cost recovery (as suggested by ORS), dramatically reduces the earlier NND component of bills in effect for a total bill reduction of approximately 15% relative to May 2017. The resulting Plan–B Levelized total

[1] While SCE&G presents its position in the record as to its No Merger Plan and Base Request, for purposes of this summary discussion is limited to the Dominion merger and ORS plans.

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bill will be *below* the experimental rates imposed by Act 258 of the General Assembly. In fact, this CBP will roll back SCE&G's overall customer electric bills to levels not seen since 2011, making them once again competitive with national and regional averages. In fact, the Plan–B Levelized industrial customer class bill will be approximately 14% *below* the South Atlantic utility regional average.

The Commission has reasonably raised questions about how a shifting approach away from up-front refunds to greater permanent electric bill relief may be received by SCE&G's customers if Plan–B Levelized were to be adopted. Dominion has committed to "ownership" of any of the CBPs sanctioned by the Commission, and has further committed to a transparent customer education plan concerning any approved electric bill relief as a condition of the merger. While not part of these dockets, but subject to judicial notice in them, the recent proposed settlement of civil ratepayer litigation against SCE&G will also, if the merger and the settlement are approved, result in near-term current and former customer refunds.

The alternative choice before the Commission with respect to NND cost recovery is the ORS-proposed plan. Under the ORS plan, the typical residential bill is approximately $116.77, representing a 20.85% reduction from May 2017 levels. By comparison, the entire NND component of rates at that time was approximately 18%. But what is more significant than the resulting bill level, in terms of the merger, is how the ORS arrives at this bill. The rate base adjustments, deferred tax assumptions, rate of return and other elements of the ORS plan, at a high level, are simply incompatible with the proposed merger economics. While ORS has ostensibly stated that it does not oppose the Dominion/SCANA merger, by its

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proposal on cost recovery, it is doing just that. The ORS Plan is a "no merger" plan – plain and simple.

The evidence is clear that the ORS "no merger" plan would perpetuate – and likely accentuate – risks to SCE&G, its customers, and the state. Continued financial distress is a virtual certainty under the ORS plan, whether that includes a bankruptcy filing, a dramatically increased cost of capital passed on to customers, an inability by SCE&G to invest as it has in the past, or a combination of these and other negative circumstances. An appeal by SCE&G of any decision adopting the ORS no merger plan is another virtual certainty, with an outcome that could result in greater cost recovery under the Base Load Review Act ("BLRA") than as proposed in connection with the merger.

In the face of this, ORS has suggested that these risks, including bankruptcy, are worth the gamble for a marginally lower rate today. Tr. at 782. Unless it doesn't work out. Tr. at 781-782.

Dominion has been very direct and transparent about what could cause the merger not to close. In doing so, Dominion is not proposing to issue ultimatums to this Commission, or intending to express anything other than unqualified respect for the Commission's ultimate authority to decide upon the questions before it in these dockets. However, the customer benefits packages presented, which are of an unprecedented nature, reflect a careful balancing of accounting, tax, credit, and shareholder return considerations, among others. Preserving the merger economics while maximizing customer benefits has been the goal, and any attempt to unscramble these packages risks upsetting the ability to allow the merger to close.

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The necessary economic terms of the merger include the level of recoverable NND rate base. Under Plan–B Levelized, the proposed recovery of $2.768 billion limits costs, and the associated prudence determination, to investments made by SCE&G on or before March 12, 2015. An avalanche of competing evidence has been presented in this matter concerning the prudence question, which in fact dominated the evidentiary hearing time. Importantly, though, the ORS does not contest the prudence of investments made before March 12, 2015, and the events surrounding the now-infamous Bechtel report and related activities all occurred after this date. By voluntarily limiting the NND rate base recovery to the March 12, 2015 level, these issues are effectively rendered moot.

By contrast, the ORS proposed rate base of $713 million, arrived at by layering in a series of regulatory liabilities on top of the March 12, 2015 limitation, would defeat the merger.

Likewise, the 20-year amortization period, 9.9% rate of return on equity ("ROE"), 5.56% cost of debt proposed by ORS, and 52.81% / 47.19% equity-to-debt capital structure assumptions are necessary components of the CBPs. The 9.9% ROE is 35 basis points below SCE&G's currently authorized ROE for both NND and base rates cost recovery, and it is consistent with Dominion's authorized ROEs for its electric operations in both North Carolina (9.9%) and Virginia (10.0% for base rates, 9.2% – 11.2% for rate adjustment clauses). It is on the low end of the current estimate of SCE&G's cost of equity by Dr. Hevert, particularly in a rising interest rate environment. More generally, in order to provide $4.5 billion in benefits to SCE&G's customers, funded by Dominion's shareholders, those

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shareholders must be entitled to the opportunity for a fair rate of return on the remaining NND investment.

The tax-related components of the CBPs are sacrosanct as well if the merger is to remain in position to close, including the Net Operating Loss Carryforward (NOLC) and Deferred Tax Asset (DTA) amounts and Tax Cuts and Jobs Act (TCJA) savings provisions. While the evidence on these issues is highly technical, the Joint Applicants submit that their proposals and assumptions will fairly and reasonably provide customers with the tax-related benefits of the NND project abandonment. Likewise, the benefit of federal tax reform will be passed on to customers, including a one-time credit for 2018; an approximately 3.5% immediate reduction in rates; and a full further evaluation of this issue in the 2020 general rate case. The contrary ORS TCJA proposal will produce a modestly lower rate initially, but its benefits are short-lived, with a revenue requirement increase in five years. The Joint Applicants' longer excess deferred income tax amortization period will extend those benefits for several decades more, promoting customer equity and rate stability.

Similarly, the Joint Applicants have presented a reasonable plan to address future cost savings related to the merger, and how to assure that such savings accrue to SCE&G's customers. The Company is committed to fully capturing merger synergy benefits in a mandatory 2020 general rate case, with savings built into rates beginning in 2021. Before that time, there will be limited, if any, net savings, given the time necessary to appropriately integrate operations and the costs to achieve any savings in the short term, which costs SCE&G and Dominion have committed not to pass on to customers. On the other hand, the ORS plan to immediately build into rates a 33% reduction in services company expense,

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largely related to headcount reductions, is draconian, unsupported by competent evidence or parallel merger experiences, and it would not preserve the merger economics.

ORS has also suggested that certain costs associated with used and useful transmission assets once designated to support the NND project be temporarily excluded from rates, recommending deferral of these costs and accrual of additional financing costs until the next general rate case. Similar to ORS' TCJA proposal, putting these costs "on the shelf" is but a temporary exercise – to chase a lower rate today – which will result in a revenue requirement increase two years from now. The assets in question are properly included in the rate base, and this can be accomplished now while still maintaining a 15% net reduction in total customer bills under Plan–B Levelized, as well as the necessary cash flows to preserve merger economics.

Finally, as to the economic terms associated with the merger, there is the question of potential securitization of NND debt. This is entirely a hypothetical question, as there is no enabling legislation in place in South Carolina. The Commission's Chairman noted at the close of the evidentiary hearing that the PSC "[doesn't] make the law, but [it does] follow the law." Tr. at 4304. Likewise, courts and commissions do not properly decide upon cases or controversies not before them.[2] Beyond this, there are multiple financial, political, and other considerations detailed in the record which call into question the potential efficacy of any speculative securitization effort. And any suggestion by the Commission that NND cost recovery would be approved in this case, but subject to a switch of plans to securitization of

[2] *United Public Workers v. Mitchell*, 330 U.S. 75, 89 (1947); *In Re: Ms. Karen Million, Complainant, v. Duke Power, Respondent*, 2003 S.C. PUC LEXIS 71, *3 (S.C.P.S.C. March 5, 2003) (finding that the South Carolina Public Service Commission is equivalent to a Court in that it must have subject matter jurisdiction).

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NND debt on entirely different terms in the future, would understandably stand in the way of the merger closing.

The Commission must also consider non-economic (or not directly economic) merger commitments and conditions to be imposed should the business combination be approved. The Joint Applicants voluntarily proposed a broad array of such conditions in their pre-filed testimony, including:

- SCE&G's headquarters will be maintained in Cayce, South Carolina;
- Dominion's board of directors will appoint a mutually agreeable current member of the SCANA Board or executive management team as a director to Dominion Energy's board of directors;
- Dominion will manage SCE&G operationally as a separate regional business under Dominion Energy;
- Dominion will not change the legal structure of SCE&G without prior authorization from the Commission;
- The Commission will continue to exercise its regulatory authority over SCE&G in the same way it does today, and Dominion will ensure local access to officers and employees of the Company as well as books and records of SCANA Services, Inc., Dominion Energy Services, Inc., and pertinent affiliates;
- Dominion will maintain compensation levels for employees of SCANA and its subsidiaries until at least January 1, 2020;
- Dominion will give employees of SCANA and its subsidiaries due and fair consideration for other employment and promotion opportunities within the larger Dominion organization, both inside and outside of South Carolina;
- Dominion will seek to minimize reductions in local employment, and in particular any involuntary reductions, by allowing some of the Dominion Energy Services, Inc. employees supporting shared and common services functions and activities to be located in Cayce where it makes economic and practical sense to do so;

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- Dominion intends to maintain SCE&G's customer service at no less than current levels and will strive for continued improvements;

- Dominion will not diminish SCE&G's focus on installing, upgrading, and maintaining facilities necessary for safe and reliable operations;

- Dominion will take steps to ensure customer service and performance levels do not degrade due to the merger, including providing quarterly SAIDI and SAIFI reporting, Call Center Performance Metrics reporting, and service quality reports, all of which will be reviewed biennially in a Commission docket;

- Dominion will maintain environmental monitoring and maintenance programs at or above current levels;

- Dominion will provide equity, as needed, to SCE&G to maintain SCE&G's capital structure consistent with regulatory guidelines and improving credit ratings;

- Dominion intends to maintain credit metrics that are supportive of strong investment-grade credit ratings for SCE&G;

- ROE should be determined based on past practice and precedent to determine a fair and reasonable return on equity;

- To the extent any long-term debt issued by SCE&G is more expensive following the merger than the average for a similarly-situated utility, the cost shall be reduced to that average for purposes of calculating overall cost of debt in base rate following merger close;

- Dominion commits to increasing SCANA's historical level of corporate contributions by $1,000,000 per year for at least five years following merger close;

- To ensure actual merger-related savings are reflected in electric rates on a timely basis, SCE&G will file a general rate case on (but not before) May 1, 2020 based on a test year ended December 31, 2019;

In addition, based on inquiries from the Commission and parties during the course of the evidentiary hearing, Dominion has further committed to the following:

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- If a cash refund is given, the Department of Defense and all other Federal Executive Agencies will have an option to select whether the refund is received as a check or credit on billing invoice;

- Non-executive employee pay protection will be extended to July 1, 2020;

- Dominion and SCE&G will develop a program to educate SCE&G customers about the benefits and implementation of any of the Joint Applicants' Merger Benefit Plans approved by the Commission and file such plan in advance with the Commission for review;

- Natural gas customers will receive bill credits refunding 2017 revenues in the form of a $2.45 million regulatory liability to be distributed on January 1, 2019, January 1, 2020, and January 1, 2021;

- Dominion pledges to maintain open and transparent communication with the Commission, ORS, and the public in South Carolina;

- Funds in the "Rabbi Trust" for senior management payments will not be included in any future cost of service;

- Senior management bonus payments charged to the NND Project will be excluded from NND rate base and not included in a future cost of service;

- Cost of the Bechtel report will not be included in rate base or cost of service;

- Consulting payments to Bill Timmerman will be excluded from rate base and cost of service;

- Civil litigation expenses associated with the merger and NND abandonment will not be included in rate base or cost of service; and

- The President of SCE&G will continue to be a South Carolina resident with his or her primary office in Cayce.

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All of these proposed conditions are stated in the Joint Applicants' Proposed Merger Conditions, entered into the record as part of Hearing Exhibit No. 169, sponsored by Prabir Purohit.[3]

The Joint Applicants have attempted to close the gap between these conditions and those proposed by ORS witness Lane Kollen in his testimony, and there is substantial overlap between them. Remaining disagreements are addressed in Section IX(C) of the Proposed Order.

The Joint Applicants have further entered into settlement agreements with Transcontinental Gas Company ("Transco") and the Solar Business Alliance ("SBA") on issues relating to future natural gas transportation capacity acquisitions, in the case of Transco, and Integrated Resource Planning and All Source Solicitations for New Electric Generation Capacity or Energy Resources, in the case of SBA. These commitments reflect reasonable proposals and concessions on these subjects, and the Joint Applicants oppose further conditions being imposed along these lines, including any conditions concerning future expansion of the Atlantic Coast Pipeline ("ACP") which may be suggested by any other Intervenor. Those objections are also addressed more fully in Section II(F) of the Proposed Order.

Finally, in the closing minutes of the evidentiary hearing, ORS presented additional proposed conditions on top of those included in its pre-filed testimony. This list, which was not accepted as part of the evidentiary record, is in many respects not the subject of any pre-filed testimony. For example, this list seeks a merger condition that the Commission lock in

[3] Hearing Ex. 169 at 22-28.

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SCE&G's Basic Facilities Charge for a decade—a rate issue not remotely in contention in this proceeding. ORS also asks the Commission to require shareholders of the Company to fund certain low-income customer benefits. Unlike the pre-filed conditions outlined by witness testimony and subject to cross examination by the parties and the Commission, ORS's eleventh-hour offering could not be meaningfully reviewed or analyzed. This issue is further addressed in Section IX(C)(3) of the Proposed Order.

Taken together, the proposed merger benefits plan and agreed conditions of the Joint Applicants, if approved by the Commission, reflect a reasonable result and one which would provide great certainty to the future of SCE&G. Plan–B Levelized reduces a $5 billion NND dilemma to less than $5 on the typical residential customer bill, matching legislative directives from earlier this year. And even absent the NND issues, the rapidly changing energy environment across the country is going to require financially viable utilities able to deploy necessary capital cost-effectively in order to meet their customers' changing needs. SCE&G will be well-equipped to survive, and to thrive, under its partnership with Dominion, removing the dark cloud currently over it.

Uncertainty and risk are familiar threats to utilities, their customers, and their investors which commissions such as this one constantly, and necessarily, assess and address. There is little doubt that significant elements of uncertainty and risk would be mitigated or eliminated under the merger plans if approved.

Under Act 258, the ORS no longer considers as part of its statutory charge the protection of the financial integrity of South Carolina's utilities or economic development in

the state. But, certainly, this Commission must consider these factors among the many which it balances to determine the best interests of customers and the public interest.

The NND story has been a difficult and acrimonious one for all involved, and moving along from it will not occur overnight. The question before the Commission is which path presents the best foot forward to a brighter future for SCE&G and its customers. In this regard, the Joint Applicants' merger and CBPs, on the one hand, and the ORS "no merger" plan, on the other, are starkly different in key respects.

In searching for a solution which is lawful, reasonable, and risk-limited, and which will put SCE&G in the best possible position to meet its public service obligations going forward in a cost-effective manner for customers, the Joint Applicants respectfully submit that the merger proposal and associated Customer Benefit Plan–B Levelized is a clearly superior option, and ask for its approval.

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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.	
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.	**SCE&G'S AND DOMINION ENERGY'S POST-HEARING BRIEF IN THE FORM OF A PROPOSED ORDER**
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.	

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the joint application and petition of South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy") (collectively the

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"Joint Applicants") in Docket No. 2017-370-E. The Joint Applicants seek an order approving a proposed transaction whereby SCE&G's parent, SCANA Corporation ("SCANA"), will become a wholly-owned subsidiary of Dominion Energy (the "Merger") and a plan for the regulatory treatment of costs associated with SCE&G's recently abandoned nuclear development project (the "Project"). The closing of the Merger is conditional on the regulatory plan that is approved here.

By Order No. 2018-81H dated July 5, 2018, the Commission consolidated the hearing in Docket No. 2017-370-E with those in Docket Nos. 2017-207-E and 2017-305-E. The Sierra Club and Friends of the Earth filed the petition in Docket No. 2017-207-E prior to abandonment of the Project asking the Commission to end funding for the Project and to grant reparations under S.C. Code Ann. § 58-27-960. The South Carolina Office of Regulatory Staff ("ORS") filed the petition in Docket No. 2017-305-E before the announcement of the merger seeking emergency rate relief under S.C. Code Ann. § 58-27-920. The Commission's rulings in Docket No. 2017-370-E are determinative of the principal issues raised in these two earlier dockets and the legal issues specifically related to them are discussed in Section X(A) and (B), below.

II. OVERVIEW OF THE MATTER AND SUMMARY OF THE BASIS FOR THE COMMISSION'S RULING

A. Origins of Docket No. 2017-370-E

In 2008, SCE&G began construction of two Westinghouse AP1000 nuclear units at the V.C. Summer site in Jenkinsville, South Carolina. Over the course of the following nine

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years, SCE&G invested approximately $5 billion dollars in the Project, an amount roughly equal to its non-nuclear electric rate base.

SCE&G abandoned the Project on July 31, 2017. This happened approximately four months after its contractor Westinghouse Electric Company, LLC ("Westinghouse" or "WEC"), filed bankruptcy and immediately after SCE&G's co-owner, the South Carolina Public Service Authority ("Santee Cooper"), ceased funding the Project. At the time of the abandonment, recovery of capital costs on its investment in the Project constituted approximately 18% or $445 million of SCE&G's annual retail electric revenue.

Shortly after abandoning the Project, SCE&G filed an application under the abandonment provisions of the Base Load Review Act (the "BLRA"), and other statutes, seeking approval of a schedule of costs regarding abandonment. SCE&G also sought authorization to amortize net investment in the Project into electric utility expenses under S.C. Code Ann. § 58-33-280(K). No change in rates was requested.

The filing triggered a strong and negative political and public reaction, and SCE&G, as requested by the General Assembly, withdrew the application approximately one month after it was filed. Committees of both the South Carolina Senate and House of Representatives opened investigations into SCE&G's management of the Project and questioned whether SCE&G concealed material information concerning the problems the Project was encountering in the 2014-2016 period. A number of civil actions were also filed against SCE&G. *See, e.g., Richard Lightsey et al. v. South Carolina Electric & Gas Co., et al.*, 2017-CP-25-335 (purported class action filed on behalf of ratepayers).

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During the fall of 2017, SCE&G proposed various permanent rate and regulatory plans to reduce impacts from the abandoned Project on its customers. None of these plans gained significant political or public support.

In late 2017, Dominion Energy approached SCE&G and SCANA to propose a business combination that would include merger benefits of approximately $3.8 billion to be provided to SCE&G's customers in resolution of the regulatory issues surrounding the Project. This amount of merger benefits appears to be unprecedented in utility mergers. The merger's benefits offered included immediate one-time payments to customers of $1.3 billion upon closing of the merger, write-offs of nuclear Project and other generation assets and regulatory assets of $1.9 billion, and reductions to on-going bills of $575 million, all of which were included in a regulatory proposal known as the "Customer Benefits Plan." To offset the financial impacts of these concessions on SCE&G, Dominion Energy offered to use capital from its balance sheet to infuse equity into SCE&G and to support the refund benefits offered under the Customer Benefits Plan. Dominion Energy also agreed to merger conditions including protections for SCE&G employees and customers, infrastructure investment and service level commitments, and continued local leadership of SCE&G's operations. SCANA announced its agreement to the plan of merger on January 3, 2018.

On January 7, 2018, the Joint Applicants initiated Docket No. 2017-370-E, seeking approval of the merger[4] and adoption of the regulatory plan proposed by Dominion Energy

[4] The Joint Application seeks Commission approval of a proposed business combination between Dominion Energy and SCANA, SCE&G's parent corporation under S.C. Code Ann. § 58-27-1300, or, alternatively, a finding that the proposed combination is in the public interest or that there is an absence of harm to South Carolina ratepayers as a result of the Merger. *See* Joint Pet. at 2.

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(the "Customer Benefits Plan"). The Joint Application also presented two disfavored alternative plans that SCE&G would be able to provide absent the merger. Those plans are the "No Merger Benefits Plan" and the "Base Request." The primary relief sought in the Joint Application was approval of the merger and adoption of the Customer Benefits Plan.

On June 28, 2018, the General Assembly adopted legislation ("Act 258") requiring, among other things, a temporary reduction in SCE&G retail electric rates of approximately 15%, amending the BLRA. The Commission implemented the mandated rate reduction by Order No. 2018-459.

B. Overview of the Regulatory Proposals in Docket No. 2017-370-E

1. Summary of the Joint Applicants' Principal Claims

To support the closing of the merger, SCE&G and Dominion Energy propose that the Commission adopt the Customer Benefits Plan–B Levelized, described below, as the appropriate resolution of the rate and regulatory matters associated with the abandonment of the Project. To that end, SCE&G and Dominion Energy request approval of a schedule of the allowable capital costs for the Project in abandonment under S.C. Code Ann. §§ 58-33-270(E) and 58-33-280(K)[5] and adoption of a number of specific accounting and ratemaking adjustments related to the Project along with voluntary bill reductions to reduce impacts on customers.[6] They also ask the Commission to find under S.C. Code Ann. § 58-33-280(K) that SCE&G's decision to abandon the Project on July 31, 2017, was prudent.

[5] That schedule is attached to the Joint Application at Exhibit 13 and, as updated, is found at Hearing Exhibit 141.
[6] These matters are discussed in more detail in Section VI below.

Since initiating Docket No. 2017-370-E, the Joint Applicants have proposed two modified versions of the Customer Benefits Plan. The first ("Plan–B") eliminates up-front payments to customers and uses that cash to reduce bills to customers going forward. The second modification ("Plan–B Levelized") levelizes the annual recovery of costs from customers. In Plan B and Plan–B Levelized, the Joint Applicants also propose to reduce the cost of equity that applies to Project investment from 10.25% to 9.9%, to reduce the cost of debt on that investment from 5.85% to 5.56% and to exclude costs incurred after March 12, 2015, and certain other allowable Project costs.

Under Plan–B Levelized, bills to a typical SCE&G residential customer would be approximately $125.26 per month, compared to $147.53 per month under the pre-Act 258 rates as of May 2017 and $125.34 per month under the Act 258 temporary rate reduction, which are the rates customers are currently paying.[7] Chart 1 compares the resulting electric bills for typical residential customers using 1,000 kw per month.

[7] The rate stated for Plan–B Levelized includes rate reductions associated with the Tax Cuts and Jobs Act ("TCJA") of 2017. The Act 258 rate, as adopted by the South Carolina General Assembly, does not reflect TCJA impacts.

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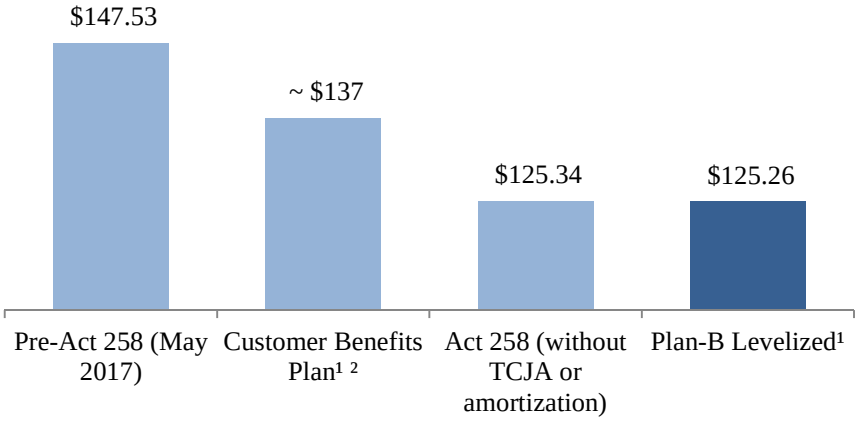
Chart 1: Comparison of Estimated Typical Residential Electric Bills



¹ Inclusive of estimated tax reform impacts and relative to May 2017 bill
² Average of Year 1 and Year 2 impact

Plan–B Levelized results in rates to residential customers that are 9% below the national average and roughly comparable to the residential rates charged by neighboring investor owned utilities. Tr. at 3424-3425. The resulting industrial rates are approximately 15% below the South Atlantic average.

Both versions of the Alternative Customer Benefits Plan involve SCE&G voluntarily writing down its investment in the Project to a level that is less than or equal to the level of expenditures as of March 2015. Doing so makes claims of imprudent expenditures after that date moot.

According to Dominion Energy, each of the three versions of the Customer Benefits Plan retains the economics of the original merger proposal while modifying the means by which merger benefits are provided to customers. Dominion Energy has testified that each of the plans is offered as a package, and that any changes that materially alter the plan

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economics or its accounting treatment would defeat the merger and result in the loss of the benefits to customers and the financial and other support Dominion Energy plans to offer SCE&G.

2. Summary of ORS's Principal Claims in this Proceeding

ORS rejects the plans proposed by SCE&G and Dominion Energy and instead proposes its own plan (the "Optimal Benefits Plan"). That plan is premised on the Commission finding that all spending on the new nuclear Project after March 12, 2015, was imprudent and should be disallowed. ORS does not allege that the Project should have been cancelled on March 12, 2015, or any other date prior to July 31, 2017, and does not challenge the prudence of investments made prior to March 12, 2015. Instead, ORS alleges that SCE&G's failure to disclose certain information to ORS and the Commission in past BLRA cases is in itself sufficient grounds to invalidate Project costs after March 12, 2015, even though the continuation of construction was itself admittedly prudent. *See* Tr. at 661-7. There is no statutory or other legal basis for this assertion.

The bases for ORS's position are described in detail below. In short, ORS identifies March 12, 2015, as the date after which costs should be disallowed because this date is when SCE&G filed its petition in Docket No. 2015-103-E. Tr. at 702. The petition in that docket sought Commission approval of a newly baselined cost and construction schedule for the Project, which had been provided some months earlier to SCE&G by Westinghouse and its consortium partner Chicago Bridge & Iron ("CB&I") (collectively, the "Consortium" or "WEC/CB&I"). ORS asserts that in its 2015 petition, SCE&G should have disclosed to ORS and the Commission certain internal analysis regarding the Consortium's cost estimate

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at completion ("EAC") for the Project. Tr. at 275-76. That analysis was conducted by SCE&G's new nuclear finance team to support on-going commercial negotiations with Westinghouse and CB&I concerning schedule mitigation options and payment responsibility for the increased costs under that new schedule. *Id.*; Tr. at 3734. ORS similarly contends that SCE&G's 2015 filing was improper because it did not disclose certain information regarding the Bechtel assessment, which began in August 2015.

Rates under the Optimal Benefits Plan: Under the Customer Benefits Plan in its various forms, The Joint Applicants have agreed to voluntarily forego recovery of all Project costs incurred after March 12, 2015, if the merger is approved and Plan–B Levelized is adopted. Therefore, the prudency challenges raised by ORS do not drive the rate differences between the ORS Optimal Benefits Plan and Customer Benefits Plan–B Levelized. Instead, through various accounting adjustments and rate making approaches, the Optimal Benefits Plan reduces SCE&G retail electric revenues to levels that are lower than those under Plan–B Levelized.

As a result of these proposed disallowances and adjustments, the Optimal Benefits Plan produces monthly charges to a typical SCE&G residential customer of $116.77 compared to $147.53 under the pre-Act 258 rate and $125.34 under the Act 258 temporary rate reduction, which is the rate customers are currently charged.[8] This is $8.49 per month less than the comparable rate of approximately $125.26 that would be charged under Plan–B

[8] The rate stated for the Optimal Benefits Plan and Plan–B Levelized include rate reductions associated with the TCJA. The Act 258 rate, as adopted by the South Carolina General Assembly, does not reflect TCJA impacts.

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Levelized.[9] But more importantly, the Optimal Benefits Plan is not structured to achieve the specific accounting and regulatory treatment that is required to support Dominion Energy's investment in providing merger benefits to customers while maintaining SCE&G's ongoing financial and credit metrics. Dominion Energy's Chief Executive Officer, Mr. Thomas Farrell, has testified unequivocally that adoption of the Optimal Benefits Plan will result in Dominion Energy not closing the merger.

3. The Principal Claims of Other Parties

Apart from the Joint Applicants and ORS, there are twenty other parties in this proceeding. Many of these parties have aligned themselves in support of ORS and the Optimal Benefits Plan. Others, like the Speaker of the South Carolina House of Representatives, have come out in favor of the Customer Benefits Plan, specifically in the form of Plan–B Levelized. Other parties have asserted that deeper disallowance should be required. These specific claims are discussed in more detail in Section IV below. [10]

4. The Operative Decision before the Commission

In issuing its Order in this matter, the Commission must answer a crucial question: what is the best result for SCE&G's customers going forward? Within the bounds of the law and the evidence of record in this case, the Commission must decide whether customers' interests are better served by adopting the Customer Benefits Plan–B Levelized and allowing

[9] The Act 258 rate does not reflect TCJA impacts.

[10] In discussing the financial and other risks to customers, the risks identified with the Optimal Benefits Plan apply with equal or greater force to the more draconian proposals of other intervenors. Discussion of the Optimal Benefits Plan applied, a fortiori, to those proposals.

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the Dominion Energy merger to close, or, assuming it is legally permissible to do so, adopting ORS's Optimal Benefits Plan and letting the Dominion Energy merger fail.

These questions are in no sense alien to the legal standards under which the Commission operates. The South Carolina Supreme Court has held, based on U.S. Supreme Court authority, that ratemaking does not require "the use of any single formula or combination of formulae" but instead "involves the making of pragmatic adjustments" such that "it is the result reached not the method employed which is controlling." *Southern Bell Tel. & Tel. Co. v. Public Service Comm'n*, 270 S.C. 590, 596-97, 244 S.E. 2d 278, 281 (1978) (*"Southern Bell")* (quoting *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) (*"Hope"*)). Utility investors have a lawful and constitutionally protected interest in the financial soundness of the utilities in which they invest just as customers have an interest in being served by utilities that have the financial wherewithal to provide good quality service and to invest in safe, reliable and efficient utility systems. *See Hope*, 320 U.S. 591 at 603. These are among the interests which the Commission is lawfully empowered to consider, evaluate and balance in a pragmatic and non-formulaic way. The Commission's goal is to reach a conclusion that best protects the long- and short-term interests of both customers and investors.

The importance of the Commission's role in striking the balance required to determine just and reasonable rates has greatly increased with the passage of Act 258. In past proceedings, ORS acted to lead and facilitate settlement agreements which balanced utility and consumer interests. In practically all of the proceedings conducted under S.C. Code Ann. § 58-33-270(E), ORS presented settlement agreements it had developed among

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itself, SCE&G and other interests. The Commission reviewed those settlement agreements to ensure that they complied with the law and the evidence.

Act 258 of 2018, Section 8, repealed Act 175 of 2004, Section B(3), which authorized the OS consider the "preservation of the financial integrity of the state's public utilities" as part of it assessment of the public interest. However, under S.C. Code Ann. § 58-4-10(B), the public interest is still defined to include the "preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." Without preservation of a utility's financial integrity, the public interest of South Carolina in preserving "continued investment in" facilities so as "to provide reliable and high quality utility services" cannot be met. Thus, assessing the public interest still today must account for the financial integrity of the utility in order to fulfill the demands of the public interest. The constitutional standards set forth in *Bluefield* and *Hope* and adopted by the South Carolina Supreme Court require no less. Thus, establishing just and reasonable rates requires consideration of the financial integrity of the utility. *Southern Bell Tel. & Tel. Co. v. Public Service Comm'n*, 270 S.C. 590, 596-97, 244 S.E. 2d 278, 281 (1978) (quoting *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944)). And now, after the enactment of Act 258, the Commission is the regulatory body with primary responsibility for considering and deciding the public interest and determining just and reasonable rates that are consistent with the public interest and the constitutional standards of *Bluefield, Hope*, and *Southern Bell.*

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5. Balancing the Interests

For reasons that are both pragmatic and legal, the Commission has decided that SCE&G's customers will be best served by adopting Plan–B Levelized and approving SCANA's proposed merger with Dominion Energy. As discussed in more detail in the latter sections of this order, both of these actions are within the scope of the Commission's legal powers and are fully supported by the facts of record in this proceeding.

Plan–B Levelized, backed by Dominion Energy's balance sheet, will provide immediate and sustained bill reductions to customers coupled with strong assurances that SCE&G will continue to operate as a financially sound, reliable and responsible utility going forward. SCE&G's rates will be brought into alignment with neighboring utilities and will be well below national averages. This result will be achieved without material risk to SCE&G's solvency, creditworthiness or ability to conduct its future utility operations safely, reliably and efficiently. No other option before the Commission provides this combination of benefits.

Certain of the considerations relevant to the rejection of the Optimal Benefits Plan are as follows:

(a) Customers' Interest in SCE&G Financial Integrity

By putting the merger at nearly certain risk of failure, the Optimal Benefits Plan creates the likelihood that SCE&G's customers would be served by a financially crippled

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utility that may have difficulty supporting effective utility operations.[11] The specific risks include:

(1) The risk that a credit-impaired SCE&G would not be able to continue to invest in its utility operations at the levels needed to sustain the quality of reliability and utility service that customers rightfully expect;

(2) The risk (or likelihood) that SCE&G's cost of capital and cost of utility service would increase materially;

(3) The risk that SCE&G could not absorb future financial shocks without impairment of its solvency; and

(4) The risk that SCE&G could lose access to capital to support its operations entirely in adverse market conditions.

The likelihood of adverse financial impacts from adopting the Optimal Benefits Plan cannot be ignored. In reliance on duly issued orders of this Commission, SCE&G has issued approximately $3.5 billion in long-term corporate bonds to finance the Project. This amount represents more than 60% of SCE&G's approximately $5.5 billion in outstanding bonds. These bonds are secured by first mortgage liens on the SCE&G's electric assets and have been matched by a generally comparable amount of equity capital used to finance the Project.

As a result of the political and regulatory uncertainty surrounding its finances, SCE&G's issuer ratings are currently set at or below minimum investment grade by its three credit rating agencies. Tr. at 2020-19–2020-20, 2024-6–2024-9. The rating agencies have

[11] In discussing the financial and other risks to customers, the risks identified with the Optimal Benefits Plan apply with equal or greater force to the more draconian proposals of other intervenors.

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clearly indicated that additional downgrades of SCE&G's credit rating to levels that are below or more deeply below investment grade could be forthcoming. Tr. at 2020-34. The rating agencies have clearly signaled that such downgrades are likely if rate reductions of the magnitude proposed in the Optimal Benefits Plan are imposed without the financial support that the Dominion Energy merger can provide. Tr. at 2024-7. Also, as a result of the political and regulatory uncertainty surrounding these matters, SCANA's equity investors lost more than $3.0 billion in value prior to the announcement of the Dominion Energy merger proposal. Tr. at 3488-45.

SCE&G has presented analyses that indicate that adoption of the Optimal Benefits Plan would result in write downs, including capital cost impairments, of $2.5 billion and a return on equity of only 7.66%. Tr. at 1784-4. These facts indicate that returns under the Optimal Benefits Plan would be insufficient to support SCE&G's creditworthiness and financial stability. These analyses are based on accepted rate-making methods and publicly reported data and are credible assessments of future operating results. The evidence of record establishes that there would be substantial risk to SCE&G's ongoing creditworthiness and ability to invest in its utility system if the Optimal Benefits Plan were adopted.

(b) Customers' Interest in SCE&G's Parent Company

As several witnesses pointed out, adoption of the Optimal Benefits Plan and breakup of the Dominion Energy merger would make SCANA the likely target of future takeover attempts. Tr. at 2353-43; 2385-86. In that case, there would be no way to guarantee who the next potential acquirer might be and whether SCANA shareholders would vote to support another offer with the required two thirds majority. The evidence of record shows that

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Dominion Energy has a track record for safe, reliable, and efficient utility operations, a strong customer service culture and a demonstrated commitment to investing in its utility systems and the communities it serves for the long term. Tr. at 2993-11–2993-14, 3010-12–3010-13. Adopting the Optimal Benefits Plan puts SCANA's customers at risk that SCE&G's future parent might be less committed to these values than Dominion Energy is, or less capable of achieving them.

(c) Customers' Interest in Avoiding Constitutional and Statutory Risks on Appeal

Adopting the Optimal Benefits Plan would require this Commission to abrogate four final and unappealable orders previously entered with respect to the Project.[12] All four orders were based on settlement agreements or audit reports that ORS produced after having been given a full opportunity to conduct discovery and audits of the relevant facts. All affirmed that it was lawful and proper for the Commission to issue the orders in question. The Commission would have to find those orders to be null and void. As discussed in Section X below, treating these orders as null and void would raise serious legal questions about the Commission's Order in this case.

Furthermore, under the Takings Clause of the United States Constitution, rates which do not provide just and reasonable benefits to a regulated utility constitute an illegal confiscation of private property. ORS admits that it has not conducted any financial analysis to determine if the rates proposed in the Optimal Benefits Plan result in returns that are "just and reasonable" as those terms have been defined by the courts. Having identified these

[12] Order Nos. 2016-794, 2016-758, 2015-661, and 2015-712.

same constitutional issues, the General Assembly considered analyses showing that imposing a 15% rate reduction on a temporary basis was constitutionally supportable while a deeper or more permanent reduction might not be. The Optimal Benefits Plan goes well beyond the Act 258 rate reduction both in amount and in permanence.

In its testimony, SCE&G provided an analysis of the impact of Optimal Benefits Plan on its earnings and financial integrity, mentioned above, which strongly supports a finding that the rates proposed by ORS would not pass constitutional muster. Tr. at 2022-17–2022-18. There is no contrary evidence in the record.

For these reasons, the possibility of a successful challenge to the Optimal Benefits Plan on constitutional or statutory grounds is a significant risk to customers. Dominion Energy's testimony indicates that before that challenge could be heard, the Dominion Energy merger would have been terminated and the benefits that it supports would no longer be available. In such circumstances, the rate options remaining open at that time might be far less favorable to customers than those that would have been available had Plan–B Levelized been adopted and the merger closed. Adopting the Optimal Benefits Plan represents an all-or-nothing risk for customers that is avoided by adoption of Plan–B Levelized.

(d) Customers' Interest in Avoiding Appeal Risks Associated with Factual Prudency Issues

As part of the Plan–B Levelized proposal, Joint Applicants have agreed to forego recovery of NND Project costs incurred after March 12, 2015. Tr. at 2821-5. Involuntarily imposing the Optimal Benefits Plan takes this voluntary proposal off the table and requires ORS to establish as a matter of fact that all investments after that date were imprudent.

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There is substantial risk that ORS could not sustain such a finding successfully if challenged on appeal. The factual findings ORS proposes here are directly contrary to the position it put forward through signed settlement agreements, sworn testimony and audit reports provided to the Commission in multiple prior proceedings. Order No. 2016-794 ex. 1 at 4; James Settlement Testimony at 4, Docket No. 2015-103-E (June 29, 2015). ORS's position is contradicted by express statements made in settlement agreements and in testimony where ORS affirmed that it had been given all information required to inform its position supporting the prudency of continued investment in the Project. James Settlement Testimony at 4, Docket No. 2015-103-E (June 29, 2015) (discussing the "enormous" amount of data reviewed by ORS). In addition, ORS's sworn testimony in those proceedings establishes that it was fully aware of the risks to construction and cost schedules at all relevant times. Order No. 2016-794 ex. 1 at 4; James Settlement Testimony at 4, Docket No. 2015-103-E (June 29, 2015). ORS's understanding of these challenges calls into question the claim that disclosure of these purportedly non-disclosed documents would have had a material effect on ORS's support for the Project during that time. *Id.* Furthermore, ORS has not pointed to any statutory or other legal disclosure requirement which it alleges SCE&G violated.

As to materiality, the economic analyses provided by SCE&G's witnesses established that it would have taken between approximately $3.1 billion and $3.8 billion of additional costs to have made the Project uneconomical based on what was known at the time of the 2015 and 2016 proceedings, respectively. Tr. at 2414-24, 2414-27. The amounts of additional costs ORS now claims were concealed from it are far less.

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Adopting the Optimal Benefits Plan puts customers at risk for the loss of important benefits provided under the Dominion Energy plans should ORS's factual assertions not be sustainable. This represents a potential risk to customers that is excessive given the value of what could be lost.

(e) Conclusion Concerning the Balancing of Interests

In the sections of this Order that follow, the Commission will review and make findings concerning each of the claims discussed here. Nothing in the present summary of the Commission's reasons for adopting the plan proposed by Dominion Energy is meant to short-change issue-specific legal and factual analysis. However, it is important to recognize that customers' interests strongly support the Commission adopting Plan–B Levelized, as voluntarily offered by SCE&G and Dominion Energy, rather than involuntarily imposing ORS's Optimal Benefits Plan with the risks that such a decision entails. The incremental, short-term benefits ORS claims would be provided to customers by the Optimal Benefits Plan do not justify the risk, uncertainty and loss of long-term benefits that would result from rejecting Plan–B Levelized and potentially causing Dominion Energy to abandon the merger.

C. Prior Orders

1. Prior BLRA Orders

On March 2, 2009, the Commission issued Order No. 2009-104(A), which approved the prudency of the Project, the choice of contractors, the terms of the EPC Contract, and an initial capital cost schedule and construction schedule for the Project. As approved in that

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order, the capital cost for the Project was $4.5 billion in 2007 dollars.[13] In that proceeding, risk factors for the Project were presented and evaluated and initial contingency amounts were established. With forecasted escalation, this resulted in an estimated cost for the Project at completion of $6.3 billion in future dollars. The construction schedule approved in Order No. 2009-104(A) anticipated that Unit 2 would be completed by April 1, 2016, and the Project as a whole would be completed by January 1, 2019. The South Carolina Energy Users Committee ("SCEUC") appealed Commission Order No. 2009-104(A) to the South Carolina Supreme Court. An appeal from Order No. 2009-104(A) was also taken by Friends of the Earth. *Friends of Earth v. Pub. Serv. Comm'n*, 387 S.C. 360, 692 S.E.2d 910 (2010). In that case, the Court affirmed the Commission's determination that the decision to construct the units was reasonable and prudent. *See id.*

In April 2009, SCE&G received the initial site-specific, integrated construction schedule for the Project. It was compiled by Westinghouse and Stone & Webster, a subsidiary of the Shaw Group, who were the contractors for the Project under the EPC Contract. At that time, SCE&G filed a proceeding under S.C. Code Ann. § 58-33-270(E) (an "update proceeding") for approval of the updated construction schedule for the Project and an updated capital cost schedule, which reflected the new schedule of cash flows associated with the updated construction schedule. The updated schedules did not alter the total estimated capital cost for the Units of $4.5 billion in 2007 dollars, nor did they change the

[13] Unless otherwise noted, all dollar amounts used in this Order reflect the cost associated with SCE&G's 55% share of the ownership of the Units. Unless otherwise noted, amounts other than those associated with the October 2015 Amendment to the Engineering, Procurement and Construction Agreement and the option it contains are expressed in 2007 dollars. For those two items, amounts are expressed in future (*i.e.*, escalated) dollars.

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estimated completion dates for the Units. In Order No. 2010-12 dated January 21, 2010, the Commission approved the updated schedules.

On August 9, 2010, the South Carolina Supreme Court issued its decision in SCEUC's appeal of Order No. 2009-104(A), *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587 (2010) (the "Opinion"). In the Opinion, the Court ruled that contingency costs were not permitted as a part of approved capital cost schedules under the BLRA. Among the enumerated items of disallowed contingencies were contingencies based on risks related to the units of labor required to complete the Project which is what productivity factors measure. The effect of this decision was to require the removal of $438.3 million in projected contingency costs from the capital cost schedules approved in Order No. 2009-104(A) and Order No. 2010-12.

In the Opinion, the Supreme Court acknowledged that S.C. Code Ann. § 58-33-270(E) allowed SCE&G to petition the Commission to update the capital cost schedule for the Units as SCE&G identified and itemized non-contingent items of cost. The Court noted, "the General Assembly anticipated that construction costs could increase during the life of the Project. Under § 58-33-270(E), SCE&G may petition the Commission for an order modifying rate designs." *S.C. Energy Users Comm.*, 697 S.E.2d at 592-93.

In response to the Opinion, SCE&G filed a petition in November 2010 for approval of an updated capital cost schedule with contingencies eliminated. The Commission approved that schedule in Order No. 2011-345, dated May 16, 2011. Because the amount of the newly identified costs was less than the amount of the Owner's contingency that was removed from the approved forecasts, the cost schedule approved in Order No. 2011-345

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showed a reduction in the total estimated capital cost for the Units from $4.5 billion to $4.3 billion.

On May 15, 2012, SCE&G petitioned the Commission pursuant to S.C. Code Ann. § 58-33-270(E) for an order approving an updated construction schedule and capital cost schedule for the Units. SCE&G based its request primarily on the fact that the Nuclear Regulatory Commission ("NRC") had issued the Combined Operating Licenses (the "COLs") for the Units approximately nine months later than originally anticipated. This resulted in a rescheduling of the substantial completion dates for the Units. Based on the information available at that time, the updated substantial completion dates reflected a delay for Unit 2 until March 15, 2017, and an acceleration of Unit 3 to May 15, 2018. SCE&G's request also reflected a settlement agreement between SCE&G and WEC/Shaw related to cost increases caused by the COL delay, design changes to the AP1000 Shield Building, redesign of certain structural modules, and unanticipated subsurface rock conditions for Unit 2. Additionally, SCE&G requested updated Owner's Costs based on information and experience gained over the course of the Project, new safety standards issued after the Fukushima event and other matters. SCE&G also included three smaller change orders in its schedules of anticipated costs.

In July of 2012, CB&I announced its intention to acquire the Shaw Group. When that transaction closed in February of 2013, CB&I became a member of the Consortium and a prime construction contractor on the Project.

In Order No. 2012-884 dated November 15, 2012, the Commission approved updating the estimated capital cost for the Units from $4.3 billion to approximately $4.5

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billion in 2007 dollars. The Commission also approved a new milestone schedule tied to substantial completion dates for Units 2 and 3 of March 15, 2017, and May 15, 2018, respectively. Order No. 2012-884 was appealed to the South Carolina Supreme Court. The Supreme Court affirmed the Commission's ruling in all respects in *S.C. Energy Users Comm. v. S.C. Elec. & Gas*, 410 S.C. 348, 764 S.E.2d 913 (2014).

On March 12, 2015, SCE&G filed a petition seeking revised cost and construction schedules principally resulting from a revised, fully integrated schedule which WEC/CB&I had provided to SCE&G some months earlier. That new schedule included several alternative completion dates and associated mitigation plans with associated cost schedules. SCE&G's Project construction team had reviewed that schedule and the potential mitigation plans with WEC/CB&I in the months preceding the filing and was in active commercial negotiations with WEC/CB&I concerning payment responsibility and other matters up to the filing and thereafter. SCE&G sought Commission approval of an updated cost schedule increasing costs by $698.2 million and an updated construction schedule showing completion dates for Units 2 and 3 for June 19, 2019, and June 16, 2020, respectively.

The primary issues in Docket No. 2015-103-E were resolved by a settlement agreement, which ORS, the SCEUC, SCE&G, and others signed. Under the terms of the settlement, the ORS and other settling parties stipulated that the agreement constituted a fair, reasonable, and full resolution of issues in the proceeding. ORS and other settling parties further stipulated that the modified construction and capital cost schedules were not the result of imprudence by SCE&G and were fully consistent with the BLRA. ORS affirmed that it had been provided all information necessary to evaluate the proposed schedule changes.

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In an Order dated September 10, 2015, the Commission approved the settlement and revisions to the construction schedules, BLRA milestones, and guaranteed substantial completion dates. No parties appealed the Commission's September 10th Order.

On May 26, 2016, SCE&G filed a petition with the Commission pursuant to S.C. Code Ann. § 58-33-270(E), seeking an order approving an updated construction schedule and capital cost schedule for the Units. SCE&G requested new schedules for the Project that reflected the 2015 Amendments to the EPC Contract, the release of CB&I from the Consortium, the hiring of Fluor as subcontractor, Westinghouse's agreement to a fixed price contract, and an extensive restructuring of the EPC Contract. SCE&G requested that the Commission modify the construction schedules and accompanying BLRA milestones to reflect new guaranteed substantial completion dates of August 31, 2019, and August 31, 2020, for Unit 2 and 3, respectively. SCE&G also requested an increase to the capital cost estimates of approximately $846 million in future dollars, which was approximately 21% higher than the comparable cost schedule approved in Order No. 2009-104(A).

Certain parties, including ORS and SCE&G, entered into a settlement agreement and, again, stipulated that the agreement would fully resolve all issues in that proceeding. As with the prior settlement, ORS and other settling parties further stipulated that the modified construction and capital cost schedules were not the result of imprudence by SCE&G and were fully consistent with the BLRA. In her September 1, 2016 testimony before the Commission, ORS witness Allyn H. Powell characterized the settlement as reasonable. In an Order dated November 28, 2016, the Commission approved the Settlement and revised construction and cost schedules accordingly. No parties appealed the Commission's Order.

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2. Prior Revised Rates Orders

The initial revised rates adjustment was contained in Order No. 2009-104(A). Thereafter, SCE&G proposed revised rates adjustments each year from 2009 to 2016. In all cases, the revised rates applications were reviewed and audited by ORS in strict conformity with the BLRA. In all cases, the Commission entered revised rates orders in reliance upon audit reports from ORS affirming the validity of the request and the amounts that were properly considered to be prudent and necessary capital costs of a BLRA approved Project.[14]

D. Interventions

1. Interventions in the Friends of the Earth and Sierra Club Docket

Timely petitions to intervene in Docket No. 2017-207-E were received from Central Electric Power Cooperative, Inc. ("Central") and The Electric Cooperatives of South Carolina, Inc. (the "Cooperatives"); Office of Regulatory Staff; and the South Carolina Coastal Conservation League ("SCCCL").

On September 6, 2017, the following persons and entities collectively moved to intervene in Docket No. 2017-207-E: Joseph Cali, Joan Brown, John Hull, John Halley, Linda Ensor, Tim Higgins, Jim Emery, Scott Turner, Gerald Ziegler, Steven C. Anderson, Lester Dempsey, Larry Hargett, Martin Karl Sessler, Peggy Bangle, Christine Czarnik, Wiley Johnson, Joseph Meehan, David Messinger, Henry Proctor, Ashley Nicole Croy, Glenda Bolyn, Eugene Lemieux, Martin Boyle, Judith Marshall, Christian Beiler, James McDonald,

[14] The orders in question were Order No. 2009-104(A), Docket No. 2008-196-E; Order No. 2009-696, Docket No. 2009-211-E; Order No. 2010-625, Docket No. 2010-157-E; Order No. 2011-738, Docket No. 2011-207-E; Order No. 2012-761, Docket No. 2012-186-E; Order No. 2013-680(A), Docket No. 2013-150-E; Order No. 2014-785, Docket No. 2014-187-E; Order No. 2015-712, Docket No. 2015-160-E; Order No. 2016-758, Docket No. 2016-224-E.

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the Dorchester County Republican Party, and the Dorchester County Taxpayers Association. On August 1, 2018, these parties moved to withdraw their motion to intervene. The Commission granted the motion to withdraw on August 15, 2018.

2. Interventions in the ORS Request for Emergency Rate Relief Docket

In Docket No. 2017-305-E, timely petitions to intervene were received from AARP South Carolina ("AARP"); Central; the Cooperatives; CMC Steel South Carolina ("CMC Steel"); Dino Teppara; Frank Knapp, Jr.; Friends of the Earth; Lynn Teague; Sierra Club; South Carolina Attorney General ("Attorney General"); SCCCL; SCEUC; South Carolina Solar Business Alliance, Inc. ("SCSBA"); Southern Current, LLC ("Southern Current"); Speaker of the South Carolina House of Representatives James H. "Jay" Lucas; and Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart").

3. Interventions in the SCE&G and Dominion Energy Merger Approval Docket

In Docket No. 2017-370-E, timely petitions to intervene were received from Frank Knapp, Jr.; AARP; the Cooperatives; Central; City of Orangeburg; CMC Steel South Carolina; Friends of the Earth; Lynn Teague; ORS; Sierra Club; the Attorney General; SCEUC; Santee Cooper; SCSBA; Southern Alliance for Clean Energy ("SACE"); SCCCL; Speaker James H. Jay Lucas and the South Carolina House of Representatives; United States Department of Defense and all other Federal Executive Agencies ("DOD"), Wal-Mart; and William T. Dowdey. Transcontinental Gas Pipeline Company, LLC ("Transco") petitioned to intervene out of time, and the Commission granted the request.

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E. Notice

In compliance with S.C. Code Ann. § 58-33-270(E), SCE&G provided timely notice of the Joint Petition in Docket No. 2017-370-E to ORS. Pursuant to S.C. Code Ann § 58-4-10 (2015), ORS is automatically a party to this proceeding. Notice of the other two dockets was provided by posting on the Commission's website.

By letter dated February 6, 2018, the Commission's Clerk's Office instructed SCE&G to publish by March 22, 2018, a Revised Notice of Filing for Docket No. 2017-370-E in newspapers of general circulation in the area where SCE&G serves retail electric customers and to furnish by March 22, 2018, the Revised Notice of Filing by U.S. Mail via bill inserts or by electronic mail to customers who agreed to receive notice by electronic mail. The Clerk's Office also instructed SCE&G to provide it proof of publication by April 12, 2018. On March 6, 2018, and March 27, 2018, SCE&G timely filed affidavits with the Commission demonstrating that the Revised Notice of Filing had been duly published and furnished to customers in accordance with the instructions of the Clerk's Office.

By letter dated August 16, 2018, the Clerk's Office instructed SCE&G to publish a Notice of Public Night Hearings by U.S. Mail via bill insert by August 22, 2018 (the "Night Hearing Notices"). The Clerk's Office also instructed SCE&G to provide proof of publication of the Night Hearing Notices by August 29, 2018. On August 21, 2018, SCE&G filed with the Commission affidavits demonstrating that the Night Hearing Notices for all three dockets had been duly published in accordance with the instructions of the Clerk's Office.

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F. Settlements

1. The Settlement with Transco

On October 24, 2018, the Joint Applicants and Transco filed a settlement agreement with this Commission which places certain conditions on SCE&G when it seeks to secure more than 100,000 dekatherms per day (dt/d) of additional natural gas transmission capacity from an interstate pipeline. This agreement is incorporated by reference and accepted in its entirety, without change, in this Order. In doing so the Commission rejects arguments by SCCCL and SACE and their witness, Gregory M. Lander, seeking to modify the settlement and inject issues that are well beyond the scope of this proceeding. There are other adequate remedies available to SCCCL and SACE to address SCE&G's fuel costs and affiliate transactions, and those matters will remain subject to the Commission's review in all future relevant proceedings.

In summary, these conditions include (1) a requirement to issue an RFP to obtain capacity exceeding 100,000 dt/d; and (2) an agreement not to contract for capacity with an interstate pipeline unless such a contract is either with the least cost provider of such capacity or this Commission approves the contract. Further, the parties agreed to define a contract as being "for more than 100,000 dt/d" even if it takes the form of two or more contracts, and/or contains different material terms, if such contracts arise out of the same interstate pipeline Project or the same capacity posting.

2. The Settlement with SCSBA

On November 30, 2018, the Joint Applicants and SCSBA filed a settlement agreement with this Commission which provides certain conditions on the Integrated

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Resource Planning ("IRP") process through 2023. This agreement is incorporated by reference and accepted in its entirety, without change, in this Order.

In summary, these conditions include (1) the ability of intervenors from the previous year's IRP to request a limited evaluation of no more than 5 alternative scenarios; (2) the required presentation of at least 3 alternative portfolios alongside the preferred portfolio to this Commission; (3) IRP sensitivities for fossil fuel prices with an imputed value of at least $25/ton for carbon emissions; and (4) Dominion Energy will fund an outside consultant to audit SCE&G's IRP methodologies and submit an independent report to the Commission.

Also, Dominion Energy agrees that SCE&G will not procure or apply to certify a new generating resource with a nameplate capacity of more than 75 MW without first conducting an all-source competitive RFP, and SCE&G will fund pursuant to S.C. Code Ann. § 58-4-100 (2015) an Independent Evaluator ("IE") agreed upon by SCE&G and ORS, which IE will report to the Commission regarding the transparency, completeness and integrity of SCE&G's bidding process and evaluation of bids. SCE&G will commit to a stakeholder process to (1) develop a protocol for the curtailment of dispatchable resources in circumstances where curtailment of solar resources is necessary due to system conditions or otherwise required, (2) devise and propose modifications to SCE&G's interconnection procedures to address operating conditions that may necessitate curtailment, and (3) consider an additional power purchase agreement ("PPA") form to accommodate the addition of energy storage resources to solar generating facilities that currently have PPAs with SCE&G.

Further, SCE&G agrees to make fixed price contracts at avoided costs available to independent power producers for durations of not less than ten years, apply to the

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Commission for approval of avoided cost rates for storage as a separate resource or for technology-neutral avoided cost rates for dispatchable renewable generating facilities such as solar plus storage, and add certain clarifying language regarding Variable Integration Charges in new Public Utility Regulatory Policies Act of 1978 (PURPA) Qualifying Facility power purchase agreements.

G. Hearing

1. Consolidation of the Dockets

On January 31, 2018, in Order No. 2018-80, the Commission consolidated the three SCE&G Nuclear Dockets, Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E. In Order 2018-81H, the Commission set forth a procedural schedule and directed all parties to file direct, responsive, rebuttal, and surrebuttal testimony and exhibits. Although the Commission established separate pre-filing schedules for each docket, the Commission ordered that the three dockets would be heard together in a single, consolidated proceeding beginning at 10:00 a.m. on November 1, 2018. Any party to one or more of the dockets at issue would be deemed parties to all three dockets, and each witness offered would be permitted to present pre-filed testimony and exhibits on the merits of all three matters.

2. Participating Parties and Attorneys

The Commission conducted an evidentiary hearing on this matter beginning on November 1, 2018, and concluding on November 21, 2018. The Honorable Comer H. Randall, Chairman, presided. SCE&G was represented by K. Chad Burgess, Esq.; Belton T. Zeigler, Esq.; David L. Balser, Esq.; Jonathan R. Chally, Esq.; Brandon R. Keel, Esq.; Julia C. Barrett, Esq.; Matthew W. Gissendanner, Esq., and Mitchell Willoughby, Esq. Dominion

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Energy, Inc. was represented by Lisa S. Booth, Esq.; Joseph K. Reid, III, Esq.; and J. David Black, Esq.

ORS was represented by Nanette S. Edwards, Esq.; Jeffrey M. Nelson, Esq., Andrew M. Bateman, Esq.; Steven Hamm, Esq.; Matthew T. Richardson, Esq., James E. Cox, Esq.; and Eric B. Amstutz, Esq. Friends of the Earth and Sierra Club were represented by Robert Guild, Esq. Wal-Mart was represented by Stephanie U. Roberts Eaton, Esq. Speaker James H "Jay" Lucas and the South Carolina House of representatives were represented by Michael Anzelmo, Esq. and Robert E. Tyson Jr., Esq.

The Cooperatives were represented by Frank R. Ellerbe, III, Esq.; Christopher S. McDonald, Esq.; Christopher S. Koon, Esq.; and Kevin K. Bell, Esq. SCCCL and SACE were represented by Elizabeth Jones, Esq.; J. Blanding Holman, IV, Esq.; William C. Cleveland, IV, Esq., and Gudrun Elise Thompson, Esq. SCEUC was represented by Scott Elliott, Esq.

The Attorney General was represented by J. Emory Smith, Jr., Esq. and Robert D. Cook, Esq. SCSBA was represented by Richard L. Whitt, Esq., Benjamin L. Snowden, Esq., and Joseph Dowdy, Esq. The AARP was represented by John B. Coffman, Esq., Susan B. Berkowitz, Esq., and Adam Protheroe, Esq.

DOD was represented by Emily W. Medlyn, Esq. Santee Cooper was represented by William C. Hubbard, Esq.; J. Michael Baxley, Esq.; and Carmen Harper Thomas, Esq. Southern Current, LLC was represented by Richard Whitt, Esq.

Transco was represented by Jefferson D. Griffith, III, Esq. Frank Knapp, Jr., William T. Dowdey, and Lynn Teague participated pro se.

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3. Testifying Witnesses

In support of the Joint Petition, SCE&G presented the testimony of Jimmy E. Addison, President and Chief Executive Officer of SCANA Corporation and Chief Executive Office of SCE&G; Iris N. Griffin, Senior Vice President, Chief Financial Officer and Treasurer of SCANA Corporation and SCE&G; Robert B. Hevert, Partner of Scott Madden, Inc.; Ellen Lapson, Founder and Principal of Lapson Advisory, a division of Trade Resources Analytics, LLC; R. Glenn Hubbard, Ph.D., Dean of the Graduate School of Business at Columbia University; Kyle M. Young, Manager, Nuclear Plant Demobilization for SCE&G; Dr. Kenneth Petrunik, Consultant; Dr. Joseph M. Lynch, Manager of Resource Planning at SCANA; Kevin R. Kochems, Manager of Regulatory Accounting for SCANA Services, Inc.; Joseph Wade Richards, Senior Engineer in Transmission Planning for SCE&G; Allen W. Rooks, Manager of Electric Pricing and Rate Administration at SCANA Services, Inc.; Angela Nagy, Executive Director at Ernest & Young; and John Raftery, General Manager of Renewable Products/Services and Energy Demand Management for SCE&G. George Wenick and Stephen Byrne also testified orally on behalf of SCE&G. On December 5, 2018, SCE&G further filed in the record the deposition testimony of Dan Magnarelli, Terry Elam, and Ron Jones.

In support of the Joint Petition, Dominion Energy presented the testimony of Thomas F. Farrell II, Chairman, President, and Chief Executive Officer of Dominion Energy, Inc.; Robert M. Blue, Executive Vice President of Dominion Energy, Inc. and President and Chief Executive Officer of the Power Delivery Group; James R. Chapman, Senior Vice President, Mergers and Acquisitions and Treasurer of Dominion Energy, Inc.; Prabir Purohit, Director

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of Mergers and Acquisitions and Financial Analysis at Dominion Energy, Inc.; and James I. Warren, Tax Partner with the law firm of Miller & Chevalier Chartered.

Friends of the Earth and Sierra Club presented the testimony of Dr. Mark Cooper, Director of Energy and Research for the Consumer Federation of America.

ORS presented the testimony of M. Anthony James, P.E., Director of Energy Policy; Gary C. Jones, P.E., President of Jones Partners, Ltd.,; Norman K Richardson, Consultant; Kelvin L. Major, Audit Manager; Daniel F. Sullivan, Deputy Director, Audit Department; Elizabeth H. Warner, Vice President, Legal Services and Corporate Secretary, Santee Cooper; Richard Baudino, Consultant; Lane Kollen, Consultant; and Michael Seaman-Huynh, Senior Regulatory Manager. Carlette Walker and Kenneth Brown testified orally under subpoena on behalf of ORS. ORS further filed for the record the deposition testimony of Ty Troutman and Joni Falascino.

Wal-Mart presented the testimony of Steve W. Chriss, Director, Energy and Strategy Analysis. DOD presented the testimony of James T. Selecky, Consultant. SCCCL and SACE presented testimony of Ronald J. Binz, Consultant; Uday Varadarajan, Consultant; and Gregory M. Lander, Consultant.

AARP presented the testimony of Scott J. Rubin, Consultant. SCEUC presented testimony of Kevin W. O'Donnell, Consultant.

III. STATUTORY STANDARDS AND REQUIRED FINDINGS

The overarching legal standard that must be met by all electric utility rates approved by this Commission is found in S.C. Code Ann. § 58-27-810. That statute provides: "Every rate demanded or received by any electrical utility . . . shall be just and reasonable." The "just

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and reasonable" standard incorporates the rule that unjust or insufficient rates constitute an unconstitutional taking of private property for public use without just compensation in violations of the Takings Clause of the United States and South Carolina Constitution. U.S. Const. amend. V; S.C. Const. art. I, § 13(A); *see also Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989) ("If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.").

As mentioned above, the South Carolina Supreme Court has held that in determining what constitutes a just and reasonable rate:

> [T]he Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of pragmatic adjustments' .... Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling.... The ratemaking process under the Act, i.e., the fixing of 'just and reasonable' rates, involves the balancing of the investor and the consumer interests. Thus we stated in the *Natural Gas Pipeline Co*. case that 'regulation does not insure that the business shall produce net revenues.' … [B]ut such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on debt and dividends on the stock. … By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Southern Bell, 270 S.C. at 596-97, 244 S.E. 2d at 281 (quoting *Hope*, 320 U.S. at 602-03).

These legal standards have been consistently employed by the Commission and the South Carolina Courts and reflect the fact that utility customers have a direct interest, not

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only in low rates today, but also in the financial soundness of the utilities that serve them going forward. This is especially true for electric utility customers because of the universal and immediate importance of the electric utility service to the public and the capital investment that a utility must be able to make month-by-month to provide the quality of service that customers expect and depend on.

As the U.S. Supreme Court stated in *Hope*:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope, 320 U.S. at 603 (citations omitted). This principle is often supplemented with language from *Bluefield*, where the U.S. Supreme Court held that:

> The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692–93 (1923) ("*Bluefield*") (citations omitted).

Together, the *Hope* and *Bluefield* cases provide "the basic principles of utility rate regulation" in South Carolina. *Southern Bell*, 270 S.C. at 595, 244 S.E.2d at 281; *Patton v. S.C. Pub. Serv. Comm'n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984).

Concerning the specific claims in this case, S.C. Code Ann. § 58-33-280(K) governs the recovery of capital investment in a BLRA-approved project after abandonment:

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> Where a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. Without limiting the effect of Section 58-33-275(A), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. The commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article.

S.C. Code Ann. § 58-33-280(K). Thus, in abandonment, "capital costs shall . . . nonetheless be recoverable," provided that the decision to abandon was prudent. *Id.* Even in that case, the disallowances of either capital costs themselves, or of the costs of capital applied to them, is permitted only for the specific costs that were imprudently incurred or could have been avoided. *Id.* The language in the statute also provides that the "recovery of . . . the cost of capital associated with abandonment may be disallowed only to the extent [costs were imprudently incurred]." *Id.* This mandates that revised rates are to continue to be collected after abandonment because to terminate them would be to disallow recovery of the cost of capital on capital costs previously determined to be prudently incurred and previously included in rates. *Id.* Nor is there any provision for terminating revised rates once they have been granted, which is itself an implicit recognition that recovery of capital costs on investment previously determined to be prudent, and previously included in revised rates, does not end on abandonment of a project. Confirming this reading of the statute is the provision that determinations made in prior BLRA orders "may not be challenged or reopened in any subsequent proceeding." S.C. Code Ann. § 58-33-275(B).

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S.C. Code Ann. § 58-33-270(E) governs proceedings to update capital cost schedules and construction schedules that have been previously approved under the BLRA and applies to the Joint Applicants' request for approval of a schedule of capital costs for the Project in abandonment. Under this statute, the Commission must grant the relief requested if, after a hearing, the Commission finds, "as to the changes in the schedules, estimates, findings or conditions, that the evidence of record justifies a finding that the changes [in previously approved schedules] are not the result of imprudence on the part of the utility." The Joint Applicants seek to update the approved cost schedules for the Project under S.C. Code Ann. § 58-33-270(E) in order to bring them into conformity with the costs of the Project after abandonment. This is consistent with the language and purpose of the BLRA and specifically S.C. Code Ann. § 58-33-270(E)(1) and provides a proper statutory vehicle for evaluating the costs involved.

S.C. Code Ann. § 58-33-280(K) allows the Commission to provide for "the amortization and recovery through rates of the investment in the abandoned plant" by issuing "an order adjusting rates under this article [the BLRA]." The Joint Applicants cite this provision of the BLRA as authority for approval of their requests related to the voluntary rate reductions that they propose. In addition, the Joint Applicants invoke S.C. Code Ann. § 58-27-870(F) as statutory authority allowing the Commission to approve the voluntary rate reductions proposed by the Joint Applicants without the necessity of a full rate case review.

Specifically, S.C. Code Ann. § 58-27-870(F) allows voluntarily proposed rate reductions filed by the utility to be considered without a full review of retail electric revenue requirements, cost of service, or rate design, and is applicable to the utility's rate reduction

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requests here. Nevertheless, SCE&G has provided testimony and exhibits demonstrating that the rates it has voluntarily agreed to accept under the Joint Applicants' various rate plans result in returns to the company that are well below the returns that would be considered to be sufficient in a general rate proceeding. *See* Hearing Exs. 14, 15, and 16, Joint Application at Exhibits 14, 15, 16, and 17; Tr. at 2020-40–2020-42. In these exhibits to the Joint Application, and testimony, SCE&G has provided evidence that its current returns on electric operations are well below allowable returns, such that a full review of retail electric revenue requirements, cost of service and rate design would have resulted in increases, not decreases in retail electric rates as proposed. This evidence is uncontested on the record in this proceeding.

However, S.C. Code Ann. § 58-27-870(F) applies only to voluntary rate reduction requests filed by the utility. It does not apply to involuntary rate reductions proposed by other parties, like ORS. Where parties seek to impose rate reductions on a utility involuntarily, they must show that the rates they propose can meet the statutory and constitutional requirement that they be "just and reasonable." S.C. Code Ann. § 58-27-810. The parties proposing them must show that the statutorily required "determination of a fair rate of return" can be made and can be "documented fully in [the Commission's] findings of fact and based exclusively on reliable, probative and substantial evidence on the whole record." S.C. Code Ann. § 58-27-870(G). To interpret S.C. Code Ann. § 58-27-870(F) in any other way would put it in direct conflict with the constitutional and statutory protections that apply in contested utility ratemaking proceedings, as referenced above, and is inconsistent with the specific language of S.C. Code Ann. § 58-27-870(F) and related statutes.

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As to the latter point, S.C. Code Ann. § 58-27-870 is meant to be read in conjunction with its companion statute, S.C. Code Ann. § 58-27-860, which immediately preceded it prior to insertion of the Fuel Clause Statute, S.C. Code Ann. § 58-27-865, into this chapter of the code of laws. S.C. Code Ann. § 58-27-860 set out the procedural requirements that must be met "[w]henever a utility desires to put into operation a new rate" and specifically references provisions of S.C. Code Ann. § 58-27-870 concerning those requirements. Thus, the triggering event for a proceeding under S.C. Code Ann. § 58-27-860 and S.C. Code Ann. § 58-27-870 is the utility voluntarily filing a rate application which, if it includes only a rate reduction, is exempt from many of the processes and the protections that would apply to a rate increase application.

Language in S.C. Code Ann. § 58-27-870 (A), (D), and (E) further confirms that S.C. Code Ann. § 58-27-870(F) is intended to apply to utility-filed rate applications. These provisions state that, when filed, the rate application must be provided to ORS, that the utility may adopt the requested rates if a timely order is not issued, and that the utility may not file a second rate increase until 12 months have passed since its last rate increase filing. These provisions clearly envision that S.C. Code Ann. § 58-27-870(F) apply to rate proposals filed by the utility.

This distinction is particularly important here because the Joint Applicants' primary rate proposals involve the offer to offset otherwise insufficient rates with billions of dollars of merger benefits which are available only if the Joint Applicants' plans are accepted and the merger closes. ORS's proposed rate reductions, however, are not supported by merger

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benefits. As a result, in this proceeding, the need is particularly important for ORS to make an affirmative showing that its proposals result in just and reasonable rates.

As to the merger approval request, S.C. Code Ann. § 58-27-1300 is the sole statutory provision.

IV. ALLOWABLE PROJECT COSTS

A. The July 31, 2017 Abandonment Decision

The evidence of record shows that on July 31, 2017, SCE&G made its decision to abandon the Project after a review of all relevant information, attempts to find co-owners to replace Santee Cooper, and attempts to obtain government assistance to complete the Project. Tr. at 4084-51, 3472-31, 1345-5, 1345-38–1345-39. No party has challenged the prudency of the decision to abandon the Project. The Commission finds that this decision was prudent.

B. Allowable Costs

The statement of allowable costs for the Project was provided in Exhibit 13 to the Joint Application and as KRK-1 to the testimony of Mr. Kevin Kochems. Hearing Ex. 141. That exhibit includes the costs for the Project that were reviewed and determined to be prudent in the nine prior Revised Rates Orders for the Project, which reflect costs audited, reviewed and approved by ORS through June of 2016. *Id.* It includes costs from 2016 forward to the date of abandonment and post-abandonment costs including costs incurred prior to September 30, 2017. *Id.* Severance costs for employees who were released as a result of abandonment are not included in these amounts.

As discussed in more detail below, adjustments to costs incurred before September 30, 2017, are properly reflected in these amounts and are properly recoverable as costs of the

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Project. For reasons stated below, the Commission orders the Company to reduce these amounts by the amounts included in them for consulting contract payments to Mr. William Timmerman, bonuses paid to senior executives related to the Project, and payments to the Bechtel Corporation for the 2015-2016 Project assessment. The Joint Applicants are directed to file a revised schedule within 30 days of the issuance of the order in this matter reflecting these changes. The Commission finds this schedule as updated as ordered above, constitutes an appropriate schedule of capital costs for the Project in abandonment, under S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-27-280 (K), subject to the voluntary exclusions and other electric bill mitigation measures adopted below.

C. ORS's Arguments for Disallowance

Despite its protestations and public comments regarding the Project, ORS effectively concedes many of the issues before this Commission. For instance, even now that the Project has been abandoned, ORS does not dispute that the prudent decision in 2008, for SCE&G and its customers, was to proceed with building two new nuclear base load facilities. *See, e.g.*, Tr. at 558, 3873-74, 3880. ORS does not take issue with the selection of the Westinghouse AP1000 design or the decision for the Owners to enter into the EPC Agreement in order to have the Consortium take responsibility for providing the engineering, procurement, and construction activities for the Project. *See* Tr. at 410-411, 3873-74. ORS also does not dispute that it was the right decision to proceed with the Project after 2008 and that, following Westinghouse's bankruptcy and the withdrawal of Santee Cooper, it was prudent for SCE&G to abandon the Project in July 2017. Tr. at 284, 417, 580-81, 3880, 3993. Nor does ORS take issue with costs incurred by SCE&G for the Project through

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March 12, 2015, which means that ORS concedes that those costs should be recovered by the Company pursuant to the BLRA. *See* Tr. at 340; *see also id.* at 320, 406-07, 409-12, 558.

These concessions are critical. They narrow the matters in dispute, and they ease the way for adoption of the Joint Applicants' proposed Customer Benefits Plan. Indeed, certain of the Joint Applicants' proposals provide rate relief on par with ORS's position that costs incurred after March 12, 2015, should be disallowed, effectively mooting the dispute over prudency. And in light of ORS's concessions regarding the prudency of many other costs for which the Joint Applicants seek recovery, there is no reason to complicate this matter further. The Joint Applicants' Customer Benefits Plan should be adopted, and this matter concluded.

ORS's concessions should not come as a surprise, of course. Throughout the Project, ORS consistently supported SCE&G's attempts to pursue construction, along with the BLRA-related requests seeking recovery of costs incurred over the course of the Project. At each stage, after a full and fair opportunity to understand the status of the Project, ORS agreed to settle nearly every Commission proceeding relating to the Project. That included, notably, SCE&G's requests to modify the approved schedule and cost estimates for the Project in 2015 and 2016. *See* Dkt. 2015-103-E, Order No. 2015-661 at Ex. 3; and Dkt. 2016-223-E, Order No. 2016-794 at Ex. 1. Through those settlements, ORS agreed that the Commission should approve SCE&G's requests, per the terms of the agreements, as in the best interests of the ratepayers, without once concluding that ORS needed more information before taking a position on SCE&G's requests. *See generally id.* ORS further reviewed and audited costs incurred on the Project to ensure compliance with the BLRA and deemed essentially all costs incurred through June 2016 as prudent. *See* Tr. at 3584-85.

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Notwithstanding ORS's consistent practice throughout the Project, ORS has changed its tune—at least slightly—in this proceeding. While conceding the propriety of the majority of costs incurred related to the Project, ORS challenges costs incurred by SCE&G after March 12, 2015, by claiming that SCE&G acted imprudently. *See, e.g.*, Tr. at 270, 273-76, 416-17, 425, 468-69, 493. Specifically, ORS contends that SCE&G failed to disclose to the Commission or ORS (1) the results of an internal SCE&G evaluation of the Consortium's EAC that had been provided to the Owners in August 2014, in advance of the March 2015 petition to update the approved schedule and cost estimates; and (2) certain details regarding the Bechtel assessment, which was conducted between August and October 2015. *See id.* Additionally, ORS suggested during the course of the hearing that SCE&G should have known at the time of the October 2015 EPC Amendment that electing the fixed price option would force Westinghouse into bankruptcy, but ORS has not actually asserted such as a basis for disallowance of any specific costs.

Even these contentions have been a moving target. ORS's own purported "whistleblower" witnesses—Ken Browne and Carlette Walker—testified that ORS received more than enough information to understand the evaluation SCE&G completed regarding the Consortium's 2014 EAC. *See* Tr. at 3834, 3916-20, 3923-25, 3926-27, 3956-57. And as to Bechtel, the facts make clear that ORS was promptly (and truthfully) informed as to Bechtel's assessment; that the assessment did not reveal anything of substance beyond what was publicly known regarding the Project; and that ORS never thought it important to discover more information regarding Bechtel. *See, e.g.*, Tr. at 429-30, 444, 448-49, 451, 465-66, 3744-46. In any event, for the reasons discussed below, the Commission finds that

none of ORS's arguments provide a basis for finding that SCE&G acted imprudently such that costs incurred after March 12, 2015, should be disallowed.

Before addressing ORS's specific bases for disallowance, however, the Commission finds it necessary to note a fundamental flaw in ORS's contentions. ORS's shotgun approach in this proceeding—generically claiming that all costs incurred after March 12, 2015 should be disallowed—is not based on any specific challenge to the costs as imprudently incurred. As noted, ORS does not challenge many of the most important Project management decisions made after March 2015, including the exercise of the fixed-price option and the abandonment of the Project. *See* Tr. at 463-64, 548, 3878. Indeed, ORS does not even contend that the Project should have been abandoned or that construction of the Project should have halted in March 2015. *See* Tr. at 284-85, 417; *see also id.* at 272-73, 279, 288-28, 288-29, 564-69, 599-600, 3971-72. ORS's expert, Gary Jones, testified only that, in his opinion, SCE&G should have held off on filing the March 2015 petition until it retained Bechtel and Bechtel had completed its assessment. *See* Tr. at 288-12; *id.* at 564-69. Mr. Jones did not testify that the Project should have been stopped in March 2015. *See* Tr. at 409. Thus, even in the scenario of what ORS contends should have occurred, the Project would have continued beyond March 2015, and ORS has presented no evidence to distinguish between the costs that were incurred on the Project after March 2015 from those costs that still would have been incurred on the Project in the scenario that ORS claims should have occurred. In fact, ORS has not identified any specific costs on the Project that were imprudently incurred.

ORS simply claims that March 12, 2015, is the critical date based on information ORS claims should have been disclosed as of that date. Yet that information, as discussed

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below, likely would have suggested only that the costs on the Project would be higher and that the Project schedule would be delayed even further. Surely, ORS does not believe that SCE&G should have charged ratepayers more for the Project or suggested an even-further delayed Project schedule. But that is the only reasonable implication that can be gleaned from ORS's position in this proceeding. Without evidence showing that the Project should have been abandoned as of March 2015, or that specific costs incurred after that date would not have been incurred in ORS's but-for scenario, the Commission is left without an evidentiary basis to disallow any costs, even if the Commission were to accept ORS's contentions (which we do not). Although it is unnecessary in the Commission's view in light of this flaw, we turn to addressing ORS's specific bases for disallowance.

1. EAC Analysis and March 2015 Petition

ORS argued in its pre-hearing brief that in October 2014, an internal team of SCE&G personnel concluded that "the actual costs for the Consortium to complete the Project would be at least $500 million greater than the Consortium had projected in August 2014," and that SCE&G acted imprudently by failing to disclose the internal team's conclusion and then seeking approval for an updated cost estimate based on the Consortium's projection, rather than the estimate provided by the internal EAC team. *See* ORS Pre-Hearing Br. at 4. The evidence, however, does not support ORS's contentions, as discussed below.

(a) Purpose of EAC Team

As an initial matter, ORS's argument rests on the faulty premise that the internal SCE&G team developed an EAC that was intended to (or did in fact) rival that of the Consortium. *See, e.g.*, Tr. at 275, 561. The evidence presented at the hearing does not

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support this allegation. Rather, the testimony presented to the Commission makes clear that SCE&G did not create a new cost estimate to rival the one provided by the Consortium. *See* Tr. at 3734-36, 3784-85. The Consortium, after all, was responsible under the EPC Agreement for all means of engineering, procurement, and construction for the new units. *See, e.g.*, EPC Agreement §§ 3.5(d), 5.1(a); Hearing Ex. 179, Falascino Dep. at 111. Westinghouse was the original designer of the AP1000, the Consortium had been building these units for years (in South Carolina and elsewhere), and only the Consortium had the expertise and access to all of the necessary information to develop a reliable cost estimate, including the Consortium's proprietary unit rates for construction and sub-contractor agreements. *See* Tr. at 3826-27, 3607. Moreover, the Consortium dedicated considerable resources to developing the updated cost estimate that it provided to the Owners in August 2014, and which SCE&G ultimately relied upon for the 2015 petition. ORS's own witness, Mr. Browne, made clear during his testimony that the Consortium dedicated months to developing the updated EAC, that it required the work of at least a dozen Consortium personnel during that time period, and that the Consortium employed a "bottoms-up" analysis, building an overall cost estimate based on every expected expenditure for the new units, down to the cost for every piece of rebar. Tr. at 3882-83.

As Mr. Browne admitted, the SCE&G EAC team did not attempt to replicate that estimate. Tr. at 3826-27, 3883-84; *see also id.* at 3734-38. SCE&G did not have the time or resources to do so. *See id.* at 3883-88. Instead, the internal team that evaluated the Consortium's EAC did so in order to understand the underlying assumptions and to assist SCE&G senior management in pending commercial negotiations with the Consortium over a

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revised economic arrangement, including whether the Consortium was entitled to recover increased costs that the Consortium's 2014 EAC attempted to impose. *See* Tr. at 3734-38, 3783-84. This is nothing like what the Consortium prepared and committed to meet.

The contemporaneous documents from the EAC team confirm that the team's focus was on entitlement issues, not on developing an independent EAC that could have formed the basis for a cost projection. The EAC team made a preliminary presentation to certain SCE&G management personnel in October 2014, the first page of which expressly stated: "this presentation is a summary of costs we believe the Consortium is entitled to." Hearing Ex. 161, Byrne Dep. Ex. 34. Consistent with that purpose, the presentation proceeded to go through various different categories and assumptions built into the Consortium's August 2014 EAC, with recommendations regarding the extent to which those increased costs should be borne by the Consortium. *See, e.g.*, *id.* at SCANA_RP0024677 ("EAC Team recommends $0 entitlement [for increases due to structural module delay]"); *id.* at SCANA_RP0024681 ("EAC Team recommends $0 entitlement [for certain acceleration costs] because the acceleration is necessary due to Structural Module Delays."); *id.* at SCANA_RP0024684 ("EAC Team recommends $0 entitlement [for increased licensing costs] as this is Firm Price work."). A subsequent report prepared by the EAC team similarly focused on recommendations as to entitlement for the increased costs. *See, e.g.*, Hearing Ex. 15, GCJ_2.18B at 1 ("This is an 'Owner – Directed' Change and the Consortium is entitled to 100% of the actual costs."); *id.* at 3 ("The EAC Review team recommends $0 of increased entitlement for these Target and Time & Materials costs [related to structural module delays]").

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Thus, the EAC team did not dispute the Consortium's projection that these costs would be necessary to finish the Project. The team's report further recognized that the Consortium's EAC included various judgments and subjective analyses from the Consortium that the EAC team "would be challenged to reproduce [] if requested." *Id.* at 7. And although the EAC team recommended that the Owners not pay the Consortium for certain increased costs, it concluded that the Consortium's "estimate appear[ed] to be a reasonable attempt at establishing the minimum Target Price and T&M Price to be expected for completion of the project." *Id.* In short, it is apparent from the evidence that SCE&G's EAC team did not attempt to create a new EAC for the Project—it evaluated the bases of the Consortium's EAC in order to understand that EAC and to understand the most notable issues for purposes of negotiations between the Owners and the Consortium.

(b) EAC Team Conclusions As To Consortium's Estimate

The evidence also does not support ORS's contention that the EAC team concluded that the Consortium would be unable to achieve the updated cost estimate. *See* ORS Pre-Hearing Br. at 5 (claiming that SCE&G "internally concluded that the Consortium's estimates were not achievable"). ORS's argument in this regard is based primarily on its contention that the internal SCE&G team determined that the Consortium would not meet the performance factor ("PF") on which the updated cost estimate was based. *See, e.g.*, Tr. at 42; *see also id.* at 274-75. As was discussed at length during the hearing, the PF is a projection of future events used in estimating cost for construction projects and that reflects the amount of time budgeted to complete work. *See, e.g.*, Tr. at 3328, 3619-25. The Consortium's original cost estimate relied on a PF of 1.0, which projected that the work would be

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completed for the precise budgeted amount of time for the particular tasks. *Id.* at 4188. For example, that meant that if the Consortium projected a task should be completed with ten hours of work, it would take ten hours to complete it. If it actually took twenty hours to complete that task rather than the budgeted ten, that would correspond to a PF of 2.0 for that task.[15] Tr. at 4084-15, Byrne Dep. at 45-46.

The updated EAC provided by the Consortium in August 2014 relied on an assumed PF of 1.15 for the remaining work on the Project. *See* Hearing Ex. 161, Byrne Dep. Ex. 13 at 28; Tr. at 4071. At the time of that presentation, the actual PF on the project to date was 1.41, meaning that the Consortium's updated EAC was based on an assumption that it would improve productivity on the Project. Hearing Ex. 161, Byrne Dep. Ex. 13 at 28. The Consortium also committed to begin realizing the 1.15 PF (at least on a monthly basis) "through gradual improvements over [a] 6 month period." *Id.*

This assumed PF of 1.15 was an input to the analysis of SCE&G's internal EAC team. In other words, the EAC team did not re-create a new to-go PF that it expected for the Project. *See, e.g.*, Tr. at 3734-40, 3784-85. Instead, as part of its overall analysis, the SCE&G EAC team calculated how the costs would change if productivity continued on the historical trend (a PF of 1.40), rather than being improved as the Consortium projected. *See* Tr. at 3987, 3734-40, 3784-85, 3788-92; *see also* Hearing Ex. 161, Byrne Dep. Ex. 34 at SCANA_RP0024676. To be sure, the team developed an estimate of the increased cost if the Consortium failed to meet its improved PF. *See id.* But this analysis—akin to a sensitivity

[15] As Stephen Byrne testified, the PF is actually not a total measure of overall productivity on the Project, as it is only a measure of the direct craft productivity. Tr. at 4082-58-59.

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analysis designed to reveal what ***could*** happen if certain critical assumptions did not hold—was not an independent assessment of the likely cost to complete; it merely facilitated the ongoing negotiations regarding a revised commercial arrangement with the Consortium. Tr. at 3734-40, 3784-85, 3788-92. Team members Kevin Kochems and Kyle Young testified to these points, and Mr. Byrne—a member of SCE&G senior management familiar with the team's conclusions and involved in negotiations with the Consortium—agreed. *See id.* at 3736, 4071-72. Thus, even if certain members of the EAC team believed it was unlikely that the Consortium could meet the 1.15 estimate or that the to-go PF was likely to be closer to the historical number, as ORS contends,[16] the team nonetheless recommended that the Owners try to hold the Consortium to the 1.15 projection. *See* Hearing Ex. 161, Byrne Dep. Ex. 34 at SCANA_RP0024676; *see also* Tr. at 3896-99.[17] It is obvious that the costs would increase if the Consortium did not improve as it committed it would do. The Commission does not believe that the EAC team's findings in this regard support ORS's claims for disallowance.

(c) SCE&G Reliance on the Consortium's Estimate

To the extent that the internal EAC team concluded that there was a real risk of the Consortium not meeting its 2014 cost estimate, that risk was clearly and unambiguously disclosed to the Commission in 2015. SCE&G made clear in testimony submitted for the

[16] ORS relies on a statement from an EAC document to suggest that the team determined it was not "achievable" for the Consortium to meet the 1.15 projection. *See* Tr. at 633. That document, however, refers to it being unlikely that the Consortium would meet the 1.15 PF within six months, given the PFs that had continued after the August 2014 presentation. *See* Hearing Ex. 15, GCJ-2.18.B at 3; *see also* Tr. at 3785. That is not to say that the Consortium could not have met the 1.15 PF by the conclusion of the Project—which was still several years away at that point.

[17] Mr. Browne admitted that he could not have said whether or not Westinghouse would be able to meet its projected improvements for the Project. *See, e.g.*, Tr. at 3906.

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2015 proceeding that the updated cost estimate for which SCE&G sought the Commission's approval was based on the estimate provided by the Consortium. *See* Hearing Ex. 64 at 38-39.[18] SCE&G witnesses, including Mr. Byrne and Ron Jones, also disclosed that the Consortium's estimate was based on certain assumptions, including an assumption that the Consortium would improve productivity to the tune of a 1.15 PF and that, as of the date of the hearing for the 2015 proceeding, the Consortium was not meeting that PF assumption. *See id.* at 21-22; Hearing Ex. 156, Dep. Ex. 10 at 274, 490, 493-94, 677.

In fact, Mr. Byrne identified "Productivity Factors" as one of the key risks remaining on the Project at the time of the 2015 proceeding. Hearing Ex. 64 at 20-22. Mr. Byrne explained that the Consortium's "[u]nfavorable productivity factors h[ad] been a matter of frank and direct discussion between the parties," that the Consortium's senior leadership was confident in the revised PF on which the new cost estimate was based, and that the Consortium justified its confidence by identifying specific ways in which the Consortium could improve and meet its commitments going forward. *Id.* at 21. Mr. Byrne also testified that SCE&G supported the Consortium's commitment to improving productivity but clearly recognized that "the possibility that WEC/CB&I w[ould] fail to meet current productivity assumptions for the project represent[ed] an important risk to both cost forecasts and the construction schedule for the project." *Id.* at 22. Mr. Byrne further explained why it was not in SCE&G's—or the ratepayers'—interest to suggest a cost estimate based on a higher PF:

[18] Mr. Byrne testified that the updated cost and schedules for the 2015 proceeding were "based on the cost projections and construction schedule data that WEC/CB&I [] provided to SCE&G" in 2014. Hearing Ex. 64 at 38. He also testified that "[t]he schedules presented here are the schedules that WEC/CB&I has represented to SCE&G that it is prepared to meet . . . ." *Id.* at 39.

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> Meeting these productivity factors will pose a challenge to WEC/CB&I. But doing so will benefit the project both in terms of cost and schedule. For that reason, as owner SCE&G has no basis or interest in insisting that WEC/CB&I should use less challenging assumptions. However, SCE&G does recognize that WEC/CB&I has set itself a significant challenge as to future productivity.

Id. at 38-39.

As Mr. Byrne indicated, using a higher PF for the cost estimate would have only resulted in a higher cost projection that, if approved, would have, at that time, been passed on to the ratepayers. It is undisputed that the Consortium was committing to the Owners that it could meet the productivity assumptions on which its cost estimate was based. In light of the fact that SCE&G disclosed to the Commission the risks attendant to the Consortium's projections and the fact that SCE&G did not have the means to do a "bottoms up" analysis to independently calculate an alternative EAC, the Commission cannot now find that it was imprudent for SCE&G to rely on the commitments of the Consortium rather than requesting approval for higher cost projections in 2015.

Additionally, there was a legal barrier to SCE&G requesting that the Commission approve a higher cost estimate based on concerns about the Consortium's ability to meet the projections. When SCE&G presented the initial cost estimate for the Project in 2008, it included a contingency amount that was intended to account for potential cost overruns or the inevitable unexpected costs that would occur on a project of this magnitude. *See* Dkt. 2008-196-E; *see also* Hearing Ex. 68 at 77-81; Tr. at 1345-10. The Commission found it prudent to include such a contingency, but that issue was appealed to the South Carolina Supreme Court, which held that the BLRA did not authorize approval of any contingency fund. Dkt.

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2008-196-E, Order No. 2009-104(A) at 47; *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587 (2010). The approved costs, in the Supreme Court's view, had to be limited to those tied to specific expected expenditures. *S.C. Energy Users Comm.*, 388 S.C. at 496. Asking the Commission to approve a higher cost estimate in 2015 beyond the estimate provided by the Consortium in order to account for the Consortium failing to meet its commitments would have, in effect, been an impermissible contingency. Tr. at 3830, 4072. Thus, both factually and legally, we do not find that it was imprudent to rely on the Consortium's estimate.

Nor do we find any merit to ORS's contention that SCE&G acted imprudently by failing to disclose information relating to the EAC review. SCE&G actually provided to ORS the Consortium's EAC presentation, which spelled out the assumptions on which the estimate was based. *See* Tr. at 526-30; Hearing Ex. 26. Moreover, in Order No. 2015-661, the Commission discussed the assumption concerning the PF supplied to SCE&G by Westinghouse. Additionally, ORS's own witnesses, including Mr. Browne and Mr. Jones, conceded that ORS had access to information about the historical performance on the Project, including the actual PFs. *See* Tr. at 404-05, 526-30, 539-44, 3916-20, 3617-18. Mr. Browne thus acknowledged that ORS could have performed the same analyses that the internal SCE&G team performed when assessing the assumptions of the Consortium's EAC. Tr. at 3916-20.[19] In fact, Mr. Browne testified that he communicated directly with ORS about the Consortium's EAC, explaining the assumptions on which that estimate was based and how

[19] Mr. Jones testified: "[I]t's correct that I could've taken and extrapolated the existing productivity factors. I never thought that would be a worthwhile exercise, because I thought there were going to be improvements in productivity." Tr. at 558.

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those assumptions compared to the historical performance information for the Project. *Id.* at 3916-20. Mr. Browne further testified that he communicated honestly with ORS and that his description of the EAC—which disclosed similar information to what Mr. Byrne testified to before the Commission—contained no material misstatement. *Id.*

ORS does not contend that SCE&G failed to disclose any information that ORS requested relating to the EAC used in the 2015 petition. To the contrary, the evidence shows that ORS repeatedly asked SCE&G about the PF assumption used for the cost estimated in the 2015 petition, and SCE&G accurately responded by explaining the 1.15 PF upon which the estimate was based and why SCE&G found it reasonable to rely on the Consortium's commitments despite the historical PF being above that figure. *See* Tr. at 531-34; Hearing Ex. 27. While ORS now takes issue with SCE&G's reliance on the Consortium's estimate, Mr. Browne admitted that, if he had been in SCE&G's position at the time, he likely would have asked the Commission to approve the same cost estimate that SCE&G used in the 2015 petition. Tr. at 3955-56.[20] For all of these reasons, the Commission does not find that SCE&G should have requested approval for a different amount in the 2015 proceeding.[21]

(d) Carlette Walker 2015 PSC Testimony

There is one final issue on this subject that warrants brief mention here: the testimony of Carlette Walker, a former SCE&G employee involved in financial matters related to the Project. Ms. Walker's appearance before the Commission was highly anticipated in light of

[20] Mr. Browne similarly testified that he accepted the company's decision to submit a petition relying on the Consortium's estimate and that he never subsequently raised any concerns about the 2015 filing through the end of his time with SCE&G. *See* Tr. at 3908-11; Hearing Ex. 157.

[21] The Commission also notes, as ORS concedes, that SCE&G's later election of the fixed-price option effectively mooted concerns over cost increases. *See* Tr. at 546-47, 3911-12.

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significant media reports of her allegations of misconduct by SCE&G executives. Her ultimate testimony, however, did little to address the actual issues before this Commission.

Much of Ms. Walker's testimony appeared to the Commission to consist of vague accusations of misconduct, many of which were completely unrelated to the issues in this proceeding. *See, e.g.*, Tr. at 3845-47, 3851, 3863-65. Ms. Walker, for instance, highlighted certain complaints she maintains to this day regarding internal SCE&G disputes over human resource issues or employee compensation not tied to the Project in any way. *See, e.g.*, *id.* at 3845-47. Ms. Walker also attempted to suggest some impropriety—admittedly based on hearsay—relating to the original estimate of the Owners' costs for the Project. *Id.* at 3973-74. But she then deferred to Mr. Browne on the specifics of those allegations, and he quickly clarified that no such misconduct ever occurred. *Id.* at 3973-77, 3984-86. And when confronted with her own contemporaneous emails undermining her claims about SCE&G executives or her experience with the company, Ms. Walker suggested that she was lying in those emails, merely telling people what she thought they wanted to hear. *See, e.g.*, Tr. at 3940-45.

The only relevant testimony Ms. Walker offered (not already covered by Mr. Browne)[22] was with respect to the testimony that she provided in the 2015 proceeding. Ms. Walker initially testified that her testimony was drafted without her involvement and that she was pressured to provide testimony with which she did not agree—because she believed the Consortium was unlikely to meet its cost estimate and that the Project was likely to cost

[22] At the beginning of her cross-examination, Ms. Walker admitted that she agreed with all of Mr. Browne's testimony, which more directly related to matters on the Project. Tr. at 3926-27.

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more. *See* Tr. at 3856-57, 3927, 3932. The evidence, however, casts serious doubt on these claims.[23]

Numerous contemporaneous documents admitted into evidence during the course of the hearing refute Ms. Walker's suggestion that she was not involved in the preparation or review of her testimony before it was submitted. *See* Tr. at 3933-39. For example, Ms. Walker appears to have attended a meeting with other SCE&G personnel and counsel on April 14, 2015, the subject of which was specifically to discuss Ms. Walker's testimony for the 2015 proceeding. Tr. at 3933-35; Hearing Ex. 156, Walker Dep. Exs. 8-9. Subsequent to that meeting, Ms. Walker exchanged multiple emails indicating that she was attending additional meetings to review testimony for the 2015 proceeding, and she coordinated with SCE&G's outside counsel to further discuss her testimony. Tr. at 3935-39; Hearing Ex. 156, Walker Dep. Exs. 15-16, 19. Although Ms. Walker was temporarily out of the office shortly before the filing of her testimony due to her husband's health issues, one of her staff members (Mr. Kochems) helped complete her testimony in her absence. Tr. at 3950-52; Hearing Ex. 156, Walker Dep. Ex. 25. And after receiving a copy of the testimony at the time, Ms. Walker told Mr. Kochems that she was "very happy" with that testimony, not

[23] Ms. Walker also criticized the EPC Amendment because it allowed the release of CB&I and provided that the Owners would temporarily make $100 million payments to the Consortium while a new payment schedule was developed, which she testified was a way to prematurely increase rates for SCE&G. Tr. at 3862-63. But the Toshiba guarantee in the EPC Amendment effectively replaced what was lost with CB&I, and the excess amounts for the $100 million payments (above what was being invoiced by the Consortium) was not included in the company's revised rate filing, was subject to a true-up provision, and was to be credited towards the fixed price. *Id.* at 3913-14, 4040-41, 4055-56. Thus, both of her criticisms regarding the EPC Amendment appear to be incorrect. The evidence further demonstrates that releasing CB&I and bringing in Fluor were positive developments for the Project and that the $100 million payments were intended to account for ramped-up activity on the Project, which did occur, with Fluor coming onboard. *See, e.g., id.* at 3879, 4032-35, 4055-56, 3614-15.

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disclosing to Mr. Kochems any concerns regarding its accuracy. *Id.*; *see also* Tr. at 4054-55. A contemporaneous email from Ms. Walker further confirms that she was "very pleased" with the settlement reached in the 2015 proceeding and believed it was a reasonable settlement for all parties. *Id.* at 3930-32; Hearing Ex. 158.

That evidence alone refutes Ms. Walker's allegations, but even if it did not, her live testimony before the Commission in the 2015 proceeding resolves the matter. On July 22, 2015, Ms. Walker told the Commission—under oath—that she affirmed her pre-filed testimony as being true and correct. Hearing Ex. 12, Walker Dep. Ex. 10 at 593; Tr. at 3928-30.

She was given an opportunity to correct her testimony at the hearing if she believed there were any errors or omissions, and she in fact made a few minor corrections unrelated to her current allegations. Hearing Ex. 12, Walker Dep. Ex. 10 at 592-96. Ms. Walker not only verified her testimony under oath at the 2015 hearing, but also during a deposition taken shortly before the hearing in this matter. At her deposition, Ms. Walker again affirmed under oath that her 2015 testimony submitted to the Commission was "true and accurate." Hearing Ex. 12 at 108-09; Tr. at 3930. And live before the Commission last month, Ms. Walker further affirmed her 2015 testimony and her recent deposition testimony. Tr. at 3929-30.

Based on the inconsistencies of her testimony, the Commission is at a loss to determine what Ms. Walker is actually claiming was untrue or misleading with respect to this Project. Let it suffice to say, however, that the Commission does not find her testimony to present a sufficient basis for finding that any costs incurred by SCE&G related to the Project should be disallowed.

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2. The Bechtel Assessment

ORS's second basis for disallowance is SCE&G's alleged withholding of information related to the Bechtel assessment from ORS. As a threshold matter, it strikes the Commission as odd to suggest that Bechtel's assessment could possibly justify an imprudence determination for costs dating back to March 2015. The evidence in the record clearly shows that Bechtel was not even retained until August 2015 and that its assessment was not completed until (at least) October 2015. Even then, Bechtel presented its assessment as preliminary, and the final Bechtel report was not provided to the Owners until February 2016. Moreover, Bechtel's assessment did not include an evaluation of the costs incurred on the Project. ORS has not demonstrated how Bechtel's assessment could possibly demonstrate the imprudence of costs incurred by SCE&G before the assessment was completed—nor does ORS claim that SCE&G should have abandoned the Project once it received the Bechtel assessment, as noted above. Instead of focusing on the prudency of cost issues before the Commission, ORS's testimony—largely presented through Mr. Jones—was that SCE&G made "willful attempts to deceive and withhold" this "materially important information" from ORS. Tr. at 276. This contention is not supported by the evidence in the record.

(a) Bechtel's Engagement in Anticipation of Litigation

The testimony of George Wenick, a highly regarded construction lawyer with over thirty years of experience, unequivocally lays to rest ORS's contention that SCE&G used the

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attorney-client privilege to conceal Bechtel's assessment.[24] Mr. Wenick was engaged as counsel by the Owners in 2011 in connection with potential litigation with the Consortium related to the Project. Tr. at 2504-05. From that point forward, Mr. Wenick was engaged as Project counsel to the Owners, advising them in commercial disputes with the Consortium. Tr. at 2506-07. When the Owners suggested engaging Bechtel to perform an assessment of the Project, Mr. Wenick insisted that his law firm engage Bechtel to perform the assessment in anticipation of litigation. Tr. at 2525-26; Hearing Exs. 107, 108. This was not to conceal the report from ORS or this Commission, but to prevent the report from being discoverable in future litigation against the Consortium, as Mr. Wenick made clear throughout his testimony. Tr. at 2520-22, 2616-18. And this determination as to the privileged nature of such an assessment was made long before Bechtel even conducted the assessment—it was not done after the fact to conceal the assessment due to the substance of the findings.

Specifically, Mr. Wenick's law firm engaged Bechtel to conduct the assessment on August 6, 2015, through a Professional Services Agreement ("PSA"). Hearing Ex. 110. The PSA stated that the objective of the assessment "[wa]s to assist SCH [Mr. Wenick's law firm] and the Owners in better understanding the current status and potential challenges of the Project ***in anticipation of litigation***." *Id.* (emphasis added). The timing and substance of the PSA are undisputed. The Commission thus finds no evidence in the record that SCE&G misused the attorney-client privilege or work-product doctrine to conceal Bechtel's assessment from ORS or the Commission.

[24] ORS employee Anthony James stated in his testimony, for example, that "an attorney was hired to conceal the retention of Bechtel and Bechtel's reports." Tr. at 658, 2617.

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(b) ORS's Awareness of Bechtel Assessment

The PSA shows that Bechtel was not formally engaged to begin its assessment of the Project until August 6, 2015. Hearing Ex. 110. Not only was there nothing deceptive about the nature of the retention, the facts show that ORS learned of that retention shortly thereafter.

Specifically, Gene Soult—an ORS employee—was informed in August 2015 that SCE&G's legal office was handling an external review of the Project. Tr. at 429-30. And approximately six weeks after that, ORS personnel became aware that Bechtel was on site and had performed an assessment of the Project. Tr. at 438. In a plan-of-the-day meeting—attended by Mr. Soult—an individual with a Bechtel hard hat stood up and thanked SCE&G for its support during Bechtel's assessment of the Project. *Id.* at 438-40. This prompted Mr. Jones to add an item to the agenda for ORS's next monthly site visit, which was scheduled for October 27 and 28: "Discuss the status of the Bechtel Assessment and the Top 10 issues noted thus far." Hearing Ex. 21.

These are the facts that ORS affirmatively presented in this proceeding. Even accepting ORS's contention that these are all of the facts that ORS knew regarding Bechtel—and it is not at all clear that this contention should be accepted—ORS knew of the Bechtel assessment contemporaneously with it being conducted.[25] Indeed, the evidence also shows that ORS verbally discussed the Bechtel assessment with SCE&G personnel, and those

[25] Dukes Scott, the executive director of ORS at the time, stated in his deposition that he discussed the fact that Bechtel had conducted an assessment of the Project with Mike Couick on multiple occasions, including sometime in February 2016. While Mr. Scott's deposition has not been admitted into the record, it is representative of the conflicting testimony regarding ORS's knowledge of the Bechtel assessment.

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personnel accurately reported the information they knew regarding the assessment: that Bechtel had not identified anything new regarding the status of the Project; and, as of the time ORS requested information regarding the assessment, no formal report regarding the assessment had been provided. Mr. Jones testified to these conversations he had with SCE&G personnel in October 2015—including Alan Torres and Mr. Young—regarding the assessment. Tr. at 448. Mr. Jones was informed that there was no written report as of that time, and that Bechtel's assessment had not identified any new issues on the Project of which the Owners (and ORS) were not already aware. Tr. at 444. Based on the record before the Commission, that information appears to have been accurate.[26] Bechtel's final Project Assessment Report was not provided to the Owners until February 2016—long after Mr. Jones's conversations with Mr. Young and Mr. Torres. Tr. at 3745-47. And Mr. Young testified that the information he provided Mr. Jones about the assessment in October 2015 was accurate. Tr. at 3745-46. Mr. Jones himself admitted that Bechtel's Project Assessment Report did not identify any "major" new issue of which was unaware, contradicting his claims that material information regarding the assessment was withheld from ORS. Tr. at 465-66.

Had ORS desired more information regarding Bechtel, it had the ability to follow up on Mr. Jones's oral request for information about the assessment, or to submit a formal,

[26] As noted, Bechtel made a preliminary presentation regarding its assessment on October 22, 2015. Mr. Young did not attend that meeting, but testified that he "was given a briefing on Bechtel's assessment" afterwards. Tr. at 3744-45. He was told "that essentially there were no new issues that had been brought up . . . and that there w[as] really no new [] information that was relayed on the project." *Id.* at 3745. A few days later, Mr. Young "relayed to Mr. Jones what [he] had been told . . . likely around the October 27th time frame[,]" which "was the date[] of their monthly meeting that month." *Id.* at 3746. October 27th was also the date the EPC Amendment was signed and, as Mr. Young testified, the Bechtel assessment "was really based on the old contract terms; it wasn't based on a lot of the new assumptions." *Id.* at 3748; *see also* Hearing Ex. 114 (EPC Amendment).

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written request for the final assessment report, as it was expressly authorized to do under the laws that govern these regulatory proceedings. ORS did not do so. Mr. Jones never asked anyone for a copy of Bechtel's assessment. Tr. at 449. And ORS never sent SCE&G an Audit Information Request ("AIR") related to the Bechtel assessment (or that even used the term "Bechtel"), meaning that SCE&G was never even called on to formally assert privilege as to the assessment with ORS. Tr. at 451.

The only AIR that ORS claims required SCE&G to disclose the Bechtel report was AIR 1-32, which ORS served in early 2016. *See* Tr. at 447-48. Yet AIR 1-32 expressly states that it is related to the "October 15 Amendment" to the EPC Agreement and asks only whether SCE&G had "decided to retain the services of a Project Consultant ***as allowed in the Agreement***." Hearing Exs. 28-29 (emphasis added). As indicated by the request, the EPC Amendment included a specific provision allowing for the future retention of "Project Consultants," which is the provision to which AIR 1-32 was directed, as ORS representatives appeared to acknowledge. *See* Tr. at 507; *see also id.* at 515. Bechtel, however, was not retained to serve as the Owner's Project consultant pursuant to the 2015 EPC Amendment. In fact, Bechtel's assessment was nearing completion by October 2015 when the EPC Amendment was executed—and ORS was aware of that fact, as demonstrated above. Given that ORS already knew that Bechtel had been retained and that Bechtel's assessment was completed by the time AIR 1-32 was issued, the request clearly is not directed to Bechtel, as it asked only whether SCE&G had "decided to retain" a Project Consultant following the Amendment. *See* Hearing Exs. 28-29.

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Moreover, as explained in detail in SCE&G's reply in support of its motion to dismiss ORS's petition in Docket 2017-305-E, ORS's contemporaneous conduct further confirms ORS's understanding, at the time, that AIR 1-32 was limited to consultants under the EPC Amendment. *See* SCE&G's Reply Br. in Supp. of its Mot. to Dismiss, Dkt. No. 2017-305-E, at 6-9. SCE&G responded to AIR 1-32 on multiple occasions, identifying only Project Consultants that were retained after the EPC Amendment. *Id.* And although ORS requested additional information from SCE&G on many of the other AIR requests included during the same time period, ORS never asked SCE&G to supplement its response to AIR 1-32, which presumably ORS would have done if it actually thought the Bechtel retention was responsive to AIR 1-32. *Id.* Thus, all of the circumstances surrounding AIR 1-32—including the express language of the request, the timing of its issuance, and the parties' contemporaneous conduct—belie ORS's current contention that AIR 1-32 required production of the Bechtel report.

In sum, ORS had contemporaneous knowledge of Bechtel's assessment, yet failed to seek more information from SCE&G about the assessment, and never asked for a copy of the final Project Assessment Report. The Commission is therefore unpersuaded by ORS's contention that it was entitled to additional information regarding Bechtel's assessment that it did not receive. And we find no support in the record for the contention that SCE&G willfully deceived ORS with respect to the assessment.

(c) Bechtel's Preliminary Schedule Assessment

While Mr. Jones concedes that ORS was aware of all the major issues identified in Bechtel's final Project Assessment Report, ORS complains that it was never provided with

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the preliminary schedule assessment included in Bechtel's October 22, 2015 presentation to the Owners. But the fact that ORS was not made aware of Bechtel's preliminary schedule assessment does not, in the Commission's view, justify the request made by ORS in this case. In addition to the fact that the Bechtel assessment was privileged, SCE&G has consistently maintained that it did not act upon the preliminary schedule assessment by Bechtel, or provide that assessment to ORS or the Commission, because (1) the Owners believed the dates provided in it were unreliable, and (2) the October 2015 Amendment to the EPC Agreement—with its fixed-price option and allowance for Fluor to enter the Project—alleviated the Owners' cost and schedule concerns. The Commission finds support for SCE&G's position in the record.

Bechtel's on-site assessment took place over an approximate eight-week period, and was performed by a team of ten Bechtel employees, only two of which were schedulers. Hearing Ex. 175 at 305, 308. Compounding the short duration and limited staffing for the assessment was Bechtel's difficulty accessing information it needed to perform the assessment. As Mr. Wenick testified, Bechtel stated during its October 22nd presentation that it had been unable to download the Consortium's complete Project schedule. Tr. at 2560-61. Bechtel's October 22nd presentation likewise expressly identified that the manner in which material was made available limited Bechtel's ability to fully assess the information. Tr. at 457; Hearing Ex. 15, GCJ-2.37 at 6. And, even more critically, the presentation stated: "***A more robust approach is needed prior to finalization of any changes to the baseline target schedule***." Hearing Ex. 15, GCJ-2.37 at 25 (emphasis added). In other words, Bechtel expressly cautioned the Owners not to make any changes to the Project

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schedule based on its preliminary analysis. When confronted with this statement in Bechtel's preliminary assessment, Mr. Jones agreed: "This was not a schedule to build a plant." Tr. at 457-58.

In addition to these limitations, Mr. Wenick testified at length about his impressions of Bechtel's preliminary schedule presentation, the issues with Bechtel's scheduling methodology, and his advice to his clients—the Owners—that "Bechtel's preliminary analysis [wa]s of limited use." Tr. at 2560-72; *see also* Hearing Ex. 113. Mr. Byrne reached the same conclusion. He testified that he did not find Bechtel's schedule useful or reliable, citing the fact that Bechtel itself "included a warning" in its presentation "that the owners should not re-baseline the schedule based on Bechtel's assessment." Tr. at 4074-75. While ORS disputes SCE&G's position on the reliability of Bechtel's preliminary schedule projection, the evidence is undisputed that the Owners, at the time, believed the work done by Bechtel was preliminary and insufficient to justify any change in the schedule. *Id.*; *see also id.* at 2560-72.

The activity on the Project in the days and months after Bechtel presented its preliminary schedule analysis also informed SCE&G's decision to disregard Bechtel's schedule assessment as immaterial to the Project moving forward. Most notably, just days after Bechtel's presentation, the Owners entered into the EPC Amendment. Tr. at 4076. The EPC Amendment mooted many of the issues Bechtel identified in its assessment, as ORS concedes. Tr. at 2573-74. In particular, the EPC Amendment included the option to fix the price of the Project. Hearing Ex. 114. This shifted the risk to Westinghouse for any cost overruns on the Project, including increased costs due to inefficiencies in meeting the

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schedule. Tr. at 2576-77. This was a major change to the Project that incentivized Westinghouse to improve productivity and—together with the increased liquidated damages and potential bonuses provided for in the Amendment—greatly increased Westinghouse's "skin in the game." Tr. at 2571-72, 3878-79; Hearing Ex. 114.

The EPC Amendment also allowed CB&I to exit the Project, which made it possible for Westinghouse to bring in Fluor as a sub-contractor. Fluor immediately began work off-site to evaluate ways to improve efficiency and implement better construction processes. Tr. at 4077. Mr. Young testified that on October 23—the day after Bechtel's preliminary presentation (which Mr. Young did not attend)—he traveled to Fluor's office and was informed that Fluor would be working with Westinghouse to re-baseline the schedule. Tr. at 3746-48. Mr. Young was then asked to lead the SCE&G team that was working to help re-baseline the schedule with Westinghouse and Fluor under the terms of the new amended agreement. *Id.* Because of this—even if Mr. Young had been provided Bechtel's preliminary schedule assessment at the time—he testified that he likely would not have done anything with it because it was "based on the old contract terms" and schedule that were now moot. *Id.*

In light of the Owners' contemporaneous view of the unreliability of Bechtel's preliminary schedule assessment and the activity on the Project following Bechtel's October 22nd presentation, the Commission concludes that SCE&G's decision to not act on Bechtel's preliminary schedule does not justify ORS's request in this case.

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3. Westinghouse's Bankruptcy

We turn to ORS's final (apparent) contention that SCE&G should have known that Westinghouse would file bankruptcy at the time of the EPC Amendment or election of the fixed price. As noted above, ORS does not actually assert this as a basis for disallowance. And, in any event, the facts prove this contention incorrect.

Nearly everyone who provided testimony in this proceeding, including representatives from Westinghouse, Mr. Wenick, Mr. Jones, Ms. Walker, Mr. Browne, and various SCANA or SCE&G employees stated time and again that they never anticipated that Westinghouse would file bankruptcy at the time of the EPC Amendment or fixed-price election. *See, e.g.*, Tr. at 582-85, 589, 3831-32, 3879-80, 3968-71, 3606-07. Bankruptcy was not anticipated because Westinghouse—over and over again—assured all who asked that Westinghouse was committed to completing the Project notwithstanding the additional financial risk it accepted with the fixed-price option. *See, e.g.*, Tr. at 547, 3831-32, 3878-79, 3968-71. Several Westinghouse representatives testified that they did not even anticipate a bankruptcy filing until shortly before it occurred, in March 2017. *See, e.g.*, Hearing Ex. 178, Magnarelli Dep. at 114; Hearing Ex. 179, Falascino Dep. at 87-88. The record is replete with testimony detailing how Westinghouse was committed to meeting its obligations under the EPC Amendment and represented as much to the Owners, to ORS, and to others. *See* Hearing Ex. 177, Elam Dep. at 144–45; Hearing Ex. 178, Magnarelli Dep. at 112–113; Hearing Ex. 179, Falascino Dep. at 51. Westinghouse's corporate representative also explained that, at the time of the EPC Amendment, Westinghouse felt that the Project could be completed for the amount of the fixed price, "with manageable risk." Hearing Ex. 179,

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Falascino Dep. at 51. In addition to that belief, Westinghouse represented to SCE&G and ORS that the AP1000 was critical to Westinghouse's future, that Westinghouse planned to sell these units around the world and make money servicing them for decades, and that to do so Westinghouse first had to prove that it could complete the units at V.C. Summer and Vogtle. Hearing Ex. 144 at 30; Hearing Ex. 161, Byrne Dep. at 177–178.

Westinghouse even made these commitments contemporaneously with its commercial commitments under oath. During the proceedings before the Dispute Resolution Board between SCE&G and Westinghouse, then-Chairman of Westinghouse Jeff Benjamin testified regarding the risk of continuing construction at V.C. Summer and dispelled any notion of bankruptcy. Specifically, in response to concerns that Westinghouse could possibly walk away from the Project, he stated that Westinghouse had "no history of doing that," that Westinghouse knew "that the successful completion of these projects [was] essential to [the] future at Westinghouse," and that Westinghouse would build these plants. Tr. at 2585-86. Mr. Benjamin went on to testify that Westinghouse was involved in new nuclear construction not just for the profit but for the "60-year opportunity to service these plants and to refuel these plants and to provide fuel to these plants," adding that "the irony that [Westinghouse] would walk away from a marquee product, frankly, is nonsense." Tr. at 2586-87.

The Owners had no reason to doubt Westinghouse's commitment as reflected in repeated assurances and sworn testimony. Indeed, Mr. Jones himself testified that he "didn't expect Toshiba to totally cut Westinghouse loose and just let them drift into bankruptcy and cut their losses," adding that he thought that "the nuclear market was very important to Westinghouse and to Toshiba and they would finish both these projects in order to maintain

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them." Tr. at 584. Mr. Byrne also testified before this Commission that he felt, in 2016, that "the prospect for this Project was really very good"—so good in fact that he turned down a lucrative CEO position at another utility in order to stay with SCE&G and finish the Project. Tr. at 4181–82. The Commission agrees that there is no basis to find that any costs should be disallowed on the theory that SCE&G should have known that Westinghouse would declare bankruptcy.

4. The Claim that Construction Should Have Been Cancelled before 2015

Friends of the Earth, the Sierra Club and AARP have further argued that the evidence presented supports their claims that the Project should have been cancelled even earlier, before 2015. Dr. Mark Cooper for Friends of the Earth and the Sierra Club contends that the Project has been mismanaged since "the very beginning," such that all costs incurred since the inception of the Project should be disallowed. Tr. at 119-5. Alternatively, Dr. Cooper says that the Project was imprudent beginning in 2012 and relies on his 2012 testimony to support that position. *Id.* at 119-7. Therefore, Dr. Cooper believes that all costs incurred since 2012 should be disallowed as imprudent pursuant to the BLRA. *Id.* at 119-45.

Dr. Cooper points to four reasons to support his finding of imprudence: (1) mismanagement of the Project; (2) misrepresentation of the chaos in the construction process; (3) misunderstanding of the economic reality in the electricity sector; and (4) misinterpretation of the Baseload Review Act (BLRA). *Id.* at 119-5. Similarly, AARP witness Scott Rubin contends that SCE&G should have cancelled the Project during 2013, or, at the latest, mid-2014. *Id.* at 1908-7. Mr. Rubin largely bases this contention on

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information regarding module delay, specifically, the CA-20 module. *Id.* at 1908-13–1908-15.

For the same reasons that the Commission finds there is no basis to disallow costs since 2015, there is likewise none to disallow costs since 2012, as explained in Section IV(C) above. SCE&G's oversight of the project was clearly and persuasively explained in the testimony of Mr. Young, Mr. Byrnes and Dr. Petrunik. It was the subject of ongoing ORS oversight and review. The evidence does not establish any mismanagement.

Moreover, in Order No. 2012-884, the Commission stated that the BLRA does not require that prudency be re-litigated once the initial prudency finding has been made. In *South Carolina Energy Users*, the South Carolina Supreme Court concurred with the Commission's ruling and affirmed the ruling in its entirety. *S.C. Energy Users Committee v. S.C. Elec. & Gas*, 410 S.C. 348, 764 S.E.2d 913 (2014).

Dr. Cooper also argues that Dr. Lynch's economic analyses presented during prior hearings were flawed. Tr. at 119-6. The Commission disagrees. First, a detailed review performed by ORS' consultants in 2008 verifies that the methodology used was reasonable and standard in the industry. *See* Order No. 2009-104(A) at 12-13. In the 2008 analyses, Dr. Lynch showed that using base assumptions, the additional cost of a natural gas resource strategy was $15 million dollars per year less than the alternative natural gas strategy levelized over forty years. In other words, the nuclear resource strategy was the least costly resource, and one scenario quantified that this lower cost resulted in levelized savings to customers of $15 million per year. *See* Order No. 2009-104(A); *Friends of Earth v. Pub. Serv. Comm'n*, 387 S.C. 360, 369, 692 S.E.2d 910, 915 (2010). Dr. Lynch also provided a

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sensitivity analysis, which demonstrated that if natural gas prices were higher than forecasted by 25%, the comparative benefit of the nuclear resource strategy increased over the gas resource strategy from $15 million to $53.4 million per year. *Id.*

Then, in Dockets 2012-203-E, 2015-103-E and 2016-223-E, Dr. Lynch presented economic analyses comparing the alternative of continuing construction of the nuclear units to that of stopping construction and building combined cycle units instead. *See* Order No. 2012-884 at 28-32; Order No. 2015-661 at 62-63; Docket No. 2016-223-E, Tr. at 783. In all three dockets, SCE&G's analyses showed that continuing construction of the nuclear units was in the best interest of customers. *See* Order No. 2012-884 at 32-33; Order No. 2015-661 at 62-63; Docket No. 2016-223-E, Tr. at 783-784.

In 2012, as he notes, Dr. Cooper challenged the methodology of Dr. Lynch's analyses. However, in Order No. 2012-884, the Commission reviewed and rejected this challenge. Order No. 2012-884 at 32. The analyses and their underlying assumptions were well justified in the record in that case and entirely reasonable and proper. They showed that under the most reasonable cost scenario, cancelling the Units and switching to natural gas would increase the cost to SCE&G's customers for electric service by $290 million per year on average over a 40-year planning horizon. *Id.* at 31-32.

In 2015, updated analyses concluded that under the most reasonable cost scenario, cancelling the Units and switching to natural gas would increase the cost to SCE&G's customers for electric service by $278 million per year on average over a 40-year planning horizon. Order No. 2015-661 at 63. Further, the future capital costs of the Units would have had to increase by about $3.1 billion above the current forecasts to overcome the benefit of

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$278 million per year from completing the Units at their then current cost. *Id.* No party challenged these analyses, and the Commission properly accepted them as reliable in Order No. 2015-61.

Likewise, in 2016, the analyses concluded that under the most reasonable cost scenario, cancelling the Units and switching to natural gas would increase the cost to SCE&G's customers for electric service by $374 million per year on average over a 40-year planning horizon. Docket No. 2016-223-E, Tr. at 781 (incorporated into these Dockets as Hearing Ex. 101). Furthermore, the future capital costs of the Units would have had to increase by about $3.83 billion above the current forecasts to overcome the benefit of $374 million per year from completing the Units at their then current cost. *Id.* at 782. The testimony also included an analysis of the fixed price option that demonstrated that exercising the option was reasonable considering the cost risks to the Project, and that doing so would save SCE&G's customers between $118 and $981 million. Order No. 2016-794 at 13, 17-18.

In this proceeding, Dr. Cooper challenges the analyses presented in those dockets. The Commission finds that they were not materially flawed, but that they reflected reasonable information and assumptions available at the time they were prepared, as SCE&G represented. Tr. at 2418-4. Dr. Lynch's economic analyses show the reasonableness of continuing construction in 2012, 2015 and 2016, and the untimely criticisms of them made by Dr. Cooper and Mr. Richardson are not sufficient to overcome the fact that cancelling the Units early would not have been economical, as the reduction in Project benefit was not significant. Tr. at 2420-4–2420-5, 2424-13–14. Regarding criticism's about SCE&G's

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future natural gas prices, SCE&G did not make a forecast of natural gas prices but conducted a sensitivity analysis using a range of future prices, as future prices cannot be projected with confidence. Tr. at 2418-6–2418-8. Likewise, regarding criticisms that SCE&G's expectation for CO_2 emissions costs was too high, it is evident that SCE&G did not make a forecast of CO_2 emission costs but conducted a sensitivity analysis using a range of possible future CO_2 emission costs. Tr. at 2418-10–2418-12. For these reasons, and as discussed in the prior Orders, the Commission finds that Dr. Lynch's analyses are both credible and reliable evidence sufficient to support prudency of the Project in all respects and meet all relevant and material points raised in Dr. Cooper's and Mr. Rubin's testimony.

Additionally, Dr. Lynch's study was based on post-bankruptcy cost and schedule data, which includes an additional $1.1 billion increase in costs for an owner-directed project structure, and a multi-year delay, completing the Project could have been beneficial to customers in most scenarios assuming Santee Cooper remained committed. Tr. at 2414-30–2414-31. However, without Santee Cooper, completing one or both Units would not be possible from a risk standpoint. *Id.*

The Commission finds in addition that Dr. Lynch and SCE&G properly considered that the benefits of fuel diversity and the flexibility to respond to future environmental regulations as important factors in assessing its generation plans. The Commission further finds, as Dr. Lynch testified, that any effect of potential adjustments to his analyses would have no effect regarding the conclusion as to economic feasibility of the Project. Rather, all analyses support the conclusion that the Project was economically feasible and prudent from

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2009 to 2017 and provided other benefits as well related to fuel diversity, carbon emissions and the mitigation of environmental risks.

V. ADJUSTMENTS TO COSTS

There are a number of issues raised in this proceeding that cut across the principal regulatory plans presented.

A. Miscellaneous Regulatory Assets

Under the Plan-B Levelized and related plans, the Joint Applicants propose to forego recovery of a group of regulatory assets associated with the Project in the amount of approximately $361 million. Tr. at 2806-11. These regulatory assets are related to the cost of rate swaps entered into to lock in interest rates on bonds that were scheduled to be issued to finance the Project as well as regulatory assets associated with various tax matters. *Id.* No party objects to the Joint Applicants' proposal to forego recovery of these assets through rates and the Commission hereby approves it as part of the acceptance of Plan-B Levelized.

B. Refunds of Revised Rates Recovery

ORS contends that SCE&G should be required to refund (1) all revised rates collected after August 1, 2017, the date the NND Project was abandoned,[27] and (2) the revised rates associated with capital costs exceeding $2.772 billion, the total capital costs that ORS believes were prudently incurred. Tr. at 987-31. Combined, these refunds would equal $392 million, which ORS proposes to treat as a regulatory liability that reduces the allowable capital costs associated with the Project. *Id.* ORS further proposes that the Commission

[27] The amount of revised rates collected after abandonment was reduced, but not eliminated when the experimental rates mandated by Act 258 were put into effect on April 1, 2018.

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require SCE&G to provide a return on this amount equal to SCE&G's grossed-up return on capital from the time the rates were collected to the time the Commission enters its order in this case. *Id.* This additional amount, $37 million, would also be applied to reduce the rate base. *Id.* All told, ORS proposes that the Commission reduce the rate base for the NND Project by about $429 million to account for the rate refunds and the time value of money. Tr. at 987-26; Tr. at 987-31.

There are a number of serious problems with this proposal. First, the Joint Applicants have proposed in Plan–B Levelized to voluntarily reduce the recoverable Project investments to be recovered by approximately $1.962 billion (inclusive of previous impairments) and to establish a regulatory liability for customer refunds and restitution of $1.007 billion to be credited to customers. Tr. at 4217-3–4217-4. These amounts are more than sufficient to protect customers' interest in these matters.

In addition, as a general principal of law, the Commission is without statutory authority to order involuntary refunds of rates collected under duly approved tariffs. Doing so constitutes a violation of both the filed rate doctrine and retroactive rate-making. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 391 (2005) (stating that the filed rate doctrine bars collateral attacks on previously determined rates); *Porter v. S.C. Pub. Serv. Comm'n*, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1997) ("Retroactive rate-making is prohibited."). Furthermore, the collection of revised rates after abandonment is authorized under S.C. Code Ann. § 58-33-280(K) which states, "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article." Finally,

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requiring a gross up of these amounts would constitute single-issue rate making, which the Commission disfavors for reasons stated below with reference to the Toshiba Corporate Guarantee Settlement Payment ("Toshiba Proceeds").

C. The Acquisition Cost of the Columbia Energy Center

After abandonment of the Project, SCE&G was able to close on the purchase of a 540 MW natural gas fired combined cycle generating facility known as the Columbia Energy Center at a very favorable price. Tr. at 3592-24. That acquisition replaced a large portion of the base-load generation capacity that would have been provided to SCE&G's customers through the first unit of the Project. Under Plan-B Levelized and related plans, the Joint Applicants propose for shareholders to absorb the acquisition cost of this asset, in the amount of $180 million, and to forego recovery of this amount in rates. Operating and maintenance costs of the plant, as well as fuel costs and future capital maintenance would be treated as ordinary costs of utility operations. *Id.;* tr. at 987-8 n. 2. No party objects to the Joint Applicants' proposal to forego recovery of this $180 million capital expense through rates and the Commission hereby approves it as part of the acceptance of the Customer Benefits Plan-B Levelized.

D. Grossing Up the Toshiba Proceeds to Included Imputed Returns

Toshiba Corporation provided a parental guarantee for the obligations of Westinghouse under the EPC Contract. Tr. at 1124-26. The principal damages provisions under that contract made Westinghouse liable upon default for 25% of the amount that had been paid as of the date of the default against fixed price obligations. Tr. at 1125. Payments associated with liens on the Project were outside of this amount. Tr. at 987-19; 991-12;

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3596-5–3596-6. Contrary to suggestions by some parties, the release of CB&I did not reduce the amount due under the guarantee. Tr. at 2581. Instead, it shifted the full payment obligation to Toshiba, and increased rather than decreased the amount payable.

In fact, under the 2015 Amendments to the EPC Contract, the amount of guarantee related to the 25% damages provision increased greatly since all payments made after that date were payments against fixed price amounts and so were considered in calculating that amount. In the end, SCE&G negotiated a payment which was approximately $500 million greater than what would have been due under a strict application of the EPC Contract terms. The cash associated with the net amount of the payment was used to provide short-term liquidity for SCE&G during a time of stress on its short-term borrowing capacity in late 2017 and 2018. Tr. at 2022-24–2022-25. For regulatory accounting purposes, SCE&G recorded the amount, net of contractor liens, in a regulatory liability account.

ORS objects to using the Toshiba Proceeds to pay for the mechanics and other liens filed by contractors and vendors on the Project's real property after the Westinghouse bankruptcy was announced. Tr. at 3596-5. However, the testimony clearly shows that these lien amounts were included in the Toshiba Proceeds for the specific purpose of satisfying these liens. *Id.* at 3596-7. Furthermore, the liabilities in question and the amount to be paid has been measured by SCE&G at approximately $30 million for that purpose. There is no testimony in the record of this proceeding indicating that this approximately $30 million amount is excessive or otherwise inaccurate. Customers will not be prejudiced because the balances in appropriate accounts will be adjusted as claims are paid or otherwise resolved. Customers will get the full benefits of any funds that are not used as anticipated. For these

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reasons, the Commission finds it appropriate to recognize the approximately $30 million reserve as proposed by SCE&G as a reduction in the Toshiba Proceeds that are available for rate mitigation for customers at this time.

E. Test Year for Calculating TCJA Savings

The Optimal Benefits Plan would calculate the "gross-up" portion of the Tax Savings Rider by adjusting SCE&G's 2011 income (the test year used in the last base rate proceeding) for sales growth through 2018 and then applying the new corporate income tax rate to that notional amount. The Joint Applicants, by contrast, propose to calculate the effect of the reduction in the corporate income tax rate based on actual 2017 results, as adjusted for standard rate making pro forma adjustments.

The 2011 figures ORS uses are nearly seven years old. They do not reflect current economic reality. Furthermore, ORS's proposal to estimate SCE&G's income by simply adjusting the 2011 numbers to account for sales growth through 2018 entirely neglects the effect of any and all changes in expenses and rate base since that last proceeding. For example, the Federal Energy Regulatory Commission generally does not permit utilities to change any single component of their cost of service outside of a general rate case.[28] A primary reason for this policy is that, while one component of the cost of service may have increased, others may have declined. By employing single-issue ratemaking, the ORS approach would require SCE&G to reduce rates for tax savings it is not currently realizing.

We agree with the Joint Applicants that adjusting the "gross-up" factor based on actual information from the 2017 test period is a much more accurate basis for assessing tax

[28] See, e.g., *Trunkline Gas Co.*, 142 FERC ¶ 61,133, at P 24 n.28 (2013).

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benefits. Because 2017 represents the most recent 12-month calendar year period for which data is available, it provides the most current assessment of realizable tax savings. These figures more accurately reflect the actual savings SCE&G will recognize as a result of the TCJA. Accordingly, we approve the calculation of the Tax Rider amount as proposed in Plan–B Levelized found in 2017 data.

F. Quantification of the Accumulated Deferred Income Tax Asset ("DTA") produced by SCE&G's Net Operating Loss Carryforward ("NOLC")

SCE&G's NOLC produced more than a $500 million DTA which represents the tax effect of tax deductions it claimed but could not use due to the lack of taxable income. The Optimal Benefits Plan proposes that only $67.1 million of this DTA should be included in rates and that the rest should be absorbed by shareholders. Its premise is that, had SCE&G not incurred the imprudent costs, the NOLC would be much lower than it is. In other words, the Optimal Benefits Plan presumes that the NOLC was created by imprudent costs to the extent of those costs. This presumed ordering of deductions (prudent costs used first only then followed by imprudent costs) is without merit. All deductions, whether relating to allegedly imprudent expenditures or prudent ones, are exactly the same from a tax perspective. Since they are indistinguishable from one another, Mr. Warren proposed to allocate the DTA between customers and shareholders based on the relative amounts of NND costs each group ends up bearing. Each dollar deducted is treated as part customer funded and part shareholder funded. This results in a fairer allocation of the NOLC as well as being aligned with the actual treatment of these expenditures on SCE&G's tax return.

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Mr. Warren also testified that for purposes of the tax normalization rules, an NOLC is deemed attributable to accelerated depreciation to the extent it was claimed in the year the NOLC was produced. Moreover, those rules require that the DTA attributable to accelerated depreciation be included in rates. Looking at ORS's proposal through this prism, the $67.1 million DTA proposed by ORS would be insufficient insofar as it is not enough to "cover" the accelerated depreciation SCE&G claimed in 2017 – the year in which the NOLC was created. In short, the Optimal Benefits Plan would result in a normalization violation that would have severe consequences for SCE&G and its customers, including the loss of the ability to claim accelerated depreciation deductions.

The Plan–B Levelized, by contrast, would recognize a $574 million NOLC-related DTA. We agree that the Plan–B Levelized provides the proper calculation for this DTA. Commission approval of an NOLC of $1.5 billion and NOLC-related DTA of $574 million are necessary conditions of merger closing. Deviation from this NOLC-related DTA would change the merger economics in a way that would prevent Dominion Energy closing the merger and would thereby deprive customers of $4.5 billion in benefits to be provided under Plan–B Levelized.

Accordingly, we reject the Optimal Benefits Plan's treatment of the ADIT and endorse the method proposed by the Joint Applicants in the Plan–B Levelized.

G. Treatment of Excess Accumulated Deferred Income Tax

Federal law governs the timing of sharing a portion of the excess accumulated deferred income tax ("EDIT") resulting from the TCJA's reduction in the corporate income

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tax rate ("protected EDIT") on base rates. Specifically, protected EDIT may not be returned to customers any faster than allowed by the Average Rate Assumption Method ("ARAM"). However, the timing of the distribution of the remainder of the EDIT ("unprotected EDIT") is not similarly constrained by the tax law. ORS proposes returning the entirety of plant-related unprotected EDIT over a five-year period in the Tax Savings Rider; the Joint Applicants propose returning the unprotected EDIT over the remaining book life of the property generally in accordance with the ARAM, which tracks and provides symmetry between the reductions in plant-related EDIT with the period of depreciation of the underlying assets to which the EDIT relates.

We agree with the Joint Applicants' approach for several reasons. First, the ORS approach would create a significant mismatch between the amortization of the unprotected EDIT and the actual depreciation of the related assets. Second, the five-year amortization period would (in isolation) result in the need for an increase in customer rates in year six. Third, we find that applying the ARAM method to both protected and unprotected plant-related EDIT results in uniformity, ease of administration, and sound regulatory economics including providing intergenerational equity and rate stability to current and future customers. Accordingly, the return of both protected and unprotected plant-related EDIT should be calculated using ARAM, as proposed in Plan–B Levelized.

H. Transmission Projects that Were Part of the BLRA Project

As part of the project, SCE&G's transmission planning department conducted the generation siting studies required under the Federal Power Act and related FERC orders, and

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undertook a major expansion and strengthening of the backbone of SCE&G's transmission system. The total amount invested was approximately $322 million and all aspects of the project will be in service as of January 31, 2019. Only the financing cost associated with $275 million in capital is in rates today which is equivalent to approximately $32 million in revenue requirement. The return of capital of the entire amount invested and the financing cost of the remaining approximately $47 million is not in rates today.

As SCE&G's witness Mr. Wade Richards testified, SCE&G's transmission system principally interconnects load centers and generation assets located in northern and southern areas of SCE&G's service territory. Tr. at 3349-5–3349-6. The transmission upgrades included in the Project were undertaken to strengthen both the capacity and resiliency of the north-south backbone of SCE&G's system while increasing the capacity and reliability of service to important or growing areas like the I-77 corridor and Northeast Columbia, Lake Murray and Lexington, and the Columbia metropolitan area. Aging, wooden transmission structures were replaced with higher capacity, multiple circuit lines on steel structures that require significantly less maintenance and are far more resistant to storm damage.

Mr. Richards provided modeling studies showing that SCE&G's transmission system could not meet reliability standards without the upgrades in question. *Id*. at 3349-20. He testified that as a result of the upgrades, SCE&G's transmission system has performed far better in storms and storm restoration than might otherwise be expected. *See id.* at 3349-8.

The Commission finds Mr. Richards' testimony regarding the necessity and benefits of the transmission upgrades to be persuasive. The revenue requirement currently in rates is approximately $32 million. The Commission further notes that the Unit 2 & 3 switchyard

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constructed as part of the Project is not included in these transmission projects but was included as part of the approximately $85 million in projects placed in service that will be written off under Plan–B Levelized.

Under Plan-B Levelized, the cost of the transmission assets will be included in rate base as transmission plant in service. Tr. at 3592-19. They will not be part of the cost used in computing the Capital Costs Rider. Tr. at 3592-18, 3592-20. SCE&G is not currently seeking any additional rate recovery for these assets under Plan–B Levelized but asks that these transmission investments be deferred for recovery in base rates, and the current approximately $32 million revenue requirement associated with them remain in base rates under the terms of the Plan–B Levelized. *Id.* SCE&G seeks to defer, as a regulatory asset for consideration in a future proceeding, the ongoing operating costs associated with these transmission assets to include O&M expenses, depreciation and property taxes.

ORS recommends that the Commission direct SCE&G to defer the BLRA transmission revenue requirement and consider inclusion of these assets in SCE&G's transmission plant in service in a future base rate proceeding.

The Commission is not persuaded by ORS's recommendation. The evidence of record is clear that these transmission assets are used and useful components of SCE&G's transmission plant in service. They are providing valuable service to SCE&G's customers and the transmission system could not meet reliability requirements without them. There is no statutory or regulatory basis to order the investment in these assets be removed from plant in service or held outside of plant in service when completed and placed in service. Leaving the associated revenue requirement rates is a necessary component of the Plan–B Levelized

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economics on which the merger is based. Tr. at 2819-7–2819-8; Tr. at 3344-3348. These assets are a known and measurable investment in SCE&G transmission plant in service and there is no basis to ignore them here. In addition, SCE&G shall defer any remaining costs associated with the transmission assets for recovery in base rates as determined in the next base rate case.

I. The Investment in Miscellaneous Used and Useful Generating Assets

After abandonment, SCE&G identified a number of assets that were constructed as part of the Project that will not be abandoned. Instead, these assets are being placed in service to support generation activities at the V.C. Summer site. They include the Unit 2 & 3 switchyard: water, wastewater, office, training and security facilities that support operations at Unit 1; and software and other IT assets that support Unit 1 operations. These are used and useful assets. However, under Plan-B Levelized and other versions of the Customer Benefits Plan, the Joint Applicants propose for shareholders to absorb the acquisition cost of these assets, in the amount of approximately $85 million, and to forego recovery of this amount in rates. No party objects to the Joint Applicants' proposal to voluntarily forego recovery of these assets through rates and the Commission hereby approves it as part of the acceptance of Plan-B Levelized.

J. Merger Savings

ORS proposes an electric rate reduction of $35 million in the first year and $70 million in the second year and annually thereafter in the form of a Merger Savings Rider to account for the anticipated savings in operating expenses due to the merger. There is no

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meaningful support for this calculation in the record beyond reference to two historical transactions, both of which are over 20 years old and both of which involve gas distribution utilities. These examples do not provide a meaningful basis for determining future merger savings. ORS's calculation also fails to account for implementation costs, which the Joint Applicants have agreed to absorb as part of their comprehensive merger commitments, and the protections for SCE&G employees and local operations that Dominion Energy is providing. The Joint Applicants do not know at this stage what efficiencies may be realized, or when, so such a calculation is premature for purposes of ratemaking.

Moreover, adding any such rate reductions to the customer benefits already included in Plan–B Levelized would upset the economic balance of Plan–B Levelized necessary to close the merger. It is also unnecessary since Dominion Energy is providing in excess of $1 billion in merger savings to customers through the Plan–B Levelized and has pledged to pass through merger savings to customers following the first electric base rate case after the merger, with rates effective January 1, 2021.[29] The Commission rejects ORS's proposal.

K. The Timmerman Consulting Contract

Upon his retirement from SCE&G, its former CEO, Mr. William B. Timmerman received a contract under which he was to be paid $360,000 per year until completion of Unit 2 to secure his availability to consult on commercial matters associated with the Project. Tr. at 2356. Mr. Timmerman was paid as the contract required, but there is no record of the services he performed. *Id.* at 930, 931. Under Plan–B Levelized, the Joint

[29] Purohit Rebuttal at 5:14-7:9.

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Applicants propose for shareholders to absorb the full cost of all payments made under this contract and to forego recovery of this amount in rates. Tr. at 4216, 4217-12. No party objects to the Joint Applicants' proposal to reduce the allowable investment in the Project by this amount and the Commission hereby approves it as part of the acceptance of the Plan-B Levelized.

L. Office Furniture Bid Rigging

Auditing invoices for the Project from CB&I, SCE&G identified evidence of bid rigging related to a provider of office furniture. Tr. at 3589. However, SCE&G refused payment of the associated invoices and determined based on publicly quoted pricing, that the price increase associated with the bid rigging was approximately $42,000. *Id.* This amount became part of the global settlement of claims between SCE&G and CB&I that formed part of 2015 Amendment to the EPC Contract and was resolved in that context. *Id.* The Commission finds that no further action related to this claim is warranted. Order No. 2016-794 at 9; Hearing Ex. 114 at ¶ 3(h).

VI. <u>RATE PLANS</u>

A. Plan–B Levelized

Through September 30, 2017, SCE&G incurred approximately $5.053 billion in capital costs for the Project. After transferring $322 million in transmission costs to transmission plant in service, this results in a remaining amount of $4.730 billion. *See* Tr. at

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3592-19; Hearing Ex. 141.[30] Plan–B Levelized provides for SCE&G/Domion Energy to voluntarily write down this amount by approximately $1.962 billion including impairments taken to date. The remaining amount is approximately $2.768 billion. *See* Tr. at 4217-3. This write down is about $4 million larger than the write down proposed by the Optimal Benefits Plan. C*ompare id., with* Tr. at 987-15. This difference reflects Dominion Energy's agreement under Plan–B Levelized that the costs of the Bechtel analysis, executive bonuses, and Timmerman consulting fees, would not be included in the allowed capital costs for the Project. Tr. at 4217-3; Tr. at 4217-12–4217-13.

Plan–B Levelized provides for the resulting amount, approximately $2.768 billion (net of the related deferred taxes discussed below), to be amortized through rates over 20 years. *See* Tr. at 4217-4. That cost of capital reflects a return on equity at 9.9% (compared to the BLRA required return of 11.0% and the current allowed return of 10.25%) and the cost of debt set at 5.56% (as recommended by ORS), which is lower than SCE&G's actual cost of debt of 5.58%. *Id.*; Tr. at 2022-12, 2022-17. The capital structure for this recovery would be fixed at the pre-impairment ratios of 52.81% equity and 47.19% debt, which is a further benefit to customers. Tr. at 4217-3.

1. The Capital Cost Rider

The recovery of all costs associated with the Project investment will be reflected in a separate Capital Cost Rider. Hearing Ex. 169 at 4. This segregates the recovery of those

[30] This amount represents SCE&G's 55% interest in the Project. All other numbers in this Order also represent SCE&G's share. Furthermore, this amount does not include any costs incurred after September 30, 2017, because SCE&G has written off those costs as they were incurred.

costs from other components of SCE&G's retail electric rates. All tax costs or benefits associated with Project investment will flow through the Capital Cost Rider.

Plan–B Levelized also includes a total of $2.039 billion in refunds and restitution over a 20-year NND recovery period. Tr. at 4217-3. Of this amount, $1.032 billion represents the amount equivalent to net Toshiba Proceeds, which SCE&G will refund to customers over 20 years at the fixed annual amounts as specified in Exhibit PP-2A (Toshiba Settlement Regulatory Liability). Payments of these funds to customers will decrease the regulatory liability recorded by SCE&G on the set schedule in Exhibit PP-2A. Tr. at 4217-4. In addition to the refunds equivalent to the Toshiba Proceeds, a further regulatory liability of $1.007 billion for refunds of amounts previously collected from customers under the BLRA will be established upon closing of the merger and credited to customers over approximately 11 years (NND regulatory liability). Instead of evenly distributing these refunds over the entire period, Plan–B Levelized shapes the refunds credited to customers so that the resulting bills to be paid by SCE&G's customers under the Capital Cost Rider will be levelized taking into account the amortization that reduces the balance of the unrecovered Project investment, thereby reducing the capital cost associated with it. Each year SCE&G shall compute the Capital Cost Rider Revenue Requirement (inclusive of the associated NND EDIT amortization) and apply the annual refund amount per the fixed amortization schedule shown in Hearing Exhibit 169 at page 20 against the Capital Cost Rider Revenue Requirement. The difference between this calculated amount and the cash collected from customers related to NND shall be deemed a refund to customers (NND refund), and reduce the corresponding NND regulatory liability. Any remaining amounts in the NND regulatory liability after the

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unrecovered Project investment has amortized below the Capital Cost Revenue requirement including the Toshiba refund will be refunded to customers as deemed appropriate by the Commission.

The $2.039 billion in refunds and restitutions under the Plan–B Levelized compensates the ratepayers for the time value of the delayed refund on the Toshiba Proceeds, refunds and provide restitution for any rate overpayments previously collected amounts under the BLRA, and provides merger benefits compensation. Tr. at 4217-4–4217-5. When combined with the expected bill reductions resulting from the TCJA, these refunds would reduce bills by approximately 15% from the pre-petition levels. *Compare* Hearing Ex. 141, *with* Tr. at 4217-3.

In addition, under Plan–B Levelized, SCE&G estimates that as to the Capital Cost Rider, the DTL for 2019 will be $1.059 billion and the DTA will be $574 million. Hearing Ex. 170. Applying the net DTL of $485 million and accumulated depreciation to the rate base would further reduce the net rate base to about $2.283 billion in 2019. *Id.*

2. TCJA Tax Rider

The Joint Applicants propose to use a Tax Rider to reduce customers' rates for certain impacts of the TCJA. Hearing Ex. 169 at 4. The impacts of the TCJA that relate to the NND Project investment would be handled through the Capital Cost Rider, and other TCJA-related tax benefits including those related to other components of SCE&G's rate base would flow through the Tax Rider. *Id.* Although the tax benefits would normally fluctuate year-to-year based on SCE&G's earnings and other tax-related factors, the Plan–B Levelized would fix

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the base rate tax savings for the years 2019 and 2020, subject to tax normalization requirements. Tr. at 2020-52–2020-53. In calculating the fixed amount for the Tax Rider, SCE&G used the twelve months ended December 31, 2017 to quantify the benefits of the TCJA Tr. at 2020-53. SCE&G computes its tax liabilities on a calendar year basis, and 2017 is the most recent calendar year for which tax liabilities can be calculated. As a result of the Tax Rider, SCE&G will reduce base rates to customers by approximately $67 million per year in 2019 and 2020, in addition to the approximately $25 million in 2019 TCJA benefits built into the Capital Cost Rider. Tr. at 2020-54.

3. Other Benefits to Customers under Plan–B Levelized

Plan–B Levelized would also provide a number of other benefits to the ratepayers as discussed above. These include the agreement not to seek rate recovery for the approximately $180 million in costs incurred for the acquisition of the Columbia Energy Center, the write-off of the approximately $85 million related to other generation investment placed in service to support Unit 1 operations, and benefits to the ratepayers in the form of merger conditions detailed in Exhibit 169, at pages 22–28. The Joint Applicants agree to file a general rate case on May 1, 2020, in order to ensure that actual merger-related savings are reflected on a timely basis but would further agree to not file for a base rate adjustment before that time. Hearing Ex. 169, at 5.

4. Customer Bill

Under Plan–B Levelized, SCE&G's customers would pay approximately $145 million related to the NND Project and the Transmission Costs in 2019, a decrease of $300

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million from May 2017. Hearing Ex. 170; Tr. at 1345-41. In addition, the customer bills would be further reduced by about $67 million by the Tax Rider for a net rate impact of approximately $78 million during the initial year. *See* Tr. at 2020-54. This amount is slightly below current bills, which include the temporary rate reductions imposed under Act 258.

5. Conclusion as to Plan–B Levelized

The Commission finds that Plan–B Levelized provides significant customer bill relief for SCE&G's customers without damaging SCE&G's creditworthiness or putting at risk SCE&G's financial soundness or ability to continue providing reliable, cost-effective utility service to customers. Under Plan–B Levelized, SCE&G can provide this combination of sustained rate benefits to customers and security for future service because of the financial support and infusions of capital that Dominion Energy will provide to SCE&G and its customers as merger benefits. Apart from the plans proposed by the Joint Applicants, no other plan can provide the same combination of benefits to customers that Dominion Energy offers. Accordingly, under S.C. Code Ann. § 58-33-280(K), the Commission adopts Plan–B Levelized as the appropriate resolution to the matters associated with the recovery of Project investment.

B. Review of ORS's Optimal Ratepayer Benefits Plan

The Optimal Benefits Plan produces a rate for the typical residential customer of $116.77 per month. The comparable rate under Plan–B Levelized is $125.26, and the pre-Act 258 rate is $147.53. Thus, the Optimal Benefits Plan and Plan–B Levelized produce significant reductions (21% vs. 15%) from pre-Act 258 rates. However, the Optimal

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Benefits Plan uses a very different mechanism to reach its result, and that mechanism does not support the economics required for the merger to close.

Both the Optimal Benefits Plan and Plan–B Levelized include a Capital Cost Rider to recover project costs and a Tax Rider to flow non-project-related TCJA savings to customers. However, while Plan–B Levelized provides for refunds and restitution of $2.039 billion to reduce bills to customers over 20 years, the Optimal Benefits Plan does not.

Specifically, under Plan–B Levelized, Dominion Energy will provide SCE&G capital from its balance sheet ($1.007 billion) that along with amount equivalent to the Toshiba Regulatory Liability ($1.032 billion) will allow SCE&G to pass refunds and restitutions on to customers while recovery on and of approximately $2.768 billion in Project investment over 20 years is reflected in SCE&G's financial returns. This approach supports SCE&G's financial health, credit profile and access to capital while allowing for bill relief.

Adopting the Optimal Benefits Plan would require the Commission to embrace a number of adjustments to SCE&G's actual investment and financial metrics, making results that are legally and factually unsupportable. As to the recoverable investment, the Optimal Benefits Plan and Plan–B Levelized start with a comparable amount of Project investment after the initial write downs (approximately $2.772 billion vs. approximately $2.768 billion in Plan–B Levelized).[31] However, while the write downs necessary to achieve these results are voluntary under Plan–B Levelized, under the Optimal Benefits Plan the inclusion of

[31] The amount of the write down under the Optimal Benefits Plan is about $4 million less than the write down under Plan–B Levelized due to the specific challenged items that the Joint Applicants propose to deduct from that amount. The testimony supporting the Optimal Benefits Plan states that the "disallowed costs are $1,873.9 million." Tr. at 987-15. However, this amount does not include the $85.6 million in costs for the switchyard, which ORS agrees the Joint Applicants should write off. *Id.* Accordingly, the total number of write offs under the Optimal Benefits Plan is $1,959.5 million (numbers do not add due to rounding).

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additional liabilities and a purported return on those liabilities is involuntary and would require a finding that all Project costs incurred after March 12, 2015, were imprudent.

To achieve the reduction in Project investment to $715 million, the Optimal Benefits Plan requires that Toshiba Proceeds be used to immediately reduce the balance of the project costs to be recovered.[32] In addition, the Optimal Benefits Plan artificially inflates the Toshiba Proceeds, as discussed in Section V above, by ignoring lien payments of approximately $30 million and imputing carrying costs of approximately $110 million.

In addition, the Optimal Benefits Plan does not provide any mechanism to support SCE&G's revenue requirements, credit metrics and returns during the 20-year recovery period. Instead, the Optimal Benefits Plan requires the Commission to order SCE&G to immediately encumber Project investment with unsupportable elements which reduces the rate base from approximately $2.768 billion to $715 million—an additional reduction of approximately $2.053 billion. Doing so would severely depress SCE&G's credit metrics and reported earnings for 20 years, leaving Dominion Energy without the mechanism to support its investment in SCE&G's creditworthiness as envisioned under Plan–B Levelized. Accordingly, Dominion Energy's CEO has testified unequivocally that the merger cannot close if the Commission adopts the Optimal Benefits Plan. Tr. at 2295-4, 2988.

As to tax matters, the Optimal Benefits Plan recognizes an unreasonably low NOLC by understating SCE&G's NOLC-related DTA that must be included in rate base. Under

[32] Although the testimony of ORS witness Lane Kollen uses a figure of $1.095 billion when referring to the Toshiba Proceeds regulatory liability, this number has not yet been adjusted by the approximate 97% retail allocation. *Compare* Tr. at 987-24, *with* Hearing Ex. 50 at 160. After adjustment, the figure is approximately $1.062 billion.

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the Optimal Benefits Plan, ORS estimates that the DTL on the NND Costs in 2018 will be $1.027 billion and the NOLC-related DTA for that year will be only $65 million after applying the retail allocation factor.[33] According to ORS estimates, the rate base would reflect refunds and returns on those refunds representing the Toshiba Proceeds and refunds of all revised rates collected after August 1, 2017, and all revised rates associated with capital costs exceeding $2.772 billion (or $2.684 billion on a retail level) proposed in the Optimal Benefits Plan which would generate additional rate base reductions, net of deferred taxes, in the Capital Cost Rider of approximately $1.006 billion in 2018.

ORS has grossed up the refunds and returns, with the exception of the Toshiba Proceeds regulatory liability for SCE&G's cost of capital. As discussed above, in Section V, these additional refunds are not legally supportable.

To achieve its total rate reduction, ORS further eliminates any recovery through rates for $275 million of the total of SCE&G's $332 million investment in transmission projects, even though these projects are or soon will be valuable assets providing service to customers. ORS further reduces SCE&G's return on equity for project investment to 9.1% from the allowed return of 10.25% and assumes merger savings of between $35 million and $70 million per year without an adequate basis. It also calculates an overstated amount of tax benefits from the TCJA in the amount of approximately $32 million per year primarily

[33] The retail allocation of $65 million of NOLC-related DTA is significantly different than the estimates provided by the Joint Applicants in support of the Customer Benefits Plans (approximately $763 million under Plan A to $574 million under Plans B and B Levelized). The Joint Applicants have provided significant evidence that this $65 million figure is improperly calculated and allocated between customers and shareholders and would lead to a normalization violation because it does not cover the DTL's created by SCE&G's deductions related to accelerated depreciation reflected on the Company's 2017 tax return. A normalization violation would lead to draconian tax penalties for SCE&G and its customers.

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attributable to the amortization of unprotected EDIT over a shorter period than the associated book depreciation to which that EDIT relates.

As discussed in Section V, above, these specific adjustments are not lawful or appropriate. They appear to be driven by a desired outcome more than by fairness, logic or factual basis. Moreover, they result in a return to SCE&G on its investment in electric utility system that is far too low to support its creditworthiness or its ability to continue to invest in its utility systems. Returns at these levels are insufficient and violate fundamental rate making standards as discussed below. In the end, the ratemaking structures used in the Optimal Benefits Plan would cause the Dominion Energy merger to fail and result in a financially unsustainable utility.

By contrast, Plan–B Levelized is carefully structured to minimize the long-term tax and accounting impacts on the Joint Applicants' financial well-being, while the Optimal Benefits Plan is not. The rate making structure proposed by the Joint Applicants would not depress SCE&G's income as much as it would under the Optimal Benefits Plan, allowing its finances to recover more quickly. In contrast, the structure of the Optimal Benefits Plan would significantly weaken SCE&G's financial position for decades to come.

For these reasons, the Commission finds the Optimal Benefits Plan not to be legally or factually justified and its adoption not to be in customers' best interests or the public interest.

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VII. COST OF CAPITAL

A. Legal Standards

While the facts of this case are unique, establishing the allowed return on equity is not and is moored in and supported by nearly a century of bedrock constitutional law. As discussed previously, in 1923 in *Bluefield*, the United States Supreme Court expressed the constitutional standards for determining an appropriate rate of return, and these standards still apply with equal force today:

> A public utility is entitled to such rates as will permit it to earn a return upon the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit, and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield, 262 U.S. at 692, as quoted in *Southern Bell*, 244 S.E. 2d at 281. Then, just over 20 years later in 1944, the Supreme Court revisited this issue and in *Hope*, the Court reiterated and reaffirmed these financial integrity and capital attraction principles holding:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.... By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope, 320 U.S. at 603.

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In sum, these decisions recognize and hold that (1) a regulated public utility cannot remain financially sound unless the return it is allowed to earn on its invested capital is at least equal to the Cost of Capital (the principle relating to the demand for capital); and (2) a regulated public utility will not be able to attract capital if it does not offer investors an opportunity to earn a return on their investment equal to the return they could expect to earn on other investments of similar risk (the principle relating to the supply of capital).

This century of constitutional law as well as statutory mandates charge the Commission with the duty to determine the fair rate of return that SCE&G should be allowed to earn on capital devoted to public use. In fact, S.C. Code Ann. § 58-33-280(K) expressly provides, "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent."[34] *See* Discussion Section III, *supra*.

With these basic constitutional and statutory standards in mind, the Commission notes that South Carolina law requires "[t]he determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record." *Porter v. S.C. Public Service Commission*, 332 S.C. 93, 98, 504 S.E.2d 320, 323 (1998), citing S.C. Code Ann. § 58-5-240 (Supp. 2003);

[34] The Commission notes that no party challenges SCE&G's decision on July 31, 2017, to abandon further construction of the NND Project, but ORS and most other parties assert that the abandonment decision should have been made earlier.

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accord S.C. Code Ann. § 58-27-870(G) (Supp. 2003). Accordingly, the Commission now carefully evaluates the evidence submitted in this case as to what ROE SCE&G should be authorized to earn on those assets prudently invested in the NND Project.

B. History of SCE&G's Credit Worthiness

It is clear that ORS's request to immediately suspend the revised rates that SCE&G collects pursuant to the BLRA and the legislative mandate to implement the experimental rate established by Act 258 resulted in visible and measurable adverse impacts upon SCE&G's credit ratings and equity valuation. As a direct result of these regulatory and legislative actions and as shown in Tables 1 and 2 below, Fitch Ratings ("Fitch"), Standard & Poor's Corporation ("S&P"), and Moody's Investor Service ("Moody's") have significantly downgraded their published credit ratings of SCE&G and SCANA. Tr. at 1756-6:7-10.

Table 1: South Carolina Gas & Electric Credit Ratings & Outlook Status

Rating Agency	Jan. 2017	Nov. 1 2017	Feb. 5 2018	July 3 2018	Current Rating
Fitch	BBB (Neg. Watch)	BBB– (Neg. Watch) 09/29/17	BBB– (Evolving Watch) 01/03/18	BBB– (Evolving Watch) 07/03/18	BB+ (Evolving Watch) 08/08/18
S&P	BBB+ (Outlook Stable)	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 07/03/18	BBB– (Watch Neg.) 08/09/18
Moody's	Baa2 (Outlook Neg.)	Baa2 (On Review for Downgrade 11/01/17	Baa3 (On Review for Downgrade) 02/05/18	Baa3 Outlook Neg. 07/03/18	Baa3 Outlook Neg. 07/03/18

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Table 2: SCANA Credit Ratings & Outlook Status

Rating Agency	Jan. 2017	Nov. 1 2017	Feb. 5 2018	July 3 2018	Current Rating
Fitch	BBB– (Neg. Watch)	BB+ (Neg. Watch) 09/29/17	BB+ (Evolving Watch) 01/03/18	BB+ (Evolving Watch) 07/03/18	BB (Evolving Watch) 08/08/18
S&P	BBB+ (Outlook Stable)	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 07/03/18	BBB– (Watch Neg.) 08/09/18
Moody's	Baa3 (Outlook Neg.)	Baa3 (On Review for Downgrade 11/01/17	Ba1 (On Review for Downgrade) 02/05/18	Ba1 Outlook Neg. 07/03/18	Ba1 Outlook Neg. 07/03/18

In particular, in September 2017, Fitch explained its rating actions as follows:

> Fitch is concerned with the sharp deterioration in the legislative and regulatory environment in South Carolina. There is a significant risk that SCE&G may have to cease collection of revenues related to the new nuclear units, as petitioned by the Office of the Regulatory Staff (ORS) to the SC Public Service Commission (PSC) until the legal issues regarding the BLRA are resolved. Fitch could consider additional negative rating actions if the BLRA were to be found unconstitutional and material refunds required. The Rating Watch Negative primarily reflects the risk that adverse regulatory orders could lead to restricted liquidity, constrained capital access and incremental debt issuance that alters the structural priority of debt levels. Fitch expects to resolve the Rating Watch [Negative] once better visibility is obtained regarding the PSC order on the ORS petition as well as the liquidity and financing strategy at both SCANA and SCE&G….[35]

Moody's expressed similar concerns in early November 2017, including the concern regarding a possible default by exceeding leverage covenants:

> Specifically, if the ORS recommendations were to be adopted, there would be a significant reduction in cash flow and a meaningful impact on credit metrics. For example, we estimate the companies' ratios of cash flow from operations excluding changes in working capital (CFO pre-WC) to debt, which are

[35] Hearing Exhibit 72 at 9.

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> currently in the high-teens to twenty percent range, could move to the mid-to-low teens range. In addition, implementation of the ORS recommendation could lead to a substantial asset impairment, which in some downside scenarios, could result in a covenant violation under the companies' credit facilities, restricting their access to liquidity. In light of the increased regulatory and political uncertainty, the resulting metrics would likely no longer be appropriate for the companies' current ratings.[36]

Following the enactment of Act 258, Order No. 2018-459, and the implementation of the experimental rate, S&P announced on July 3, 2018, it would lower the issuer credit ratings for the group by one notch if SCE&G's request enjoining the implementation of the Experimental Rate were not granted, explaining:

> We are maintaining the CreditWatch [Negative] to reflect the potential for a downgrade if the Court does not issue an injunction prohibiting the SCPSC from implementing the new law. The rate reduction would significantly weaken the company's financial measures, despite its recent announced plan to reduce its dividend by about 80%."[37]

Fitch likewise addressed its credit ratings of SCANA and SCE&G on July 3, 2018, stating that it would maintain the ratings for SCE&G and SCANA and noting that its ratings were bolstered by the positive implications of the proposed merger:

> Fitch's Rating Watch Evolving also considers the potential positive implications of the proposed merger between SCG and Dominion Energy (DEI, BBB+/Stable). … If the merger were consummated as originally envisioned, Fitch would expect a stabilization of SCG's and SCE&G's credit metrics and would consider an upgrade.[38]

Moody's announced a Rating Action on July 2, 2018 that also confirmed the ratings for SCE&G and for SCANA, but expressed concerns about the impairment of the companies'

[36] Hearing Exhibit 72 at 14.

[37] Hearing Exhibit 72 at 20.

[38] Hearing Exhibit 72 at 25.

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ongoing liquidity and access to funding, stating that it would lower the ratings in response to the following circumstances:

> Downward pressure on the ratings could again increase if SCE&G is ordered to refund amounts previously collected under the BLRA, particularly without the benefit of a larger, better capitalized partner; or if rates established by the SCPSC later this year do not provide an opportunity for SCE&G to maintain a ratio of CFO pre-WC to debt that is at least in the low-teens on a sustained basis. Furthermore, if the company's liquidity becomes constrained, such as being unable to draw on its credit lines or to issue additional debt, there could also be downward movement in the ratings. [39]

On August 6, 2018, the United States District Court for the District of South Carolina denied a Motion for Preliminary Injunction filed by SCE&G seeking to stay the effect of Act 258 and to enjoin the Commission from instituting or implementing Act 258, including the Experimental Rate mandate. *S.C. Elec. & Gas Co. v. Randall*, 333 F. Supp. 3d 552 (D.S.C. 2018). Following this adverse decision to SCE&G, Fitch downgraded the long-term credit ratings of SCE&G and SCANA on August 8, 2018, stating that "[i]f the PSC issues an order in December 2018 with a permanent cut of a similar magnitude, additional downgrades may be warranted."[40] The next day, on August 9, 2018, S&P also announced a credit downgrade of SCANA and SCE&G from BBB to BBB– commenting that:

> We could lower ratings again if credit metrics weaken further beyond those in our base-case scenario, which assumes the temporary rate cut is made permanent. This could occur following the pending Summer abandonment proceeding if the PSC orders a permanent rate reduction or rate credits that lead to incrementally weaker financial measures than those resulting from the temporary 15% rate cut.[41]

As a result of these credit rating downgrades, SCE&G's current ratings are in the

[39] Hearing Exhibit 72 at 33.

[40] Hearing Ex. 73 at 70.

[41] Hearing Ex. 73 at 93.

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bottom 3% of the credit ratings of all U.S. rate-regulated, investor-owned electric and gas utilities. Tr. at 1753:22 – 1754:1. In fact, SCE&G is the lowest rated of 111 utilities rated by Moody's due to its negative credit outlook and credit watch negative status. Tr. at 1754:1-4; Hearing Ex. 39.

In addition, South Carolina used to fall within the top one-third of the 53 regulatory commissions ranked by Regulatory Research Associates ("RRA"), a widely referenced source of rate case data that provides an assessment of the extent to which regulatory jurisdictions are viewed as constructive from investors' perspectives. Tr. at 1778-69–1778-70. Now, however, the State has fallen to a rank of "Average/3," reflecting that the regulatory environment currently is in the bottom third of the ranked regulatory commissions. Hearing Ex. 40. Thus, from an investor perspective, South Carolina is now viewed as having increased regulatory risk associated with the ownership of securities issued by utilities in this jurisdiction.

Operating an electric utility is a capital-intensive business that requires continuous access to both debt and equity capital markets. Regulated utilities such as SCE&G typically issue common stock and long-term debt as primary securities used to finance the acquisition of permanent property, plant, and equipment needed to serve their customers. In particular, SCE&G serves a growing service territory and typically invests approximately $500 million of new capital in its utility businesses in South Carolina each year to meet the needs of its new and existing customers. Tr. at 2014:7-15. These recent regulatory and legislative actions have had a profound impact on SCE&G's ability to secure adequate funding at a reasonable price. Notably, SCE&G's most recent long-term bond issuances required the Company to

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offer a risk premium that was 80% higher than utility companies without SCE&G's credit challenges. Tr. at 2015:13-19. As one example, Ms. Griffin reported that South Carolina Fuel Company, Inc. ("FuelCo"), a separate SCANA subsidiary was successful in placing only 7.6% of the commercial paper it sought to issue in April 2018 as shown in Table 3 below. Tr. at 2020-31–2020-32.

Table 3: COMMERCIAL PAPER SOLICITATION BY FUELCO

Date	Amount Solicited	Amount Placed	Percent Placed
4/2/2018	$ 150,000,000	$ 2,500,000	2%
4/3/2018	$ 150,000,000	$ -	0%
4/4/2018	$ 150,000,000	$ 11,000,000	7%
4/5/2018	$ 120,000,000	$ 2,000,000	2%
4/6/2018	$ 120,000,000	$ -	0%
4/9/2018	$ 120,000,000	$ 4,200,000	4%
4/10/2018	$ 120,000,000	$ 16,500,000	14%
4/11/2018	$ 120,000,000	$ 14,000,000	12%
4/12/2018	$ 120,000,000	$ 15,000,000	13%
4/13/2018	$ 120,000,000	$ 9,500,000	8%
4/16/2018	$ 120,000,000	$ 4,800,000	4%
4/17/2018	$ 120,000,000	$ 11,000,000	9%
4/18/2018	$ 120,000,000	$ 17,110,000	14%
4/19/2018	$ 120,000,000	$ 11,300,000	9%
4/20/2018	$ 120,000,000	$ 10,000,000	8%
4/23/2018	$ 120,000,000	$ 30,100,000	25%
4/24/2018	$ 120,000,000	$ -	0%
4/25/2018	$ 120,000,000	$ 8,500,000	7%
4/26/2018	$ 120,000,000	$ 27,000,000	23%
4/27/2018	$ 120,000,000	$ 3,000,000	3%
4/30/2018	$ 120,000,000	$ -	0%
Total	**$ 2,610,000,000**	**$ 197,510,000**	**7.6%**

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From the body of evidence in the record, it is clear the Company currently is on a very slippery slope due to its weakened and vulnerable financial position. In its current weakened financial condition, any additional stress, such as an economic down-turn, major storm event, loss of customers, or other need requiring immediate financing could cause SCE&G's debt to rise, which could result in a default of its financial covenants on its revolving credit facilities. Tr. at 1748:21 – 1749:3. A utility in such a weak financial condition will have difficulty fulfilling its obligation to meet the needs of electricity consumers. In short, the "public interest" in the "preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services," S.C. Code Ann. § 58-4-10(B)(2018), is in jeopardy unless SCE&G is allowed to collect rates to recover the capital costs of the Project with a return on equity sufficient to allow it to secure access to the financial markets at reasonable rates in the future.

C. Goal of Rate Regulation and Risks of Opportunism

Dr. Glenn Hubbard[42] testified that, from a general economic perspective, the goal of effective utility rate regulation is to set rates in such a way that the supply- and demand-side incentives created by regulatory activity result in the provision of the appropriate quantity and quality of service at reasonable rates. Tr. at 3472-12:14-17. To achieve this result, states have created systems that rely on private suppliers of the utility services together with economically sensible regulation. Tr. at 3472-12:17-19. Such systems allow the introduction

[42] Among his many other academic credentials and professional distinctions, Dr. Hubbard received a Ph.D. in Economics from Harvard University and currently serves as the Dean of the Graduate School of Business at Columbia University. Dr. Hubbard also has been an advisor and consultant to the Board of Governors of the Federal Reserve System, served as Chairman of the President's Council of Economic Advisers, and is the author of "The Market Leading Principles of Economics." The Commission therefore acknowledges Dr. Hubbard's expertise and leadership role in the fields of economics and finance.

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of a profit motive to control costs, while at the same time providing for appropriate regulatory oversight. Tr. at 3472-12:19-21. Economically sensible regulation within such systems recognizes that the private suppliers of public utility services and their investors must have proper incentives to invest and work hard to provide the desired quality and quantity of service, and must be protected against regulation that unnecessarily increases costs or retroactively changes the rules for recovering investments. Tr. at 3472-12:21 – 3472-13:4.

Dr. Hubbard stated that these principles work to the benefit of customers because the primary incentive that private utility firms have for providing good service is the ability to earn sufficient revenue to recover their operating and capital costs plus a return on invested capital that is at least equal to the firm's opportunity cost of capital. Tr. at 3472-13:5-8. The opportunity cost of capital is the expected return on investments of equivalent business and financial risk. Tr. at 3472-13:8-10. Accordingly, if utility firms are able to offer investors a rate of return equal to or greater than their opportunity cost of capital, they will be able to compete for and attract sufficient capital at reasonable rates to provide the appropriate quality and quantity of service. Tr. at 3472-13:10-13.

Dr. Hubbard further stated that, as regulated monopolies, electric utilities are vulnerable to regulatory risk for three primary reasons: (i) investments are large and irreversible, (ii) generation, transmission, and distribution technologies are characterized by economies of scale and scope, and (iii) outputs are consumed by nearly every member of the population. Tr. at 3472-39:9-13. In addition, he noted that these characteristics provide governments with the opportunity to behave opportunistically, which can then result in

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inefficiently low levels of investment by the utility and reductions in economic growth, given the dependence of other industries on reliable access to electric power at reasonable rates. Tr. at 3472-40:1-4. Thus, Dr. Hubbard testified that, if legislative or regulatory actions are considered to be opportunistic by other utilities, large-scale investment by electric utilities in the state, and consequently the reliability of the electric power system, may suffer. Tr. at 3472-44:6-9.

In order to estimate the actual economic harm that SCE&G's investors already have incurred as a result of these legislative and regulatory actions, Dr. Hubbard calculated the decline in the market capitalization of SCANA following the abandonment decision, focusing his study to determine the impact caused by factors other than the abandonment itself. Tr. at 3488-30:13 – 3488-31:16. This analysis, which is based on a methodology called an "event study" or "cumulative abnormal return" analysis, shows that between the abandonment announcement date and the merger proposed business combination announcement date, SCANA's stock price fell by approximately 39%, representing a reduction in market capitalization of approximately $3.4 billion. Of this total decline, Dr. Hubbard testified that the portion attributed to the regulatory and legislative developments and actions ranges from $2.1 billion to $2.5 billion. Tr. at 3488-33:9-14. His analysis shows that there was little or no decline in SCANA's stock price or market capitalization, net of industry and market factors, following the announcement of the abandonment decision itself on July 31, 2017. Tr. at 3488-35:6-14. The adverse impact to market capitalization resulted primarily from legislative investigations and reports that the BLRA would be amended and applied retroactively and ORS's petition to reduce rates in Docket No. 2017-305-E, all of

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which created unexpected risk for investors. Thus, Dr. Hubbard's analysis showed that the $2.1 to $2.5 billion decline in SCANA's market capitalization was a direct reflection of investors' assessment that the regulatory risk in South Carolina had substantially increased.

As a result of investors' assessment of a higher level of regulatory risk of investing in SCE&G, Dr. Hubbard testified that SCE&G's cost of capital will increase in order to offset this increased risk. Tr. at 3488-26:4-17. This increased cost of capital will harm SCE&G's customers through higher rates or perhaps less efficient investment going forward. Future investors in SCE&G will demand a higher cost of capital in exchange for bearing more risk either further weakening the financial condition of SCE&G or increasing the rates paid by customers if the higher costs are passed through. Thus, Dr. Hubbard explained that he understood the customers' desire to have an immediate reduction in rates as proposed by ORS's Optimal Benefits Plan, but such lower rates would be short lived as the higher cost of capital would have to be borne by customers over the long term. Tr. at 3488-41:13 – 3488-42:3. Further, the long-term higher cost of capital and resulting higher rates would be more costly to customers over the long term when compared to the benefits of an immediate and short-term rate reduction.

D. Optimal Benefits Plan

As part of the Optimal Benefits Plan, ORS witness Richard Baudino recommends that the Commission authorize an ROE of 9.1% for those NND Project costs that ORS proposes to be allowed for rate recovery. Tr. at 816-4:21-22. He also endorses ORS's capital structure recommendation of 52.81% equity to total capital as of September 30, 2017. Tr. at 816-6:3-5.

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Finally, he recommends modifying the cost of SCE&G's long-term debt to incorporate the cost of debt issued by the Company in August 2018. Tr. at 816-6:6-8.

As previously recognized, the Optimal Benefits Plan, if approved, would prevent the proposed business combination between the Company and Dominion Energy. Specifically, Mr. Farrell testified on behalf of Dominion Energy that, if the Optimal Benefits Plan or anything close to it were adopted, Dominion Energy would not close on the proposed business combination, and the plan would be devastating to SCE&G's future and to the interests of SCE&G's customers and the state of South Carolina in reliable electric service at reasonable rates. Tr. at 2997-3:17-20. Mr. Farrell also stated the Optimal Benefits Plan so severely restricts recovery of the NND Project investments that the necessary cash flows would not be available for SCE&G reasonably to service the debt incurred to finance construction and make continued investment in modernizing its electric system. In short, the public interest in having reliable electric service at reasonable rates would be harmed.

Ms. Griffin also testified about the harm to SCE&G posed by the Optimal Benefits Plan and quantified the financial results to be anticipated if the Optimal Benefits Plan were to be adopted. As of December 31, 2017, SCE&G's issued and outstanding long-term debt totaled approximately $4.929 billion and its total equity outstanding totaled approximately $5.533 billion, reflecting a capital structure of 47.11 percent long-term debt, a 5.86% cost of debt, and an equity ratio of 52.89%. Mr. Hevert reported in his testimony that, based on the Company's December 2017 financial statements, SCE&G's South Carolina retail jurisdictional earned return on equity was only 8.30%, well below the Company's authorized

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return on equity of 10.25%. Tr. at 1778-60:21 – 1778-61:3.[43] However, on a *pro forma* basis, Ms. Griffin testified that, had the Optimal Benefits Plan been in effect during an adjusted test period reflecting the 12 months ended December 31, 2017, SCE&G would have earned a return on equity of only 7.66%, which is 259 basis points lower than its allowed ROE of 10.25% as established in Order No. 2012-951, and $103 million in revenue less than authorized. Tr. at 2022-17:13-20. Ms. Griffin further noted that this 7.66% would be achieved only after SCE&G writes off approximately $2.5 billion in assets, resulting in an additional capital cost impairment of $1.4 billion above the $1.1 billion in impairments already recorded. Tr. at 2022-18:1-4. Thus, in addition to earning only a 7.66% ROE on remaining assets, SCE&G's investors will not earn any return at all on $2.5 billion in investment, and this investment will never be returned to them through depreciation or amortization under the Optimal Benefits Plan. Tr. at 2022-18:4-7.

Ms. Griffin further testified that this ROE assumes that the TCJA and merger savings proposed by ORS would be realized. Tr. at 2022-18:7-9. If SCE&G provides savings that it is not currently realizing, this 7.66% ROE would be further decreased, resulting in the need for additional annual retail electric revenues in order to raise SCE&G's ROE to the Commission approved 10.25%. Tr. at 2022-18:9-13. Mr. Hevert also stated that, under the Optimal Benefits Plan, the additional return required by equity investors will be in the range of 220 to 650 basis points, indicating a likely cost of equity in the range of 12.95% to 17.25%, with the Company's cost of equity lying toward the upper end of that range. Tr. at 1784-64:3-7. In

[43] It is, of course, noted that this snapshot of the Company's earnings is prior to the reduction in rates of 14.8% mandated by Act 258 on June 28, 2018. This rate reduction would further erode the earned ROE.

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addition, Mr. Hevert reported that of the 1,395 vertically-integrated electric utility rate cases since 1980 provided by Regulatory Research Associates that disclosed the awarded ROE, only one authorized ROE has been as low as 9.00%. Tr. at 1778-27:4-7.

Ms. Lapson also testified that implementing the Optimal Benefits Plan will not strengthen or improve the credit standing of SCE&G, but in fact would result in additional credit downgrades. Tr. at 1762-9:9-13. For example, the S&P July 3, 2018 Research Update makes it quite clear that S&P's concern is focused on weakened credit metrics resulting from the reduced rates imposed by the Experimental Rate:

> We could lower the ratings if the Court does not issue an injunction prohibiting the SCPSC from implementing the new law [Act 258]. A rate decrease of the magnitude reflected in the law would weaken credit metrics significantly. We could also lower ratings even if the Court issues an injunction that is subsequently followed by a SCPSC order to reduce rates or an order to provide rate credits for Summer-related costs that results in weaker financial measures.[44]

In a subsequent Research Update on August 9, 2018 (in which S&P announced that it had downgraded SCANA and SCE&G and that the ratings remained on credit watch with negative implications), S&P again uses the word "uncertainty" but the text explicitly states that further reduction in revenues and cash flows could result in a further downgrade of the credit rating.

> The CreditWatch with negative implications on SCANA and its subsidiaries reflects our view of ongoing uncertainty regarding cost recovery of the abandoned V.C. Summer nuclear construction Project. We could lower ratings again if credit metrics weaken further beyond those in our base-case scenario, which assumes the temporary rate cut is made permanent. This could occur

[44] Hearing Exhibit 72 at 21.

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> following the pending Summer abandonment proceeding if the PSC orders a permanent rate reduction or rate credits that lead to incrementally weaker financial measures than those resulting from the temporary 15% rate cut.[45]

Ms. Lapson also reviewed the different rating criteria and financial ratio guidelines of the three major credit rating agencies to determine a reasonable outline of the credit rating actions that would result from the imposition of the Optimal Benefits Plan. For S&P, Ms. Lapson testified that S&P likely would lower the SCE&G's issuer credit rating to BB+ or possibly BB, both of which are in the speculative or sub-investment grade. Tr. at 1762-22:11-13. Similarly, Ms. Lapson estimated that Moody's would be inclined to downgrade the issuer rating to a speculative grade of Ba1, a rating decision that would be further supported if Moody's deems that the Commission's decision to impose such a severe rate reduction indicates an inequitable regulatory and political environment. Tr. at 1762-24:6-10. Fitch also would be likely to downgrade SCE&G to the speculative grade of BB+. Tr. at 1762-27:5-6.

The Commission also recognizes that SCE&G's current credit ratings and the outlooks of the credit rating agencies have had a significant and direct impact on SCE&G's ability to issue long-term debt. Based upon SCE&G's issued 10-year maturity bonds in August 2018, the Company incurred a yield spread that was 50 to 70 basis points higher than that for 10-year bonds issued by electric utilities whose credit was not similarly burdened. Tr. at 1762-36:1-4. If SCE&G experiences further downgrades by S&P or Moody's below investment grade into speculative grade ratings in the BB and Ba categories and if the Company is subjected to a revenue reduction of 20% as proposed in the Optimal Benefits

[45] Hearing Exhibit 73 at 66.

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Plan, Ms. Lapson testified that the differential spread for SCE&G long-term interest costs is likely to widen to an aggregate of 75 to 90 basis points or more. Tr. at 1762-36:4-10. Furthermore, SCE&G has already experienced constrained access to the commercial paper market to fund short-term needs and Ms. Lapson stated that access to this market could be completely eliminated if SCE&G's credit ratings were further reduced. Tr. at 1752-42:20 – 1752-43:1; 1762-14:20-22 – 1762-15:1. With credit ratings materially below the norm for the sector, such as those that would occur under the Optimal Benefits Plan, SCE&G's access to capital and sources of liquidity would also be seriously constrained during any future period of capital market or credit market distress. Tr. at 1762-15:12-16.

Implementing steep and punitive reductions in SCE&G's ongoing operating cashflow without giving adequate consideration to the resulting adverse impacts on the Company's financial condition and ability to serve customers' future needs would be both short-sighted and would not satisfy the requirements of *Hope*, *Bluefield*, and *Southern Bell*. While customers have an interest in lower rates, customers nevertheless depend upon and expect their electric utility to maintain and provide reliable and safe service today and tomorrow. A financially weak electric utility with diminished access to capital markets at reasonable rates cannot assure customers that the reliable, modern, and high quality service, which SCE&G's customers have enjoyed and come to expect, can continue to be provided without rates sufficient to calm investor perception that investing in SCE&G comes with heightened risk. The Optimal Benefits Plan will not calm those fears, but will exacerbate them. Simply put, the Optimal Benefits Plan likely drives SCE&G's issuer credit into the sub-investment, or speculative, grade and puts the Company at substantial risk of losing access to future capital.

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In short, SCE&G delivers vital services to its customers and putting it in a financially distressed condition will not serve the future needs of customers and is not in the public interest.

Based on this clear and essentially uncontradicted evidence, the Commission concludes that the Optimal Benefits Plan fails to meet the Comparable Risk, Capital Attraction, and Financial Integrity standards established by *Hope* and *Bluefield.* The *pro forma* return that would result under the Optimal Benefits Plan would be neither just nor reasonable and is likely to be confiscatory. Thus, the Commission finds that the Optimal Benefits Plan must be rejected as constitutionally unsound and potentially resulting in an unconstitutional taking.

E. Plan-B Levelized and the Business Combination

Under Plan–B Levelized, NND capital costs would be recovered at a 9.9% ROE, a 5.56% cost of debt, and a capital structure comprised of 52.81% equity and 47.19% debt. Tr. at 4217-4. These changes produce a significant bill reduction of approximately 15% relative to May 2017 bill levels and would result in bills less than the typical residential bill under the Experimental Rates currently in effect, inclusive of NND amortization and the impacts of the TCJA. Tr. at 4217-5.

Importantly, if the Customer Benefits Plan or a similar plan such as Plan-B Levelized is approved, Ms. Lapson testified that the financial outcome would be consistent with credit ratings within the investment grade category and would stabilize SCE&G's financial condition and better position the company to serve its customers' future needs. Tr. at 1752-32:10 – 1753-33:11. Specifically, Ms. Lapson stated that such an outcome would result in the

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restoration or retention of low investment grade ratings by all three agencies thus providing SCE&G with strong access to debt funding. Tr. at 1752-33:1-3. By comparison, and as mentioned above, a plan equivalent to the Optimal Benefits Plan would lead to sub-investment grade ratings. Tr. at 1762-28:7-12. Thus, in Ms. Lapson's expert opinion, and based upon her over 40-year career in credit markets for the utility sector, the credit rating impacts each plan would have are shown in Table 4 below.

Table 4: Predicted Credit Rating Impacts

	Current Issuer Credit Rating	Current Outlook	Outcome Equivalent to Optimal Benefits Plan	Approval of Business Combination
Fitch	BB+	Evolving	BB	BBB-
Moody's	Baa3	Negative	Ba1	Baa3
S&P	BBB-	CreditWatch, Negative	BB+ or BB	BBB

Tr. at 1762-28:13-15.

In addition, the business combination between SCANA and Dominion Energy will have a number of other tangible benefits. Specifically, SCE&G's customers will benefit from Dominion Energy's size and strength as the new ultimate parent of SCE&G. Dominion Energy is a large and financially stable company with relevant experience as the owner of sound utilities and infrastructure. Tr. at 1752-32:15-19. As shown in Table 5 below, the substantially greater size and scale of Dominion Energy is evident from Dominion Energy's greater equity valuation of $46.8 billion, which is over eight times SCANA's equity capitalization. The total enterprise value of Dominion Energy is approximately 6.6 times

greater than that of SCANA. Also, Dominion Energy has lower debt leverage in relation to the total enterprise value of the corporations, with debt equal to 45% of total market capitalization versus 56% for SCANA.

Table 5: Dominion and SCANA: Market Capitalization

	Dominion Energy	SCANA	Relative Scale
Price per Share (a)	$71.71	$39.99	
Shares Outstanding (b)	654,000,000	143,000,000	
Market Capitalization			
Equity (a)	$46,898,340,000	$ 5,718,570,000	8.2x
Total Debt (Book Value) (b)	$37,810,000,000	$7,183,000,000	
Total Enterprise Value (a)	$84,708,340,000	$12,901,570,000	6.6x
Debt to Total Enterprise Value	45%	56%	

(a) At July 31, 2018. (b) June 30, 2018.

See Tr. at 1752-34:4-10.

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Due to its greater scale and diversification, Dominion Energy has excellent access to the equity capital market, meaning that SCE&G would regain a source of equity capital. Tr. at 1752-32:20-22. This improved access to both debt and equity funding and stable investment grade credit ratings would provide SCE&G with strong financial capability to fund expansion of its electric systems as needed to meet customer demands and to restore service after natural catastrophes. Tr. at 1752-33:4-8. Finally, SCE&G's customers would receive the benefit of having a more financially stable utility with greater access to capital markets at reasonable rates than exist currently. Tr. at 1752-33:9-11.

A further source of Dominion Energy's strength is the diversity of Dominion Energy's business portfolio, as indicated in the distribution of segment profit contributions shown in Table 6 below.

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Table 6: Diversity of Dominion Energy Business Segments

Dominion Energy Business Segment Financial Results, 2016-2017

$ Millions	2016 EBITDA	% of Total	2016 EBIT	% of Total	2017 EBITDA	% of Total	2017 EBIT	% of Total
Power Delivery	1,573	27%	1,036	24%	1,723	26%	1,130	24%
Power Generation	2,673	46%	2,011	47%	2,670	41%	1,923	41%
Gas Infrastructure	1,569	27%	1,239	29%	2,111	32%	1,589	34%
Segment EBITDA	5,815	100%			6,504	100%		
Segment EBIT			4,286	100%			4,642	100%
Corp Eliminations			(409)				(347)	
Total EBIT			3,877				4,295	
Consolidated Interest			(1,010)				(1,205)	
Consolidated Income Tax			(655)				30	
Minority Interests			(89)				(121)	
Total Income			2,123				2,999	

EBITDA: Earnings before interest, income taxes, and depreciation.
EBIT: Earnings before interest and income taxes; i.e., EBITDA plus depreciation.
Source: Dominion Energy Investor Materials

See Tr. at 1752-34:11 – 1752-35:4.

In stark contrast to the Optimal Benefits Plan, approval of the proposed business combination, along with the Plan–B Levelized, allows SCE&G to recover the capital costs associated with the NND Project over a period of 20-years based upon a reduced ROE of 9.9% and a reduced cost of debt of 5.56%. Further, the approval of the business combination between SCANA and Dominion Energy provides a number of additional benefits including the elimination of any constitutional or other appellate challenges by SCE&G and Dominion Energy. This plan also ensures that debt and equity capital will be available to the Company

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on reasonable terms and ends the slippery slope of financial instability currently facing SCE&G.

The Commission also is mindful of the requirement that "[u]nder the … standard of 'just and reasonable' it is the result reached not the method employed that is controlling" and "the fixing of 'just and reasonable' rates, involves the balancing of the investor and the consumer interests." *Southern Bell*, 270 S.C. at 596, 244 S.E.2d at 281 *quoting Hope*, 320 U.S. at 602-603. With this balancing of interest in mind, the Commission finds that approval of the proposed business combination together with the Plan–B Levelized strikes the appropriate balance between reasonably minimizing bills for customers, retaining the merger economics for Dominion Energy, and preserving the financial health of SCE&G.

F. Appropriate Return on Equity

One of the principal issues to be decided in any ratemaking determination is the proper return to be allowed on the common equity invested in the regulated utility. While the cost of debt and preferred stock can be directly observed, the cost of equity is market-based and, therefore, must be estimated based on observable market information and by applying recognized financial models to market-based data. By their nature, those models produce a range of results, from which the market-required ROE must be determined. The key consideration in determining the ROE is to ensure the overall analysis reasonably reflects investors' view of the financial markets in general, and the subject company (in the context of the proxy companies) in particular.

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Pursuant to S.C. Code Ann. § 58-33-280(K), the Company is authorized to recover and earn a return[46] on the capital costs of the abandoned Project so long as the abandonment decision is prudent. In this proceeding, several witnesses presented detailed explanations of a number of methodological approaches to the determination of the cost of equity for the Company and offered testimony relating to a fair and reasonable ROE to be applied to the NND capital costs under various proposals.

In support of the Joint Applicants' proposals, Dr. Hubbard testified that, in determining an appropriate rate of return on common equity capital for a regulated public utility, the interests of both the customer and the Company need to be considered. Tr. at 3472-20:5-7. He stated that the interests of the Company and customers are aligned in important ways, noting that the long-term viability of the Company is in the best interest of both the Company's customers and investors, with the customers having access to stable and reliable services while investors will receive a market-based return on the capital they invested. Tr. at 3472-20:7-11.

Dr. Hubbard further noted that, from an economic perspective, *Bluefield* and *Hope* established principles for balancing the interest of investors and customers in setting an appropriate rate of return. Tr. at 3472-22:19-22. A primary principle derived from these

[46] In its original Order regarding this Project, the Commission approved a return on equity ("ROE") of 11.0% related to the base load plant construction, finding that it would "provide sufficient cash flow to support financing of the Units, and will meet investors' reasonable expectations of a return given the risks involved in base load construction." Order No. 2009-104(A), dated March 2, 2009, Docket No. 2008-196-E. As part of the Settlement Agreement approved by the Commission in Order No. 2015-661, dated September 10, 2015, Docket No. 2015-103-E, the Company agreed to reduce the approved ROE used in calculating revised rates requests using a 10.5% ROE rather than the 11.0% ROE authorized in Order No. 2009-104(A). As part of the settlement reached in Docket No. 2016-223-E, the Company agreed to further reduce the ROE to 10.25% used for revised rates filings made on or after January 1, 2017. *See* Order No. 2016-794, dated November 28, 2016, at 12.

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decisions is that a utility and its investors should be allowed to earn a rate of return that is commensurate with returns on investments in other firms that have comparable risks. Tr. at 3472-22:22-25. If the rate of return is set at the opportunity cost of capital, it will ensure that the firm is able to attract capital at reasonable rates in order to make needed investments, as well as maintain its creditworthiness and financial integrity. Tr. at 3472-22:26 – 3472-23:3.

Dr. Hubbard testified that, in order to "maintain and attract capital," the expected returns available to investors must provide adequate compensation for the risks borne relative to other investment options. Tr. at 3472-25:1-3. In the case of public utilities, they must face the standard financial and business risks faced by all companies, but they and their investors should not have to bear the risk of the legal framework being changed retroactively by political action after a Project has been commenced. Tr. at 3472-25:3-6. Dr. Hubbard further stated that higher levels of regulatory or political risk assigned by investors to the securities of a utility also will increase investors' required return on equity. Tr. at 3472-33:15-16.

Mr. Hevert estimated SCE&G's cost of equity by conducting several analyses. First, Mr. Hevert applied the Constant Growth Discounted Cash Flow ("DCF") model to a proxy group of 22 integrated electric utility companies to calculate the proxy group median, mean low, and mean high DCF results. Tr. at 1778-15:12 – 1778-16:1. However, Mr. Hevert determined that the model's mean and mean low results are well below a reasonable estimate of the Company's cost of equity and, therefore, are not reliable measures of electric utilities' cost of equity. Tr. at 1778-27:3-8. To address these considerations, Mr. Hevert also considered the Multi-Stage DCF Model, which, among other things, provides the ability to specify near, intermediate, and long-term growth rates, avoiding the sometimes-limiting

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assumption that the subject company will grow at the same, constant rate in perpetuity. Tr. at 1778-27:18 – 1778-29:14. Additionally, Mr. Hevert conducted a traditional and empirical Capital Asset Pricing Model ("CAPM") analysis, which is a risk premium approach that estimates the cost of equity for a given security as a function of a risk-free return plus a risk premium. Tr. at 1778-33:10-12. Finally, he estimated SCE&G's ROE using a Bond Yield Plus Risk Premium approach that estimates the cost of equity as the sum of the equity risk premium and the yield on a particular class of bonds. Tr. at 1778-40:13-14. The results of Mr. Hevert's analyses are shown in Tables 7 and 8 below.

Table 7: Summary of DCF Results

Discounted Cash Flow	***Mean Low***	***Mean***	***Mean High***
Constant Growth DCF			
30-Day Constant Growth DCF	8.45%	9.24%	10.12%
90-Day Constant Growth DCF	8.49%	9.29%	10.16%
180-Day Constant Growth DCF	8.37%	9.16%	10.03%
Multi-Stage DCF (Gordon Method)			
30-Day Multi-Stage DCF	9.05%	9.23%	9.45%
90-Day Multi-Stage DCF	9.09%	9.28%	9.50%
180-Day Multi-Stage DCF	8.96%	9.14%	9.36%
Multi-Stage DCF (Terminal P/E)			
30-Day Multi-Stage DCF	9.40%	9.89%	10.42%
90-Day Multi-Stage DCF	9.53%	10.02%	10.55%
180-Day Multi-Stage DCF	9.19%	9.67%	10.21%

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Table 8: Summary of Risk Premium Results

Risk Premium			
CAPM Results		***Bloomberg Derived Market Risk Premium***	***Value Line Derived Market Risk Premium***
Average Bloomberg Beta Coefficient			
Current 30-Year Treasury (3.11%)		10.13%	10.34%
Near Term Projected 30-Year Treasury (3.48%)		10.50%	10.71%
Average Value Line Beta Coefficient			
Current 30-Year Treasury (3.11%)		11.66%	11.91%
Near Term Projected 30-Year Treasury (3.48%)		12.03%	12.28%
ECAPM Results		***Bloomberg Derived Market Risk Premium***	***Value Line Derived Market Risk Premium***
Average Bloomberg Beta Coefficient			
Current 30-Year Treasury (3.11%)		11.53%	11.78%
Near Term Projected 30-Year Treasury (3.48%)		11.90%	12.15%
Average Value Line Beta Coefficient			
Current 30-Year Treasury (3.11%)		12.68%	12.95%
Near Term Projected 30-Year Treasury (3.48%)		13.05%	13.33%
	Low	***Mid***	***High***
Bond Yield Risk Premium	9.96%	10.03%	10.28%

Mr. Hevert also testified that it is important to assess the reasonableness of any financial model's results in the context of observable market data because the models are meant to reflect, and are influenced by, current and expected capital market conditions. Tr. at

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1778-44:5-8. Based on his analyses of the current capital market environment, Mr. Hevert determined that there is no reason to conclude that investors see utilities as less risky relative to either historical levels or to their corporate counterparts. Tr. at 1778-52:15-19. In addition, because not all models used to estimate the cost of equity adequately reflect changing market dynamics, Mr. Hevert stated that it is important to give appropriate weight to the methods and to their results and testified that somewhat more weight should be afforded the Risk Premium based methods. Tr. at 1778-53:6-8. He further testified that the TCJA has increased cash flow-related risks for utilities, which supports looking to the upper end of the range of results when setting the Company's ROE. Tr. at 1778-58:21-26.

Mr. Hevert testified that, since 2012, the annual median earned Return on Average Common Equity among the operating companies within his proxy group was in the range of 9.17% to 9.79%; the median return over the entire period was 9.54%. Tr. at 1778-61:7-10. SCE&G's December 2017 earned ROE, assuming a capital structure comprised of 52.89% equity, 47.11% debt, and a 5.86% cost of debt, was 8.30%. This earned ROE falls below the median earned return by 124 basis points and falls within the bottom 27th percentile of earned returns since 2012. Tr. at 1778-61:10-12.

Mr. Hevert also testified that any operating utility's credit rating and outlook depend substantially on whether or not rating agencies view the regulatory environment as credit supportive. Tr. at 1778-69:4-6. For example, he testified that Moody's finds the regulatory environment to be so important that 50% of the factors that weigh in its ratings determination are determined by the nature of regulation. Tr. at 1778-69:6-8. Given the capital-intensive nature of utility operations, the corresponding need to access external capital, and the weight

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rating agencies place on the nature of the regulatory environment, it is important to consider the extent to which the jurisdictions that recently have authorized ROEs for electric utilities are viewed as having constructive regulatory environments. Tr. at 1778-69:8-12. Authorized ROEs for vertically integrated electric utilities in jurisdictions that RRA, a widely referenced source of rate case data, rates as Average/2 range from 9.10% to 10.10%; among those ranked Average/1 and higher (that is South Carolina's ranking until October 2017) it ranged from 9.5% to 10.55%. Tr. at 1778-70:12-15.

Based on the full range of DCF and Risk Premium-based estimates and considering other model results and data available to investors, the recent performance of electric utility stocks relative to the broad market, the recent actions by Moody's, and the potential effect of the TCJA, Mr. Hevert opined that the Company's Cost of Equity falls in the range of 10.25% to 11.00%, with 10.75% as a reasonable estimate of SCE&G's ROE if the merger is approved. Tr. at 1778-60:4-8.

In contrast, Mr. Baudino recommended that an ROE of 9.1% be applied to the allowed NND costs to be collected through a new Capital Cost Recovery Rider. In arriving at his recommended ROE, Mr. Baudino applied the DCF model to the same proxy group used by Mr. Hevert and also performed CAPM analyses using projected and historical data. As Mr. Hevert pointed out, however, Mr. Baudino did not directly incorporate the results of his CAPM analysis and therefore his recommended ROE is based solely upon a single analytical method, which is inconsistent with decisions reached by regulatory commissions over the past several years and departs from the normal practice of estimating the Cost of Equity for

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utilities. Furthermore, while Mr. Baudino criticized various components of the standard methodologies employed by Mr. Hevert, he offered no analysis of these same methodologies.

In short, the Commission finds that there is ample evidence and reason to conclude that the analyses conducted by Mr. Hevert, who is a most experienced and well-respected financial analyst, are accurate and reliable estimates of SCE&G's cost of equity. The Commission further finds that it is appropriate and reasonable to consider a range of estimates under various methodologies in order to more accurately estimate SCE&G's cost of equity. Accordingly, the Commission rejects Mr. Baudino's analysis as flawed and incomplete concludes that the Company's current cost of equity most likely ranges between 10.25% and 11% as determined by Mr. Hevert and that the most likely point estimate of the cost of equity is 10.75%, assuming the merger is approved.

Notwithstanding this finding, the Commission recognizes that, as part of Plan–B Levelized, the Joint Applicants propose a 9.9% ROE to be applied to the capital costs associated with the unrecovered balance in the Project regulatory asset account. Although a 9.9% ROE is below the recommended range of Mr. Hevert and below the Company's actual cost of equity, the Joint Applicants' have agreed to reduce the ROE in furtherance of resolving the issues presented in this case. The Commission observes that this reduced ROE is only achievable because of the infusion of capital to be provided by Dominion Energy's balance sheet if the proposed business combination is approved. Without the merger, SCE&G standing along would require a premium to the market-based ROE estimated by Mr. Hevert in order to attract equity capital in the future. Thus, the merger provides the

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immediate and additional benefit of lowering SCE&G's cost of equity to market-based levels.

The Commission therefore finds that, in conjunction with the business combination with Dominion Energy and under the unique circumstances of this case, the 9.9% ROE proposed by the Joint Applicants as part of Plan–B Levelized represents a reasonable level of earnings on the allowed NND investment and meets the requirements of *Bluefield*, *Hope*, and *Southern Bell*. Such a return on equity for the purposes of recovering the allowed capital costs of the Project over a 20-year period also is reasonable and appropriate, is in the public interest, and will support the interest of all parties by allowing SCE&G continued access to capital at reasonable rates, as a subsidiary of Dominion Energy. In sum, the Commission finds that the 9.9% ROE offered as part of Plan-B Levelized strikes a reasonable balance between the interests of customers and SCE&G when considered in light of the proposed merger with Dominion Energy.

G. Cost of Debt, Preferred Stock, and Capital Structure

Unlike the cost of equity, the cost of debt and preferred stock is contractual in nature and more easily ascertainable in that they can be directly observed. Specifically, debt holders are promised a series of specified interest payments and have a contractual right to receive the bond's par value upon maturity. Moreover, in order to provide the Company with an opportunity to earn a fair and reasonable return on its investment, the Commission must determine what capital structure is appropriate for ratemaking purposes.

As discussed previously, the Joint Applicants proposed that, as part of the Customer Benefits Plan, the Joint Merger Plan, and the Base Plan, the unrecovered balance in the NND

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regulatory asset account should be subject to SCE&G's cost of capital devoted to retail electric operations based on a weighted average cost of debt of 5.85%, and a capital structure consisting of 52.81% equity and 47.19% debt. As part of this capital structure, SCE&G effectively proposed an embedded cost of preferred stock of 0.00%. These proposals reflect the Company's capital structure as of September 30, 2017, and do not reflect the actual impairments written off in September 2017. Thus, on a *pro forma* basis, the common equity is restored to pre-impairment levels, resulting in a ratio of debt to equity that reflects a more normalized capital structure for ratemaking purposes.

Through the testimony of Mr. Baudino, ORS agreed with the Joint Applicants' proposed capital structure. However, he disagreed with the proposed cost of debt. Specifically, Mr. Baudino testified that, on August 16, 2018, SCE&G issued two new debt issuances and recommended that these issuances be included in the Company's cost of long-term debt for purposes of calculating the return on the allowed NND costs.

The Commission notes that, through the Plan–B-L, the Joint Applicants have agreed to adjust the proposed cost of long-term debt to include the two new debt issuances and that, as a result, the Company's cost of debt for purposes of calculating the overall return on the allowed NND costs is 5.56%. Based upon the evidence of record, the Commission therefore finds that a weighted average cost of debt of 5.56% and a capital structure consisting of 52.81% equity and 47.19% debt is reasonable and appropriate. Accordingly, the Commission adopts this cost of debt and capital structure for use in this proceeding.

H. Conclusion

Based upon the above findings, Table 9 reflects for Plan B-Levelized the overall

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returns authorized to be earned by SCE&G on the allowed capital costs invested in the now abandoned Project, using, as determined above, the Company's capital structure, cost of debt, and cost of common equity as the components in calculating the overall rate of return:

Table 9: Summary of Overall Rate of Return (Plan–B-L)

Type of Capital	Ratios	Embedded Cost Rate	Overall Cost/Rate
Long-Term Debt	47.19%	5.56%	2.62%
Preferred Stock	0.00%	0.00%	0.00%
Common Equity	52.81%	9.90%	5.23%
Total	100.00%		7.85%

VIII. MISCELLANEOUS FINANCIAL CONSIDERATIONS

A. Securitization

This Commission finds that securitization of the NND investments is an inappropriate remedy. There are multiple reasons that securitizing the abandoned nuclear Project debt would not achieve the needed balance of stakeholder interests and have negative consequences for these stakeholders. After proper consideration of the numerous potential consequences, in light of the various issues that are before this Commission to balance and decide as well as the certain benefits that the Joint Applicants' combination proposal brings, this Commission rejects securitization for the following reasons.

1. Dominion Energy Will Not Close the Merger if the Regulatory Asset is Securitized

As the record reflects, securitization of the NND regulatory assets will prevent Dominion Energy from closing this merger. Tr. at 2988:18-24; 2801:21-24; 1762-41:4-7. The Customer Benefits Plan proposals (Plans A, B, and B Levelized) are comprehensive

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packages that are constructed to provide significant customer benefits and concessions as well as preserve the merger economics.

Any material change in the merger proposals which would diminish the merger economics will cause Dominion Energy not to close the merger. Securitizing the allowed NND costs that this Commission determines were prudently incurred would constitute such a material change to the merger proposals and economics.

This is an important consideration because Dominion Energy offers material and certain benefits to SCE&G's customers and has agreed to significant limitations on the future NND rate base cost recovery, to the lowest levels that are acceptable for the merger economics, balancing the needs of SCE&G's customers and Dominion Energy's fiduciary duties to its shareholders.

If these assets were securitized, in a "stand-alone," no merger scenario, SCE&G would have an even further diminished cash flow. It would likely have a highly leveraged balance sheet without any corresponding equity to balance its capital structure for several decades. And while the NND surcharge on customer bills could be reduced, their cost of service will likely still go up because the cost of capital for the utility will increase.

2. There Is Currently No Enabling Securitization Legislation

This Commission notes there is no enabling legislation giving this Commission the authority to approve or order securitization of any NND costs approved for recovery in this docket. This Commission would be recommending that the Company use a regulatory framework that has not been developed under a law that does not exist and that is uncertain to even be feasible if it is passed. The securitization question is, at this point, entirely

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hypothetical, and the Commission does not fashion hypothetical remedies or decide questions that are not actively before it.

The record further establishes that there is no precedent of enabling language that provides for the government or a utility commission to, sua sponte, order or require securitization, or to do so over the objection of the utility. In all of the examples of securitization in the record, the utility has the "option" to "request" or "petition" a commission for an order to securitize an asset, making this a permissive and voluntary action on the part of the utility. Binz Late-Filed Ex. 94 at p. 5, 24 and 66. Here, the Joint Applicants oppose securitization as an option compared to the merger benefits plans proposed.

3. Investor Confidence in Any Securitized Debt is Questionable

The evidence before the Commission shows that the investors who purchase securitized securities do so given their belief or perception that the explicit, non-bypassable charges included on customer bills for the servicing of securitization debt are invulnerable over the entire term of that debt – that is, not subject to political influence, second guessing, or political challenges. Tr. 2808-5; *see also* Tr. 1206-1207 and Hearing Ex. 94 at 7, 8, 35, and 72.

Any suggestion of an uncertain political climate would call this into question and impact investor appetite for such a security, as well as the required return on these securities, such that the bond yields will have to be higher than what proponents of securitization have suggested. Tr. at 1762-44.

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4. The Size of the Secured Asset May be Too Large for Feasibility

The Commission notes that the size any securitization offering of SCE&G's NND costs alone would be among the largest since 2007-2008 and would require a higher surcharge to finance with a smaller pool of investors that would be interested in such a large security. Tr. at 2808-6. The record supports the assertion that there is a limit to the market capacity for a hypothesized securitization offering, with only $1.5-2 billion of debt possibly able to be securitized. *See generally* Tr. at 2214. That is well below the total amount of NND costs for SCE&G alone, much less the total NND costs for SCE&G and Santee Cooper.

5. SCE&G May Not be Able to Treat Any Hypothetical Securitized Debt Amount as an "Off-balance sheet" Obligation

Securitization does not deconsolidate or remove the debt from SCE&G's balance sheet. In addition, while some credit rating agency methodologies adjust for securitized debt, the evidence in the record supports the assertion that it may be very difficult to achieve "off-credit" or "off-balance sheet" under the various credit rating agency methodologies without either reducing the amount of the security from what has been proposed or extending the time-period of the bonds' maturation from 20 years to upwards of 30 years. This is because the methodologies of the credit rating agencies require that the securitized asset's surcharge be a small percentage of the total customer bill.[47] Tr. at 2808-6–2808-7.

The Commission notes that adjusting the securitized asset in this manner has a number of drawbacks: the longer maturation date will not appeal to many investors, thus exacerbating the prior potential issue with investor appetite; and the longer duration of

[47] "This is generally around 10%".

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repayment would result in ratepayers paying more in undiscounted dollars and at a higher rate. *Id.* On the other hand, reducing the size of the security would only serve to reduce the possible benefits of securitization below those suggested in the record.

6. SCE&G's Existing Debt Instruments Have Steep Pre-payment Penalties

Where securitization proceeds are being used to replace capital that was already incurred and funded by other means, those proceeds would need to be used to repay the "on-credit" original funding. Tr. at 2808-5:7-14; 2808-7:18-8:5. If that debt were not repaid, the resulting credit profile of the utility would remain impaired. In order to provide for a financially viable utility company, the proceeds of a securitization would need to be used to repay existing SCE&G recourse, long-term bonds which are not pre-payable without penalty. Assuming that all of the $3.5 billion of SCE&G's NND Project related debt was securitized, "breakage" or "make-whole" costs of several hundred million up to a $1 billion could be incurred. This use of proceeds would be a highly inefficient use of capital, not providing a sensible solution in this situation. *Id*.

Further, there is evidence in the record that either paying down debt alone or paying down both debt and equity would result in negative consequences: one for the customers and the other for the company, respectively. Tr. at 2262-3–2262-4. More strain on SCE&G's balance sheet, while it may not necessarily lead to bankruptcy in the near term, will certainly affect the company's ability to provide safe and reliable service into the future, as well as to access capital markets in the inevitable effect of financial market fluctuations and

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unavoidable damage repairs outside of system upgrades and maintenance. *See generally* Tr. at 1762-46.

7. The Proceeds Would Not Go to Renewable Generation Resource Investment as Suggested

One of the suggested benefits of securitization is that the proceeds from the refinancing could immediately be used to invest in renewable energy resources to replace the capacity that V.C. Summer Units 2 and 3 would have produced. *See* Tr. at 2269-20.

However, the record in this case suggests, and this Commission agrees, that the proceeds from the securitization cannot immediately be used for investing in renewables but rather would be immediately used in paying back the refinanced debt and then absorbing the prepayment penalties, with no proceeds available for other purposes. *See* Tr. at 2808-8. Beyond that, in the facts of this case as established by the record, a significant amount of replacement capacity has already been purchased[48] and SCE&G has committed not to pass that cost on to its customers.

IX. MERGER APPROVAL

A. Summary of Approval

As stated, based on the evidence in the record, the Commission finds that a merger between SCE&G and Dominion Energy is the best solution to the NND cost recovery issues currently facing SCE&G's customers. This proposed combination offers the most reasonable alternative to move past the costly and acrimonious history of the NND Project, meaningfully benefit SCE&G ratepayers, and ensure a stable energy future for South Carolina. The

[48] The Columbia Energy Center has been purchased with shareholder money. Tr. at 1361.

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testimony and evidence of the past month's evidentiary hearing before this Commission has reinforced and underscored the importance of proceeding in a manner that will facilitate closing of the proposed merger.

In light of the pre-filed testimony and the evidence presented at the hearing in this matter, the Commission finds that adoption of Dominion Energy's Plan–B Levelized is in the public interest and hereby approves it without any changes to the terms as stated in the testimony and exhibits of Dominion Energy's witnesses. Further, the Commission notes the unique circumstances of this merger whereby roughly $4.5 billion of customer benefits are being provided by Dominion Energy, necessitating that a prescribed set of financial assumptions and conditions must be approved by the Commission to enable Dominion Energy to close the Merger. For Plan–B Levelized, the financial assumptions and conditions supported by the evidence in the record are summarized in Hearing Exhibit 169 at pages 22-28, which contains the Joint Applicants' Proposed Merger Conditions, and they are incorporated by reference and adopted. Those terms for Plan–B Levelized include: 1) NND rate base of $2.768 billion, offset by the NOLC amount of $1.5 billion that results in a NOLC-related DTA of $574 million, 2) an NND amortization and recovery period of 20 years, 3) a capitalization of 52.81% equity and 47.19 debt, 4) a Return of Equity of 9.9%, 5) a debt cost of 5.56%, 6) an up-front cash refund of $0, 7) $2.039 billion of refunds to customers from prior years' revenues comprised of $1.032 billion to be credited to customer bills by fixed schedule over 20 years and $1.007 billion credited to customer bills over approximately 11 years. These terms provide both the merger economics necessary to finance the merger and associated benefits while reducing customer bills 15% from the May

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2017 level of $147.53 per month to $125.26 per month for the typical residential customer. The Commission believes that taken as a whole, this set of conditions is in the public interest and results in rates that are just and reasonable and is hereby approved.

B. Qualifications of Dominion Energy, Inc.

Dominion Energy, Inc. is well equipped to acquire SCE&G and provide efficient and effective operations in its service territory. Dominion Energy is one of the largest and most experienced energy companies in the United States and has provided utility services for more than a century. Farrell Direct at 10:5-6; Tr. at 3001:21-23. The Dominion Energy footprint and customer base is large. The Company serves nearly six million utility and retail energy customers and employs approximately 16,200 full-time employees in six states. Farrell Direct at 10:11-15; Tr. at 3002:3-6. Dominion Energy's extensive energy infrastructure provides further evidence of its ability to meet the needs of SCE&G customers and the state of South Carolina. With approximately 26,000 megawatts of electric generating capacity and 66,000 miles of natural gas transmission, gathering, distribution, and storage pipelines, Dominion Energy is an experienced industry participant. Farrell Direct at 10:6-10; Tr. at 3001:23-3002:2.

On top of the experience and resources Dominion Energy provides, the Company will bring considerable financial stability to SCE&G. That economic certainty carries a wealth of benefits for the utility and its customers. Dominion Energy owns assets totaling over $79 billion, and the Company maintains a revolving credit capacity of $6 billion. Tr. at 2798:25-2799:3. SCE&G's credit ratings are currently below investment grade, which will dramatically increase its cost of capital if SCE&G must go to market on its own. Tr. at

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823:18-825:2. Conversely, Dominion Energy has strong credit ratings with all of the major credit-rating agencies, and Dominion Energy has represented that SCE&G would be incorporated into the Dominion Energy family of companies in a way that ensures access to its credit facilities and remedies its current liquidity challenges. Dominion Energy is publicly-traded on the New York Stock Exchange with an equity market capitalization of over $46 billion, and is a member of prominent general and industry-specific equity market indices. Chapman Direct at 5:13-18. The Commission believes that investors look favorably on Dominion Energy's operational model, which produces stable earnings and cash flows as a result of being heavily weighted towards state and federally regulated energy infrastructure.

The evidence in this matter suggests that Dominion Energy will operate SCE&G in accordance with its core values, which Dominion Energy Chairman and CEO Thomas Farrell addressed at length in his pre-filed and live testimony before the Commission. Farrell Direct at 11:18-12:21; Tr. at 3043:10-3044:15. The Commission expects that these values – safety, excellence, ethics, teamwork, and embracing change – will shape the way Dominion Energy operates SCE&G, how it manages the transition, and how it operates for the benefit of SCE&G's customers in the years to come.

Dominion Energy has been recognized as one of *Fortune's* "Most Admired" electric and gas utilities and its inclusion on *Forbes'* "Just 100" list is a testament to Dominion Energy's commitment to operational excellence, treating customers well, minimizing environmental impact, supporting the communities it serves, and valuing its employees. Farrell Direct at 13:7-11. As Mr. Farrell testified to the Commission, the Company has always prioritized community engagement and the Commission looks forward to it

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continuing that commitment in South Carolina. By granting its employees time to give back to their community, through grants from its Dominion Energy Charitable Foundation, and through its own commitment to hiring veterans, the Commission expects to see Dominion Energy be a strong and generous corporate citizen in South Carolina. Farrell Direct at 13:11-17; Tr. at 3215:11-12; 3216:22-3217:11.

Of all of the witnesses who testified before the Commission in this matter, none challenged Dominion Energy's qualifications to successfully operate SCE&G and provide cost-effective, quality service to its customers. Witness Kollen conceded that the Dominion merger will lead to lower rates and better service for SCE&G's customers. Kollen Direct at 62:13; Tr. at 1131:2-9. The parties have offered different approaches for how SCE&G might move forward, but Dominion Energy's ability to provide reliable, cost-effective electric service to the customers of South Carolina has never been questioned.

C. Merger Conditions

In addition to approval of the Dominion Energy combination and Customer Benefits Plan–B Levelized, the Commission must determine what merger-related conditions or commitments it shall impose in connection with this transaction. In response to a request from ORS, Dominion Energy compiled a comprehensive list of merger conditions it agrees to and under which it can close the merger. Some of these voluntary commitments were contained in the Joint Application and associated pre-filed direct testimony, and others are the result of exchanges during the evidentiary hearing with the Commission and parties. The Commission finds that the list of merger conditions presented by the Joint Applicants, as sponsored by witness Prabir Purohit presents a reasonable and appropriately comprehensive

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compilation of commitments. *See* Hearing Ex. 169, at 22-28. The Commission hereby adopts as part of the final Order entered in this matter the conditions as stated in testimony exhibit PP-4A ("Joint Applicants' Proposed Merger Conditions"), entered into the hearing record as part of Hearing Exhibit 169, and summarized below.

1. Joint Applicants' Proposed Merger Conditions

Future Base Rate Cases

Except for rate adjustments for fuel and environmental costs, demand side management costs, and other rates routinely adjusted on an annual or biannual basis, SCE&G will freeze retail electric base rates at current levels until January 1, 2021, with its first post-merger rate case to be filed in 2020.

NND Cost Recovery Exclusions

SCE&G will exclude from rate base and cost of service those costs that are associated with funds in the "Rabbi Trust" for senior management payments; senior management bonus payments charged to the NND Project; costs associated with the Bechtel report; consulting payments made to former SCANA CEO William Timmerman; and civil litigation expenses associated with the merger and NND Project abandonment. *Joint Applicants' Proposed Merger Conditions* at 1, Hearing Exhibit 169 at 22-28.

Merger Acquisition Premium, Goodwill, Transaction, and Transition Costs

SCE&G will not seek recovery of any acquisition premium costs, transition costs, or transaction costs associated with the combination. Dominion Energy will not record any portion of the purchase price allocation adjustments associated with the merger on SCANA or SCE&G's books. These costs will be recorded at the respective Dominion Energy, Inc.

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and SCANA holding company level and will not be pushed down or charged to SCE&G or any other SCANA or Dominion Energy, Inc. subsidiary company. *Joint Applicants' Proposed Merger Conditions* at 1-3, Hearing Exhibit 169 22-28. When Generally Accepted Accounting Principles require such costs to be recorded on SCE&G books, they will be reflected below-the-line to ensure they are excluded from rate recovery.

Cost of New Generating Capacity

The approximately $180 million initial capital investment in the Columbia Energy Center, a 540-MW combined-cycle natural gas-fired power plant located in Gaston, South Carolina, will be excluded from rate base and rate recovery. Only fuel costs, operations and maintenance expense, and maintenance or improvement capital investments will be recovered in future base and fuel rates, with Commission approval. *Joint Applicants' Proposed Merger Conditions* at 3, Hearing Exhibit 169 at 22-28.

Affiliate Transactions

Dominion Energy does not permit any lending of cash or other capital from a utility subsidiary to any other entity within the Dominion Energy family. Moreover, SCE&G shall not be the guarantor of any debt of Dominion Energy, Inc. or any other Dominion Energy affiliate. For affiliate transactions involving SCE&G, Dominion Energy, SCE&G, and its affiliates will abide by the following conditions: (1) generally, the price for services, products, and use of assets provided by a regulated entity to its non-regulated affiliates should be at the higher of fully allocated costs or prevailing market prices; (2) generally, the price for services, products, and use of assets provided by a non-regulated affiliate to a regulated affiliate should be at the lower of fully allocated cost or prevailing market prices;

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(3) generally, transfer of a capital asset from the utility to its non-regulated affiliate should be at the greater of prevailing market price or net book value; (4) generally, transfer of a capital asset from its non-regulated affiliate to the utility should be at the lower of prevailing market prices or net book value and (5) entities should maintain all information underlying affiliate transactions with the affiliated entity for a minimum of three years. *Joint Applicants' Proposed Merger Conditions* at 3-4, Hearing Exhibit 169 at 22-28.

Business

The Commission orders the following conditions regarding operation of SCE&G's business activities: (1) Dominion Energy intends to maintain SCE&G's headquarters in Cayce, South Carolina; (2) The President of SCE&G will continue to be a South Carolina resident with his/her primary office in Cayce, South Carolina. That position will report to the CEO of the Dominion Energy Southeast Energy Group; (3) Dominion Energy intends that its board of directors will take all necessary action, as soon as practical after the effective time of the merger, to appoint a mutually agreeable current member of the SCANA Board or SCANA's executive management team as a director on Dominion Energy's board of directors; (4) Dominion Energy will manage SCE&G from an operations standpoint as a separate regional business under Dominion Energy, and SCE&G will retain local responsibility for making decisions to achieve company objectives; (5) Dominion Energy will not change the legal structure of SCE&G without prior authorization from the Commission, and SCE&G will continue to exist as a separate legal entity after the merger; (6) the Public Service Commission of South Carolina will continue to exercise its regulatory authority over SCE&G in the same way it currently does, and Dominion Energy will ensure

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local access to books and records of the Company as well as its officers and employees; and (7) Dominion Energy and SCE&G commit to communicate all material information within a reasonable period of time with ORS and the Commission and to be transparent with regard to all non-privileged information, and subject to appropriate protections for confidential and proprietary information. *Joint Applicants' Proposed Merger Conditions* at 4-5, Hearing Exhibit 169 at 22-28.

Employee Matters

Dominion Energy will maintain compensation levels for employees of SCANA and its subsidiaries, including SCE&G, until at least January 1, 2020. For non-executive employees, Dominion Energy will extend this compensation commitment along with a pledge to provide severance or base pay continuation until at least July 1, 2020. Dominion Energy will give SCANA and SCE&G employees fair consideration for other employment and promotion opportunities within the larger Dominion Energy organization, both inside and outside South Carolina. Finally, Dominion Energy will seek to minimize reductions in local employment by allowing some Dominion Energy Services, Inc. employees supporting shared and common services functions and activities to be located in Cayce where it makes economic and practical sense to do so. *Joint Applicants' Proposed Merger Conditions* at 5, Hearing Exhibit 169 at 22-28.

Service Quality

Dominion Energy intends to maintain SCE&G's customer service at no less than current levels. It will not diminish SCE&G's focus on installing, upgrading, and maintaining facilities necessary for safe and reliable operations. Dominion Energy will also implement

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conditions to monitor service and performance following the closing of the merger to ensure levels do not degrade for reasons attributable to the merger. This will include providing quarterly SAIDI and SAIFI reporting, as well as quarterly Call Center Performance Metrics, all to begin no later than six months after the close of the merger. For SCE&G's gas operations, SCE&G will file quarterly service quality reports. All the foregoing service quality reports will be reviewed biennially in a Commission docket, with the first review taking place two years after merger close, and any degradation in service levels will be accompanied by a SCE&G plan for addressing it. Dominion Energy will also maintain SCE&G's environmental monitoring and maintenance programs at or above current levels. *Joint Applicants' Proposed Merger Conditions* at 5-6, Hearing Exhibit 169 at 22-28.

Financial

Dominion Energy commits to provide equity financing, as needed, to SCE&G with the intent of maintaining SCE&G's capital structure and to maintaining credit metrics that are supportive of strong investment-grade credit ratings for SCE&G. Except for the return on equity and cost of debt approved by the Commission for NND cost recovery for the twenty-year recovery period, the ROE for SCE&G's base electric business should be determined based on past practice and precedent to determine a fair and reasonable return. To the extent any long-term debt issued by SCE&G following merger close is more expensive as a result of the merger than similar average long-term debt, the cost of such issuances shall be reduced to that average for purposes of calculating overall cost of debt in the first base rate proceeding following merger closing. *Joint Applicants' Proposed Merger Conditions* at 6, Hearing Exhibit 169 at 22-28.

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Community

Dominion Energy will increase SCANA's historical level of corporate contributions to charities identified by SCANA's leadership by $1,000,000 per year for at least five years after the closing of the merger and will maintain historical levels of community involvement in SCANA's current operation areas. *Joint Applicants' Proposed Merger Conditions* at 6, Hearing Exhibit 169 at 22-28.

Merger Savings and Rate Case Stay-out / Comeback

Upon closing of the merger, SCE&G will create a regulatory liability of $2.45 million representing a refund to natural gas customers of 2017 revenues and will subsequently provide such a refund to its natural gas customers as bill credits in 2019, 2020, and 2021. In order to ensure actual merger savings are reflected in electric rates on a timely basis, SCE&G will file an electric general rate case on May 1, 2020 based on a test year ended December 31, 2019, updated for known and measurable merger savings as of September 30, 2020 for rates effective January 1, 2021. SCE&G will not, however, file an electric general rate case *before* May 1, 2020. *Joint Applicants' Proposed Merger Conditions* at 7, Hearing Exhibit 169 22-28.

Transco Settlement

The Joint Applicants entered into a settlement with Transco that provides for the following: Following the closing of the merger, SCE&G will not contract with an interstate pipeline for natural gas transmission capacity of 100,000 dekatherms per day or more unless or until it has issued a request for proposals to obtain such capacity and considers the proposals in good faith. SCE&G will file confidential reports with the Commission within

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thirty days of the conclusion of this process. Moreover, such an arrangement must be with the least cost provider of such capacity unless the Commission has otherwise approved the contract. *Joint Applicants' Proposed Merger Conditions* at 7, Hearing Exhibit 169 22-28.

Department of Defense

SCE&G agrees that to the extent any cash refund is distributed to customers as part of the merger, the Department of Defense and all other Federal Executive Agencies will have an option to select whether they receive the refund of rates as a check or as a credit on their billing invoice. *Joint Applicants' Proposed Merger Conditions* at 7, Hearing Exhibit 169 22-28.

Customer Education Plan

In consultation with ORS, Dominion Energy and SCE&G will develop a program to educate SCE&G customers about the benefits and implementation of any Joint Applicants Merger Benefits Plan approved by the Commission, and any such program shall be filed with the Commission prior to its implementation. Tr. at 2987.

2. ORS's Proposed Merger Conditions – Pre-Filed Testimony

There is substantial overlap between ORS's pre-filed proposed merger conditions (Hearing Exhibit 51 at 82-91) and those of the Joint Applicants, referenced above. ORS and the Joint Applicants agree, for example, that Dominion Energy will freeze retail electric base rates until January 1, 2021. They also agree that the Joint Applicants will not seek acquisition, transaction, or transition costs associated with this merger from customers. The proposed merger conditions presented by both ORS and the Joint Applicants exclude from recovery the acquisition costs associated with the Columbia Energy Center, which amounts

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to roughly $180 million. Although there is disagreement regarding some aspects of affiliate transactions, the parties agree on many of the fundamental tenets. With respect to business operations, ORS and the Joint Applicants also find areas of agreement, including keeping SCE&G's headquarters in Cayce, South Carolina, maintaining compensation levels for employees through at least January 1, 2020, and general agreement regarding various types of quality metric reporting.

Several of ORS's proposed merger conditions, however, are not included in the Joint Applicants' proposal, and for reasons including those set forth below, the Commission declines to adopt these conditions. ORS's proposals concerning the Merger Savings Rider and the treatment of transmission projects that were included in the BLRA project costs are discussed above in Section V.

Recommendations Related to ORS "Optimal Benefits Plan"

Many of ORS's proposed merger conditions reflect and support ORS's "Optimal Benefits Plan." For example, ORS's proposed conditions include details pertaining to rate write-downs, Cost Recovery Rider calculation, and the impact of TCJA savings. For the reasons already discussed in Section VI(C) of this Order, the Commission declines to adopt merger conditions proposed to implement that plan.

Securitization

ORS asks the Commission to direct SCE&G to securitize the allowed NND abandonment costs if South Carolina enacts enabling legislation. The Commission declines to do so. The issue of securitization and the rationale for the Commission's decision not to direct it for NND cost recovery is set forth in more detail in section VIII(A).

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Affiliate Transactions

As noted above, ORS and the Joint Applicants agree regarding many aspects of the proposed merger conditions pertaining to affiliate transactions. ORS does, however, propose some conditions with which the Joint Applicants disagree. Specifically, ORS requests that the Commission require SCE&G to file with the Commission to prospectively seek approval for any proposed structural reorganization and not implement any such reorganization until and unless the Commission approves it. The Joint Applicants have repeatedly expressed that they have no plans to change the organizational structure of SCE&G's operations following the merger.[49] The Commission is satisfied that the Joint Applicants are committed to maintaining SCE&G's headquarters, management team, and local control over operations in Cayce, South Carolina. Personnel changes are inevitable with any merger to achieve merger savings and efficiencies. In this merger, such savings will be passed to customers as a result of the 2020 electric base rate proceeding. Moreover, the Joint Applicants have committed to report on transition efforts and seek prior approval from this Commission where such matters fall within the Commission's authority. The South Carolina legislature has not ordered this type of pre-authorization and the Commission does not deem it appropriate to impose such a requirement in the form of a merger condition here.

Additionally, ORS recommends that the Commission adopt a condition requiring SCE&G to competitively source purchasing using a "least cost" standard without exception. The Commission finds that this type of protection would be unnecessary and overly burdensome. In the case of natural gas supplies, for example, while SCE&G endeavors

[49] Blue Rebuttal at 6:6-7:9.

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to purchase natural gas supplies, storage, transportation at reasonable prices, this does not necessarily mean that the purchases that have the "least cost" are the most reasonable and prudent for the company or its customers because it must take into account total delivered cost, reliability, availability, and diversity of supply. Such a "least cost" standard is neither reasonable nor practical in practice, and would not allow SCE&G reasonable flexibility to prudently pursue the optimal resources for the benefit of customers. Affiliate transactions for SCANA and its subsidiaries will continue to be governed by the Commission's Order No. 92-931 and S.C. Code Ann. § 58-27-2090, which include transfer pricing protections for the benefit of customers. Existing provisions in South Carolina law ensure that affiliate transactions are tied to market rates and standard contract conditions for similar goods and services. A "least cost" standard would be overly burdensome and impractical and is not necessary to preserve benefits and protections for customers, who are fully protected by South Carolina law and this Commission's prior orders.

Local Employment

ORS proposes that the Commission adopt a merger condition requiring the Joint Applicants to relocate some of the Dominion Energy Services, Inc. shared and common services functions and activities to Cayce, South Carolina from Richmond, Virginia. The Joint Applicants have made clear that they intend to maintain local employment in a Cayce-based SCE&G headquarters. They have further noted that they will give employees of SCANA and its subsidiaries due and fair consideration for employment and promotion

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opportunities within the larger Dominion Energy organization both inside and outside South Carolina. Tr. at 3012-4–3012-5. It is impractical, unduly burdensome, and likely not cost-effective to arbitrarily require the Joint Applicants to move Richmond employees to Cayce, particularly where they have already made concrete commitments which ensure that the majority of SCE&G employees will remain employed and located in South Carolina where it makes economic and practical sense to do so.

Service Quality

ORS's proposed merger conditions include a request that the Commission provide SAIDI and SAIFI reporting along with quarterly Call Center Performance Metrics to begin no less than three months after the close of the transaction. The Joint Applicants have agreed to provide this reporting, though they propose to do so starting six months after the close of the transaction. The Commission agrees that six months is an appropriate timeframe for this reporting to commence. It provides for the collection of more representative data and will better enable the Commission to assess post-merger service quality.

ORS also proposes that for SCE&G's electric operations, SCE&G be required to provide a yearly plan for addressing the 5% worst performing feeders on the Company's system as well as a detailed report identifying opportunities for improving service quality within six months of the merger's close. ORS suggests that the Commission open a docket within two years from the filing of these service quality reports to evaluate SCE&G's progress on service quality. These proposed conditions tend to suggest that SCE&G's current provision of service to customers on it system is deficient in some respect – an assertion the evidence does not support. The Joint Applicants have pledged to maintain

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service quality at or above current levels and have agreed to file various quarterly reports with review by this Commission in biennial proceedings. This reporting provides ample opportunity for the Commission to review service quality metrics and ensure SCE&G customers continue to receive quality service following the merger.

Credit Quality/ROE

ORS suggests that the ROE for SCE&G should be determined using a proxy group of investment grade regulated utilities and seeks to prohibit SCE&G from passing through any increases in the cost of equity caused by the merger due to imprudent actions by SCANA and/or SCE&G. In so doing, however, ORS seeks to impose artificial conditions on the Commission's ROE determination and suggests a number that is appreciably outside the bounds of what this and other Commissions have traditionally approved. The Commission sees no reason to depart from its precedent and typical approach to determining a reasonable ROE and therefore declines to adopt ORS's recommendation.

As it pertains to the cost of long-term debt, ORS asks the Commission to require that the cost of new long-term debt issued by or for SCE&G be set based on the lower of the prevailing cost of debt for an average investment grade regulated utility (rated BBB/Baa/A) or on SCE&G's actual cost of new long-term debt. However, the credit metrics of an "average investment grade regulated utility" are not comparable to SCE&G in its current state. It is therefore not a fair comparator. Accordingly, the Commission finds that to the extent that any long-term debt issued by SCE&G following the date of the closing of the merger is more expensive (as measured by spreads to then-current Treasuries) as a result of the merger than the average long-term debt of similar tenor and security package issued by

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"BBB/Baa" rated state-regulated utilities in a similar time period, the cost of debt of such issuances shall be reduced to that average for purposes of calculating overall cost of debt in the first base rate proceeding following closing of the merger. This constitutes reasonable and adequate protection for SCE&G customers against any adverse impacts of the merger.

"Most Favored Nations" Benefits from North Carolina

ORS offers a blanket contention that SCE&G customers should receive equivalent or greater merger benefits, ratemaking benefits, and other commitments and conditions as compared to those offered or ordered by the North Carolina Utilities Commission – a so-called "most favored nation" provision. The issues in the North Carolina case, however, are not analogous to the issues in this matter involving a different type of utility in an entirely different jurisdiction with a unique legal and regulatory context. While SCANA offers both electric and gas utility services through SCE&G in South Carolina, its services in North Carolina only involve natural gas distribution. That distinction necessarily impacted the types of merger commitments Dominion Energy could make in North Carolina. The Company offered a refund to gas customers there because SCANA's North Carolina customers are gas customers and that state's regulatory construct. And where Dominion Energy offered other conditions, it did so within the limitations of the nature of SCANA's North Carolina business. While the total merger packages in North Carolina and South Carolina look different in several respects, that fact does not make them unbalanced. Dominion Energy could not offer many of the benefits in North Carolina that it has agreed to provide in South Carolina, such as exclusion of certain NND costs and costs of new generating capacity like the Columbia Energy Center. Dominion Energy has offered a host

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of merger conditions in South Carolina that were not offered in North Carolina, so we are hard-pressed to say that, on balance, South Carolina is in any way disfavored vis-à-vis North Carolina. The nature of SCANA's business and the regulatory constructs are simply different in each state, which warranted different merger conditions in each jurisdiction. North Carolina has now issued its order and the benefits are known. This Commission is capable of fashioning a fair and beneficial final order without merely copying the terms of another state's order, and we have done so here.

3. ORS's Eleventh Hour Additional Proposed Conditions

In the final minutes of the evidentiary hearing in this matter, ORS presented additional proposed conditions on a document marked for identification only as Hearing Exhibit 171. Tr. at 4245:12-4254:17. This list is not part of the evidentiary record in this proceeding and was filed as a pleading. It is largely not, however, supported by the evidence in the matter and is not an exhibit to any pre-filed testimony. Certain of these proposed conditions may rightfully be the subject of future proceedings before this Commission, but they would be inappropriately imposed in this matter or are more reasonably addressed through the Transco and SBA settlements. ORS had the opportunity to present its proposed merger conditions in pre-filed testimony, and did so with witness Lane Kollen. Hearing Exhibit 51 at 83-91. Those proposed conditions are addressed in detail above. The Commission was able to analyze those conditions precisely because they were discussed in pre-filed testimony and presented by witnesses who could answer questions about the details of the proposal. Unlike those conditions, however, the newly-proposed conditions in Exhibit 171 were not discussed in pre-filed testimony, presented for cross examination by the parties,

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or even subject to any meaningful level of review or analysis during the hearing due to their last minute dissemination.

Hearing Exhibit 171 does include some of the conditions previously presented by Mr. Kollen in Hearing Exhibit 51, such as SCE&G's commitment to freeze electric retail base rates until January 1, 2021 and SCE&G's pledge not to seek recovery of merger acquisition, transition, and transaction costs. Conditions related to service quality and credit quality are also the conditions which are consistent with those previously proposed.

Many of the proposed conditions in this new list, however, are brand new and not supported by the evidence. By way of representative example, ORS proposes new terms associated with affiliate transactions that would prevent SCE&G from entering any contract that entails transportation using capacity on any interstate natural gas pipeline where such capacity does not already have a certificate from FERC, unless the Commission has approved it using a test proposed by ORS. These are terms which go beyond any pre-filed testimony in this matter as well as the terms of the Transco settlement, which the Commission believes provides a reasonable level of oversight regarding future expansion of natural gas pipeline capacity.

ORS also proposes for the first time that Dominion be required to provide this Commission and ORS with the complete review, results, and corrective actions of any internal investigation or evaluation of the SCANA and SCE&G actions related to the ND Project. Mr. Farrell promised to consider conducting such an investigation, but testified that any internal investigation would remain strictly internal. Tr. at 3042: 16-22. The Commission has no legitimate basis on which to require that the results of such an

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investigation be produced. Likewise, ORS would have the Commission require SCE&G to adopt and agree to a code of conduct to ensure that representatives from the Company adhere to their duty to avoid concealment, omission, misrepresentation, or nondisclosure of any material fact or information in any proceeding or filing before the Commission or ORS. Dominion has pledged to be forthcoming with the Commission, but it is not properly the subject of a merger condition in this case.

ORS now proposes a handful of conditions regarding SCE&G's future treatment of low-income customers. Specifically, ORS asks the Commission to require SCE&G not to seek any increase in the monthly Basic Facilities Charge for ten years and to contribute an amount to be determined by the Commission annually from shareholder funds into a low-income customer benefit fund in South Carolina. None of these recommendations were supported by the evidence or testimony in the case, and the Commission declines to adopt them.

Some of the new conditions proposed by ORS in Hearing Exhibit 171 incorporate issues raised by in the evidentiary hearing by other intervenors. For example, ORS's new set of proposed conditions asks the Commission to permit future intervenors in SCE&G's annual integrated resource planning process to require the Company to produce various modeling at their request. This document also asks the Commission to impose conditions requiring competitive, all-source solicitation for new capacity and/or energy resources as well as conditions regarding demand side management and energy efficiency projects. As is the case with the other new issues raised, these proposed conditions were presented at the last minute without sponsorship or evidentiary support. Presenting them without a sponsoring witness in

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the final minutes of the hearing is prejudicial to the other parties and fails to provide an opportunity to develop the record through cross examination or otherwise in a way that would permit the Commission to adopt any of the conditions.

For the reasons noted above, it would be improper and prejudicial for the Commission to consider this late proposal. To the extent any of the proposed conditions contained in Hearing Exhibit 171 not already addressed in this Order are raised in pre-filed testimony, the Commission finds that the adopted conditions herein are comprehensive, fair, and reasonable, and there is no showing that adoption of additional merger-related conditions is necessary or in the public interest.

X. OUTSTANDING DISPOSITIVE MOTIONS

In each of the three dockets, SCE&G filed dispositive motions. The Commission issued an Order on October 25, 2018, holding all three dispositive motions in abeyance. The Commission will now address and rule upon each of these motions, as discussed below.

A. Docket No. 2017-207-E

On October 8, 2018, SCE&G filed a Motion to Dismiss in Docket No. 2017-207-E alleging that Petitioners themselves admitted that they had already been granted the crux of the relief sought in their Complaint.[50] As explained above, the Complaint in Docket No. 2017-207-E sought (1) an order halting construction of the new nuclear development Project; (2) a proceeding to determine the prudence of acts and omissions by SCE&G in connection with the NND Project; and (3) a proceeding to "remedy, abate and make due reparations for

[50] SCE&G had previously filed a Motion to Dismiss on additional grounds, which was denied in Order No. 2017-770, dated December 20, 2017.

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the unjust and unreasonable rates to be charged to ratepayers related hereto." Compl./Pet. at 1-2, Docket No. 2017-207-E.

On July 2, 2018, the Commission issued Order No. 2018-459 in Docket No. 2018-217-E, which temporarily reduced rates to SCE&G's customers by approximately 15% starting on April 1, 2018, as required by Act 258.

At the September 4, 2018 hearing on Transcontinental Gas Pipe Line Company's Petition to Intervene Out of Time, Robert Guild, Petitioners' attorney, stated that the issues concerning the need for cancellation and addressing the immediate impact of the cancellation on customers' rates had been largely resolved by Order No. 2018-459. Specifically, he stated:

> My clients filed a proceeding in Docket -207 that raised three substantial issues, two of which have largely been resolved in the sense that the Project that we have been critical of for the last ten years has indeed been canceled, been abandoned.

Tr. at 40 (Sept. 4, 2018). With this representation, the only issue remaining in Docket No. 2017-207-E is the Petitioners' request for an evaluation of renewable energy alternatives, which was not properly raised in a docket seeking reparations under S.C. Code Ann. § 58-27-960. Thus, all of the requests made in Docket No. 2017-207-E are now moot.

The Complaint in Docket No. 2017-207-E was filed under S.C. Code Ann. § 58-27-960 as its sole basis. That statute, by its own terms, expressly prohibits the recovery of reparations in a case "wherein the rate or charge in question has been authorized by law." S.C. Code Ann. § 58-27-960; *see also S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n*, 275 S.C. 487, 490, 272 S.E.2d 793, 795 (1980) (holding that the Commission has no authority to direct

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refunds pursuant to past-approved lawful rates). Therefore, because no valid request for relief can't be granted in Docket No. 2017-207-E, the Petition must be dismissed.

Additionlly, this docket is still not an appropriate place to evaluate renewable energy alternatives as Petitioners request. The appropriate places to consider future generation supply decisions are in connection with (1) SCE&G's Integrated Resource Plan; (2) SCE&G's Distributed Energy Resources Plan, which was approved under the terms of the South Carolina Distributed Energy Resources Act, S.C. Code Ann. §§ 58-39-110 *et seq.*; and (3) proceedings under the Utility Facility Siting and Environmental Protection Act, S.C. Code Ann. §§ 58-33-10 *et seq.* Tr. at 2434-13–2434-14.

In summary, two of the three claims in this matter have become moot, and the third does not have the required legal basis for filing a contested case. Additionally, as explained in Section VI and IX of this Order, adoption of the rates proposed in Dominion Energy's Plan–B Levelized results in the full measure of rate relief that is warranted in these circumstances. Therefore, the relief sought in Docket 2017-207-E is now moot. For these reasons, the Commission orders that the Complaint/Petition in Docket No. 2017-207-E be dismissed.

B. Docket No. 2017-305-E

ORS commenced its action in Docket No. 2017-305-E by filing a Request asking the Commission to suspend SCE&G from collecting approximately $445 million in annual revenue based upon S.C. Code Ann. § 58-27-920.

Under the explicit language of that statute, two requirements must be met: (1) there must be evidence that ORS made "a preliminary investigation" into the proposed schedule of

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rates; and (2) there must be evidence presented for the Commission to determine that the proposed rates are "fair and reasonable." In Docket No. 2017-305-E, SCE&G filed a Motion for Summary Judgment and in the Alternative Motion to Strike on September 19, 2018, points out that ORS had failed to present any evidence proving that it had satisfied the requirements of S.C. Code Ann. § 58-27-920. It is ORS's burden to ensure that these requirements were met before filing its Complaint, and SCE&G argued that given ORS's pre-filed direct testimony, it was evident that ORS failed to meet this burden. The Commission agrees.

The direct testimony that ORS submitted in support of its Request in Docket No. 2017-305-E only consisted of testimony from Elizabeth H. Warner and M. Anthony James. Neither of these witnesses sought to show that ORS conducted the required "preliminary investigation," or that its proposed rates were "fair and reasonable," "just and reasonable" or "just, reasonable and sufficient" as the law requires. *See* S.C. Code Ann. §§ 58-27-810, 58-27-850, 58-27-920.[51]

Rather, Ms. Warner's testimony only identifies documents contained in Santee Cooper's records, and Mr. James' testimony provides only cursory statements regarding why ORS seeks to suspend the current revised rates, then focuses solely on a discussion of the Bechtel report.

[51] "Every rate made, demanded or received by any electrical utility . . . shall be just and reasonable." S.C. Code Ann. § 58-27-810. "Whenever the commission after a hearing finds that the existing rates in effect and collected by any electrical utility are unjust, unreasonable, insufficient, unreasonably discriminatory, or in any way in violation of any provision of law, the commission shall determine the just, reasonable, and sufficient rates to be thereafter observed and in force . . . ." S.C. Code Ann. § 58-27-850. These statutes echo the controlling language of the cases applying the Takings Clause of the United States Constitution and adopts a standard that is not materially different from the "fair and reasonable" standard contained in S.C. Code Ann. § 58-27-920.

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This testimony and the attached exhibits provide no discussion or analysis constituting the results of a preliminary investigation regarding the rates as the statutes require. Additionally, the testimony is devoid of any evidence regarding whether the rates ORS seeks to impose are "fair and reasonable" and ORS Witness Kollen and others affirmatively testified that no review of the effect of the proposed rates on SCE&G's financial soundness or ability to continue to finance utility operations had been conducted.[52]

Thus, ORS failed to provide any evidence to show that it had met its burden of proof under S.C. Code Ann. § 58-27-920 or that the rates it proposes are "fair and reasonable." Either of these failures warrants the entry of summary judgment for SCE&G in Docket No. 2017-305-E. And, although it would be inappropriate to consider additional testimony from the Hearings for purposes of this motion, the Commission would note that no additional evidence was presented during the Hearings that indicating that ORS has met its burden of proof.

Therefore, because ORS failed to meet its burden of submitting any evidence into the record that it both conducted a preliminary investigation before filing its request and that the rates it seeks to impose are "fair and reasonable," the Commission grants SCE&G's Motion for Summary Judgment.

[52] The only testimony about the effect upon SCE&G of suspending the revised rates is that of Mr. James, who draws reference to the conclusions made by ORS's bankruptcy counsel in documentation that is not an exhibit to his testimony. This testimony is hearsay and is not evidence of the proposed rates being "fair and reasonable." In fact, as explained below, the evidence presented at the Hearings indicated that ORS's proposed rates would be neither fair nor reasonable.

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C. Docket No. 2017-370-E

On October 19, 2018, Joint Applicants filed in all three dockets a Motion for Declaratory Rulings and Motion *in Limine*, seeking a ruling from the Commission:

(1) Affirming the findings, rulings, and determinations made by the Commission in the 14 prior proceedings concerning the NND Project, including its determination that SCE&G is entitled to recover the costs incurred on the NND Project through June 30, 2016, and barring the introduction of any testimony, evidence, or argument challenging those prior decisions;

(2) Declaring that the South Carolina Supreme Court's decision in *S. Carolina Energy Users Committee v. S. Carolina Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587 (2010), precluded SCE&G from including in its estimate of future construction costs contingency amounts over and above contractually-established or otherwise hard-budgeted, pre-contingency costs and precludes parties to the Consolidated Dockets from introducing testimony, evidence, or argument to the contrary;

(3) Finding that the South Carolina Supreme Court's decision in *S. Carolina Energy Users Committee v. S. Carolina Elec. & Gas*, 410 S.C. 348, 764 S.E.2d 913 (2014), precludes parties to the Consolidated Dockets from introducing testimony, evidence, or argument placing a burden on SCE&G to recertify the prudency of the NND Project after its initial approval; and

(4) Holding that the prudency standards set forth in Act No. 258 of 2018 ("Act 258") cannot be applied retroactively and barring the introduction of any testimony, evidence, or argument purporting to apply those standards to the NND Project.

The approval of the Merger and the associated customer benefits contemplated by the Merger moot these issues. The Commission nevertheless finds them to be independent grounds to reject the contentions of the ORS and Intervenors, as addressed below.

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1. Collateral Estoppel Bars the Relitigation of Several Issues in This Case

Collateral estoppel "prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same."[53] *State v. Hewins*, 409 S.C. 93, 106, 760 S.E.2d 814, 821 (2014) (internal citation and quotation marks omitted). Moreover, mutuality of parties is not a prerequisite to invoking collateral estoppel "where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue." *Carman v. S. Carolina Alcoholic Beverage Control Comm'n*, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994) (internal citation and quotation marks omitted). Pursuant to the doctrine of collateral estoppel, litigation is precluded with respect to any issue that was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Hewins*, 409 S.C. at 106, 760 S.E.2d at 821 (internal citation and quotation marks omitted). It also applies to "necessary and inevitable inferences" to the extent that "the judgment could not have been rendered as it was without deciding such points." *Carman*, 317 S.C. at 6, 451 S.E.2d at 386. Here, the Commission finds that five issues raised by the parties in these Consolidated Dockets have already been litigated and are precluded from being relitigated here.

[53] Collateral estoppel applies to administrative decisions, just as it applies to judicial determinations. *See Bennett v. S. Carolina Dep't of Corr.*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) ("This Court has repeatedly held that, under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action."); *Carmen v. S. Carolina. Alcoholic Beverage Control Comm'n*, 317 S.C. 1, 6-7, 451 S.E.2d 383, 386 (1994) ("When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, courts have not hesitated to apply collateral estoppel to enforce repose.").

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First, ORS claims that SCE&G should not be permitted to recover costs incurred on or after March 12, 2015, because of deficiencies in the Project schedules presented to the Commission at that time. Yet, in Docket No. 2015-103-E, this Commission conducted a full hearing in that matter and found that the Project schedules that had been submitted were, in fact, reasonable, prudent, and sufficient. The principal issues in that case were resolved by a settlement agreement which ORS, SCEUC, SCE&G, and others signed, and which included as attachments the specific cost and construction schedules which the Commission was asked to affirm, and which the Commission then did affirm. In fact, that settlement agreement states that, "[t]he Parties agree that the modified construction schedule and capital cost schedule [as attached] are not the result of imprudence by SCE&G and are fully consistent with the requirements of the BLRA." (*See* 2015 Settlement Agreement at 7.) In Order No. 2015-661, we expressly stated that ORS had "reviewed and evaluated the schedule and supports its adoption as the anticipated construction schedule for the Units under SC Code Ann. § 58-33-270(B)." (Order No. 2015-661 at 21.) We also specifically reviewed and resolved the issue of whether poor productivity factors and other sources of delay and inefficiency posed unacceptable risks to the construction schedule and cost schedule, finding that, though such risks existed, the schedules presented were appropriate and warranted approval under the BLRA. (*See id*. at 27-28.) A year later, we again addressed these issues in Docket No. 2016-223-E and, in Order No. 2016-794, again adopted cost and construction schedules that had been agreed to by ORS, SCEUC, SCE&G, and others. Thus, there can be no question that ORS is collaterally estopped from challenging SCE&G's recovery of costs incurred prior to March 12, 2015.

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Second, the parties in these Consolidated Dockets are collaterally estopped from claiming that SCE&G should be denied recovery of actual NND Project costs incurred before June 30, 2016. The reason for this is simple. Since 2009, this Commission has entered five update orders adopting cost schedules and affirming the prudency of actual capital costs incurred by SCE&G in connection with the NND Project. The most recent of these orders – Order No. 2016-794 – affirms actual Project costs through March 2016. *See* Order No. 2016-794, Ex. 2. We have also specifically established the allowable capital costs for the Project through June 30, 2016. This was done in nine revised rate adjustments beginning with Order No. 2009-104(A); these orders establish that the appropriate capital cost of the Project as incurred was approximately $3.7 billion as of June 30, 2016. *See* Order Nos. 2009-104(A), 2009-696, 2010-625, 2011-738, 2012-761, 2013-680(A), 2014-785, 2015-712, 2016-758. Because this Commission has expressly considered and authorized the actual Project costs and capital costs incurred by SCE&G prior to June 30, 2016, the parties in these Consolidated Dockets are precluded from challenging SCE&G's recovery of those amounts here.

Third, ORS and the other parties in these Consolidated Dockets are precluded from challenging SCE&G's oversight of the NND Project because that issue was raised and actually litigated in prior BLRA proceedings. While the issue of oversight has been present in all BLRA update proceedings since 2009, it arose most prominently in the 2015 proceedings, and, in Order No. 2015-661, this Commission specifically found that SCE&G's approach to managing Westinghouse and the Consortium was appropriate. *See* Order No. 2015-661 at 34-35. After being raised and decided in seven contested case hearings, ORS

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and the other parties to these Consolidated Dockets are collaterally estopped from challenging SCE&G's past oversight and supervision now.

Fourth, collateral estoppel bars ORS from claiming that all orders regarding the NND Project entered since 2015 should be treated as null and void because ORS was not provided with information regarding Bechtel's review of the NND Project. ORS's own expert witness – Mr. Gary Jones – testified that: (a) he was aware that Bechtel had conducted an analysis of the NND Project; (b) he had discussed the existence of that analysis with certain NND Project team members; (c) he was informed that the Bechtel assessment did not contain meaningful new information concerning the NND Project; (d) once he became aware of Bechtel's report, he concluded that the substance of the information Bechtel provided was, except for a handful of items that he acknowledged to be largely insignificant, already known and that the issues identified were in the process of being addressed; and (e) as to schedules, he was aware of information that would have allowed him to develop a schedule analysis rivaling that of Bechtel. (*See* 10/05/18 Jones Dep. 83:13-106:12.) This admitted knowledge of Bechtel's assessment and the substance of the information it includes precludes ORS from claiming that SCE&G acted in bad faith and defrauded it by concealing material information. Moreover, even if ORS's allegations had merit, they would not defeat collateral estoppel here because the South Carolina Supreme Court has recognized that only "extrinsic fraud" provides a basis for not applying the doctrine of collateral estoppel. *Aaron v. Mahl*, 381 S.C. 585, 593, 674 S.E.2d 482, 486 (2009). Allegations like those here – that a party failed to disclose documents – "generally amounts to intrinsic, rather than extrinsic fraud." *Id*.

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Fifth, and finally, the parties in the Consolidated Dockets are precluded from challenging the NND Project's prudency prior to abandonment. When SCE&G submitted its Combined Application under the BLRA, this Commission conducted a comprehensive pre-prudency review of the selection of the technology, contractors and subcontractors for the NND Project, the terms of the EPC Contract under which the Project was to be constructed, and the projected costs and construction schedule as forecasted at that time. *See generally* Docket No. 2008-223-E. We ultimately approved SCE&G's application and authorized the NND Project in Order No. 2009-104(A). As part of that Base Load Review Order, we acknowledged that we were required "to make a comprehensive assessment of the decision to build the plant to determine if that decision is reasonable and prudent based on all available information." *Id*. at 58. We also expressly found that the NND Project was prudent because of SCE&G's selection of AP1000 technology, and its decision to use Westinghouse as the nuclear system supplier, and approved the EPC contract as being reasonable and prudent. *Id*. at 58, 51-69, 75. The fact that these issues were raised and actually litigated necessarily precludes the parties in these Consolidated Dockets from raising them again here. The Commission agrees with Joint Applicants that the doctrine of collateral estoppel bars the relitigation of these issues in these Consolidated Dockets, thus warranting exclusion of all testimony, evidence, and argument concerning the issues discussed herein.

2. SCE&G Properly Excluded Contingency-Based Costs from Its BLRA Cost Schedules

The Commission hereby finds that, pursuant to the Supreme Court's decision in *South Carolina Energy Users Committee v. South Carolina Public Service Commission*, 388 S.C.

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486, 697 S.E.2d 587 (2010) [hereinafter *S.C. Energy Users I*], SCE&G was not required or permitted to present contingency-based budget estimates in its 2015 and 2016 BLRA filings.

SCE&G's initial capital cost budgets, which were submitted in 2008, sought to identify and quantify key risk factors for the Project by calculating contingencies to apply to each of the categories of costs associated with the Project. *See* Order No. 2009-104(A) at 90-91, 96-98. This Commission found that those "contingency percentages were determined as a matter of sound engineering judgment based on SCE&G's assessment of the potential for actual cost to be greater than the forecasted cost based on such things as . . . the possibility that the estimates of the units of time and materials used to price the Project might understate actual requirements." (*Id*. at 96.) On appeal, however, the Supreme Court reversed the decision to allow SCE&G to recover $438,293,000 in contingency costs as a component of the capital costs for the NND Project. *See S.C. Energy Users I*, 388 S.C. at 491-96, 697 S.E.2d at 590-93.

Following the Supreme Court's decision in *S.C. Energy Users I*, this Commission recognized that SCE&G was constrained by precedent and was not "in a position where it c[ould] propose that an amount of contingency be added to the anticipated construction costs against the possibility that this challenging level of productivity [as contractually committed to by Westinghouse and the Consortium] will not be achieved." Order No. 2015-661 at 28. *S.C. Energy Users I* remains binding on this Commission. As such, we will not consider the propriety of SCE&G's use of the hard-budgeted, pre-contingency cost schedules provided by Westinghouse in its 2015 and 2016 BLRA filings rather than contingency-based schedules.

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3. The Parties in This Action Cannot Challenge the Prudency of the NND Project Prior to Abandonment

The Commission finds that South Carolina Supreme Court precedent also prohibits the parties from challenging the prudency of the NND Project prior to abandonment, and thereby necessitates the exclusion of all testimony, evidence, and argument purporting to challenge the prudency of the NND Project prior to abandonment.

In *South Carolina Energy Users Committee v. South Carolina Electric and Gas*, 410 S.C. 348, 764 S.E.2d 913 (2014) [hereinafter *S.C. Energy Users II*], the South Carolina Supreme Court held that, after the initial prudency review, the BLRA did not require or permit this Commission to conduct a prudency evaluation of continuing the NND Project during subsequent proceedings. It explicitly concluded that: "'[D]eterminations under Section 58-33-275(A) may not be challenged or reopened in any subsequent proceedings[.]'" *Id*. at 360, 764 S.E.2d at 918 (quoting S.C. Code Ann. § 58-33-275(B)). Nevertheless, several parties have submitted testimony and evidence purporting to challenge the financial analyses performed in the Commission's prior dockets in order to suggest that continuing the NND Project was not prudent long before it was abandoned. This includes the testimony of Norman K. Richardson, Jr., which was proffered by ORS, in its entirety. Mr. Richardson's testimony is hereby stricken from the record and not to be considered in resolving these matters.

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4. The Prudency Standards Contained in Act 258 Do Not Apply to These Proceedings

This Commission also agrees with Joint Applicants that the prudency standards set forth in Act 258 cannot be applied retroactively to assess the prudency of the NND Project prior to abandonment. This is so for three reasons.

First, the separation of powers doctrine prohibits the General Assembly from enacting a statute in order to overturn the result in a case that the Supreme Court had already decided. Where the Supreme Court has already issued a judicial interpretation of a statute, that interpretation is determinative and "any subsequent legislative amendment to the contrary will only be effective from the date of its enactment and cannot be applied retroactively." *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974). The Supreme Court interpreted the BLRA in *S.C. Energy Users II* and held that prior prudency determinations made under the BLRA "'may not be challenged or reopened in any subsequent proceedings.'" *S.C. Energy Users II*, 410 S.C. at 359, 764 S.E.2d at 918 (quoting S.C. Code Ann. § 58-33-275(B)). Because the Supreme Court rendered a judicial interpretation of the BLRA, the General Assembly lacks the power to enact retroactive amendments to its scope and interpretation. *See Lindsay*, 262 S.C. at 629, 207 S.E.2d at 78.

Second, the presumption against statutory retroactivity can only be rebutted if the legislature "expressly prescribe[s] the statute's temporal reach" to include past claims and conduct. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). Act 258 states that it "takes effect upon approval by the Governor and applies to all cases, proceedings, petitions, or matters pending before the Public Service Commission or in any other court or venue on

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or after the effective date of this act." 2018 S.C. Act 258, § 12. Under binding South Carolina precedent, the inclusion of an "effective date" is inconsistent with legislative intent to apply a statute retroactively. *See, e.g., S. Carolina Dep't of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416, 418 (2000); *Pulliam v. Doe*, 246 S.C. 106, 142 S.E.2d 861, 863 (1963). Thus, Act 258 cannot be applied retroactively and has no bearing on these proceedings.

Finally, valid constitutional concerns prevent the Commission from applying Act 258 retroactively in these matters.[54] More specifically, the substantive due process rights granted by the United States and South Carolina constitutions prohibit the retroactive application of a statute when doing so would "attach[ ] new legal consequences to events completed before its enactment." *Landgraf*, 511 U.S. at 270. The takings clauses of the United States and South Carolina constitutions similarly prohibit the retroactive application of a statute that "takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or consideration already past." *Immigration Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 321 (2001) (internal citation and quotation marks omitted). Applying Act 258 in this matter to retroactively judge the NND Project and SCE&G's conduct would run afoul of both of these constitutional protections because SCE&G has invested billions of dollars in the NND Project over the last decade in reliance of the guarantees set forth in the BLRA. This reliance conferred upon SCE&G vested rights based on the terms of the BLRA as they existed in

[54] This Commission has the power to "rule on whether a law as applied violates constitutional rights." *Travelscape, LLC v. S. Carolina Dep't of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 28 (2011).

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2009, when the Base Load Review Order was issued. Act 258 cannot be applied retroactively in this case without raising the possibility of serious constitutional challenges to the act.

For all of these reasons, the Commission holds that Act 258 cannot be applied retroactively to assess the prudency of the NND Project or SCE&G's actions prior to abandonment.

D. Request by Santee Cooper for a Public Interest Fund

In its October 26, 2018 Pre-Hearing Brief, Santee Cooper proposed that the Commission order that SCE&G fund a $351 million "Public Interest Fund" to benefit Santee Cooper's wholesale and retail customers. Santee Cooper argues such a fund is required to protect the State's public interest.

SCE&G objected to this request in a Motion to Strike that part of the Pre-Hearing Brief dated October 30, 2018. On October 31, 2018, the Hearing Officer denied SCE&G's Motion to Strike, as the Pre-Hearing Brief was just argument of counsel, not a formal motion.

Santee Cooper has set forth no legal basis for its request other than its contention that the merger must "benefit the State of South Carolina as a whole and thus the public interest...." Pre-Hearing Br. of Santee Cooper at 8, Docket No. 2017-370-E (Oct. 26, 2018). However, this Commission does not regulate Santee Cooper. Without statutory authority, this Commission has no jurisdiction to order such a fund. *See, e.g., Kiawah Property Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) (This Commission "is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly.").

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Notwithstanding, Santee Cooper has not presented any evidence establishing the basis of the amount claimed, or the factual justification for awarding it. It is unclear how awarding $351 million to Santee Cooper for the benefits of its customers would result in rates which are "just and reasonable" for SCE&G customers, which is the regulatory standard under which the Commission evaluates the proposal made in this proceeding. Nor does the Commission have clear statutory authority to order the fund to be created by Dominion Energy as a condition of approving the merger with SCE&G. The fund has no bearing on the issues of utility service and protection of SCE&G's customers' interest in such service, which is the proper focus of the Commission's regulatory review of mergerr proposals. As a co-owner of the Project, Santee Cooper's rights vis-à-vis SCE&G are defined by the operative Project agreements and are not a matter of the general rate making or utility regulatory jurisdiction of the Commission.

Additionally, Santee Cooper made this request six days before the hearings in this matter and did not offer any testimony or any other evidence to support it. Given the total lack of evidence to support this informal request, it must be denied.

XI. CONCLUSION

For the reasons set forth above, the Commission finds that pursuant to S.C. Code Ann. § 58-33-280(K), SCE&G's decision to abandon the Project on July 31, 2017, was prudent and in customers' best interest. Indeed, no party has challenged the prudency of the decision to abandon the Project or to seek to reduce costs to customers by obtaining abandonment tax deductions to reduce the impact of the decision on customers. The Commission finds that these decisions were prudent.

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Further, the Commission finds that SCE&G's customers will be best served by adopting Plan–B Levelized and approving SCANA's proposed merger with Dominion Energy. As explained above, Plan–B Levelized provides immediate and sustained bill reductions to customers coupled with strong assurances that SCE&G will continue to operate as a financially sound, reliable and responsible utility going forward. SCE&G's electric bills will be brought into alignment with neighboring utilities and will be well below national averages. This result will be achieved without material risk to SCE&G's solvency, creditworthiness or ability to conduct its future utility operations safely, reliably and efficiently. No other option before the Commission provides this combination of benefits. Likewise, the Commission finds that ORS's proposed rate reductions are not supported by these merger benefits and are not just and reasonable as required.

The Commission also finds that adjustments to costs incurred before September 30, 2017, as set out in Hearing Ex. 141 are properly reflected in these amounts and are properly recoverable as costs of the Project, subject to reduction of these amounts by the amounts included in them for consulting contract payments to Mr. William Timmerman, bonuses paid to senior executives related to the Project, and payments to the Bechtel Corporation for the 2015-2016 Project analysis. The Joint Applicants are directed to file a revised schedule within 30 days of the issuance of this Order reflecting these changes. The Commission finds this updated schedule to be the appropriate schedule of capital costs for the Project in abandonment under S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-27-280 (K).

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XII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Customer Benefits Plan–B Levelized is the appropriate resolution to the matters at issue in these dockets and creates bills for SCE&G which are just and reasonable.
2. The rate moratorium provided for Customer Benefits Plan–B Levelized is hereby adopted.
3. The merger between SCANA Corporation and Dominion Energy, Inc. is hereby approved under S.C. Code Ann. § 58-27-1300 to the extent such approval is statutorily required or alternatively is found to be in the public interest.
4. The merger conditions as proposed by Dominion Energy, Inc. and discussed above with reference to Plan–B Levelized are hereby adopted.
5. The merger conditions as proposed by ORS and other intervenors are hereby denied.
6. The schedule of costs attached as Exhibit 1 to this Order is approved as the reasonable and appropriate schedule of capital costs in abandonment for V.C. Summer Units 2 and 3 under the terms of S.C. Code Ann. §§ 58-33-270(E) and 58-33-280(K), provided however that SCE&G has voluntarily agreed to reduce the amount of capital costs to be recovered through rates by $1.962 billion to $2.768 billion as set forth in Plan–B Levelized.
7. The transmission assets constructed as a part of the Project to construct V.C. Summer Units 2 and 3 in the amount of $322 million constitute prudently constructed assets that are used and useful for providing retail electric service to customers and are properly reflected in SCE&G retail electric plant in service.

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8. SCE&G is directed to record as a regulatory asset the operating and maintenance expenses, property taxes, and depreciation associated with the transmission assets referenced above for recovery in a future rate proceeding with carrying costs recorded at SCE&G incremental cost of long-term debt.

9. The Unit 2 and 3 Switchyard and other assets constructed or acquired as a part of the Project to construct V.C. Summer Units 2 and 3 in the amount of approximately $85 million constitute prudently constructed assets that are used and useful for providing retail electric service to customers and are properly reflected in SCE&G retail electric plant in service, provided however that SCE&G has voluntarily agreed to write off this amount as set forth in the Customer Benefits Plan–B Levelized.

10. The acquisition cost of the 540 MW nameplate capacity Columbia Energy Center combined cycle natural gas generation unit in the amount of $180 million constitutes a reasonable and prudent investment in utility assets used and useful for providing retail electric service to customers and is properly reflected in SCE&G retail electric plant in service, provided however that SCE&G has voluntarily agreed to write off this amount as set forth in the Customer Benefits Plan–B Levelized.

11. The Optimal Benefits Plan, as presented by ORS in this proceeding is rejected as resulting in rates that, if imposed involuntarily, would be unjust, unreasonable, and insufficient.

12. SCE&G is ordered to file with the Commission within 30 days hereof a letter explaining the mechanism and timing for refunding to customers savings under the

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Tax Cuts and Jobs Act of 2017 from January 1, 2018 to the effective date of the rates imposed under this Order.

13. The petition filed by SCEUC and Sierra Club in Docket No. 2017-207-E is hereby dismissed because the issues concerning the need for cancellation and addressing the immediate impact of the cancellation on customers' rates were resolved by Order No. 2018-459, thereby rendering them moot.

14. The petition filed by SCEUC and Sierra Club in Docket No. 2017-207-E is further dismissed to the extent it requests an evaluation of renewable energy alternatives because such a request cannot be properly raised in a docket seeking reparations pursuant to S.C. Code Ann. § 58-27-960.

15. The request sought by ORS in Docket No. 2017-305-E is hereby dismissed because ORS failed to conduct a preliminary investigation into the proposed schedule or rates, as required by S.C. Code Ann. § 58-27-920, and has still failed to present any evidence proving that it satisfied the requirements of S.C. Code Ann. § 58-27-920.

16. The Commission hereby affirms the findings, rulings, and determinations that it made in the 14 prior proceedings concerning the NND Project, including its determination that SCE&G is entitled to recover the costs incurred on the NND Project through June 30, 2016.

17. The doctrine of collateral estoppel bars ORS from claiming that SCE&G should not be permitted to recover costs incurred on or after March 12, 2015, because this Commission conducted a full hearing in Docket No. 2015-103-E and found that the

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Project schedules that had been submitted were, in fact, reasonable, prudent, and sufficient.

18. The doctrine of collateral estoppel also bars the parties to these Consolidated Dockets from claiming that SCE&G should be denied recovery of actual NND Project costs incurred before June 30, 2016, because this Commission previously considered and authorized the Project costs and capital costs incurred by SCE&G prior to June 30, 2016.

19. The parties to these Consolidated Dockets are further precluded from challenging SCE&G's oversight of the NND Project because that issue was raised and actually litigated in prior BLRA proceedings, thereby resulting in collateral estoppel as to that issue.

20. ORS is also collaterally estopped from claiming that information regarding Bechtel's review of the NND Project renders all orders regarding the NND Project entered since 2015 should be treated as null and void.

21. The parties to these Consolidated Dockets are further collaterally estopped from challenging the NND Project's prudency prior to abandonment because this Commission has previously addressed and ruled on that issue.

22. The Commission hereby finds that, pursuant to the Supreme Court's decision in *S.C. Energy Users I*, SCE&G was not required or permitted to present contingency-based budget estimates in its 2015 and 2016 BLRA filings.

23. The Commission also finds that the South Carolina Supreme Court's decision in *S.C. Energy Users II* prohibits the parties from challenging the prudency of the NND

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Project prior to abandonment, thereby necessitating the exclusion of all testimony, evidence, and argument purporting to challenge the prudency of the NND Project prior to abandonment.

24. The prudency standards set forth in Act 258 cannot be applied retroactively to assess the prudency of the NND Project prior to abandonment.

25. Santee Cooper's request that the Commission order SCE&G to fund a $351 million "Public Interest Fund" to benefit Santee Cooper's wholesale and retail customers is also hereby denied because Santee Cooper has failed to provide any legal basis for its request and has failed to present any evidence establishing the basis of the amount claimed, or the factual justification for awarding it.

26. SCE&G shall file tariff sheets implementing rates under the Customer Benefits Plan–B Levelized within thirty (30) days of this order.

27. The rates adopted in the order shall take effect for bills rendered on or after the first billing cycle of February 2019. This will allow SCE&G to implement its new retail electric rates in an orderly manner. Current rates shall remain in effect until that time.

28. SCE&G shall file tariff sheets implementing the rate reduction offered for SCE&G retail natural gas distribution customers under the Customer Benefits Plan–B Levelized within thirty (30) days of this order.

Now, therefore,

IT IS HEREBY ORDERED:

BY ORDER OF THE COMMISSION:

_____
Comer H. Randall, Chairman

ATTEST:

_____
____, Vice Chairman
(SEAL)

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