November 9, 2016

VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: SCE&G Petition for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina - Docket No. 2016-223-E

Dear Ms. Boyd:

On behalf of the parties to the Settlement Agreement that was filed in the referenced docket, enclosed is a proposed order approving SCE&G’s request for modification of schedules.

Yours truly,

FRANK R. ELLERBE, III
ROBINSON, MCFADDEN & MOORE, P.C.

Enclosure

cc w/enc: F. David Butler, Esquire, Standing Hearing Officer (via email)
Joseph Melchers, Esquire (via email)
Parties of Record (via email and US Mail)
BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2016-223-E - ORDER NO. 2016-___

November__, 2016

In Re:

Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina,

ORDER APPROVING SCE&G’S REQUEST FOR MODIFICATION OF SCHEDULES

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the petition of South Carolina Electric & Gas Company (“SCE&G” or the “Company”) for an order approving an updated capital cost schedule and an updated construction schedule for the construction of two 1,117 net megawatt (“MW”) nuclear power units to be located at the V.C. Summer Nuclear Station near Jenkinsville, South Carolina (the “Project” or “Units”). SCE&G filed the petition in this docket (the “Petition”) on May 26, 2016, pursuant to S.C. Code Ann. § 58-33-270(E) (2015). Under that provision of the Base Load Review Act (the “BLRA”), a utility “may petition the commission…for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order.” S.C. Code Ann. § 58-33-270(E). Further, “[t]he commission shall grant the relief requested if, after a hearing, the commission finds…that the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the utility.” Id.
The Project has been the subject of a number of previous proceedings in this Commission. In Order No. 2009-104(A), dated March 2, 2009, the Commission approved an initial capital cost schedule and construction schedule for the Units. As approved in that order, the capital cost for the Units was $4.5 billion in 2007 dollars. With forecasted escalation, this resulted in an estimated cost for the Units 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. In 2009 SCE&G filed its first petition under S.C. Code Ann. §58-33-270(E) (an “update proceeding”) seeking an update to Project cost schedules. In Order No. 2010-12 dated January 21, 2010, the Commission approved the updated schedules. Subsequent update proceedings were filed in 2010 (approved by Order No. 2011-345) and in 2012 (approved in Order No. 2012-884).

Prior to this proceeding, the last petition filed by SCE&G pursuant to S.C. Code Ann. §58-33-270(E) was filed on March 12, 2015. In that petition, SCE&G sought an order approving an updated construction schedule and updated capital cost schedule for the Units. In Order No. 2015-661 dated September 10, 2015, the Commission approved an updated construction schedule with new substantial completion dates for Units 2 and 3 of June 19, 2019, and June 16, 2020, respectively, and an updated capital cost estimate of $5.2 billion in 2007 dollars.

1 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.
II. UPDATE PETITION IN THIS DOCKET

The update petition under consideration in this docket has been modified from what was proposed in SCE&G’s petition by a settlement (“Settlement Agreement”) entered into by a number of parties (and discussed below) and entered into the record as Hearing Exhibit 1. The updated construction schedule under review here was Exhibit 1 to the Settlement Agreement. This updated schedule revises the substantial completion date of Unit 2 to August 31, 2019, and of Unit 3 to August 31, 2020, a delay of approximately two and one-half months for each Unit compared to the dates established in Order No. 2015-661.

The updates to the cost schedule which result from the settlement are set out in Exhibit 2 to the Settlement Agreement. This schedule increases the anticipated cost of the Units by $831.3 million in future dollars to $7.658 billion or by approximately 12.2% compared to the forecasts of $6.8 billion reflected in Order No. 2015-661. These increases in anticipated costs are related to:

(a) Adjustments to the EPC Contract price associated with the October 27, 2015 Amendment to the EPC Contract (the “Amendment”);

(b) The additional costs associated with the exercise by SCE&G and Santee Cooper of the option to transfer to the Fixed Cost categories all but a limited set of costs to be paid under the EPC Contract after June 30, 2015 (the “Option”);

(c) Eleven individual change orders under the EPC Contract which involve such things as site physical security upgrades and security system upgrades, the construction of additional shop and office space for support personnel who will operate the Units, and additional personnel to train operations and maintenance personnel;
(d) Increases in Owner’s Costs principally associated with the extension of the completion dates for the Units and additional project oversight resources to ensure the safety and quality of the work, and

(e) Associated escalation and Allowance for Funds Used during Construction (‘‘AFUDC’’).

The cost forecast presented in Hearing Exhibit 11 also reflects the reversal of a credit for future liquidated damages payments of $85.5 million. This credit had been included in the cost projections approved in Order No. 2015-661 but was no longer anticipated to be earned because of revisions in the Guaranteed Substantial Completion Dates (‘‘GSCDs’’) of the Units.

Under the updated schedule, the cost of the Units will be approximately 21.3% more than the $6.3 billion amount forecasted in 2009. Chart A details the elements of the current request as per the settlement agreement:
The anticipated cost schedule for the Units as approved in various dockets filed under the BLRA is set forth in Chart B. These amounts are in future dollars.
III. NOTICE AND INTERVENTIONS

In compliance with S.C. Code Ann. § 58-33-270(E), SCE&G provided timely notice of the Petition in this docket to the South Carolina Office of Regulatory Staff (“ORS”). Pursuant to S.C. Code Ann § 58-4-10 (2015), ORS is automatically a party to this proceeding. By letter dated June 2, 2016, the Clerk’s Office instructed the Company to publish by June 17, 2016, a Notice of Filing and Hearing in newspapers of general circulation in the area where SCE&G serves retail electric customers (the “Newspaper Hearing Notices”). The Clerk’s Office also instructed SCE&G to provide proof of newspaper publication by July 8, 2016. On June 20, 2016, the Company timely filed affidavits with the Commission demonstrating that the Newspaper Hearing Notices had been duly published in accordance with the instructions of the Clerk’s Office.

By letter dated September 15, 2016, the Commission’s Clerk’s Office instructed the Company by September 21, 2016, to publish a Notice of Public Night Hearing to be held on Tuesday, October 4, 2016 as a display ad in the local section of the following newspapers: The
State, The Aiken Standard, The Post and Courier, and The Beaufort Gazette/Island Packet (the “Newspaper Night Hearing Notices”). The Clerk’s Office also instructed SCE&G to provide proof of publication of the Newspaper Night Hearing Notices by September 23, 2016. On September 22, 2016, the Company filed with the Commission affidavits demonstrating that the Newspaper Night Hearing Notices had been duly published in accordance with the instructions of the Clerk’s Office.

Timely petitions to intervene in this docket were received from Frank Knapp, Jr., Central Electric Power Cooperative, Inc. (“Central Electric”); The Electric Cooperatives of South Carolina, Inc. (“The Cooperatives”); Sandra Wright; Sierra Club; the South Carolina Energy Users Committee (“SCEUC”), South Carolina Coastal Conservation League (“CCL”) and CMC Steel South Carolina. These petitions were granted by this Commission. However, by Order No. 2016-525, Mr. Joseph Wojcicki was denied intervention on the ground that he is not a customer of SCE&G.

IV. SETTLEMENT AGREEMENT

In September of 2016, after the pre-filing of direct testimony by SCE&G and after all parties had been afforded a full opportunity to conduct discovery in this matter, ORS filed the Settlement Agreement with the Commission. It was executed by ORS, SCE&G, Central Electric, the Cooperatives, Frank Knapp, Jr. and SCEUC (the “Settling Parties”). The remaining parties, the Sierra Club, South Carolina Coastal Conservation League, Sandra Wright, and CMC Steel South Carolina, did not sign the Settlement Agreement. The Settlement Agreement was placed into the record as Hearing Exhibit No. 1 in this matter and is attached to this Order as Order Exhibit No. 1.

The Settling Parties propose that the Settlement Agreement and the modified construction schedule and capital cost schedule attached to it “should be accepted and approved by the
Commission as a fair, reasonable and full resolution of all issues” in this proceeding. Hearing Exhibit No. 1 at p. 14. These schedules reflected the new GSCDs for the Units as contained in the Amendment. The modified construction schedule is attached as exhibit 1 to the Settlement Agreement. The Settlement Agreement also reflected the Settling Party’s agreement to an adjustment in the capital cost schedules for the Units of $831.3 million, which is a reduction of $20.45 million from the adjustment requested in the Petition in this matter. The modified capital cost schedule that results from the Settlement Agreement is described in the testimony of ORS witness Powell and set out in Exhibit AHP-1, entered into the record as Hearing Exhibit 11. The resulting adjustment would create a BLRA approved capital cost for the Units of $7.658 billion.

In the Settlement Agreement, SCE&G agreed to a number of concessions that are not reflected in the attached construction or cost schedules. First, SCE&G agreed to fix the price to consumers for EPC Contract costs according to the terms of the Settlement; to accomplish this, SCE&G agreed not to file for approval of additional capital costs associated with the construction of the Units unless the requests are related to certain specifically enumerated exceptions. Tr. at 93-94. SCE&G also agreed it will not seek recovery for any increase in Owner’s Costs associated with transfer of scopes of work from Fixed Cost Categories under the EPC Contract to Owner’s Costs categories. Tr. at 92. This prohibition will not apply if the scope of work transferred is to be completed under a fixed price agreement which is less than or equal to the credit (reduction) to the fixed EPC Contract price provided by Westinghouse as a result of the transfer. This provision provides the Settling Parties assurance that transfers of EPC Costs to Owner’s Costs will not result in cost increases in categories that are now subject to fixed prices under the Option.

These commitments in the Settlement Agreement will operate as a type of “Guarantee” by SCE&G shareholders of the Option, which is intended “to fix the price to consumers of the EPC
Contract costs according to the terms of the Settlement [Agreement].” Settlement Agreement at ¶12. ORS’s witness Gary Jones testified that “the Guarantee is the most important aspect of the Settlement Agreement because that provision encourages accountability for construction costs and preserves the benefits to ratepayers from electing the Option.” Tr. at 936. For that reason, the Guarantee “mitigates the risks associated with electing the Option.” Id. All witnesses who discussed the matter were clear that the terms of the Guarantee are as set forth in Paragraph 12 of the Settlement Agreement, and a definitive statement of its terms is to be found there.

Second, SCE&G agreed not to file new petitions to update the BLRA capital cost schedules for the Units prior to January 28, 2019. Tr. at 90. SCE&G also agreed that prior to January 28, 2019, it will not seek revised rates reflecting capital costs greater than those approved in this Order. Both commitments are collectively referred to as the “Moratorium.” The January 28, 2019 date corresponds to the date on which SCE&G would expect to make its final revised rates filing prior to Unit 2 going into service. Furthermore, the Settlement also provides that the end date for the Moratorium will track the completion date for Unit 2 and will be extended day for day if the completion date is extended. As Mr. Marsh indicated, capital costs that are not reflected in revised rates due to the Moratorium will continue to accrue AFUDC as envisioned under the BLRA. Tr. at 95.

Third, SCE&G agreed to place a $20 million cap on any BLRA recovery for amounts associated with the items listed as unresolved matters on Exhibit C to the Amendment. Tr. at 91. These were disputed items the parties were not in a position to resolve at the time the Amendment was concluded. This $20 million cap excludes two change orders related to Plant Security Systems Integration and Plant Layout Security, Phase 3. The $20 million cap provides the Settling Parties
assurance that the additional costs of the Exhibit C items will not exceed a reasonable and quantified amount.

Fourth, SCE&G will calculate future revised rates filings using a return on common equity (“ROE”) of 10.25% rather than the ROE of 10.5% that SCE&G agreed to in the settlement underlying Order No. 2015-661. Tr. at 92-93. This new ROE will be used in revised rates filings made on or after January 1, 2017, and prospectively thereafter until the Units are complete.

In support of the Moratorium, the Settlement Agreement revises the milestone schedule for the project to include only two uncompleted milestones. Those milestones are the substantial completion dates of the two Units. Reducing the remaining milestones in this way recognizes the fact that the substantial completion dates are the key milestone dates going forward and that customers are protected so long as those dates are met. In support of this milestone change, the Settlement Agreement provides for greatly expanded and highly detailed reporting on schedule matters in the quarterly filings required under S.C. Code Ann. § 58-33-277(A) (2015).

Pursuant to S.C. Code Ann. § 58-33-270(G) (2015), the Settling Parties asked the Commission to hold a hearing on the Settlement Agreement along with the hearing for the Petition. They agreed that “the terms of the Settlement Agreement are reasonable, in the public interest and in accordance with the law and regulatory policy,” and that they “comport with the terms of the BLRA.” Settlement Agreement at 14-15. The Settling Parties asked the Commission to adopt the Settlement Agreement as part of its order in this proceeding. The Commission will rule on that request at the conclusion of its consideration of the evidence and issues raised in this proceeding.

V. STATUTORY STANDARDS AND REQUIRED FINDINGS

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. 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.” S.C. Code Ann. § 58-33-270(E)(1) (2015).

VI. FINDINGS RELATED TO COST AND SCHEDULE UPDATES

A. The 2015 Amendment to the EPC Contract

The amendment to the EPC Contract dated October 27, 2015, is attached to Mr. Byrne’s testimony as Hearing Exhibit No. 10. The Option to transfer costs to the Fixed Cost category is set forth in a document pre-signed by Westinghouse that was attached as Exhibit D to the Amendment. Hearing Exhibit No. 10 at p. 23. The Amendment and the Option are of primary importance here because they represent more than 90% of the adjustments to the project’s cost schedule that are proposed in this docket.

B. Overview of the Amendment and the Option

The Amendment and the Option were the result of negotiations involving SCE&G, Santee Cooper, Westinghouse, and CB&I that took place during September and October of 2015. Tr. at 56-57. Westinghouse requested a meeting with SCE&G and Santee Cooper during the first week of September 2015. At that meeting, Westinghouse disclosed that CB&I had decided to exit the new nuclear construction business and was requesting terms on which it could be released from its contractual commitments to this project and the sister project at the Vogtle site in Georgia. Tr. at 56. At the September meeting, Westinghouse also said that if CB&I were released from the project, Westinghouse would hire the Fluor Corporation (“Fluor”) to assume lead construction responsibilities as a subcontractor to Westinghouse. Fluor would not become a member of the Consortium. Tr. at 57. In order for Westinghouse to remove CB&I from the project, Westinghouse
had to convince SCE&G and Santee Cooper to release CB&I from the direct parental guarantees that CB&I had provided to them. In response SCE&G and Santee Cooper negotiated provisions (a) increasing liquidated damages, (b) restricting the grounds for future change order requests, (c) eliminating calendar-based progress payments, (d) establishing a dispute review board and prohibiting litigation while construction was ongoing, (e) extending major equipment warranties to match the new GSCDs of the Units, and (f) resolving all but a limited number of the outstanding change order requests and other claims between the parties.

SCE&G and Santee Cooper also demanded and obtained from Westinghouse the unilateral and irrevocable Option to transfer all but a limited amount of work under the EPC Contract to the Fixed Price cost category. The Option would set a price of $3.354 billion for all EPC Contract invoices paid after June 30, 2015. Tr. at 432. That price would be subject to future change orders and a limited number of excluded scopes of work in the Time and Materials cost category. By terms of the Amendment, the exercise of this Option is subject to Commission approval, which SCE&G has requested in this proceeding.

The Amendment was signed on October 27, 2015. Effective January 1, 2016, Fluor assumed responsibility for construction work on site and began transferring CB&I’s craft workers to Fluor’s employment rolls. On July 1, 2016, SCE&G and Santee Cooper provided Westinghouse with an executed copy of the Option agreement subject to review and approval by the Commission. Tr. at 60.

In this proceeding, SCE&G is presenting the cost changes associated with both the Amendment and the Option for incorporation in the updated BLRA cost forecasts. As to both sets of costs, the determinative question is whether the Commission can determine that “the evidence of record justifies a finding that the changes are not the result of imprudence on the part of the
utility.” S.C. Code Ann. § 58-33-270(E). For the reasons stated below, the Commission finds that SCE&G has met this statutory standard and that these changes have been shown not to be the result of imprudence on the part of SCE&G. Under the terms of the BLRA, they are properly included in the updated cost forecasts for the Units.

C. The Decision to Incur $137.5 Million to Procure the Amendment was not the Result of Imprudence on the Part of SCE&G.

The record shows that SCE&G assessed the value of the Amendment as a single integrated package of costs and benefits. No attempt was made to allocate the $137.5 million cost of the Amendment among the specific terms negotiated. Tr. at 455. Based on the testimony of SCE&G witnesses and those presented by the ORS, in addition to the provisions of the Settlement Agreement, the Commission finds that this approach was reasonable. While it is known and quantifiable at this time that the cost of the Amendment for which approval is sought is $137.5 million, the terms of the Amendment are primarily intended to control future costs and improve the likelihood of meeting future schedule commitments. These forward-looking benefits can only be specifically quantified, if at all, when the Units are complete and the intervening circumstances are known. At the hearing in this matter, SCE&G adduced evidence that multiple benefits secured by the Amendment would be sufficient individually to justify the cost paid for it. This is cogent evidence that SCE&G was not imprudent in negotiating it. In sum, there is no basis in this record to conclude that the provisions of the Amendment or its costs are the result of imprudence by SCE&G.

SCE&G pursued two principal goals in negotiating the Amendment. One was to restructure the EPC Contract to support the timely completion of the Units. The second was to limit SCE&G’s and Santee Cooper’s exposure to future price increases under the EPC Contract. Tr. at 59-60. Each
of the principal terms of the Amendment supports one or both of these goals. The provisions in the Amendment that principally support the timely and efficient completion of the Units include those (a) ending the divided structure of the Consortium, (b) allowing Fluor to become the construction lead for the project, (c) restructuring and increasing liquidated damages and completion incentives, (d) eliminating calendar-based progress payments, (e) resolving current disputes, (f) prohibiting future litigation, and (g) minimizing the grounds for future disputes. The principal provisions in the Amendment that limit the exposure of SCE&G and Santee Cooper to future price increases include provisions (a) amending the change in law provision of the EPC Contract, (b) specifying Design Control Document (DCD) Revision No. 19 to be the controlling document for purposes of the project, (c) providing an irrevocable Option to transfer most remaining EPC Contract costs to the Fixed Price category, and (d) resolving most of the payment disputes between the parties. The Commission finds that there is no evidence of imprudence regarding SCE&G’s decision to incur costs of $137.5 million in order to secure these benefits.

D. Approval of the Decision to Exercise the Option

In its Petition in this matter, SCE&G requested a ruling from the Commission affirming its decision to exercise the Option. In the Settlement Agreement the Settling Parties also urge that the Option be approved. SCE&G presented testimony by Dr. Lynch showing that in the most likely scenarios the Option will save SCE&G’s customers between $118 million and $981 million. See Hearing Exhibit No. 12.

SCE&G’s witnesses testified that Westinghouse understands that it likely will incur costs under the Option that it cannot recover from SCE&G and Santee Cooper. Certain intervenors raised concerns about whether these costs are so great that Westinghouse might be driven to default on its obligations under the EPC Contract or seek to renegotiate the terms of the Option. Tr. at
That latter concern underlies ORS’s view that additional protections in the form of the Guarantee were required for ORS to accept the terms of the Settlement Agreement. Clearly, ensuring the benefits of the Option are not lost due to the magnitude of the obligation incurred by Westinghouse is a principal goal of ORS in negotiating the Guarantee.

Of course, under any circumstance, it is best for SCE&G and its shareholders for Westinghouse to hold this risk. As discussed below, a principal feature of the Settlement Agreement is the Guarantee that prevents SCE&G from negotiating with Westinghouse to reallocate costs if things turn out poorly for Westinghouse.

A related question is what would happen if Westinghouse were to default on the EPC Contract and then prove to be insolvent. In that case, SCE&G would have recourse to its parental guarantee from Toshiba, which Toshiba has reaffirmed as part of the Amendment. Tr. at 419. Today, that guarantee would secure approximately $1 billion in SCE&G’s EPC Costs—or about a third of the amount currently remaining to be paid—against Toshiba’s publicly reported market capitalization of approximately $15 billion. In addition, approximately 85% of the equipment needed to complete the Units is now stored on site. Tr. at 414. SCE&G is currently implementing the rights it negotiated under the EPC Contract to place key software, design data and other intellectual property necessary to complete the Units in a third party escrow. Tr. at 458. The Settlement Agreement requires SCE&G to complete this transfer. Furthermore, as a result of the Amendment, Fluor is now fully integrated into the project, managing the on-site construction work and insulated from direct Consortium liability should Westinghouse fail. Even in the direst circumstances with reference to Westinghouse, SCE&G would not be without options to complete the project.
In the end, it is in the best interest of the project, SCE&G and its customers for SCE&G to exercise the Option and transfer to Westinghouse the price risk that the Option represents. The Commission hereby approves the exercise by SCE&G of the Option. The Commission further recognizes that the Guarantee further protects customers from the benefits of the Option being eroded by future events.

E. The Updated Owner’s Costs are not the Result of Imprudence On the Part of SCE&G

In its Petition and testimony, SCE&G identified an increase of $20.8 million in Owner’s Costs to complete construction of these Units. Tr. at 459. Owner’s Costs includes all of the costs SCE&G must bear as owner of the project to oversee construction and engineering on the project. As the holder of active NRC Combined Operating Licenses (“COLs”) for the Units, SCE&G is directly responsible for ensuring the quality and safety of all work on-site and at suppliers worldwide. SCE&G also pays license fees to the NRC to cover its costs for inspection and oversight of the project and for maintaining the multiple NRC resident inspectors on site.

Under the EPC Contract, SCE&G is contractually obligated to provide security and certain utilities for the site, as well as builder’s risk insurance and workers compensation insurance. Tr. at 825-26. To protect its commercial interests and those of its customers, SCE&G audits and reviews all invoices and request for payment associated with the project and bears the cost of disputing invoices and change order requests and enforcing its rights under the EPC Contract. As the prospective operator of the Units, SCE&G must recruit, train, and license the personnel needed to operate the Units and must draft and adopt the operating, maintenance and safety plans and procedures for the Units. SCE&G must accept the turnover of individual systems as they are completed by WEC and must test, operate, and maintain them pending completion of the Units.
SCE&G must provide the facilities, IT and other support required by these functions. The New Nuclear Development (“NND”) team comprises approximately 600 SCE&G, and SCANA and Santee Cooper personnel who fulfill these tasks. Tr. at 530.

As a result of the Settlement Agreement the Settling Parties agreed upon the inclusion of $30 million in Owner’s Costs. No party has presented any testimony challenging approval of SCE&G proposed updates to Owner’s Costs or the process by which the Owner’s Costs budgets are compiled. In the Settlement Agreement the Settling Parties support approval of the proposed update to Owner’s Costs. The evidence of record clearly supports the finding by this Commission that the increase in Owners Costs is not a result of imprudence by SCE&G.

F. The Additional Costs Associated with Change Orders are not the Result of Imprudence.

The Company has identified 11 change orders and related matters that were not resolved through the Amendment. In its petition SCE&G requested an adjustment of $52.5 million to the EPC Contract cost for these 11 change orders. As a result of the Settlement Agreement the Settling Parties agreed upon the inclusion of $32.6 million of those costs. See Order Exhibit No. 1, paragraph 6.

The Company’s witnesses, Mr. Byrne and Mr. Kochems, provided detailed testimony concerning the justification, purpose and necessity for each of these 11 change orders and their associated costs. They affirmatively testified that the costs associated with each of the 11 change orders represent reasonable and prudent costs of completing the Units. Tr. at 396, 790, 815-24. In addition, ORS witness Powell testified in detail about the change orders and explained the ORS recommendation that this Commission should accept the Change Order costs of $32.6 million reflected in the Settlement Agreement. Tr. pp. 729-730.
The Commission finds that the increase to the EPC Contract of $32.6 million for the 11 change orders discussed above is not the result of imprudence by SCE&G. Therefore, these costs are properly included in the anticipated capital cost schedule for the Units as approved in the Settlement Agreement.

G. Approval of Updates to the Construction Schedule

The updated construction schedule presented in the Petition reflects the approximately two and one-half month change in the GSCD for each of the Units and other adjustments to intervening milestones. Mr. Byrne testified that these milestone changes and the new substantial completion dates are based on extensive construction data WEC provided to SCE&G, and that SCE&G’s construction experts carefully reviewed and found the new schedule logical and appropriate. Tr. at 415-16. Mr. Byrne also testified that in its role as the new construction manager for the project, Fluor is conducting a full review of the construction schedule to ensure the GSCDs can be met and that any needed mitigation plans are put in place to support the schedule. Mr. Byrne also testified that Fluor has specifically told him that Fluor has not identified any reason that the Units cannot be completed by those dates. Mitigation plans are being formulated to ensure that those dates are met. The ORS’s witness, Mr. Jones, testified that while he has concerns about Fluor’s ability to complete the Units by the GSCDs, he has no specific evidence indicating that they are not attainable. Tr. at 923-24.

Based on this evidence of record, the Commission finds that the revisions to the construction schedules for the Units presented in the Petition are reasonable forecasts of the time required for completing the Units and supported by the evidence of record in this proceeding. They are appropriate schedules for the project under the provisions of the BLRA both in their more
detailed form as filed and as modified according to the terms of the Settlement Agreement and they are not the result of any imprudence on the part of SCE&G.

VII. COMMISSION ACCEPTANCE OF THE SETTLEMENT AGREEMENT

As discussed throughout this order the Commission has been presented with a comprehensive Settlement Agreement joined by a number of parties who have asked that the Settlement Agreement be approved under S.C. Code Ann. § 58-33-270(G). That provision, which is a part of the BLRA, provides the following:

The commission promptly shall schedule a hearing to consider any settlement agreement entered into between the Office of Regulatory Staff, as the party representing the public interest in the proceedings, and the utility applicant, provided that all parties shall have been given a reasonable opportunity to conduct discovery in the docket by the time the hearing is held. The commission may accept the settlement agreement as disposing of the matter, and issue an order adopting its terms, if it determines that the terms of the settlement agreement comport with the terms of this act.

The Commission finds that the Settlement Agreement was entered after all parties had a full opportunity to conduct discovery on the matters at issue in this case, and after SCE&G had submitted approximately 326 pages of prefiled testimony and exhibits setting out in detail the reasons for the changes in the construction schedule and anticipated cost schedules for the project. Furthermore, the direct and settlement testimony of the ORS’s witnesses, Ms. Allyn Powell and Mr. Gary Jones, shows that the ORS’s participation in the Settlement Agreement is based on extensive oversight of costs and construction schedules for the project. Tr. at 717-36, 935-37.

Based on these facts, the Commission finds that the Settlement Agreement meets the statutory requirements for adoption under S.C. Code Ann. § 58-33-270(G). In this context, the Commission’s task is to review the evidence of record presented by the utility and ORS to ensure
that this evidence supports the Settlement Agreement and the terms it encompasses. See S.C. Code Ann. § 58-33-270(G).

As indicated above, the evidence adduced at the hearing in this matter clearly establishes that the proposed changes in estimated capital costs are not the result of any imprudence on the part of SCE&G. Collectively, these items represent the $831.3 million adjustment in the capital cost forecasts for the Units as reflected in the Settlement Agreement and create the total schedule of estimated capital costs for the Units of $7.658 billion.

As to changes in the construction schedules for the project, the Commission recognizes that the substantial completion dates are now the key milestones remaining to be accomplished and the important milestones to be measured. Changes in other milestones would only be relevant in relation to any resulting changes that they cause in those substantial completion dates. The Settlement Agreement will require extensive reporting of multiple milestone schedules, including all of the milestones contained in the schedules presented in Order No. 2015-661, the milestones that will be contained in the forthcoming resource loaded integrated construction schedule being prepared by Fluor, as well as the new milestone payment schedule being formulated under the auspices of the Dispute Resolution Board. As a result, there will be extensive reporting and transparency concerning construction progress going forward, indeed more than the already high levels that have been required since the project began. If problems occur that place the substantial completion dates into serious question, that fact will be clearly apparent to ORS and this Commission.

In this regard, ORS’s statutory oversight and review authority is clear and extensive:

The Office of Regulatory Staff shall conduct on-going monitoring of the construction of the plant and expenditure of capital through review and audit of the quarterly reports under
this article, and shall have the right to inspect the books and records regarding the plant and the physical progress of construction upon reasonable notice to the utility.


Accordingly, in this context, and at this stage of the project, it would elevate form over substance to require the Company to file BLRA update proceedings to revise a list of interim milestones when Fluor completes and updates its review of the construction schedule. So long as the resulting construction schedules result in the timely completion of the Units, which the required quarterly reporting will clearly show, the interest of customers and the public is protected.

In addition to the Guarantee, the Settlement Agreement also contains the Moratorium, the prospective ROE reduction and the cap on remaining Amendment Exhibit C costs. These are all concessions which the Company has voluntarily agreed to make in the interest of achieving a settlement in this matter. In this regard, the Commission finds Mr. Marsh’s settlement testimony to be persuasive concerning the value of settlements in communicating to investors and financial markets that regulation in South Carolina is fair, predictable and reasonable. The Commission believes that settlements of this sort are in the best interest of customers, the public and the State because they lower the perceived regulatory risk faced by utilities and therefore improve their ability to raise capital to invest in their utility systems on reasonable terms. In this context, it is appropriate for SCE&G to bind itself to concession that might otherwise not be possible to be imposed involuntarily under the terms of the BLRA.
Based on these facts, the Commission finds that the terms of the Settlement Agreement are reasonable, in the public interest and in accordance with the law and regulatory policy. The Commission adopts the Settlement Agreement under the terms of S.C. Code Ann. § 58-33-270.

VIII. PROCEDURAL MATTERS

A. The South Carolina Coastal Conservation League’s Testimony

Prior to the hearing in this matter, SCE&G filed a motion to strike the prefiled direct testimony of the CCL’s witness Alice Napoleon on the grounds that the testimony was not relevant to the issues in this proceeding. Mrs. Napoleon’s testimony analyzed the Company’s energy efficiency efforts, discussed changes or additions to energy efficiency programs that SCE&G could potentially implement, and recommended energy efficiency programs that CCL recommended the Company adopt. Tr. P. 305. The sole subject of her testimony was energy efficiency programs.

The Commission deferred a ruling on this motion until after the hearing in this matter. In response to Ms. Napoleon’s testimony, SCE&G filed rebuttal testimony of Keller Kissam. Ms. Napoleon filed surrebuttal testimony in response. Having reviewed this testimony, the Commission determines that it is not germane to the issues in this proceeding. See S.C. Code Ann. § 58-33-270(E). The testimony Ms. Napoleon presented lacks any discussion of the changes to the cost or construction schedules for completing the Units or whether there was any imprudence on the Company’s part related to these changes. The relief she has requested, the amendment of energy efficiency programs and the initiation of energy efficiency program studies, is not properly before the Commission in a proceeding that was commenced and noticed pursuant to S.C. Code Ann. § 58-33-270(E).

However, pursuant to S.C. Code Ann. § 58-37-10 et seq. and in compliance with Order No. 2010-472 and Order No. 2013-826, the Company comes before the Commission annually to report
on developments regarding its demand-side management activities and to update its rate rider for
demand-side management costs, including energy efficiency programs. Therefore, the
Commission will consider Ms. Napoleon’s testimony in this matter, and Mr. Kissam’s rebuttal to
it, as comments in the 2017 proceedings to review SCE&G’s demand-side management programs.

IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The updated capital cost schedule contained in Order Exhibit 1 reflects $831.3
million in costs that have not previously been presented to the Commission for review and
approval.

2. The evidence in the record demonstrates that $831.3 million in newly identified and
itemized costs are not the result of imprudence on the part of SCE&G.

3. The specific components of the $831.3 million in newly identified and itemized
costs represent costs that, along with other provisions of the Settlement Agreement, will provide
benefits to customers and the project, and include costs which SCE&G must reasonably be
expected to pay for completing the Units and preparing to operate them safely, efficiently and
reliably.

4. The additional costs that SCE&G is incurring as Owner of the project are not the
result of imprudence on the part of SCE&G.

5. The updated milestone construction schedule contained in Order Exhibit No. 1
reflects the delay in the substantial completion dates of Unit 2 until August 31, 2019, and of Unit
3 to August 31, 2020. The evidence shows that SCE&G was not imprudent in its management of
this aspect of the project.
6. The Settlement Agreement entered into the record of this proceeding as Hearing Exhibit No. 1 fully conforms to the terms of S.C. Code Ann. § 58-33-270(G) and its terms comport with the terms of the BLRA and are supported by the evidence.

Now, therefore,

**IT IS HEREBY ORDERED:**

1. The Settlement Agreement attached hereto as Order Exhibit No. 1, is approved and the terms therein shall be accepted and adopted by this Order pursuant to S.C. Code Ann. § 58-33-270(G).

2. That the construction milestones schedule set forth in Exhibit 1 to the Settlement Agreement shall be the approved construction milestone schedule for the Units for purposes of the administration of the Base Load Review Act unless and until such time as the Commission approves a substitute schedule pursuant to S.C. Code Ann. § 58-33-270(E).

3. That the capital cost schedule set forth in Exhibit 2 to the Settlement Agreement shall be the approved capital cost schedule for the Units for purposes of the administration of the Base Load Review Act unless and until such time as the Commission approves a substitute schedule pursuant to S.C. Code Ann. § 58-33-270(E).

4. The future quarterly reports filed by SCE&G under S.C. Code Ann. § 58-33-277 shall reflect the modified schedules approved in this Order and the additional information required by the Settlement Agreement.
5. This Order shall remain in full force and effect unless and until modified by a subsequent order of the Commission.

BY ORDER OF THE COMMISSION:

__________________________________
Swain E. Whitfield, Chairman

ATTEST:

______________________________
___, Vice Chairman
(SEAL)
In Re: Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, a Paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the proposed Order Granting SCE&G’s Request for Modification of Schedules in the foregoing matter by electronic mail and by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Dated at Columbia, South Carolina this 9th day of November, 2016.

Toni C. Hawkins