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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, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent	)	
IN RE:	Request of the South Carolina Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920	)	**SOUTH CAROLINA OFFICE OF REGULATORY STAFF PROPOSED ORDER**
IN RE:	Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans	)	

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I. INTRODUCTION

This matter comes before the Public Service Commission ("the Commission") to decide the prudency of South Carolina Electric & Gas Company's ("SCE&G") abandonment of and the prudency of SCE&G's New Nuclear Development ("NND") construction costs incurred for the V.C. Summer Units 2 and 3 Project (the "Project"). The Commission must then set a just and reasonable permanent rate to be charged to Customers for the allowed NND construction costs even though the Project will never be used and useful for energy generation. The parties have also agreed to pass through all tax savings for the Tax Cuts and Jobs Act ("TCJA") of 2017 for both NND and general rate base costs, and the Commission will include those tax savings in the permanent rate set in this proceeding. The Joint Applicants also asked the Commission to review its proposed merger with SCANA Corporation, which would result in Dominion Energy, Inc. ("Dominion") owning SCE&G.

After receiving an extensive written record, including numerous witnesses, and holding 15 days of hearing testimony, the Commission disallows all construction costs incurred on the Project after March 12, 2015. On that date, SCE&G filed a petition to modify the Project's approved schedule and budget. That petition and the accompanying testimony failed to fully disclose the status of the Project and its anticipated costs and expected schedule. Despite other petitions for Revised Rates and another petition to modify the anticipated costs and schedule, the Project's construction budget and approved schedule was never adjusted to account for the real anticipated costs and schedule after March 12, 2015. Construction stopped permanently on July 31, 2017, when the Project was abandoned.

Based on the construction costs incurred as of March 12, 2015 with adjustments as conceded by the Joint Applicants during the hearing, the NND rate base is $2.768 billion. The

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allowed NND rate base will be amortized on a levelized basis over twenty years. The rate of return will be based on the current cost of debt at 5.56% and a return on equity of 9.1% under an assumed capital structure of 47.19% debt and 52.81% equity. Regulatory liabilities of the Toshiba Guarantee Payment of $1.06 billion and a return on that amount, along with the Revised Rates and a return on the Revised Rates collected since abandonment, will be returned to Customers through rate credits on the bills to be collected under the new permanent rate with NND cost recovery.

As more fully detailed below, this Order will require rates to be reduced for all classes of Customers. Lastly, the Joint Applicants presented the proposed merger to the Commission for approval or, in the alternative, a finding the merger is not contrary to the public interest. The Commission finds the merger requires certain conditions Subject to those conditions, the Joint Applicants are not prohibited from the merger under the applicable law or the findings in the Consolidated Docket. Thus, the Commission finds the proposed merger is not harmful to the public interest with the merger conditions in this Order.

A. Description of the Dockets

On June 22, 2017, Friends of the Earth ("FoE") and the Sierra Club ("Sierra Club") filed a complaint in Docket No. 2017-207-E requesting the Commission initiate a formal adjudicatory proceeding to determine the prudence of acts and omissions of SCE&G in connection with the Project; to consider and determine the prudence of abandonment of the Project and of the available least cost efficiency and renewable energy alternatives; and to remedy, abate and make due reparations for the unjust and unreasonable rates to be charged to Ratepayers.

On July 31, 2017, SCE&G announced its decision to abandon construction of the Project, and on August 1, 2017, SCE&G filed a Petition seeking an order amending the capital cost

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schedule, construction schedule and other terms and conditions concerning the Project to reflect SCE&G's decision to abandon the Project as of July 31, 2017. The Petition sought a prudency determination regarding the decision to abandon the Project, establishment of the amount of abandonment costs through September 30, 2017, associated with the Project, and for other matters related to rate mitigation and other accounting and tax items. By letter dated August 15, 2017, SCE&G, pursuant to S.C. Code Ann § 58-3-225(E) (2015), voluntarily withdrew the Petition as a matter of right without prejudice to file for similar relief in a future proceeding. Also, on August 1, 2017, SCE&G filed a 30-day letter of intent under the Base Load Review Act ("BLRA") to request revised rates. By letter dated August 15, 2017, SCE&G, pursuant to S.C. Code Ann § 58-3-225(E) (2015), voluntarily withdrew its notice to seek revised rates as a matter of right without prejudice to file for similar relief in a future proceeding.

On September 26, 2017, the South Carolina Office of Regulatory Staff ("ORS") filed its "Request for Rate Relief to SCE&G's Rates Pursuant to S.C. Code Ann. § 58-27-920" in Docket No. 2017-305-E which requested an order of the Commission declaring (a) that SCE&G immediately suspend all revised rates collections from Customers and, (b) if the General Assembly takes action to amend or revoke the BLRA or a court of competent jurisdiction declares the BLRA unconstitutional that SCE&G cease and desist from collecting revised rates and that credits to future bills or refunds be made to Customers for prior revised rates collections.

On January 12, 2018, the Joint Applicants filed their Joint Application and Petition in Docket No. 2017-370-E which requested: (a) review and approval of a proposed business combination between SCANA and Dominion whereby SCANA would become a wholly-owned subsidiary of Dominion, (b) approval of a customer benefit and cost recovery plan for the NND

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costs associated with the Project, (c) a prudency determination regarding the abandonment of the Project, and (d) other associated merger benefits, determinations, and accounting directives.

B. Notice and Intervention

Following the filing of the Complaint by FoE and Sierra Club, the Commission's Chief Clerk and Administrator issued a 30-day notice to SCE&G advising SCE&G of the Complaint and providing SCE&G with notice of the time by which to file an Answer. Petitions to Intervene in the FoE and Sierra Club docket were filed by The South Carolina Coastal Conservation League ("CCL"), The Electric Cooperatives of South Carolina ("ECSC") and Central Electric Power Cooperative, Inc. ("Central"), and Joseph Cali *et al,*[1] and these Petitions to Intervene were subsequently granted by the Commission.[2]

In the docket established for Docket No. 2017-305-E, Petitions to Intervene were received from FoE and Sierra Club; CCL; State of South Carolina ex rel. Alan Wilson Attorney General ("Attorney General"); James H. "Jay" Lucas, in his official capacity as Speaker of the South Carolina House of Representatives ("Speaker Lucas"); ECSC and Central ; Lynne S. Teague; Wal-Mart Stores East, LP and Sam's East, Inc. (collectively "Walmart"); Frank Knapp, Jr.; South Carolina Energy Users Committee ("SCEUC"); CMC Steel ("CMC"); South Carolina AARP ("AARP"); Dino Teppara, Esquire; Southern Current LLC; and South Carolina Solar Business Alliance ("SCSBA"). These Petitions to Intervene were granted by the Commission.

[1] The Petition to Intervene of Joseph Cali *et al* was filed by individual SCE&G ratepayers (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), the Dorchester County Republican Party, and the Dorchester County Taxpayers Association.

[2] By Motion dated July 30, 2018, Joseph Cali, *et al.* sought to withdraw their Petition to Intervene, and the Motion was granted by Order No. 2018-564.

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In Docket No. 2017-370-E, relating to SCE&G and Dominion's Joint Application, Petitions to Intervene were filed by FoE and Sierra Club; William T. Dowdy; CMC; Frank Knapp. Jr.; the United State Department of Defense and all other Federal Executive Agencies ("DoD/FEA"); Wal-Mart; Lynn S. Teague; ECSC and Central; Speaker Lucas; City of Orangeburg ("Orangeburg"); CCL and Southern Alliance for Clean Energy ("SACE"); AARP; SCEUC; SC Attorney General; SCSBA; South Carolina Public Service Authority ("Santee Cooper"); Gordon Miller; and Transcontinental Gas Pipe Line Company, LLC ("Transco"). The Petition to Intervene of Gordon Miller was denied by Order No. 2018-339, and the remaining Petitions to Intervene were approved by the Commission.

Pursuant to S.C. Code Ann. § 58-4-10(B) (Supp. 2018) and S.C. Code Ann. §58-33-230 (Supp. 2018) ORS is a party of record in Dockets 2017-207-E (FoE's Complaint) and 2017-370-E (SCE&G and Dominion's Joint Application and Petition).

C. <u>Hearing</u>

By Order No. 2018-80 dated January 31, 2018, the Commission recognized a number of common issues existed in the three (3) dockets and ordered the dockets be consolidated for hearing purposes. On March 13, 2018, the Clerk's Office issued a Notice of Hearing and Prefiled Testimony Deadlines and set the merits hearing to begin on November 1, 2018.

This Commission heard from 67 public witnesses throughout the three public night hearings held in Columbia on September 24, 2018,[3] in Aiken on October 8, 2018,[4] and in

[3] See Hearing Exhibit 6 9/24/18 Columbia Night Hearing and 10/8/18 Aiken Night Hearing Sign-in Sheets.

[4] *Id.*

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Charleston on October 15, 2018.[5] These witnesses testified about how the rate increases have affected them, their opinions on SCE&G's handling of the project, their opinions on the Merger, and what resolution they would like to see. Witnesses, especially the senior citizens, testified to the hardships they face due to the increases in their SCE&G bills over the years. Witness Ruth Rambo testified Ratepayers feel as though they have been duped and taken advantage of and the proposals put forth by Dominion do not rectify the situation. Witness Rambo reiterated in her testimony that the Commission is the *public* service commission, which is of great importance in this situation as the Commission must look out for the public. Witnesses testified they did not feel that SCE&G should be allowed to recover any costs related to the Project due to SCE&G's deception and misrepresentation. Witness Don Thompson testified SCE&G should not be able to impose the costs of the failure onto Ratepayers. Several witnesses testified they were opposed to the Merger; a few testified in favor of the Merger. Witnesses testified they wanted full refunds for every dollar they were charged for the Project, and many testified they did not want the one-time rate credit offered by Dominion as it was merely a loan to be later paid back to Dominion.

The Commission convened the hearing on the consolidated dockets on November 1, 2018, with the Honorable Comer H. "Randy" Randall, Chairman, presiding. F. David Butler, Esquire served as hearing officer and advisor to the Commission.

The following appearances were recognized at the hearing:

FoE/Sierra Club were represented by Robert Guild, Esq.

[5] See Hearing Exhibit 7 10/15/18 Charleston Night Hearing Sign-in Sheets.

SCE&G was represented by K. Chad Burgess, Esq.; Belton T. Zeigler, Esq.; David L. Balser, Esq.; Jonathan R. Chally, Esq.; Julia C. Barrett, Esq.; Brandon R. Keel, Esq.; Matthew W. Gissendanner, Esq.; and Mitchell Willoughby, Esq.

Dominion was represented by Lisa Booth, Esq.; Joseph Reid, III, Esq.; and J. David Black, Esq.

ORS was represented by Matthew T. Richardson, Esq.; James E. Cox, Esq.; Nanette S. Edwards, Esq.; Jeffrey M. Nelson, Esq.; Andrew M. Bateman, Esq.; Jenny R. Pittman, Esq.; Steven W. Hamm, Esq.; Eric Amstutz, Esq.; and Wallace K. Lightsey, Esq.

Walmart was represented by Stephanie U. Roberts Eaton, Esq.

DoD/FEA was represented by Emily W. Medlyn, Esq.

Speaker Lucas was represented by Robert E. Tyson, Jr., Esq., Michael J. Anzelmo, Esq., and Vordman Carlisle Trawick, III, Esq.

Central and ESCS were represented by Frank R. Ellerbe, III, Esq.; Christopher S. McDonald, Esq.; Kevin K. Bell, Esq.; Christopher R. Koon, Esq.; Michael N. Couick, Esq.; and John H. Tiencken, Jr., Esq.

CCL and SACE were represented by Elizabeth Jones, Esq.; J. Blanding Holman, IV, Esq.; William C. Cleveland, IV, Esq., and Gudrun Elise Thompson, Esq.

AARP was represented by John B. Coffman, Esq., Susan B. Berkowitz, Esq.; and Adam Protheroe, Esq.

SCEUC was represented by Scott Elliott, Esq.

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SC 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.

Southern Current was represented by Richard L. Whitt, Esq.

Santee Cooper was represented by William Hubbard, Esq.; Carmen Harper Thomas, Esq.; and J. Michael Baxley, Esq.

Transco was represented by Jefferson D. Griffith, III, Esq.

William T. Dowdy, Frank Knapp, Jr., and Lynne Teague appeared *pro se.*

CMC Steel, Orangeburg, and Dino Teppara did not appear at the hearing.

At the hearing on the merits which began on November 1 and concluded on November 21, 2018, the Commission heard from numerous witnesses. FoE/Sierra presented Mark N. Cooper, Ph.D. as its witness. DoD/FEA presented James T. Selecky, a consultant and Principal with Brubaker & Associates, Inc. AARP presented the testimony of Scott J. Rubin, an independent consultant and attorney. Walmart sponsored as its witness Steve W. Chriss, Director Energy and Strategy Analysis for Walmart. CCL/SACE presented the testimony of witnesses Ronald J. Binz, Principal with Public Policy Consulting; Uday Varadarajan, Ph.D., Principal with Rocky Mountain Institute; and Gregory M. Lander, President of Skipping Stone LLC. SCEUC sponsored the testimony of Kevin W. O'Donnell, President of Nova Energy Consultants, Inc. Transco presented the testimony of witness Hector Allatorre, Director of Customer Services for Transco.

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ORS presented the following witnesses at the hearing: Elizabeth H. Warner, Vice President Legal Services and Corporate Secretary of Santee Cooper; Gary C. Jones, President of Jones Partners Ltd.; M. Anthony James, P.E., Director of Energy Policy for ORS; Richard Baudino, consultant with J. Kennedy and Associates, Inc; Norman K. Richardson, Jr., President of Anchor Power Solutions, LLC; Kelvin L. Major, Audit Manager for ORS; Daniel F. Sullivan, Deputy Director of the Audit Department for ORS; Lane Kollen, Vice President and Principal with J. Kennedy and Associates, Inc.; Michael L. Seaman-Huynh, Senior Regulatory Manager in the Utility Rates and Services Division of ORS; Kenneth J. Browne, former senior engineer with SCE&G in the New Nuclear Deployment Business and Finance Group; and Carlette L. Walker, former Vice President of Nuclear Finance Administration with SCANA. Witnesses Browne and Walker appeared pursuant to subpoena.

SCE&G presented as witnesses Jimmy E. Addison, Chief Executive Officer of SCANA and each of its subsidiaries including SCE&G; Ellen Lapson, founder and principal of Lapson Advisory; Robert B. Hevert, Partner of ScottMadden, Inc.; Iris N. Griffin, Senior Vice President, Chief Financial Officer, and Treasurer of SCANA and SCE&G; Angela M. Nagy, Executive Director at Ernst & Young; Joseph M. Lynch, Ph.D., Manager of Resource Planning for SCE&G; John H. Raftery, General Manager of Renewable Products/Services and Energy Demand Management for SCE&G; George D. Wenick, Esq., Partner with the law firm of Smith, Currie & Hancock; Joseph Wade Richards, Senior Engineer in Transmission Planning at SCE&G; Allen W. Rooks, Manager of Electric Pricing and Rate Administration at SCANA Services, Inc.; Glenn Hubbard, Ph.D., Dean of the Graduate School of Business at Columbia University and Professor of Economics in the Department of Economics of the Faculty of Arts and Sciences; Ken Petrunik,

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Ph.D., nuclear power industry consultant and non-executive board member of Horizon Nuclear Power in the United Kingdom; Kevin Kochems, Manager of Regulatory Accounting for SCANA Services, Inc. and formerly Director of Nuclear Financial Administration with SCE&G's New Nuclear Development Project; Kyle M. Young, Manager, Nuclear Demobilization for SCE&G; Rose M. Jackson, General Manager - Supply & Asset Management for SCANA Services, Inc.; and Stephen Byrne, formerly President of Generation and Transmission and Chief Operating Officer of SCE&G.

Dominion presented as witnesses James Chapman, Senior Vice President – Mergers and Acquisitions and Treasurer of Dominion; Prabir Purohit, Director of Mergers and Acquisitions and Financial Analysis at Dominion; James I. Warren, tax partner in the law firm of Liller & Chevalier Chartered; Thomas F. Farrell, II, Chairman, President, and Chief Executive Office of Dominion; and Robert M. Blue, Executive Vice President of Dominion and President and Chief Executive Officer of the Power Delivery Group.

A total of 179 exhibits were introduced during the proceedings.

II. TESTIMONY RECEIVED FROM THE PARTIES

A. Friends of the Earth and Sierra Club

Dr. Mark Cooper testified on behalf of FoE and Sierra Club that all costs associated with the Project were imprudently incurred and the Project should have been abandoned at an earlier date. Tr. p. 113, ll. 7-21. According to Dr. Cooper all costs associated with the Project were imprudently incurred based on what SCE&G knew at the time yet failed to disclose to regulators. *Id*. He provided four bases for the disallowance of Project costs: mismanagement of the project, misrepresentation of the chaos in the construction project, misunderstanding of the economic

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reality in the electricity sector, and misinterpretation of the BLRA. Tr. p. 115, ll. 3-11. Dr. Cooper testified the newly-released secret documents clearly show that SCE&G was actively suppressing disclosure of its imprudence from regulators and "such evidence of imprudence and withholding of material information from ORS and this Commission demands full disallowance of the costs of the abandoned nuclear project." Tr. p. 118, ll. 1-9.

B. <u>South Carolina Office of Regulatory Staff</u>

Elizabeth Warner testified and represented to the Commission that she served as the corporate secretary and records custodian of Santee Cooper. Ms. Warner identified numerous documents related to the Project that revealed information previously withheld from regulators. Tr. p. 173-4, ll. 11- 21. Ms. Warner testified regarding the authenticity of ten (10) documents which SCE&G had withheld from ORS and the Commission and about which SCE&G had raised objections. Tr. p. 178-88, ll. 24-18.

Gary Jones, P.E., testified regarding ORS recommendations on the prudency of recovery of the costs incurred by SCE&G for the Project. Tr. p. 267, ll. 12-17. Mr. Jones offered testimony to support the ORS recommendation that all Project costs incurred by SCE&G after March 12, 2015, were imprudent and should be disallowed. Tr. p. 267, ll. 20-24. In addition, Mr. Jones recommend the revised rates increases granted by the Commission under Orders 2015-712 and 2016-758 should be rescinded and SCE&G should be required to refund amounts collected for these rate increases to retail Customers. Tr. p. 267, ll. 8-16. Mr. Jones provided evidence that SCE&G failed to fully disclose material information which SCE&G was required to provide ORS and the Commission. Tr. p. 268-9, ll. 17-3. In an effort to demonstrate the sequence of Company

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activities, Project milestones and events, Mr. Jones created a timeline, entered as an exhibit to his testimony.[6] Tr. p. 269, ll. 14-25.

Mr. Jones cited two major Company failures that support the ORS recommendation that all Project costs incurred after March 12, 2015, should be disallowed and not recovered from Customers: (1) the Company's failure to disclose its plans for a thorough, independent assessment to review the status of the Project and identify major issues contributed to major Project delays and (2) the Company's intentional failure to disclose to the Commission and ORS its complete lack of trust in the schedule and costs the Company sponsored in its March 12, 2015 petition to the Commission. Tr. p. 270-3, ll. 5-7. Mr. Jones testified that the settlement reached in 2015[7] would have been vastly different and it might have resulted in the cancellation or abandonment of the Project if, at the time, he had been made aware of the scope of the independent assessment done by the Bechtel Corporation ("Bechtel") and the subsequent Bechtel Report findings. *Id.* Not only did the Company fail to disclose that Bechtel would be conducting an assessment on the Project, Mr. Jones testified that after his ORS colleague recognized Bechtel personnel on the Project site and questioned the Company about their presence in October 2015, (Tr. p. 278, ll. 4-19), the Company stated that nothing new had been found by Bechtel and there would be no written report. Tr. p. 278, ll. 19-24.

Mr. Jones testified that he learned during the discovery process, the Project construction completion dates in Bechtel's assessment were two to three years beyond what the Company presented to the Commission in 2015. Tr. p. 279, ll. 2-21. Mr. Jones' testimony indicates had the

[6] See Hearing Exhibit 15: ORS Exhibit GCJ - 2
[7] See Settlement Agreement filed June 29, 2015 in Docket No. 2015-103-E.

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Company shared this information with him in 2015, Mr. Jones would have requested a more detailed economic evaluation of the viability of continuing the Project. Tr. p. 279, ll. 16-21.

Through the discovery process, Mr. Jones testified that he learned the Company had little confidence in the Consortium's[8] construction schedule. Tr. p. 274, ll. 1-15. However, the Company failed to disclose this concern to the Commission and ORS. Tr. p. 274, ll. 16-19. According to Mr. Jones' testimony, the most critical concealment of material information occurred in 2015 when the Company failed to disclose the Company's internal efforts to estimate the cost to complete the Project. Tr. p. 274-5, ll. 25-3. Mr. Jones asserts the Company's internal staff cost estimate was $1.2 billion; however, the Company chose to advance testimony at the Commission which utilized the Consortium's $698 million estimate to complete the Project. Tr. p. 275, ll. 3-16.

In addition, Mr. Jones testified that SCE&G continued to deceive and withhold information from the Commission and ORS in the Company's 2016 filing with the Commission in Docket No. 2016-223-E not disclosing the results of the Bechtel assessment and hiding the Bechtel Reports. Tr. p. 281-2, ll. 18-6. Mr. Jones provided documentation obtained through discovery to support his testimony. Mr. Jones also made clear in his testimony that SCE&G had the primary responsibility to provide an accurate and complete schedule and budget for the Project to the Commission and ORS, and that SCE&G's attempts to shift this responsibility to ORS were totally without merit. Tr. p. 282-3, ll. 19-11. Mr. Jones testified that SCE&G's decision to monetize the Toshiba Settlement was prudent at the time, that transmission system assets be booked to plant-in-service

[8] The Consortium consisted of Westinghouse Electric Company and its primary construction contractor Stone & Webster and later Chicago Bridge & Iron.

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and cost recovery be deferred to the next general electric rate case, and that the Company's decision to abandon was prudent. Tr. p. 285, ll. 17-25.

Anthony James summarized the different cost recovery plans offered by the Joint Applicants and ORS's recommendations. Mr. James provided testimony to outline how ORS's recommendation to disallow cost recovery for Project construction costs are supported by the definitions of "imprudent" and "prudent' contained in S.C. Code Laws § 58-33-270 (Supp. 2018). Tr. p. 659-12 – 59-14, ll. 5-14. Specifically, Mr. James testified that the Company's failure to inform the Commission or ORS of Bechtel's work, while SCE&G requested updates to the Project's schedule and budget as well as revised rates revenue increases during 2015 and 2016, constitutes a fraudulent act, as defined in S.C. Code Laws § 58-33-220(c). Tr. p. 659-15 – 59-16, ll. 17-6. Mr. James' testimony established March 12, 2015, the date the Company filed its 2015 request in Docket No. 2015-103-E, as the date SCE&G began reporting its schedule and budget in a fraudulent manner. Tr. p. 659-16, ll. 4-6. Mr. James testified that SCE&G did not properly manage the project due to their "hands-off" approach. Tr. p. 659-18, ll. 16-20.

Mr. James provided a response to SCE&G witness Dr. Petrunik's testimony in which Dr. Petrunik questioned and dismissed the reliability of Bechtel's assessment. Tr. p. 654, ll. 8-9. Mr. James testified ORS's deposition of Ty Troutman[9] soundly refuted Dr. Petrunik's claim that Bechtel had limited access to information and ultimately produced an unreliable schedule. Tr. p. 654, ll. 9-19. Mr. James testified Bechtel got everything necessary to conduct the assessment. Tr. p. 654, ll. 20-23. Mr. James also responded to Dr. Petrunik's statements that SCE&G had a culture

[9] At the time of the assessment, Ty Troutman was the general manager of Nuclear Power Worldwide and president of Bechtel

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of openness and complete communication regarding the Project. Tr. p. 655, ll. 3-6. Mr. James testified ORS's deposition of former SCE&G employee, Kenneth Browne, revealed that ORS received limited information from SCE&G because SCE&G employees were provided talking points from executive management and were limited to using those talking points when interacting with ORS. Tr. p. 655, ll. 6-17. Mr. James testified to the Company's statutory requirements and the initial BLRA Order[10] and how they were not met as the Company failed to provide the Commission with yearly status reports on its progress and other significant developments. Tr. p. 655-7, ll. 18-23.

Richard Baudino testified about ORS's recommendation for the allowed rate of return on abandoned NND costs, merger conditions, and credit quality safeguards to protect Ratepayers. Tr. p. 808, ll. 12-23. Mr. Baudino recommended a 9.1% return on equity ("ROE"), based on recent market conditions and testified SCE&G's recommended 10.75% ROE is unsupported and unreasonable and therefore should be rejected. Tr. p. 811-2, ll. 24-9. Mr. Baudino testified SCE&G's recommended ROE would burden Ratepayers with an additional yearly revenue requirement of approximately $6.4 million. *Id.* Mr. Baudino testified the average ROE in 2018 is about 9.6%, and Dominion was recently authorized a 9.2% ROE by the Virginia State Corporation Commission, which shows how out of line the SCE&G recommended ROE of 10.75% is. Tr. pp. 812-3, ll. 11-4. Mr. Baudino recommended a capital structure that preserves SCE&G's equity ratio at the September 30, 2017 level of 52.8%. Tr. p. 813, ll. 5-9. Mr. Baudino recommended credit quality protections designed to protect Ratepayers from increases in the cost of equity and the cost of debt should be put in place if the Merger is approved. Tr. p. 814-5, ll. 22-1.

[10] See Order No. 2009-104(A).

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Daniel Sullivan's testimony set forth ORS's recommendations based on ORS' review of the Company's financial statements contained in the Exhibits to the Joint Application and reported in the Company's Quarterly Report. Tr. p. 947, ll. 15-22. Mr. Sullivan testified that ORS did not conduct a full review and examination of the Company's operating experience because the Company did not request the Commission approve a base electric rate change. *Id*. Mr. Sullivan recommended the Commission prohibit the Company from seeking to recover from Customers any sales and use taxes paid to the South Carolina Department of Revenue, should sales and use tax be assessed, for the abandoned Project. Tr. p. 948, ll. 9-13.

Kelvin Major testified to the procedures used by ORS to calculate the allowable incremental NND construction work-in-progress ("CWIP") in each revised rate proceeding and the ORS recommendation to allow $2,845,735,805 in CWIP for recovery of Project costs prior to March 12, 2015. Tr. pp. 913-4, ll. 18-22. Mr. Major testified that ORS made several adjustments to CWIP based on discovery responses obtained from the Company. *Id.* Specifically, Mr. Major provided detailed testimony on ORS adjustments to reduce the CWIP balance by $19,943,940 to remove, among other things, consulting fees, fraudulent procurement activity and employee bonuses. *Id.*

According to ORS witness Norm Richardson, had the Bechtel projected commercial operation dates been used in a corrected version of the analysis Dr. Lynch offered in 2015, including the associated loss of production tax credits, it would have shown that the Project was uneconomic to continue. Tr. p. 883, ll. 16-22. With those corrections, Mr. Richardson testified that abandoning the NND project and replacing it with a generation alternative shows an economic advantage over continuing the NND project in all nine scenarios forecast by Dr. Lynch. Tr. p. 886, ll. 6-11. Mr. Richardson testified had SCE&G not mislead and deceived ORS and the Commission

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but had actually informed regulators of Bechtel's findings, that it would have been apparent sooner that continuing with the Project was not economical and it would have prompted further investigation by ORS potentially leading to a different outcome. Tr. pp. 883-4, ll. 22-1. Mr. Richardson testified SCE&G's abandonment analysis for the 2016 filing with the Commission contained significant flaws, which when corrected showed that continuing construction in several scenarios was uneconomic. Tr. p. 885, ll. 5-9. Mr. Richardson further testified SCE&G's abandonment analysis in these dockets contains the same flaws shown in 2016, which when corrected show that none of the Project options evaluated, even with Santee Cooper continuing as a partner, are economically feasible for any future scenario. Tr. p. 887, ll. 15-21.

Lane Kollen testified about ORS's rate recommendations and compared them with the scenarios offered by SCE&G. Mr. Kollen testified the ORS Optimal Plan would result in a rate reduction from current rates to rates of $158.5 million in 2019 and $90 million in 2020. Tr. pp. 976-7, ll. 25-7. Mr. Kollen testified under the Customer Benefits Plan ("CBP") proposed by the Joint Applicants, there would be a $1.3 billion rate credit up front, and recovery would be $310 million each year for the first eight years, then it would decline. Tr. pp. 980-1, ll. 16-3. Under the CBP, Mr. Kollen testified there would be an additional $260 million of recovery than what is recovered under the ORS Optimal Plan. Tr. p. 981, ll. 12-15. Mr. Kollen testified the Capital Cost Recovery Rider ("CCR Rider") proposed by ORS provides SCE&G recovery of allowed NND costs less related regulatory liabilities over 20 years on a levelized basis, including a 9.1% ROE, compared to SCE&G's 10.75%, and long-term debt at 5.56%, compared to SCE&G's 5.85%. Tr.p. 987-20, 1. 14 – p. 287-21, 1. 121, 11. 1-5. Mr. Kollen recommended the Commission authorize a rate reduction of $987 million in the form of a Tax Savings Rider for the base rate savings due to the TCJA unrelated to the NND costs and related regulatory liabilities. Tr. p. 987-12, 11. 9-14.

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Mr. Kollen testified in favor of approving the Merger, subject to various conditions to include ORS rate recommendations, limitations on affiliate transactions, and improvements to service and credit quality. Tr. p. 987-7, 11. 13-18; p. 987-63, 11. 2-12.

ORS examined and compared the various plans proposed by the Joint Applicants and ORS. Tr. p. 1342, ll. 9-10. The Customer Benefits Plan offers to SCE&G's electric retail Customers a rate credit that totals $1.3 billion. Tr. p. 1342, ll. 19-21. The Customer Benefits Plan also effectively gives the Customers a 540 MW combined-cycle natural-gas generation facility and provides SCE&G's Customers with a 7% bill reduction. Tr. p. 1342, ll. 24-25, p. 1343, ll. 1-5. Subsequent to the introduction of the Customer Benefits Plan, the Joint Applicants introduced Plan B, which eliminates the up-front cash payment of the Customer Benefits Plan and lowers the Customers Benefits Plan's average monthly bills over a 20-year period. Tr. p. 2801, ll. 3-11. Plan B also limits the future rate base to investments made on or before March 12, 2015 and produces a typical customer bill of $126.96. Tr. p. 2801, ll. 6-15. Subsequent to the introduction of Joint Applicants Plan B, the Joint Applicants introduced Plan B-L, which lowered monthly bills for a typical residential customer to $125.26. Tr. pp. 4217-5, ll. 7-11.

In contrast to the Joint Applicants' Customer Benefits Plan, which the Joint Applicants testified to the Commission must be approved for the Merger to succeed,[11] ORS introduced what it called, The Optimal Plan. The ORS Optimal Plan provides a reduction of approximately $193 million and $160 million, respectively, for the years 2019 and 2020. Tr. p. 653, ll. 5-9. The rate

[11] According to witness Farrell, "the merger can only close if the Commission approves the jointly proposed Customer Benefits Plan, with no material change to the terms, conditions, or undertakings set forth in the plan and no significant change to the economic value to the combined company of the plan." (Tr. p. 2806-4, ll. 18-21). SCE&G has also submitted the No Merger Benefits Plan and the Base Request, should the Merger not succeed. These plans offer fewer benefits for ratepayers than the Customer Benefits Plan, the Joint Applicants' Plan B, the Joint Applicants' Plan B-L, and the ORS Optimal Plan.

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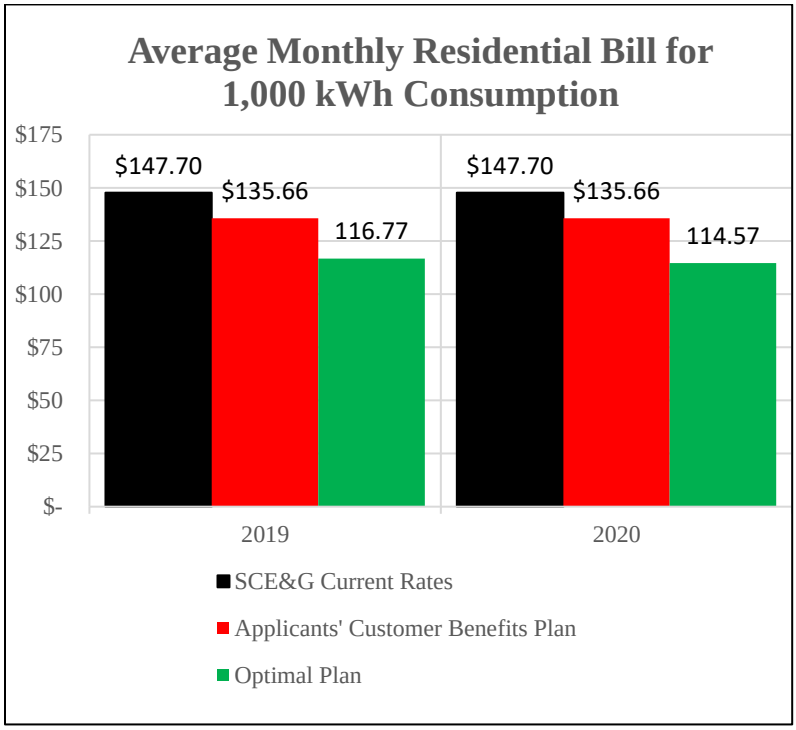
reductions proposed by ORS reflect the termination of $445 million that SCE&G currently recovers in revised rates; termination of the $367.4 million experimental rate credit put into effect under Commission Order No. 2018-460; implementation of a rate recovery rider to collect $86.2 million in allowable project costs; implementation of a tax savings rider to capture $98.7 million in savings related to the Tax Cut and Jobs Act; implementation of a merger savings rider to capture merger savings of $35 million in 2019 and $70 million in 2020; and implementation of a one-time refund of $68.2 million for the base rate and revised rate income tax savings in 2018 due to the Tax Cut and Jobs Act. Tr. pp. 659-9, ll. 15-23, pp. 659-10, l. 1. Under the ORS Optimal Plan, SCE&G is allowed to fully recover prudently incurred costs. Tr. p. 811, ll. 2-6. According to witness Kollen, under the Customer Benefits Plan as proposed by Joint Applicants, the $1.3 billion up-front rate credit is not used to reduce the NND costs, as a result, SCE&G Customers will have to pay that "credit" back over a 20-year period, effectively making this credit a loan. Tr. pp. 1059, ll. 22-25, p. 1060, ll. 1-7.

Under the ORS Optimal Plan, the average monthly bill for a residential customer will decrease by approximately $30.93, from $147.70 to $116.77 in the first year and to $114.57 in the second year. Tr. p. 653, ll. 10-15. The table below provides a comparison of the ORS Optimal Plan to the Joint Applicants' Customer Benefits Plan:

Average Monthly Residential Bill for 1,000 kWh Consumption[12,13,14]



Michael Seaman-Huynh offered testimony about ORS's examination of the joint application. Mr. Seaman-Huynh recommended this Commission establish certain conditions to ensure natural gas Customers receive safe and reliable service at reasonable prices and that electric generation from the purchase and transportation of natural gas is achieved on the most economical terms, should the merger be approved. Tr. p. 1260, ll. 8-13. Mr. Seaman-Huynh testified ORS disagrees with SCE&G's proposal to reduce rates of all electric retail classes by a flat 3.5%, and recommends using the methodology previously used in each revised rates proceeding which is based on SCE&G's South Carolina firm peak demand data from the prior year. Tr. p. 1260, ll. 14-

[12] SCE&G Current Rates exclude the Experimental Rates.

[13] CBP excludes Rate Credit.

[14] Optimal Plan excludes the ORS proposed one-time Tax Refund.

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23. Mr. Seaman-Huynh testified under the ORS Optimal Plan, ORS is recommending a base rate reduction of approximately $45 million, a Capital Cost Recovery Rider to recover approximately $86.2 million in prudently incurred NND costs, and a Tax Savings Rider to reduce retail electric rates by $35 million during the first year and $70 million during the second year. Tr. pp. 1260-1, ll. 24-7. Mr. Seaman-Huynh testified ORS does not support the one-time rate credit proposed by the Joint Applicants; that rate credit would be funded primarily through the proceeds of the Toshiba guarantee which Mr. Seaman-Huynh testified should be used to reduce the allowed NND abandonment costs recoverable through the Capital Cost Recovery Rider. Tr. p. 1261, ll. 8-15.

Kenneth Browne and Carlette Walker, both former SCE&G employees in the NND Business and Finance group, appeared pursuant to subpoenas and presented testimony regarding their time at SCE&G working on the Project. Both Mr. Browne and Ms. Walker testified the Consortium's cost estimate at completion ("EAC") was about $500 million less than the EAC the Company's NND Business and Finance group calculated. Tr. p. 3830, ll. 3-5, p. 3853, ll. 7-16. Mr. Browne testified he worked for SCE&G for almost seven (7) years. Tr. p. 3816, ll. 6-7. Mr. Browne testified the Company's EAC was rejected by the Company's outside counsel, who insisted on using the EAC the Consortium provided. Tr. p. 3830, ll. 15-21. Mr. Browne testified the Company's public representation that the Project was doing well was a front; that the construction progress was actually extremely poor and the projected cost overruns were substantial. Tr. p. 3831, ll. 4-12. Ms. Walker testified she worked for SCANA for over 33 years, and for the final seven years of her employment she held the position of Vice President of Nuclear Finance Administration. Tr. p. 3848, ll. 15-19. Ms. Walker testified she was concerned with the status of the Project and the Company's reliance on and acceptance of the Consortium's excuses and poor performance. Tr. p. 3845, ll. 7-13. Ms. Walker testified she expressed her concerns about

the Project to the Company's senior management, but her concerns were largely ignored. Tr. p. 3852, ll. 15-20. Ms. Walker testified in early 2015 her team reviewed the Consortium's EAC and the team calculated its own EAC, which was $1.2 billion compared to the Consortium's $698 million – a staggering $500 million difference. Tr. p. 3852, ll. 7-16. Ms. Walker testified she presented the Company's senior management with this information, but then-CEO Kevin Marsh merely stated he would rely on the EAC provided by the Consortium and would not advise the Commission or ORS of the SCE&G EAC calculation. Tr. pp. 3854-5, ll. 17-6.

C. <u>South Carolina Electric & Gas</u>

Jimmy Addison testified about the three proposals the Joint Applicants submitted to the Commission, specifically the CBP with the Merger. Mr. Addison offered that the CBP is the best option for the rate payers and the State of South Carolina. Tr. p. 1342, ll. 14-18 Mr. Addison testified under the CBP $1.3 billion will be returned to Customers as a one-time rate credit where the average residential customer will receive $1,000, the utility acquired a combined cycle natural gas generation facility that Customers will not have to pay for, and Dominion will further reduce customer's bills by 7%. Tr. pp. 1342-3, ll. 19-5. Mr. Addison further testified SCE&G would remain based in South Carolina, continue to employ thousands of South Carolinians, and ultimately be in a more secure position with the backing of the Dominion. Tr. p. 1343, ll. 9-11.

Ellen Lapson testified how weak SCE&G's financial situation would be without the Dominion merger, and recommended the merger as proposed by the Joint Applicants as the most favorable option for SCE&G going forward. Tr. p. 1745, ll. 9-15. Ms. Lapson testified with the merger, SCE&G will be financially sound and able to protect the long-term interests of Ratepayers.

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Tr. p. 1745, ll. 21-25. Ms. Lapson testified all other proposals presented by the Parties in this docket would only further weaken SCE&G's financial situation. Tr. p. 1745, ll. 12-15.

Robert Hevert recommended in testimony the Commission set the Company's ROE for allowed NND costs s in the range of 10.25% to 11% and that a reasonable point estimate is 10.75%. Tr. p. 1773, ll. 9-12. Mr. Hevert testified if the experimental rate set by the General Assembly were to be made permanent, the Company's overall ROE would be 6.67%, which would compromise the Company's financial profile. Tr. p. 1776, ll. 13-16.

Iris Griffin testified to SC&G's overall financial position and the regulatory plans set forth in the Joint Applicant. Ms. Griffin testified currently, SCE&G's long-term financial health is in question. Tr. p. 2013, ll. 3-5. Ms. Griffin testified if the rate proposal recommended by ORS is accepted, a total write-down of approximately $2.5 billion would be triggered, and Dominion would not proceed with the Merger. Tr. p. 15-19. Ms. Griffin testified the CBP is the best option for Ratepayers and the Joint Applicants. Tr. p. 2015, ll. 21-24.

Angela Nagy testified in response to ORS witness Kollen regarding the recovery of costs incurred through September 30, 2017. Tr. p. 2031, ll. 18-23. Ms. Nagy testified SCE&G requests that costs incurred through September 30, 2017 be recovered, even if those amounts were not yet paid by that date, as is consistent with generally accepted accounting principles. Tr. p. 2032, ll. 6-11. Ms. Nagy testified the same applies to any sales-and-use taxes related to the period prior to September 30, 2017. Tr. p. 2032, ll. 21-23. Ms. Nagy also testified it is appropriate for SCE&G to net any future payments to satisfy outstanding liens associated with the Project from the proceeds of the Toshiba parental guarantee. Tr. p. 2033, ll. 14-17.

Dr. Joseph Lynch testified to the analyses he performed in prior dockets that concluded continuing construction of the Project was in the best interest of Ratepayers. Tr. pp. 2411-2, ll.

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10-17. Dr. Lynch testified even with the Westinghouse bankruptcy, the Project could have gone forward had Santee Cooper remained a partner in the Project. Tr. p. 2413, ll. 1-6. Dr. Lynch testified that he was not provided and did not incorporate the findings from the Bechtel assessment into his analysis in 2015 or 2016. Tr. p. 3275 – 7, 11. 10-12.

Mr. John Raftery testified in response to SACE/CCL, Wal-Mart and ORS testimonies regarding renewable resources, energy efficiency, customer service quality, and electric reliability. Mr. Raftery testified SCE&G ranked 6th in the nation out of 423 utilities in 2017 with regards to solar generation, and SCE&G consistently meets the goals set forth in Act 236. Tr. pp. 2428-9, ll. 8–5. Mr. Raftery testified SCE&G currently has an independent third party undertaking an exhaustive Energy Efficiency Potential Study to ascertain what changes and improvements could be implemented in SCE&G's current energy efficiency programs. Tr. p. 2430, ll. 4-8.

Mr. George Wenick testified he was hired by SCE&G in 2011 for work related to the Project and continued to work on an irregular basis as project counsel for SCE&G over the years. Tr. pp. 2504-5, ll. 13-7, p. 2506, ll. 10-17. Mr. Wenick testified in addition to these proceedings he mainly dealt with commercial disputes with the Consortium. Tr. p. 2507, ll. 3-7. Mr. Wenick testified his area of expertise is in construction litigation, and he is not familiar with utility regulation and does not advise clients in that area. Tr. p. 2507, ll. 12-24. Mr. Wenick testified there was never any litigation with the Consortium, but there was often the possibility of litigation. Tr. p. 2508, ll. 9-14. Mr. Wenick testified he hired Bechtel in 2015. Tr. p. 2509, ll. 18-21.

Dr. Glen Hubbard testified to the impact of South Carolina Acts 258 and 271 on the Company, the Ratepayers, and the general public. Tr. p. 3465, ll. 16-19. Mr. Hubbard also testified to the potential impact if the temporary rate reduction set by the General Assembly were to become

permanent. Tr. p. 3465, ll. 19-22. Mr. Hubbard testified utilities must carefully balance Ratepayer's and investor's interests. Tr. pp. 3465-6, ll. 24- 5.

Wade Richards testified about the transmission upgrade projects SCE&G undertook as part of the Project. He explained how these upgrade projects are not being abandoned along with the Project but have or will be placed into service to meet customer demands. Tr. p. 3334, ll. 9-16.

Allen Rooks testified about the CBP and the No Merger Benefits Plan and explained how SCE&G would calculate and make the one-time rate credits. Mr. Rooks testified SCE&G Customers will receive an aggregate one-time rate credit totaling $1.3 billion, which originally was to be apportioned to all retail electric customer classes based on their 2016 contribution to the firm peak demand as prepared by SCE&G. Tr. p. 3355, ll. 18-23. However, SCE&G later agreed with ORS witness Seaman-Huynh that 2017 data would be more appropriate. Tr. pp. 3358-9, ll. 12-8. Under the CBP, SCE&G will provide each retail customer class a 3.5% bill reduction compared to is May 2017 retail electric bills and Dominion will underwrite $575 million in refunds for SCE&G for amounts previously collected for the Project, establishing a regulatory liability. Tr. pp. 3355-7, ll. 24-1. Mr. Rooks testified SCE&G will implement a separate NND tax rider to capture the benefits of the TCJA; the rider is currently calculated to produce an initial 1.9 % bill reduction. Tr. p. 3357, 11. 2-9. Mr. Rooks testified the CBP will also include a tax rider to pass along to Customers non-NND related effects of the TCJA, and it is calculated to produce a 2.7 % bill reduction. Tr. p. 3357, ll. 9-13. Mr. Rooks testified under the No Merger Benefits Plan SCE&G would implement a 3.5% bill reduction, and NND and non-NND related effects of the TCJA will be reflected in the tax rider bill reduction. Tr. p. 3357, ll. 14-25.

Dr. Kenneth Petrunik's testimony dealt with the prudency of SCE&G's oversight of the Project and SCE&G's disclosures to ORS and the Commission. Dr. Petrunik state his belief that

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SCE&G's disclosures were appropriate and that the Bechtel reports did not contain material information that was not previously known to SCE&G and disclosed to regulators. Tr. pp. 3636-9, ll. 5-7.

Mr. Kochems testified to the updated schedule of capital costs associated with the Project that were incurred as of December 31, 2017. Mr. Kochems testified SCE&G wanted this Commission to adopt his Exhibit KRK-1 as the updated and approved capital-capital cost schedule for the Project as of December 31, 2017 and to find that the cost schedule is reasonable and prudent, and that SCE&G is legally entitled to amortize and recover these amounts through rates. Tr. p. 3584, ll. 6-13. Mr. Kochems testified the costs set forth in KRK-1 fall within the scope of cost projections that were previously approved by this Commission as the reasonable and prudent cost schedules for the Project. Tr. p. 3584, ll. 14-23. Mr. Kochems testified it is SCE&G's position that while it would expense new cost items incurred in connection with the wind-down and demobilization of the Project after September 30, 2017, SCE&G would continue to recognize adjustments to costs incurred prior to that date. Tr. p. 3595, ll. 13-16. He asserted this was an issue of importance because the South Carolina Department of Revenue ("DOR") has asserted a claim of sales tax associated with the purchases made prior to September 30, 2017. Tr. p. 3596-4, ll. 4-6. Mr. Kochems testified if the taxes are assessed and collected, they would constitute a governmentally-imposed tax and would constitute valid capital costs of the Project, which should be subject to recovery through rates. Tr. p. 3596-4, ll. 9-12. In response to ORS witness Major's testimony regarding the $42,873 spent due to fraudulent activity, Mr. Kochems testified this issue was handled in the 2015 amendment to the EPC and therefore requires no further action. Tr. p. 3589, ll. 5-15.

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Kyle Young testified that immediately after Westinghouse filed for bankruptcy, he was on a team tasked with evaluating the cost and schedule of the Project going forward. Tr. p. 3607, ll. 8-12. Mr. Young testified there were viable options for completing construction at that time, but when Santee Cooper announced its decision to suspend the Project due to its lack of need for power generation, the decision to abandon was made. Tr. p. 3609, ll. 22-24.

Rose Jackson testified about the Settlement Agreement reached between SCE&G and Transco and its terms. Ms. Jackson testified the Settlement Agreement provides that SCE&G will issue requests for proposals ("RFP") for capacity of 100,000 dekatherms per day or more, will file confidential reports on such solicitations with the Commission, and will not contract for such capacity unless the interstate pipeline is the least cost provider, or the Commission approves the contract. Tr. p. 3999, ll. 12-21.

Stephen Byrne testified about SCE&G's decision to pursue new nuclear construction, issues that arose with the Project and steps taken to address those issues, and the disclosures made to ORS and the Commission. Mr. Byrne testified SCE&G was forthcoming with ORS and the Commission regarding the troubles the Project faced with scheduling and productivity factors. Tr. p. 4072, ll. 25-22. Mr. Byrne testified Santee Cooper raised the idea of Bechtel conducting an assessment of the Project, and ultimately SCE&G's outside counsel, George Wenick, hired Bechtel. Tr. p. 4074, ll. 12-15. Mr. Byrne testified he was surprised Bechtel included a project schedule in their analysis and he did not rely on it as he felt they did not have sufficient time or information to create an adequate project schedule. Tr. p. 4074, ll. 17-21. Mr. Byrne testified he did not believe that the February 2016 final Bechtel report identified any significant issues that the Project owners ("Owners") were unaware of. Tr. p. 4076, ll. 16-20.

D. <u>DoD/FEA</u>

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James Selecky testified on behalf of DoD/FEA addressing the proposed CBP, specifically the one-time rate credit. Mr. Selecky testified the Customers should have the choice of receiving the rate credit in the form of a check or as a credit on their electric bill, as DoD/FEA Customers would not be able to benefit from the rate credit if it is issued as a check. Tr. p. 1886, ll. 3-24.

E. AARP

Scott Rubin testified on behalf of AARP that SCE&G ignored numerous signs in 2013 and early 2014 that the Project should have been canceled. Tr. p. 1904, ll. 6-8. Mr. Rubin testified there were two major red flags that showed the Project was doomed: 1) a May 2014 letter from then-CEOs Lonnie Carter and Kevin Marsh to the Consortium CEOs detailing all of the issues with the Project, and 2) the fact that when Santee Cooper tried to find another utility to buy a portion of the project they couldn't – all other utilities thought the cost was too high, the benefits were too small, and the risks were too great. . Tr. pp. 1904-5, ll. 9-6.

F. Wal-Mart

Steve Chriss testified on behalf of Wal-Mart with recommendations regarding the proposed merger. Mr. Chriss testified Wal-Mart does not oppose the Joint Applicants' proposed revenue allocation and rate design for the proposed up-front, one-time bill credit. Tr. p. 1990, ll. 5-8. Mr. Chriss testified if the merger is approved, Wal-Mart recommends this Commission include at a minimum the level of bill credits and rate reductions proposed by the Joint Applicants and this Commission should require SCE&G to work with stakeholders on developing at least one new renewable energy offerings for each customer type and work with large Customers to structure the expansion of SCE&G's currently available interruptible service program. Tr. p. 1990, ll. 1-23.

G. SACE/CCL

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Ronald Binz testified in his opinion as a former public utilities commissioner that the focus of the decision in these proceedings should be on how the treatment of stranded costs and the merger affect customer interests, and how they affect the public interest. Tr. p. 2199-200, ll. 20-1. Mr. Binz testified Customers and the public would best benefit from securitization of stranded assets and SCE&G's procurement of energy resources. Tr. p. 2202, ll. 2-20.

Dr. Uday Varadarajan testified to the benefits of securitization for SCE&G's Ratepayers and addresses any concerns about potential impacts of securitization on SCE&G's credit rating. Dr. Varadarajan testified he evaluated six different NND cost recover scenarios: the three proposed by the Joint Applicants, a continuation of the 15% rate cut put in place by the General Assembly, the CBP modified to use the upfront rate credits to offset rate base instead, and a plan where no additional Project costs would be allowed into rates. Tr. p. 2254, ll. 3-13. Dr. Varadarajan testified through his analysis, securitization would offer significant customer benefits in all of these cost recovery scenarios. Tr. p. 2254-5, ll. 22-9.

Gregory Lander testified the Project illustrates the tendency of investor-owned utilities to use massive power generation projects as a driver of financial returns for shareholders. Mr. Lander testified Dominion has a history of unnecessary construction and spending, as evidenced by the Atlantic Coast Pipeline which is billions of dollars over budget and years behind schedule. Tr. pp. 2285-6, ll. 21-6. Mr. Lander testified the Settlement Agreement between Transco and Dominion is insufficient to protect Ratepayers as there is a complete lack of scrutiny that the RFP will undergo. Tr. p. 2290, ll. 4-11. Mr. Lander also testified should this Commission approve the Merger it should require SCE&G to engage in a "needs analysis" in a public proceeding before this Commission to identify demand; require SCE&G to undertake a comparative cost analysis of meeting the identified demand with extension or expansion of SCE&G services and facilities;

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require SCE&G to have a public and transparent procurement process; and this Commission should impose carefully crafted regulatory conditions that ensure vigorous ongoing oversight of affiliate transactions be subject to a public RFP and bidding process. Tr. p. 2291-3, ll. 5-25.

H. SCEUC

Kevin O'Donnell testified on behalf of the SCEUC that it was unlikely that SCE&G will declare bankruptcy. Tr. p. 2343, ll. 16-23. Its parent company, SCANA, has sufficient resources to prevent a bankruptcy filing. First, SCANA could sell its subsidiary Public Service of North Carolina. Tr. p. 2344, ll. 3-12. He testified that SCANA had declined an offer of approximately $2.2 billion for the North Carolina utility, an amount that could be applied to offset the unrecovered NND costs. Tr.p.2347-8, 11. 5-21. In addition, SCANA could eliminate the balance of its dividend which would free up approximately $70 Million in revenue. Tr. p. 2344, ll. 1-12. In response to the testimony of SCE&G witness Lapson, Mr. O'Donnell testified that the cost of the SCE&G credit downgrade suggested by Ms. Lapson would cost consumers approximately $110 million over 30 years, meaning that the average cost of the downgrade is roughly $3.67 million per year. Tr. p. 2344, ll. 18-24. The revised rate cut proposed by the intervenors is $445 million per year for 30 years and the higher cost of debt should not be a determinative factor in assessing the ORS petition for rate reduction. Tr. p. 2344-5, 11. 18-1 While Mr. O'Donnell was generally supportive of the ORS position, he disagreed with allowing SCE&G recovery on NND costs. Tr. p. 2345-6, ll. 9-4. He testified that the ORS position requires consumers to pay an additional $86.2 million for 20 years to pay for the now-abandoned Summer nuclear plants. Tr. p. 2349-4, 11. 23-25 State law precludes the Commission from allowing the collection of these abandonment costs from Ratepayers. Tr. p. 2345, ll. 9-11. If, however, the Commission disagrees with his conclusions in this regard, he recommended that the Commission separate the nuclear recovery costs from the

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rate reductions set out in its final order so as to be very transparent with SCE&G's Customers that they will continue to pay for nuclear abandonment costs of approximately $1,240 to the typical residential consumer. Tr. p. 2349-8, 11. 18-22

I. Dominion

James Chapman testified Dominion is one of the largest public energy companies in terms of equity market capitalization, with substantial assets that allow Dominion the ability to invest prudently and confidently in Dominion's operating companies. Tr. p. 2798-9, ll. 14-10. Mr. Chapman testified that, under the Merger, SCE&G would remain a stand-alone publicly rated entity but with the added strength of Dominion's backing and resources. Tr. p. 2799, ll. 16-20. Mr. Chapman testified the CBP would refund the majority of Ratepayer's contribution to NND costs, would reduce Ratepayer's bills by 7%, freeze base electric retail rates until at least January 1, 2021, and provide for the acquisition of the Columbia Energy Center at no cost to Ratepayers. Tr. p. 2800, ll. 6-23. Mr. Chapman testified Dominion created the Alternative Customer Benefits Plan ("Plan B") in response to stakeholder input, stating that Plan B does not offer the up-front rate credit that the CBP offers and instead uses that money to lower Ratepayers utility bills over a 20-year period. Tr. p. 2801, ll. 3-11. Mr. Chapman testified Plan B also limits the future rate base to investments made on or before March 12, 2015, as recommended by ORS. Tr. p. 2801, ll. 11-13. Mr. Chapman testified a typical Ratepayer's bill under Plan B will be $126.96, which would be $1.62 more than the current experimental rate enacted by the General Assembly. Tr. p. 2801, ll. 13-16. Mr. Chapman testified securitization was not a viable option without legislation from the General Assembly. Tr. p. 2802-4, ll. 8-8

Prabir Purohit testified Dominion developed Plan B in response to parties who expressed a preference to replace the up-front bill credit in exchange for lower customer bills during the NND

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recovery period. Tr.p. 2812, ll. 6-17. Mr. Purohit testified Dominion still supports its proposal of the CBP but will close the merger under Plan B if that is preferred. Tr. p. 2812, ll. 19-24. Mr. Purohit testified Plan B provides an all-inclusive bill reduction of nearly 14% of the May 2017 bills. Tr. p. 2813, ll. 1-11. Mr. Purohit testified Plan B will provide a total of $1.91 billion in refunds over a 20-year NND recovery period, instead of the up-front rate credit, and lowers SCE&G's request for an ROE of 10.25% to 9.9%. Tr. p. 2813, ll. 12-21. Mr. Purohit testified that Dominion is not conceding that any of SCE&G's investments in the Project were imprudent, but in the spirit of compromise Plan B reduces the NND investment to be recovered by approximately $550 million, from $3.327 billion to $2.772 billion. Tr. p. 2813-4, ll. 22-10. Upon recall at the end of the hearing, Mr. Purohit testified the Joint Applicants revised their proposals to create the Alternative Levelized Customer Benefits Plan ("Plan B-L"), Under Plan B-L Ratepayers' bills would be close to the experimental rate set by the General Assembly and to the rates under the ORS Optimal Plan. Mr. Purohit testified Plan B-L provides a total refund of $2.039 billion over a 20-year recovery period and reduces the NND investment to recover from $2.772 billion to $2.768 billion. Tr. p. 4212-3, ll. 18-7. Mr. Purohit testified the Joint Applicants proposed several additional merger commitments, including open and transparent communication with ORS and the Commission, bill credits as requested by DoD/FEA, an extension of the nonexecutive employee pay through July 1, 2020, and the exclusion of senior management bonus payments from NND rate base and future cost of service. Tr. p. 4215-6, ll. 6-9

James Warren testified in response to ORS witness Kollen regarding SCE&G's net operating loss carryforward ("NOLC") and the impacts of the TCJA. Mr. Warren testified in 2017 SCE&G generated a large NOLC due to the large NND-related deductions claimed that year. Tr. p. 2827, ll. 5-7. He testified that while the parties agree that the NOLC deferred tax asset ("DTA")

caused by the disallowed NND costs should be excluded from rate base for ratemaking purposes as a matter of principle, that is not the Applicants' proposal. Tr. p. 2828, 11. 15-25. Instead, the Applicants' proposal is to include the entirety of the DTA in rate base where it will earn a rate of return until it is fully utilized and to include an amortization of the excess portion of the entirety of the DTA (due to the reduction in federal income tax rates) as an increase to the revenue requirement to recover the NND costs. Tr. p. 991 – 23, 11. 5-11. Mr. Warren provided a calculation that would allocate the DTA between the allowed NND costs and the disallowed NND costs that was different than the ORS allocation recommended by ORS witness Mr. Kollen. Tr. p. 2835 – 8, 11. 4 – 11.Mr. Warren's proposed allocation was based on the ratio of allowed NND costs to total NND costs, while the ORS allocation assumed that the disallowed NND costs were never incurred and never deducted, thus resulting in a much lower DTA. Tr. p. 991 – 24, 11. 3 – 13. Mr. Warren also raised the possibility of an IRS normalization violation if a threshold amount of the DTA was not included in rate base; however, he did not quantify this threshold amount. Tr. p. 2829-30, ll. 17-11. Mr. Warren also proposed a longer amortization of the unprotected excess deferred income taxes ("EDIT") in response to the ORS proposal to amortize the EDIT over five years. Tr. p. 2833, ll. 17-24.

Thomas Farrell testified about the proposed merger between SCE&G and Dominion and its benefits, as well as the CBP and the Plan B in comparison to the ORS Optimal Plan. Mr. Farrell testified the CBP provides immediate relief to Ratepayers through $1.3 billion in up-front refunds as well as long-term relief through bill reductions. Tr. p. 2985-6, ll. 24-5. Mr. Farrell testified Plan B would limit the NND rate base recovery to investments made before the March 12, 2015 date that ORS highlighted as the turning point for prudency in the Project. Tr. p. 2986, ll. 5-10. Mr.

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Farrell testified the ORS Optimal Plan would prevent the merger between the Joint Applicants and would put SCE&G in a perilous situation. Tr. p. 2988-90. Ll. 20-14.

Robert Blue testified SCE&G will benefit from Dominion's size, experience and operational structure. Tr. p. 3001-2, ll. 15-2. Mr. Blue testified if the merger goes through, SCE&G will remain headquartered in Cayce, South Carolina with no changes to its organizational structure and the leadership in South Carolina will continue to have the decision-making responsibility related to customer satisfaction, reliable service, and environmental stewardship. Tr. p. 3005, ll. 16-23.

J. Transco

Hector Alatorre testified on behalf of Transco and recommended certain safeguards be put in place to prevent any self-dealing between Dominion and SCE&G should the merger be approved. Tr. p. 3554, ll. 15-19. Mr. Alatorre testified Transco and the Joint Applicants entered into a Settlement Agreement that reflects a fair resolution to address Transco's concerns. Tr. p. 3554-5, ll. 20-4.

III. REVIEW OF THE EVIDENCE AND EVIDENTIARY CONCLUSIONS

A. Standards and Required Findings

The Application and Petition was filed for review and approval of a proposed transaction whereby SCE&G's parent, SCANA, will become a wholly-owned subsidiary of Dominion. App. p. 1. According to the Application, the approval of the merger and CPB may take the form of a formal approval of the business combination if the Commission determines that formal approval

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of the merger is required under S.C. Code Ann. § 58-27-1300. App. p. 1, 12. Alternatively, the Joint Applicants request that the Commission enter a finding that either: (i) the merger is in the public interest; or (ii) there is an absence of harm to the South Carolina Ratepayers as a result of the merger. App. p. 2. Additionally, other parties have proposed Ratepayer plans that will impact rates.[15]

Joint Applicants offered multiple plans for Commission consideration;[16] however, according to the Application and testimony offered by the Joint Applicant witnesses, they seek approval of the CPB under the provisions of S.C. Code Ann. § 58-27-870 (F), which allows the Commission to approve a rate schedule filed by a utility without consideration of the overall rate structure. App. p. 12. Additionally, Joint Applicants state that they seek approval of the CPB under provisions of S.C. Code Ann. § 58-33-280 (K), which they state authorizes recovery of and return on the capital costs of projects approved under the terms of the BLRA after a project is abandoned so long as the abandonment decision is prudent.[17] App. p. 13. In the event the Commission does not grant the merger, then SCE&G seeks approval of its No Merger Benefits Plan under the provisions of S.C. Code Ann. § 58-27-870 (F), and S.C. Code Ann. § 58-33-280(K) and should the Commission approve neither the merger nor the No Merger Benefits plan, SCE&G seeks approval of the Base Request under the same statutory authority. App. p. 13.

Under both the No Merger Benefits Plan and the Base Request, SCE&G seeks a determination that the NND Project costs are reasonable and prudent costs of the NND Project that are not incurred due to imprudence by SCE&G and are properly included in the cost schedules for

[15] *See* the South Carolina Office of Regulatory Staff Optimal Ratepayer Plan
[16] Joint Applicants introduced new plans throughout the proceeding, each purporting to offer greater benefits to ratepayers than the one preceding it.
[17] In S.C. Acts 258, the General Assembly repealed the BLRA.

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the project in abandonment under S.C. Code Ann. § 58-33-270(E). App. pp. 13, 14. According to the Application, the Joint Applicants do not make any request that might require a full rate case proceeding under S.C. Code Ann. §58-27-870 (G), or any other provision of law. App. p. 14.

The Commission must fix just and reasonable rates, standards, classifications, regulations, practices, and measurements of service to be furnished. Thus, the Commission must give due consideration to all evidence presented in the proceeding and consider the impact of, and appropriate conditions to place upon, the proposed Merger.

In reviewing matters filed pursuant to the BLRA, "[t]he purpose of the Base Load Review Act (BLRA) is to provide for the recovery of the prudently incurred costs associated with new base load plants when constructed by investor-owned electrical utilities, while at the same time protecting Customers of investor-owned electrical utilities from responsibility for imprudent financial obligations or costs." *S.C. Energy Users Comm.*, 410 S.C. 348, 354, 764 S.E.2d 913, 916 (2014).

After discussion of the positions of the parties, the Commission reaches the legal and factual conclusions below based on its review of the facts and evidence of record.

The evidence supporting the Joint Applicant's business and legal status is contained in the Application filed by Joint Applicants, testimony, and in prior Commission Orders in the docket files of the Commission, of which the Commission takes judicial notice. SCE&G is a corporation organized and existing under the laws of the State of South Carolina and headquartered in Cayce, South Carolina. App. p. 7. SCE&G is a public utility subject to the regulatory authority of the Commission pursuant to Title 58 of the Code of Laws Annotated of South Carolina. App. p. 7. SCE&G is an electrical utility engaged in the generation, transmission, distribution, and sale of electricity to the public for compensation. App. p. 7. SCE&G is a wholly-owned subsidiary of

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SCANA. App. p. 8. SCANA, a South Carolina corporation, is a publicly-held holding company whose common stock is traded on the New York Stock Exchange under the ticker symbol SCG. App. p. 8. The other principal subsidiaries of SCANA are Public Service Company of North Carolina, Inc. and SCANA Energy Marketing, Inc. App. p. 8.

Dominion is a Virginia corporation with its principal place of business at 120 Tredeger Street, P.O. Box 26532, Richmond, Virginia. App. p. 9. Dominion is a publicly-held holding company whose common stock is traded on the New York Stock Exchange under the ticker symbol D. App. p. 9. It has the following wholly-owned public utility subsidiaries: Virginia Electric and Power Company, The East Ohio Gas Company, Hope Gas, Inc., and Questar Gas Company. App. p. 9. In addition, Dominion owns other subsidiaries in the energy industry, including two solar power generating projects in South Carolina. App. p. 9. Sedona Corp. is a South Carolina corporation and wholly-owned subsidiary of Dominion created solely to accomplish the merger. App. p. 10. Sedona Corp. is not a public utility in South Carolina or elsewhere. App. p. 10. Should a merger occur, Sedona Corp. and SCANA will merge, with SCANA being the surviving entity. App. p. 10.[18]

The Application, testimony, exhibits, affidavits of publication, and public notices submitted by the Joint Applicants are in compliance with the procedural requirements of the South Carolina Code of Laws and the Regulations promulgated by this Commission.

These findings of fact are informational, procedural and jurisdictional in nature, and the matters which it involves are not contested by any party.

[18] According to the Joint Applicants' Application, the merger can only close if the Commission approves the jointly proposed CBP, with no material change to the terms, conditions, or undertakings set forth in the plan and no significant change to the economic value of the plan. (App. p. 11). This Commission, however, notes that the Joint Applicants have submitted other plans, which if approved would violate this term of the Application.

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B. Prudency

Summary of the Positions of the Parties

Sierra Club and FoE: The Sierra Club/FoE points to four bases to disallow all NND costs: project mismanagements, chaos in the construction process, misunderstanding of the economic reality in the electricity sector, and misinterpretation of the BLRA. Tr. p. 115, ll. 3-11. Its fundamental argument is that "[t]he withholding of information is in itself an imprudent behavior." Tr. p. 116, ll. 18-19. Sierra Club/FoE urges that there is strong evidence that material information was intentionally withheld or suppressed and that, accordingly, this "evidence of imprudence and withholding of material information from ORS and this Commission demands full disallowance of the costs of the abandoned nuclear project." Tr. p. 118, ll. 5-9.

In particular, Sierra Club/FoE notes that SCE&G "sent an aggressive . . . letter to the vendor in 2014, before the Bechtel audit was commissioned." Tr. p. 121-5, ll. 19-21. "This letter was never shared with the PSC," but showed the problems that had already been plaguing the Project for years. Tr. p. 121-5, ll. 22-23; *see* GCJ Ex. 2.10. Additionally, "Santee Cooper, the owner of 45% of the Summer 2 & 3 capacity, had commissioned a study of the economics of the project, which reached exactly the same conclusion as I [Dr. Mark Cooper] did [that continuing the Project was uneconomic] at roughly the same time. The fact that Santee Cooper, a publicly owned utility, determined that it needed to exit the project early. . .speaks volumes about the dire condition of new nuclear construction." Tr. p.121-7, ll. 1-6.

AARP: AARP contends that there were numerous signs in 2013 and early 2014 that the Project should be terminated and that a prudent utility would have cancelled the NND Project no later than mid-2014. Tr. p.1908-13. Like Sierra Club/FoE, AARP points to the 2014 letter from

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the Owners to the Consortium CEO's detailing the problems that had plagued the Project to that point and to Santee Cooper's inability to sell any of its interest in the Project (except for a 5% stake back to SCE&G). AARP also points to an INPO report issued July 2013 recommending an evaluation of the likely schedule and cost of the project which, had SCE&G followed this advice, would likely have led to cancellation of the Project. *See,* Tr. p.344, ll.5-20.

ORS: ORS asserts that SCE&G imprudently incurred costs after its March 2015 filling with the Commission because it intentionally hid significant and relevant information from the Commission and ORS. In the March 2015 filing, SCE&G misled the Commission by failing to disclose its own internal cost estimates, which estimated the Project would require an additional $1.2 billion to complete. Instead, SCE&G senior management and outside legal team made the conscious decision to only inform the Commission of the Consortium's lower forecast of costs of $698 million and its constrained substantial completion dates. SCE&G engaged in its second serious act of deception by hiding both the existence and results of the Bechtel assessment from the Commission and the ORS. Instead, SCE&G knowingly promoted the Consortium schedule of completion as an accurate schedule for the Project.

ORS believes that SCE&G's decision to conceal the Bechtel assessment which included revised SCDs for the Units, while SCE&G requested updates to the Project's schedule and budget as well as revised rates revenue increases during 2015 and 2016, constitutes a fraudulent act, as defined in Section 58-33-220(c). Accordingly, ORS established March 12, 2015, the date the Company filed its 2015 request in Docket No. 2015-103-E as the date SCE&G began reporting its schedule and budget and withheld material and adverse information from the Commission and ORS.

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Central and the Cooperatives: The Cooperatives agree with ORS. The pre-filed testimony and exhibits submitted by the ORS and the deposition testimony of SCE&G employees who were charged with monitoring the progress of the Project demonstrate that by March 2015 the Project was not being constructed "within the parameters" of the Commission-approved construction schedule and capital cost estimates. Because the Project was not within those required parameters, this Commission has the authority under §58-33-280(K) to consider disallowing costs incurred after the date when the Project was no longer within the cost and schedule parameters as required by the BLRA.

SCEUC: Intervenor SCEUC argues that SCE&G lost the protection of the BLRA when it abandoned construction on or before July 31, 2017. Recovery of rates through revised rates is a statutory benefit to which SCE&G is entitled only so long as it is compliance with the schedule, estimates and projections in its BLRA Order. S.C. Code Ann. 58-33-275(C). However, the protections of the BLRA no longer applied once SCE&G went outside the bounds of the 2016 Base Load Review Order. (*e.g.* Tr.p.376, l.8 - p.377, l.25; *see also* Tr.p.378, ll.1-10 ("both of those dates [SCE&G's final SCD's of 12/31/2022 and 3/31/2024] are way outside the 2016 order.") SCEUC argues that SCE&G's failure to comply with the BLRA prohibits any further recovery under the BLRA once the nuclear units were no longer being constructed. Consequently, SCE&G is no longer entitled to recovery of the revenues generated by the revised rates or recovery of capital costs of the abandoned units.

SCEUC further asserts that the decision to abandon was imprudent because it was made long after the Project should have been abandoned.

SCE&G: SCE&G first contends that the principal claims of ORS and other parties are legally precluded because the prudency of the costs incurred for the Project and the prudency of

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the Project itself have been litigated in prior dockets. Once prudency has been determined, SCE&G argues that it should be allowed to continue to recover costs incurred after March 12, 2015 because the ORS was informed and fully aware of the challenges facing the NND Project in 2015, as shown by the settlement agreement and testimony and findings in the Commission's order in Docket No. 2015-103-E. SCE&G also refutes the allegation that the 2015 project assessment performed by Bechtel Corporation generated material information that was not disclosed. According to SCE&G, the project would still be under construction if Westinghouse had not filed for bankruptcy or if Santee Cooper had not quit the project thereafter. Tr.p.89, ll.11-19.

Speaker of the House: Speaker Lucas asserts that a plain reading of the BLRA and Act 287 reveals that SCE&G's claim to continue recovering NND revised rates evaporated upon abandonment of the Project. Full recovery of the nuclear rates is not allowed simply because an initial prudency determination to begin construction was made. The Speaker argues that because the Project was not constructed or under construction after July 31, 2017, SCE&G is not entitled to recover any revised rates from that date forward.

Legal Framework for Prudency Review

Commission Finding

The parties stake out myriad positions with respect to what costs incurred in the Project should be excluded from recovery. At one end of the spectrum, the Sierra Club/FoE assert that *all* costs were imprudently incurred and thus all capital costs should be disallowed and that all costs of capital, including all Revised Rates collected, should be returned to Customers. The ORS asserts that costs incurred after SCE&G's March 12, 2015 Commission filing were imprudently incurred because SCE&G withheld its internal cost estimates and impending ground-up project assessment from ORS and the Commission. SCE&G contends that all costs incurred prior to

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abandonment were prudently incurred, however, the merger plans proposed by the Joint Applicants would set the rate base as costs incurred after March 12, 2015, in any event. Having closely considered the evidence of record, the Commission concludes that costs incurred after SCE&G's March 12, 2015 filing are imprudent and are disallowed.

Legal Framework for Prudency Review

After abandonment, a prudency determination is required. "Where a plant is abandoned after a base load review order approving rate recovery has been issued," the utility will not recover costs "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 to the utility at the time that the utility could have acted to avoid or minimize the costs." S.C. Code § 58-33-280(K). Thus, the statute clearly contemplates a historical investigation of when the utility could have acted, *i.e.* when it would have acted if it were behaving prudently. *See S.C. Energy Users Committee*, 410 S.C. at 358, 764 S.E.2d at 918 (finding "the BLRA provides for a course of action [relating to prudency determinations] in the event of abandonment").

Furthermore, a utility is only able to recover its capital costs "[s]o long as the plant [was] constructed or [was] being constructed in accordance with the approved schedules, estimates, and projections." *Id.* § 58-33-275(C). "In cases where a party proves by a preponderance of the evidence that there has been a material and adverse deviation from the approved schedules, estimates, and projections . . . the commission may disallow the additional capital costs that result from the deviation, but only to the extent that the failure by the utility to anticipate or avoid the deviation, or to minimize the resulting expense, was imprudent considering the information available at the time that the utility could have acted to avoid the deviation or minimize its effect." *Id.* § 58-33-275(E).

> "Imprudent" or "imprudence" includes, but is not limited to, lack of caution, care, or diligence as determined by the commission in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project or any other person acting on behalf of or for the utility affecting the project. Imprudent or imprudence includes, but does not require, a finding of negligence, carelessness, or recklessness.

S.C. Code Ann. § 58-33-220(23). Moreover, "[i]mprudence on behalf of any contractor, subcontractor, agent, or person hired to construct a plant or perform any action or service on behalf of the utility shall be attributed to the utility." *Id.* On the other hand,

> "Prudent", "prudence", or "prudency" means a high standard of caution, care, and diligence in regard to any action or decision taken by the utility or one acting on its behalf including, but not limited to, its officers, board, agents, employees, contractors, subcontractors, consultants affecting the project or any other person acting on behalf of or for the utility affecting the project.
>
> *Id.* § 58-33-220(24). "To the extent a utility enters a contract with a third party that delegates some or all decision-making authority related to the project, the utility retains the burden of establishing the prudency of specific items of cost or specific third-party decisions." *Id.* Additionally, "'[p]rudent', 'prudence', or 'prudency' also requires that any action or decision be made in a timely manner." *Id.*
>
> In determining whether any action or decision was prudent, the commission shall consider, including, but not limited to: (a) whether the utility acts in a timely manner, with any passage of time which results in increased costs or expense prior to the utility acting or making the decision weighing against a finding of prudency; (b) whether prior actions or decisions by the utility were imprudent and such imprudent actions led to a decision by the utility that could otherwise be prudent. Such circumstances weigh against a finding of prudency; and (c) any other relevant factors, including commission of a fraudulent act, which are deemed not to be prudent.

Id. For purposes of this proceeding,

> "fraud" includes, in addition to its normal legal connotation, concealment, omission, misrepresentation, or nondisclosure of a material fact in any proceeding or filing before the commission or Office of Regulatory Staff. Proceedings and

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> filings to which the provisions of this paragraph apply include, but are not limited to, rate or revised rate filings, responsive filings, motions, pleadings, briefs, memoranda, document requests, and other communications before the commission or Office of Regulatory Staff.

Id.

Application of Law

In Order No. 2009-104(A), dated March 2, 2009, the Commission approved an initial capital cost schedule and construction schedule for the Units. (Hearing Ex. 8 at p. 617.) As approved in that order, the capital cost for the Units was $4.5 billion in 2007 dollars. *Id.* With forecasted escalation, this resulted in an estimated cost for the Units at completion of $6.3 billion in future dollars. *Id.* 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 January1, 2019. *Id.*

On May 15, 2012, 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. (Hearing Ex. 8 at p. 619.) 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 billion in 2007 dollars and a new milestone schedule tied to substantial completion dates for Units 2 and 3 of March 15, 2017, and May 15, 2018, respectively.

During the third quarter of 2013, the Consortium provided SCE&G with information indicating that the substantial completion dates for Units 2 and 3 would be further delayed. (Hearing Ex. 12 at p. 19.) It was not until a full year later, in August 2014, that the Consortium provided SCE&G with a revised construction schedule and a new estimate of costs to complete construction of the Project. *Id.* The revised construction schedule included a new milestone

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schedule tied to substantial completion dates for Units 2 and 3 of June 19, 2019 and June 16, 2020, respectively. *Id.* The estimate of costs provided by the Consortium reflected an increase of approximately $698 million in the costs approved in Order No. 2012-884. *Id.* at p. 36. Notably, the cost estimate provided by the Consortium was based on the Consortium's assumption and promise that it would improve its monthly labor productivity to a performance factor ("PF") of 1.15 within six months.

After receiving the Consortium's construction schedule and cost estimate, SCE&G formed internal teams to review this information. The internal team that reviewed the Consortium's cost estimate (the "EAC team") was composed of highly-qualified accountants and engineers who were specifically selected by senior management to perform this analysis due to their expertise in analyzing costs under the EPC contract. Ken Browne, a senior engineer with SCE&G, was the day-to-day leader of the EAC Team and the acknowledged expert on the team in labor productivity factors. (Tr. Vol. 14-3783.)

The SCE&G EAC team concluded that the PF used in the Consortium's cost estimate was not achievable and that it would be more accurate to use a PF in line with historical productivity on the Project. (Hearing Ex. 155, p. 43, 84.) The EAC Team results were presented to SCE&G senior executives on October 13, 2014. (Hearing Ex. 155, p. 41.) In early 2015, after several additional months of less-than-promised productivity by the Consortium, Ken Browne, along with Kevin Kochems, updated the cost spreadsheet based on further increased PFs. This resulted in an estimate that an additional $1.2 billion beyond the existing capital cost schedule or budget would be required to complete the Project, which was about $500 million more than the Consortium's estimate. Carlette Walker, a SCANA corporate officer in charge of finance for the Project, then presented this information to senior management of SCE&G. Tr. p. 168 – 200 to 168 – 202.

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On March 12, 2015, SCE&G initiated Commission Docket No. 2015-103-E in which it petitioned the Commission to modify the approved cost and construction schedules for the Project. SCE&G misled the Commission in this proceeding in a number of ways.

First, SCE&G misled the Commission by using the Consortium cost estimate based on the 1.15 PF in its 2015 filing with the Commission and failing to even disclose its internal cost estimate. Notably, SCE&G knew that the Consortium's estimate was not an accurate estimate. Its own EAC team had concluded that the Consortium estimate was based on a level of labor productivity that was not achievable. (Hearing Ex. 155, p. 43, 84.) Furthermore, the Consortium's cost estimate was based on a promise to obtain a monthly PF of 1.15 by February 2015. Yet, the Consortium had already broken that promise by the date of the petition, because its PF actually got worse by that date, not better. SCE&G implicitly acknowledged that its EAC team's estimate was more accurate when – just weeks after the July 2015 Commission hearing – it used a much higher PF and cost estimate to access the likely benefit of the 2015 EPC amendment. (Hearing Ex. 31.)

SCE&G's argument that it could not "hold Westinghouse's feet to the fire" (Tr. Vol. 1-55) if it had provided a higher cost estimate in its petition is disingenuous for two reasons. First, the argument wrongly suggests that SCE&G's disclosure obligations under the BLRA can be voided when necessary for purposes of commercial negotiating tactics with an unregulated entity. SCE&G was required to include "the anticipated components of capital costs" in its petition. S.C. Code Ann. § 58-33-270(E) (adopting for a schedule modification docket the requirements of S.C. Code Ann. § 58-33-250). Of course, this reporting obligation applied, regardless of whether SCE&G was applying to modify the Base Load Review Order. *See* S.C. Code Ann. § 58-33-277(A); Section 58-33-280(B) ("The revised rates filing shall include the most recent monitoring

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report filed under Section 58-33-277(A) updated to reflect information current as of the date specified in the filing." (emphasis added).)

The second reason that SCE&G's argument fails is because SCE&G could have easily disclosed to ORS and the Commission the higher cost estimate and still maintained that it was not responsible for paying those costs to the Consortium. In fact, that is precisely what it did for most of the costs included in the petition:

> The majority of the revised EAC costs are the result of delays in the project, revised projections of the labor required to accomplish previously-identified scopes of work, and revised overhead and staff ratios associated with that labor. . . . SCE&G has not accepted responsibility for these costs (the "Delay and Other EAC Costs"). SCE&G has also asserted the claim that WEC/CB&I is contractually responsible for the occurrence of the delay and other factors underlying the Delay and Other EAC Costs.

(Hearing Ex. 12 at p. 22.) SCE&G's failure to take this action with respect to the much higher overall budget costs it anticipated demonstrates that the real motivation for not providing the higher estimate was to avoid disclosure, most likely because it feared that the petition would not be approved and revised rates would then not be collectible.

SCE&G's deception with respect to cost estimates went beyond *mere omission* of its own estimate to include *outright misrepresentations* about (1) the accuracy of the Consortium's cost estimate and (2) the outcome of SCE&G's review of that estimate. SCE&G executives falsely testified (1) that the Consortium's estimate was the best existing estimate of anticipated costs, and (2) that SCE&G's internal review supported the Consortium's cost estimate:

> These schedules represent the best current forecasts of the anticipated costs and the anticipated construction schedules to complete the project. They are based on the cost projections and construction schedule data that WEC/CB&I has provided to SCE&G and which SCE&G has carefully studied and reviewed consistent with its duties as Owner. . . . The schedules presented here are the schedules that WEC/CB&I has represented to SCE&G that it is prepared to meet and that SCE&G has carefully reviewed with WEC/CB&I. For those reasons, I can affirm that these

> schedules represent the best and most definitive forecast of the anticipated costs and construction schedule required to complete this project that is available as of the date of this filing of the testimony.

(Hearing Ex. 64 at pp. 38-39.)

Both the Commission and ORS relied on these misleading assertions in deciding to support SCE&G's petition:

> In supporting the Settlement Agreement, Mr. James testified that "based on ORS's review; SCE&G's in depth evaluation; and, SCE&G's adoption of the proposed schedule and budget, ORS finds that the cost estimates [approved in the Settlement Agreement] have sufficient support and provide a reasonable basis to proceed with the Units." Tr. at 705. The Commission has reviewed Mr. James' testimony against the record as a whole, including the extensive testimony and evidence provided by SCE&G concerning its review and analysis of the EAC Cost estimates and other cost estimates and the methodology by which they were created. The Commission finds that ORS's conclusions concerning the cost estimates presented here are fully supported by the record in this proceeding.

(Hearing Ex. 8 at p. 672.) The reliance of the ORS and the Commission on SCE&G's material omissions and misrepresentations of fact conclusively demonstrates that these omissions and misrepresentations were not harmless.

SCE&G's deception extended beyond the Project capital cost schedule to include the construction schedule as well. Months before the 2015 petition was filed, SCE&G senior executives acknowledged the need for an independent assessment of the Project, to include the project schedule. Hearing Ex. 70 at p. 3; Ex. 161 at Depo Ex. 37. The Owners agreed to retain the Bechtel Corporation to perform the assessment shortly after the March 2015 petition was filed. Nonetheless, SCE&G did not reveal the existence of this assessment to ORS or the Commission. The assessment revealed that the substantial completion dates for the Units were approximately 24 months behind the existing schedule on file with the Commission. Hearing Ex. 15 at GCJ-2.37. Once ORS happened to stumble on evidence that the assessment had occurred, SCE&G

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misrepresented the results of the assessment to ORS consultant Gary Jones on multiple occasions. Tr. p. 2-288-21. In response to a written discovery request from ORS, SCE&G on multiple occasions, failed to disclose Bechtel as a consultant or even disclose that an assessment had been performed, the results of which SCE&G claimed privileged. (Hearing Ex. 15 at GCJ-2.50; Ex. 28 at p. 59; Ex. 29 at p. 33.

SCE&G claims that its failure to disclose the Bechtel assessment was appropriate because the assessment was protected by the attorney-client privilege. This argument fails for numerous reasons. First, the undisputed facts demonstrate that the Owners and Bechtel had agreed to the terms of the assessment, including its price and scope, before the attorney who ostensibly was the basis for the privilege claim – George Wenick – was even made aware of the assessment. Hearing Ex. 175 at pp. 24-26). The lawyer's effort to interject language into the hiring agreement after the assessment had been negotiated and agreed to did not change anything about the assessment itself. *Id.*

Moreover, contrary to the terms of the professional services agreement, SCE&G paid for the Bechtel assessment, rather than the lawyer. Tr. pp. 4-919-923; Ex. 45. And, of course, the Ratepayers themselves paid for the assessment and even for the lawyer's efforts to shield it from disclosure to them. *Id.* For these reasons, SCE&G's use of an attorney to attempt to cloak the assessment in privilege is insufficient to overcome its disclosure obligations under the BLRA.

The illegitimacy of SCE&G's privilege claim is further demonstrated by its actions after Bechtel's October 2015 presentation of the results of the assessment. Bechtel initially provided a draft report to the owners that included Bechtel's assessment of the schedule of the project. Hearing Ex. 15-GCJ-2.41. Contrary to witness Wenick's testimony, if Bechtel was truly a consulting (non-testifying) expert retained for purposes of litigation as indicated in the agreement

with the Consortium, Hearing Ex. 111, then this entire report would be considered privileged and non-discoverable in litigation under the rules of civil procedure as that agreement explicitly states. However, SCE&G attempted to get Bechtel to not even provide a written report. Hearing Ex. 117; Ex. 175 at p. 64. Since there was no basis for this request with respect to discoverability of the report in litigation, the only reason for this action is to ensure that Bechtel's findings would never see the light of day in the regulatory process.

When Santee Cooper insisted on a written report, SCE&G, through its lawyer, then requested that the schedule assessment and criticisms of SCE&G's project management be deleted from the report. Bechtel refused this request because the schedule assessment was so critical to the overall project assessment. Wenick then proposed that the schedule assessment be included in a second report, which Bechtel reluctantly accepted. Hearing Ex. 120. Again, because the Bechtel report would ostensibly be privileged in any litigation with the Consortium, Wenick's requests to (1) delete the schedule assessment from the report and (2) put the schedule assessment in a second report show that SCE&G's real purpose was to hide the schedule assessment from its regulators.

In fact, witness Wenick never provided the Schedule Assessment to Santee Cooper, even though Santee Cooper was his client. Hearing Ex. 121; Ex. 123. Neither the Project Assessment Report nor the Schedule Assessment Report was ever provided to the ORS or the Commission prior to these abandonment proceedings and then only in response to numerous demands and a motion to compel from the ORS. *See* SCE&G Response to ORS Motion to Compel (June 11, 2018).

Furthermore, SCE&G's argument that it was prudent to not disclose the results of the Bechtel assessment to the Commission and ORS fails even if SCE&G was initially correct in claiming that the reports were privileged. First, SCE&G did not assert that the Bechtel assessment

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was privileged in response to a written discovery request. Hearing Ex. 15 at GCJ-2.50; Ex. 28 at p. 59; Ex. 29 at p. 33. Thus, even if any privilege existed, it was waived by SCE&G's failure to meet its obligations to assert a privilege objection to the discovery request. See SCRCP 34.

Second, even if the Bechtel assessment was legitimately privileged (which it was not), that would not have prevented SCE&G from informing the Commission of the factual information in the reports or that the construction schedule presented by the Consortium was not accurate.

If ORS had known about the Bechtel Reports, it says it would not have entered into a settlement agreement in that docket, but, rather, would have recommended that the petition be held in abeyance until the results of the assessment were available. Tr. p. 288-12. If the results of the assessment had been disclosed, there is no question that it would have had a profound impact on the testimony and questions in Commission proceedings and very likely the decisions on the future of the Project. Bechtel's schedule assessment found the likely completion date for Unit 2 was between December 2020 to August 2021 (18 to 26 months later than the approved SCD), and the likely completion date for Unit 3 was between June 2022 to June 2023 (24 to 36 months later than the approved SCD). Hearing Exhibit 119 at p. 11. Crucially, the Bechtel likely completion dates would impact SCE&G's ability to secure the Production Tax Credits on which the feasibility of the Project depended. Tr. p. 288-18.

SCE&G's argument that the Bechtel schedule assessment is unreliable almost does not even merit mention because there is a vast amount of evidence demonstrating the reliability of the assessment. Of course, SCE&G's own assessment in 2017 after Westinghouse's bankruptcy provides more than ample proof of the reliability of Bechtel's assessment. However, there is also evidence of the reliability of the assessment even in 2015. SCE&G itself agreed to retain Bechtel

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and pay it $1 million, showing that it had great confidence in Bechtel's abilities. This is further demonstrated by Mr. Byrne's 2008 sworn testimony:

> Bechtel is one of the most experienced and well recognized firms internationally in power systems construction, engineering and consulting services. My colleagues at SCE&G and I have an extensive knowledge of Bechtel Corporation both from direct working experience and knowledge gained through our long-standing involvement in the nuclear power industry. In my opinion, Bechtel is exceptionally capable and experienced in work of the kind that it is undertaking for SCE&G in preparing the COLA for VCSNS Units 2 & 3 and in seeing that application through the regulatory process.

Hearing Ex. 68 at p. 61.

SCE&G's other arguments that the assessment was not reliable are factually unsupported. Contrary to SCE&G's claim, Bechtel received evidence to all of the information it needed in order to perform the schedule assessment. Hearing Ex. 175 at pp. 36-38; Ex. 177 at pp. 94-97. Moreover, Bechtel was not creating a new schedule to run the project, so the Level 2 schedule it created was more than adequate to assess the accuracy of the Westinghouse schedule within the range that it did. Hearing Ex. 175 at pp. 97-100. Bechtel made it clear that more detailed schedule work would be required to determine the precise month for adjusting the SCDs. *Id.*

In sum, SCE&G's decision to conceal the Bechtel assessment while requesting updates to the Project's schedule and budget and obtaining revised rates revenue increases, constitutes a fraudulent act, as defined in S.C. Code Ann § 58-33-220(c). This finding also violated the high standard of care required for the Project under the BLRA for prudency in both abandoning construction and incurring costs. Thus, it would be imprudent under any standard for determining the disallowed costs for the Project under the BLRA. Accordingly, ORS established March 12, 2015, the date the Company filed its 2015 request in Docket No. 2015-103-E as the date SCE&G began reporting its schedule and budget in a fraudulent manner.

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Commission Findings

The Commission concludes that SCE&G's NND costs incurred after March 12, 2015 were imprudently incurred and should be disallowed. After reviewing all evidence presented in the Record, the Commission finds that SCE&G failed to live up the standard of prudency both as defined in Act 258 and that existed prior and is included in SCE&G's previous testimony before this Commission as of March 12, 2015. Therefore, from that point on, all costs incurred are deemed to have been imprudently incurred. The revised rates increases granted under Order Nos. 2015-712 and 2016-758 associated with these imprudent cost increases and schedule changes should be immediately rolled back and the collections by SCE&G should not only stop but the amounts already collected for these revised rates increases should also be refunded or credited to the retail Customers as soon as possible.

C. Allowed NND Abandonment Costs

FoE's and Sierra Club's Position

Witness Cooper testified that all nuclear project costs were imprudently incurred because SCE&G and others had a duty of care and disclosure. Tr. p. 113, ll. 7-12. According to Dr. Cooper, from the very inception of the NND Project, in 2008, SCE&G had sufficient facts to know that the Project would fail to deliver its promised economies. Tr. p. 114, ll. 20-25, p. 115, ll. 1-2.

AARP's Position

AARP witness Rubin testified that SCE&G "bet the farm and lost." Tr. p. 1903, l. 25, p. 1904, l. 1. Witness Rubin recommends there be no further recovery of NND Project costs and SCE&G be required to end collections under revised rates effective December 31, 2018. Tr. p. 1905, ll. 19-22. In addition, Mr. Rubin proposes the Company not be obligated to refund the $109

million collected between April 1 and June 30, 2018. Tr. p. 1908-30, ll. 5-7. This results in Customers paying approximately $2.2 billion for the abandoned Project. Tr. p. 1908-30, ll. 7-8.

ORS' Position

ORS asserts that costs incurred after SCE&G's March 12, 2015 Commission filing in Docket No. 2015-103-E were imprudently incurred for reasons discussed earlier in this Order. Tr. p. 883, l. 2-12. ORS witnesses Major and Kollen incorporate the recommendations from ORS witness Jones that all recovery of NND Project costs be disallowed after March 12, 2015. Witness Major determined the total Construction Work In Progress ("CWIP") expenditures through March 12, 2015, were $2,865,679,745. Tr. p. 914, ll. 5-11. Witness Major reduced the CWIP and Allowance for Funds Used During Construction ("AFUDC") expense balance by $19,943,940 to remove expenses for consultant fees, transfers, miscellaneous adjustment requested by the Company, expenditures related to equipment and materials that have been or will be sold before the same date, other costs deemed non allowable by ORS, and all SCE&G bonuses allocated to NND. Tr. p. 915, ll. 12-19. After the removal of these additional expenditures ORS's allowable CWIP as of March 12, 2015 totals $2,845,735,805. Tr. p. 914, ll. 20-22.

ORS witness Lane Kollen recommends the SCE&G be allowed to recover allowable NND abandonment costs through a new Capital Cost Recovery ("CCR") Rider. Tr. p. 987-10, ll. 1-6. Mr. Kollen calculated the disallowed NND costs as $1,873.9 million (total Company), excluding the NND costs incurred after September 30, 2017, which SCE&G has written off as incurred. Tr. p. 987-15, ll. 8-11. According to witness Kollen, the actual NND costs are $4,645.5 million (total Company) at September 30, 2017, after exclusion of the BLRA transmission costs and transfers to Unit 1 and switchyard. Tr. p. 987-15, ll. 12-13. The transmission lines are still being constructed and will not be used before January 31, 2019. Tr. p. 3378, ll. 1-9. Witness Kollen

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testified that the ORS recommendation for allowed NND costs is $2,771.6 million (total Company) or $2,6837 million (retail). Tr. p. 987-15, l. 14, p. 991-1, l. 1. ORS proposes an amortization period of 20 years. Tr. p. 4233, ll. 9-12.

Joint Applicants' Position

For the purposes of these proceedings, the Joint Applicants have limited their request for a prudence determination to NND investments made on or before March 12, 2015. (Hearing Exhibit 69).

The Joint Applicants requested recovery of $3.1 billon (total Company) in abandoned NND Project costs through a CCR Rider as part of the CBP. (Tr. p. 1016, ll. 1-14). Alternatively, should the Commission not approve the business combination, SCE&G seeks recovery of $4.02 billion in abandoned NND Project cost through the No Merger Benefit Plan. *Id.* The Joint Applicant proposed Plan B introduced by Dominion witness Prabir Purohit reduces the NND investment to be recovered to 2.768 billion, from 2.772 billion. (Tr. p. 4214, ll. 12-14). The Joint Applicants propose an amortization period of 20 years. (Tr. p. 4233, ll. 9-12).

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that the position put forth by ORS and by the Joint Applicants in Plan B-L to be just and reasonable NND costs to be recovered. This Commission has found that costs incurred subsequent to March 12, 2015 were imprudent, and costs incurred previous to that date are recoverable. Additionally, this Commission has concurred with the methodology utilized by witness Major to determine recoverable CWIP. Accordingly, this Commission accepts the CWIP recovery amount proposed by ORS. Additionally, the Joint Applicants have limited the recovery sought in this proceeding to expenses incurred prior to March 12, 2015. The Commission finds that the ORS

proposed Capital Cost Recovery Rider to be a just and reasonable method to recover allowable NND costs and that the transmission costs are not used and useful. The Commission finds that Joint Applicants may recover the allowed NND costs in the amount of $2,771.6 million (total Company), or $2,6837 million (retail). The Commission finds the appropriate amortization period to be 20 years.

D. Capital Cost Rate Base

ORS' Position

ORS witness Kollen testified that the adoption of a CCR Rider is a balanced mechanism to recover allowed NND costs less related regulatory liabilities over a 20-year period. Tr. p. 987-10, ll. 3-9. Witness Kollen recommended the CCR Rider be levelized or annuitized and the use of the CCR Rider was not dependent on approval of the business combination. Tr. p. 987-40, ll. 15-18. Witness Kollen calculated the Capital Cost rate base, upon which the Joint Applicants will earn a return on equity, to be $712.7 million. Tr. p. 1028, ll. 7-8, p. 991-1, l. 1. The Table below was included in witness Kollen's surrebuttal testimony and depicts his calculation of the appropriate rate base for the abandoned NND Project.

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SUMMARY OF RATE BASE AT DECEMBER 31, 2018
SOUTH CAROLINA RETAIL
$ MILLION

	ORS Recommend	ORS Securitiz	SCE&G No Merger	Dom Merger
Prudent and Allowed NND Costs	2,683.7	2,683.7	4,023.8	3,138.6
Less: Reg Liab for Toshiba Proceeds	(1,063.6)	(1,063.6)	(981.0)	0.0
Less: Reg Liab for Return on Toshiba Proceeds	(106.4)	(106.4)	0.0	0.0
Less: Reg Liab for Refund of Revised Rates	(392.0)	(392.0)	0.0	0.0
Less: Reg Liab for Return on Ref of Revised Rates	(37.3)	(37.3)	0.0	0.0
Less: Liability ADIT @21%	(256.2)	413.4	(759.2)	(783.1)
Less: Reg Liab for Excess Liab ADIT (Bef Gross-Up)	(180.6)	(180.6)	(404.7)	(417.4)
Add: NOL ADIT @21%	18.0	0.0	503.5	482.9
Add: Reg Asset for Excess Asset NOL ADIT (Bef Gross-Up)	47.0	47.0	294.8	294.8
Total Rate Base	712.7	1,364.2	2,677.2	2,715.8

Witness Kollen recommended the Capital Cost rate base be derived by subtracting all regulatory liabilities from rate base identified and described in his testimony in conjunction with the ORS CCR. Should the securitization become available as discussed earlier in this Order, the Capital Cost rate base may change as securitization impacts the liability ADIT.

Joint Applicants' Position

The Joint Applicants Capital Cost rate base calculation fluctuates with the each of the recovery plans offered: CBP, Plan B, Plan B-L and the disfavored options, No Merger CBP and the Base Request. The Joint Applicants did not provide specific testimony to highlight the Capital Cost rate base impacts of each plan; however, the record contains evidence from various sources that the Joint Applicants CBP would produce a NND rate base of $2.7 billion (retail); the No Merger CBP would produce a NND rate base of $2.6 billion (retail); the Plan B would produce a NND rate base of $2.772 billion (total Company) and Plan B-L would produce a NND rate base of $2.768 billion (total Company). Tr. p. 1027, ll. 16-21; Tr. p. 1027, ll. 23-25; Tr. p. 1028, ll. 1-2; Tr. p. 4214, ll. 12-15; Tr. p. 4214, ll. 12-15. While the Joint Applicants through

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Plan B-L have agreed to forego recovery of any NND costs after March 12, 2015, the Joint Applicants have testified that the economics of the merger limit their ability to accept the Capital Cost rate base proposed by ORS. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-1A, p. 1; Tr. p. 2808, ll. 12-15.

Commission Findings

The South Carolina Supreme Court has defined rate base as "the amount of investment on which a regulated public utility is entitled to an opportunity to earn a fair and reasonable return; and represents the total investment in, or the fair value of, the used and useful property which it necessarily devotes to rendering the regulated services." *Hamm v. Pub. Serv. Comm'n,* 309 S.C. 282, 286, 422 S.E.2d 110, 112 (1992) (citing Southern Bell Tel., 270 S.C. at 600, 244 S.E.2d at 283). "Rate base should reflect the actual investment by investors in the Company's property and value upon which stockholders will receive a return on their investment." *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 312, 313 S.E.2d 290, 292 (1984).

SCE&G has requested the Commission determine the amount of the capital cost rate base.[19] Through Plan B-L, the Joint Applicants have voluntarily reduced their Capital Cost rate base. Upon review of the evidence presented by the parties and introduced into the record, the Commission finds that the Capital Cost rate base proposals offered by the Joint Applicants in each of the recovery plans are not just and reasonable and not in the public interest because they are disproportionately weighted in favor of the shareholders and unfairly disadvantage the Ratepayer.

[19] Application p.46

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SCE&G has abandoned construction of the Project and, as a result the Ratepayer will not receive benefit of the services from two nuclear plants and the nuclear plants will never be considered "used and useful." The regulatory compact allows shareholders an opportunity to earn a reasonable return on the total investment in used and useful property devoted to serving its Customers. The Joint Applicants ask the Commission to up-end this regulatory compact. The Commission has a duty to uphold the public interest and ensure just and reasonable rates are enacted. Accordingly, the Commission rejects the Capital Cost Rate Base calculations offered by the Joint Applicants and sets a Capital Cost Rate Base of $712.7 million to be recovered from Customers through the CCR Rider over a period of 20 years.

E. Securitization

Joint Applicants' Position

Only Dominion witness Chapman provided lengthy specific criticism of securitization. Witness Chapman provided six specific objections: 1) that there is no current legal framework in South Carolina for securitization, 2) that given the General Assembly's recent amendments to the BLRA that investors may fail to purchase the securitized debt, 3) that somehow "the assumed use of proceeds would be a highly inefficient and (in my view) imprudent use of capital," 4) due to its size, the securitized debt would be expensively priced, 5) the large size of the debt, the size of the charge in Ratepayers bills would be too high, and 6) securitization is not compatible with Dominion's plan. Tr. p. 2808-4, l. 22 to p. 2808-7, l. 12. SCE&G witness Ellen Lapson testified that, due to the lack of a law authorizing it, securitization is not an option at the present time for the Commission to consider, and that various additional factors could delay or rule out the use of a securitization transaction. Tr. p.2211-5, l. 7 to p. 2211-6, l. 7 and Tr. p. 2211-39, l. 12 to p. 46, l.

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3. In terms of whether the Commission should actually require securitization, however, Ms. Lapson did not recommend the Commission reject the proposal: "[L]et me say I am an agnostic about securitization. I am a neutral on that point." Tr. p.1849, ll. 21-23. SCE&G Witness Iris Griffin additionally testified that securitization assessments presented by intervenors were impractical and "without substance" because the terms and costs have not been fully established and quantified.

Additionally, several of the Joint Applicants' witnesses were questioned regarding the potential use of securitization on cross-examination and questions from Commissioners. SCE&G CEO Jimmy Addison, in responding to a question from Commissioner Ervin stated that Securitization, even if a law were passed by the South Carolina General Assembly authorizing such, could not be used by SCE&G. Mr. Addison stated that all SCE&G's debt has certain "make whole" provisions; meaning that if that debt were purchased by a third-party entity to be securitized, that the current debt holders would have to be paid a high premium, thus eliminating the financial and rate advantage of securitizing the debt. Mr. Addison, however, also stated that the Company's position regarding securitization was that it could potentially be useful in paying off the equity portion of the Project. Tr. p.1724, l. 13 to p.1725, l. 1.

Dominion Witness Warren testified Tr. p.2808-4, l. 19 to p.2808-7, l. 12 that consideration of securitization was not relevant to this proceeding because no such law exists in South Carolina, and that, provided the merger is approved by the Commission, that Dominion should be allowed to earn a return on the NND costs, even though Dominion put no money into the Project and took no risk.

<u>ORS' and Intervenors' Position</u>

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Both ORS witness Kollen and CCL/SACE witness Binz provided substantial testimony opining that, were the South Carolina General Assembly able to enact a law authorizing securitization, that securitization of the NND debt incurred by SCE&G would be most beneficial to Ratepayers and also beneficial to the financial health of the Company.

On behalf of the SCCL/SACE, witness Binz provided the Commission with an in-depth explanation and analysis of how securitization works, where and how often it has it has been used, and why he recommends it be considered by the State of South Carolina and this Commission. See, Tr. Pg. 2206-15, ln. 14 to Pg. 2206-22, ln. 20. Witness Binz testified that securitization would provide financing for a portion of the NND costs with low cost bonds to be repaid by a dedicated revenue stream resulting from a monthly fee that would be placed on customer's bills. He predicted that in South Carolina he would expect the carrying costs to be approximately 3.2%; which is significantly lower than SCE&G's weighted average cost of capital of 8.17%. The difference between these two numbers would produce significant rate relief to SCE&G Customers. Witness Binz also showed through his Exhibit RB-4 that securitization is both a relatively common and well tested method and identified 65 instances in 17 states in which securitization has been used by U.S. utilities.

In responding to SCE&G witness Lapson's criticism of his recommendation of securitization, witness Binz acknowledged that with the South Carolina legislature currently out of session, it is not possible to enact securitization legislation before this docket is closed. Tr. p. 2211-2, ll. 3–5. He testified that Ms. Lapson, however, ignored the possibility that the Commission could make its approval of the SCE&G and Dominion merger contingent upon the Joint

Applicants' use of securitization for certain stranded NND costs when and if it becomes available in the future. Tr. p. 2211-2, ll. 8 -21.

ORS witness Kollen similarly testified that the Commission should direct in its Order that *in the event that* South Carolina enacts enabling legislation for securitization, SCE&G should be directed to securitize the allowed NND abandonment costs, without reduction for regulatory liabilities and ADIT. Tr. p. 987-9, l. 15 to p. 987-10, l. 19. Mr. Kollen additionally recommended that if the NND costs could be securitized, that the Commission authorize a net rate increase of between $35.3 million and $52.4 million in the form of a securitization tariff to collect the amounts sufficient to repay the NND costs and a CCR surcredit (negative rate) rider. Mr. Kollen testified that if the NND costs could be securitized, that the rate increase would be between $50.9 and $33.8 million less than those which would be produced under the ORS Optimal Plan. Tr. p. 987-10, ll. 11-19.

Several other intervenor witnesses put forth information about expected savings that could be achieved through securitization. DoD/FEA witness James Selecky modeled several scenarios and noted that securitization could save Ratepayers "over $1 billion in nominal dollars." Tr. p. 1890-1, ll. 18-21; Exh. JTS-1. CCL/SACE Witness Uday Varadarajan examined six V.C. Summer NND cost recovery scenarios, including but not limited to the Joint Applicants' preferred Customer Benefits Plan and a scenario similar to the ORS Optimal Plan. He concluded that securitization would save Ratepayers a substantial amount of money in each of the scenarios he examined— between $0.5 and $2 billion in terms of net present value of revenue requirements, equivalent to bill savings of 2 to 10% compared to current levels. Tr. p. 2260-4, ll. 1-4. Mr. Varadarajan also concluded that securitization would have no long term adverse impacts on the

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utility's credit rating and could even improve its credit position if the utility reinvests some of the proceeds from securitization into inexpensive clean energy. Tr. p. 2262-5, ll. 1-2 and Tr. p. 2262-6, l.6 to p. 2262-7, l.8. He addressed SCE&G Witness Griffin's concerns about the "substance" of his assessment by pointing out that he used transparent assumptions provided directly from SCE&G or based on recent debt market conditions. *Id.* Tr. p. 2262-7, ll. 12-22. In addition, witness Varadarajan's conclusions are supported by examples across the country where securitization has been used to mitigate Ratepayer costs. *Id.* Securitization was very recently used to save Ratepayers in Florida nearly $700 million in costs associated with the abandoned Crystal River nuclear plant. *Id.* As discussed in Mr. Binz's direct testimony, securitization would mean hundreds of millions of dollars savings for Customers and need not happen at the same time as the merger. Nearly the same savings could be obtained by refinancing some amount of the stranded V.C. Summer costs on SCE&G's books through securitization after the merger closes, assuming the Joint Applicants accept such a condition to their merger in an Order of the Commission in this proceeding. Tr. p. 2211-2, ll. 8-21.

Commission Finding

We find that the implementation of securitization as explained in the direct testimony of ORS witness Kollen and SCCL/SACE witness Binz is appropriate for recovery of the stranded NND costs at issue in this case, provided that a law authorizing securitization is enacted by the State of South Carolina. Under securitization financing the right to collect the allowable NND costs would be sold to a third party special purpose entity. This third party would then finance this asset with low-cost, high-quality debt, thus significantly reducing the cost of financing the NND costs during the amortization and recovery period. Tr. p. 987-10, ll. 3-10. The bonds are then

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repaid through a dedicated revenue stream resulting from a monthly fee placed on Ratepayer's bills. Tr. p. 2206-16, ll. 3-18. Securitization has been used successfully in states across the country to lower Ratepayer costs. Tr. p. 987-7, ll. 12-22.

The Commission believes that the limited evidence presented by the Joint Applicants, urging the Commission to reject securitization, fails to outweigh the multiple benefits of securitization testified to by Mr. Kollen, Mr. Binz, Mr. Selecky, and Dr. Varadarajan. Although Dominion witness Chapman and SCE&G Witness Lapson gave lists of reasons why securitization may not work; most of these reasons are based on conjecture that at almost every point investors and the market will fail to act in a usual or predictable way. Simply speculating that investors will shy away from, or require a higher return, on the securitized debt does not outweigh the potential savings and benefits of securitization for both SCE&G and its Ratepayers. The fact that securitization does not fit in with Dominion's plan because it would not allow SCE&G to collect a return on the abandoned Plant carries little weight with this Commission.

The Commission must weigh the interests of both the utility as well as the Ratepayers in determining "just and reasonable" rates. S.C. Code Ann. §58-27-810 (Supp. 2018). Dominion has made multiple threats to "walk" from the merger if: 1) the CBP was not adopted by the Commission, 2) the first revised ("Plan B") CBP was not approved by this Commission, and 3) the second revised Plan B-L was not approved by this Commission. Regardless of how any of the parties may react to the final order of the Commission in this case, it would be inappropriate for the Commission to approve a merger or "plan" which is skewed too favorably towards either the interests of the regulated utility (or the shareholders of its parent company) or the Ratepayers. We believe that this is particularly true when the primary reason for giving an advantage to the utility

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would be to ensure that utility (and the shareholders of its parent company) a steady stream of revenue, including a rate of return, on an inoperative and abandoned plant over a 20-year period.

While there is no guarantee that the South Carolina General Assembly will pass securitization legislation, the savings that Ratepayers could realize over the long period of repayment are so significant that this issue cannot be ignored by the Commission or brushed aside because it does not fit with one of the utility's plans. It would be inappropriate for this Commission not to avail itself of a common-sense option that if made available by the General Assembly, would save Ratepayers hundreds of millions to billions of dollars. The narrow confines of the BLRA limit our options, but as Ms. Lapson phrased it, securitization bonds "take something bad and make it least worst . . . ." Tr. Pg. 1853, l. 11.

If the South Carolina General Assembly enacts a securitization law, that law may, or may not, require the Joint Applicants to implement securitization of the stranded NND costs. To ensure, in the event of such a law being enacted, the ability of this Commission to issue a financing order and establish a non-by-passable collection mechanism, we therefore find that it is in the public interest to condition its approval of the merger to require the use of securitization for V.C. Summer stranded costs if and when securitization becomes available in the future. Should the South Carolina Legislature enact a securitization law at any date prior to the full retirement of the NND debt, any party may file a petition or motion to request either a partial or full securitization of the remaining unrecovered costs of the NND project in accordance with the terms of the legislation.

While the Joint Applicants may not favor the use of securitization, the Commission believes that securitization could both protect Ratepayers and serve the interests of the Joint Applicants.

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F. Rate of Return and Cost of Capital

Joint Applicants' Position

SCE&G witnesses Hevert, Hubbard, and Lapson all filed testimony regarding the economic issues presented by both the Abandonment and Merger Petitions. Tr. p. 1762, 1778 and 3472. Specifically, Ms. Lapson summarized the rating agencies principle concerns regarding SCANA's and SCE&G's credit condition. Her testimony presented her opinion that while the proposed Dominion CBP and Dominion business combination provide a strong prospect of restoring SCE&G's creditworthiness, that the ORS Optimal Plan, as well as proposals by Intervenor witnesses O'Donnell and Rubin, would likely drive SCE&G's issuer credit into the sub-investment grade. Tr. p. 1762-46, ll. 7 - 22.

Witness Hubbard was also critical of the ORS Optimal Plan and opined that if all of ORS Witness Kollen's recommendations were approved, that SCE&G would be allowed to only recover $321.2 million of the $4.0 billion in NND costs. He concludes that such a cut would increase the future cost of capital for SCE&G, which would ultimately be passed on to Ratepayers in the form of higher rates. Tr. p.3488-5, l. 15 to p.3488-7, l. 20.

SCE&G witness Hevert testified that he recommended a ROE of 10.75%, with a range of ROE Estimates of between 10.25% and 11.00%. Mr. Hevert used a variety of methodologies in his analysis, including two forms of the Discounted Cash Flow ("DCF") model, the Capital Asset Pricing Model, the Empirical Asset Pricing Model ("ECAPM") and a Bond Risk Premium analyses. Tr. p. 1784-3, l. 19 to p. 1784-4, l. 1.

Somewhat counter to the recommendations of SCE&G witnesses Lapson, Hubbard and Hevert, the Joint Applicants requested in their Application that "until the balance of the Capital

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Cost Rate Base is fully recovered" that an ROE of 10.25%, as previously approved by this Commission in Order No. 2012-951, be applied to "the balance of the Capital Cost Rate Base" along with a weighted average cost of debt of 5.85% and a capital structure of 52.81% equity. App. 47, Para. 126. An Alternative CBP was filed by Dominion with the Commission on October 25, 2018 via the Supplemental Rebuttal Testimony of Mr. Prabir Purohit. Tr. pgs. 2821-1 to 2821-8. In this Plan B, Dominion lowered its requested ROE from 10.25% to 9.9% and revised its proposed cost of debt from 5.85% to 5.56%. On November 20, 2018, the Joint Applicants filed yet a second alternate customer benefit plan, identified as Plan B-L, as Exhibit PP1-A to the Second Supplemental Rebuttal Testimony of Dominion witness Purohit. Tr. pgs. 4217-1 to 4217-13. As with the Plan B, Plan B-L requested approval by the Commission of an ROE of 9.9%. and a cost of debt of 5.56%.

It is worth noting that SCE&G witness Lapson, in responding to questions from SELC Attorney Will Cleveland went so far as to state that the Company should even be permitted to recover imprudently incurred NND costs in order to sustain the financial viability of the Company. In response to questions from ORS she doubled down and said that her ONLY concern was the financial health of the Company – even if that means Ratepayers pay a higher return due to the imprudent acts of the Company.

ORS' Position

ORS witness Baudino was qualified as an expert witness in the areas of Rate of Return, Cost of Capital and Credit Quality. Tr. p. 807, l. 21 – p. 808, l. 3. In his Direct and Surrebuttal Testimonies, Mr. Baudino recommended a 9.1% ROE for SCE&G's allowable NND costs. Mr. Baudino's analysis was based on his use of the DCF model. While he also employed a CAPM

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analysis, he did not include its results into his recommendation, even though his CAPM analysis produced a lower ROE than his DCF results. Tr. p. 810, ll 3 – 16. Mr. Baudino recommended to the Commission that it base its allowed ROE based on the returns of an investment grade utility company, rather than a hypothetical ROE based on SCE&G's current financial situation. Tr. p. 810, l. 17 – p. 811, l. 2.

Mr. Baudino further supported his ROE recommendation by demonstrating that the average allowed ROE's for 2018, January through early October, was approximately 9.6%. Baudino Surrebuttal Table 2, Tr. p. 820-5. He stated that his 9.1% recommendation was thus demonstrably closer to the current national average than Mr. Hevert's 10.75% recommendation. Mr. Baudino accepted the Joint Applicant's proposed equity ratio of 52.81%, provided that it is balanced with his 9.1% recommendation, as both represent a balance between a more financially healthy capital structure for SCE&G and the costs incurred by Ratepayers. Tr. Pg. 813, ll. 5-12. Mr. Baudino additionally recommended that certain service quality requirements be placed on Dominion if the Commission were to approve the proposed merger.

Finally, Mr. Baudino proposed certain credit quality protections to protect South Carolina Ratepayers from increases in the cost of equity and the cost of debt because of the proposed merger. He proposed that the Commission should not allow Dominion or SCE&G to pass through to Ratepayers any increases in the cost of equity due to adverse effects from the proposed acquisition and, further, 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. See, Tr. p. 816-63, l.11 to p. 816-64, l.2.

<u>Commission Finding</u>

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ORS witness Baudino and SCE&G witness Hevert both presented extremely detailed testimony regarding the methods and models which each used to reach their recommended appropriate rate of return and ROE. However, we believe that Mr. Hevert's recommendation of a 10.75% ROE should be given relatively little weight in view of the fact that the Joint Applicants initial request of a 10.25% ROE was voluntarily reduced in their Plan B and Plan B-L to a requested ROE of 9.9%. The Joint Applicants themselves thus appear to have little confidence in Mr. Hevert's recommendation.

Several of the Intervening parties in this case, notably the SCEUC, Sierra Club/FoE, and AARP provided testimony during the course of the hearing to support their positions that SCE&G was entitled to **no** return on or recovery of its stranded NND costs. None of these intervening parties, however, presented any testimony or evidence discussing or recommending an additional alternative ROE to those proposed by ORS and the Joint Applicants. While our finding regarding the amount of allowable NND costs is addressed elsewhere in this Order, we find that the Applicants are, by law, entitled to a reasonable return on such allowable costs. See, *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct. 281 (1944) and *Bluefield Water Works and Improvement Co. v. Public Service Comm'n*, 262 U.S. 679, 43 S.Ct. 675 (1923)**.** We do not believe that it is reasonable, or a fair balancing of the interests of the Utility and its Ratepayers, to approve an inflated ROE due to the poor financial condition which SCE&G has itself created. While a public utility is entitled to earn a fair return, it has no entitlement or constitutional right to earn profits comparable with highly profitable enterprises or speculative ventures. *Bluefield v. Pub. Serv. Comm'n*, 262 U.S. 679, 690. We therefore find that the analysis and methodology used

by Mr. Baudino is the most compelling of those presented into evidence in this case and hereby adopt his recommended ROE of 9.1%.

Regarding the testimony and other facts in evidence addressing an appropriate ROE, it is worth noting that the Commission decision here is limited to the allowable ROE for SCE&G's stranded NND costs. The Company's current general rate base continues to be allowed an ROE of 10.25% as approved by this Commission in Order No. 2012-951 in Docket 2012-218-E. We agree with Mr. Baudino's recommendation that his recommended rate of return on SCE&G's allowed NND costs be collected by SCE&G through a CCR Rider.

In reaching his recommendation of a 9.1% ROE, Mr. Baudino performed an analysis of current market conditions primarily using the DCF model. The DCF relies on current stock prices in the marketplace and has normally been regarded by this Commission as the best indicator of the returns investors are requiring in the current marketplace for investment grade regulated utility companies. A major difference between Mr. Baudino s recommended ROE and that of Mr. Hevert is whether SCE&G should be allowed an adder or premium to its allowed ROE because it's credit ratings are currently borderline investment grade. Essentially, SCE&G has asked this Commission to reward it with a higher return because the company has driven itself into the ditch. We agree with Mr. Baudino's and the ORS's position that "(i)t is important to keep in mind it was the actions of SCE&G's management that are responsible for the Company's current credit ratings, not the ORS recommendations in this case." Tr. p. 820-14, ll. 20-22. It is self-evident that the management decisions made by SCE&G are the primary cause of SCE&G's current precarious financial situation. The argument that SCE&G is entitled to a higher ROE based on its own mismanagement

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is illogical and wholly unfair to SCE&G's Ratepayers who should not be required to pay higher rates, based on a high, well above average, ROE due to SCE&G's mismanagement.

In his Direct Testimony Mr. Baudino provided an analysis showing that the average ROE authorized by the various utility regulatory bodies throughout the United States through early October 2018 is approximately 9.6%. Tr. p. 820-5. While this is not the basis for the Commission finding that 9.1% is an appropriate ROE, it does affirm the reasonableness of Mr. Baudino's recommendation of 9.1%. This evidence additionally highlights how extreme Mr. Hevert's recommendation of a 10.75% ROE is in relation to the average ROE's granted to regulated electric utilities in 2018.

While Mr. Baudino was criticized by Mr. Hevert for allegedly only using a DCF analysis to produce his recommended ROE, the evidence in the record shows that Mr. Baudino also performed a CAPM analysis. However, as his CAPM analysis yielded a very low range of between 7.97% and 8.08% for a forward looking CAPM and between 6.52% - 7.78% using historical risk premiums. Tr. p. 816-33, Table 2. Based on this very low range Mr. Baudino choose to exclude his CAPM analysis results from his recommendation. Conversely, SCE&G Witness Hevert failed to include in his recommendation the results of his DCF analysis. Further, there is not a single DCF analysis in Mr. Hevert's testimony to support the low end of his recommended range of 10.25%. Again, we believe that these results highlight the reasonableness of Mr. Baudino's recommended ROE of 9.1%.

In addition, Mr. Hevert's mean and median DCF analyses and Bloomberg CAPM analysis support an ROE significantly less than his recommended 10.75% ROE and are more consistent with Mr. Baudino's 9.1%. Neither do his Risk Premium results, based on his analysis of

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Commission-allowed returns, even remotely support a 10.75% ROE for SCE&G or any other investment grade regulated utility.

A Capital Structure preserving SCE&G's equity ratio of 52.81%, and a long-term debt ratio of 47.19%, as of September 30, 2017 is just and reasonable and fairly balances the interests of SCE&G and its Customers. While this number is hypothetical and doesn't reflect the lower actual equity ratio after the write-downs which have been made by SCE&G, it is a fair balancing of the interests which matches the 9.1% ROE with a more financially healthy capital structure for SCE&G. This Capital Structure includes a 5.56% Debt Rate.

As previously noted, Mr. Baudino used variations of both the DCF and CAPM to develop his recommended ROE. He performed both average, and median, growth rate DCF analyses and both historical and forward looking CAPM analyses. Tr. Pg. 816-22, ln. 8 to Pg. 816-34, ln. 7. These four analyses under the DCF and CAPM models yielded ROE's of between 6.52% and 9.48%. Mr. Baudino provided detailed testimony in explaining the sources and calculations used by him to produce his recommended ROE of 9.1% which was based on his DCF analyses. Mr. Baudino's extensive testimony provides clear and substantial evidence to support the Commission's finding that an ROE of 9.1% is just and reasonable.

Testimony was also received from Mr. Baudino and SCE&G witness Lapson discussing SCE&G's merger conditions and proposed benefits of the merger and from Mr. Baudino and SCE&G witness Hubbard concerning cost of capital and capital markets. While there is no dispute as to the actual current credit ratings and that the potential exists for SCE&G, if left to operate as an independent utility, to pay higher cost of capital due to the increased level of risk which SCE&G is currently experiencing. However, as discussed above, the current and potential future lower

credit ratings, and resulting higher cost of debt, are the effect of the actions of SCE&G's management. Ratepayers should not be required to pay a premium on the return SCE&G is allowed on abandoned plant to compensate shareholders for the misdeeds of management. Rather, this cost should be paid by the equity holders in the form of a lower approved ROE.

In the same vein, we believe that the credit quality protections recommended by Mr. Baudino are reasonable and easily implemented to further protect Ratepayers from future increases in the cost of equity and cost of debt.

G. Ratemaking Conditions

Merger Related Ratemaking Conditions

Prior to reaching a final decision on the Joint Applicants request to approve a merger, the Commission has carefully reviewed various merger related proposals presented by the Joint Applicants, ORS and other parties. The Commission notes that the Joint Applicants initially did not present or calculate any specific beneficial savings resulting from shared services if the Commission were to approve their requested merger. Application at 17. Pursuant to the terms of SC Code Ann. § 58-27-1300 any electric utility seeking to consolidate or merge its utility property, powers or privilege must first obtain Commission approval. The Joint Applicants through their filing, have conferred jurisdiction to the Commission to apply the provisions of SC Code Ann. §58-27-1300 at the holding company level. Based upon a review and examination of the testimony presented and related exhibits, the Commission has determined that the substantial evidence of record in this proceeding supports both consideration and adoption of certain merger conditions that must be applied to the proposed merger in order to properly recognize for rate making purposes

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that Ratepayers should gain certain benefits that should be reflected in rates charged to all classes of Ratepayers.

The Commission notes that no party of record in these proceedings has expressly opposed Joint Applicants request for approval of the business combination between SCANA and Dominion. Based upon the Testimony of ORS witnesses Kollen and Richardson, ORS supports the Joint Applicants proposal to abandon construction of V.C. Summers Unit 2 and Unit 3. However, ORS conditions its decision not to oppose the proposed merger on the condition that the Commission adopt its recommended merger savings conditions. However, the Commission was presented with various proposed merger conditions necessary to flow merger benefits directly to Ratepayers.

Merger Savings

In analyzing the record developed during the public hearing, the Commission, has determined that any approval of the proposed merger must include consideration of flowing any identified economic benefits back to Ratepayers on a timely basis.

ORS witness Kollen presented testimony and exhibits in support of his recommendation that the Commission examine and apply the economic concept of merger savings to the proposed merger based upon his examination of savings that were achieved by Dominion in prior acquisitions. Mr. Kollen referenced two prior Dominion acquisitions of East Ohio Gas and Hope Natural Gas. [20] Mr. Kollen reported a two-year cumulative merger reduction of 41% in annual O&M/A&G expenses to Dominion East Ohio in 2001 and 2002. Similarly, Mr. Kollen testified

[20] East Ohio Gas is now Dominion East Ohio and Hope Natural Gas is now Dominion Hope (see, Response to ORS AIR 7-8)

that Dominion Hope realized a two-year cumulative reduction of 32% in annual O&M/A&G expenses in 2001 and 2002. Tr. p.987-62 l. 3-21.

ORS witness Kollen estimated that the annual expense savings flowing from a Commission approval of the proposed merger "could be $100 million or more, of which the electric savings could be $70 million or more." Tr. p. 787 and p. 987, l. 63. ORS recommended that the Commission establish a merger savings rate reduction through a Merger Savings Rider of $35 million during the first 12 months if the merger were to be approved and then $70 million annually thereafter.

Joint Applicants testified that actual merger savings were speculative and that the Commission could examine and establish any savings in the next case proceeding. *See*, rebuttal testimony of Hubbard, Tr. pp. 3488-57 & 58. Based upon a review of the testimony and evidence provided by ORS witness Kollen, the Commission has concluded that recognizing merger savings based upon the actual experience of Dominion in previous mergers is both reasonable and conservative, is supported by the record and is not the product of surmise, speculation or conjecture as long as such merger savings are subject to review and true up during a later Commission rate proceeding.

Federal Tax Cuts and Jobs Act Savings

The Commission has examined the record regarding several different proposals addressing tax related matters. Given the fact that the Commission has determined that it will approve the proposed merger, the Commission must now examine potential tax savings resulting from the application of the TCJA. The questions presented to the Commission are: 1) what is the income

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tax expense included in present SCE&G base rates and 2) what is the effect on that income tax expense resulting from the enactment of the TCJA?

SCE&G witness Nagy testified that using a test year of 2017 was appropriate and served as a more accurate calculation of the income tax savings resulting from the application of the TCJA. Tr. p. 991-19, l. 9 to p. 991-21, l. 6. ORS witness Kollen testified in surrebuttal that "The evident problems with this approach is that it allows the Company to use and retain the income tax savings from the TCJA to offset increases without filing a rate case or allowing the Commission to conduct a comprehensive rate review. *See*, Tr. p.991-20, ll.9-16. ORS witness Kollen testified that income tax expense included in present rates is "known and measurable" by simply reviewing the record in Docket No. 2012-218-E and adjusting the amount to reflect changes in kWh sales. ORS witness Kollen asserted that his proposed approach was "exact". Tr. p. 991-20. Mr. Kollen also noted the conflict with the SCE&G statement contained in a letter to the Commission dated January 24, 2018 and the testimony of SCE&G witness Nagy: "[i]f the Joint Application [in Docket No. 2018-370-E] is approved and if the proposed merger between those companies is concluded, Dominion has committed that it will pass the full amount of the tax savings arising from the change in tax law irrespective of the effect on SCE&G's ability to earn its allowed returns." Tr. p. 991-21 SCE&G witness Griffin also argued that the Commission should calculate the one-time refund of the 2018 tax savings by using a 2017 test year. ORS witness Kollen testified that the SCE&G proposal was "… contrary to the direction the Commission provided to electric utilities in Docket No. 2017 – 381 – A." Tr. p. 991-20 l. 9-16.

<u>Commission Finding</u>

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The Commission has concluded that the ORS treatment of TCJA is consistent with prior directives from the Commission and is both fair and reasonable based upon a careful review of the entire record in this proceeding.

Net Operating Loss Accumulated Deferred Income Tax ("NOL ADIT")

The tax issues surrounding NOL ADIT and its impact on Ratepayers was subject to wide ranging and differing positions during the hearing. ORS witness Kollen pointed out that while the Company did not change its proposal to include a return on the entire NOL ADIT amount in rate base, Mr. Warren provided a calculation in his rebuttal testimony that reduces the NOL ADIT to partially reflect the disallowed NND costs. However, it does not appear that the Joint Applicants have endorsed Mr. Warren's calculation. His calculation assumes the NOL and NOL ADIT were caused based on the percentage of allowed and disallowed NND costs compared to the total NND costs. He calculated the percentage of allowed NND costs under the Applicants' Merger CBP and multiplied it by the estimated NOL carryforward and NOL ADIT at 12/31/18 to quantify the amount of the allowed NOL ADIT to be included in rate base for ratemaking purposes. The Joint Applicants initially sought to include a return on the entire NOL ADIT amount in rate base and an amortization of the excess portion of the SCE&G asset NOL ADIT in operating expenses until fully utilized and ultimately reduced to $0 under the proposed No-Merger BP and the Merger CBP. ORS witness Kollen argues that the Dominion approach improperly allocates disallowed NND costs to allowed NND costs and results in an improper cost burden on SCE&G Ratepayers. ORS recommends that the Commission treat disallowed NND costs for ratemaking purposes as having never been incurred or deducted, which would result in a lower NOL and NOL ADIT. Under the ORS proposal, only the NOL carryforward and the NOL ADIT related to the allowed NND costs

are recognized for ratemaking purposes. Under the ORS plan taxable income in 2016, 2017 and 2018 would be used to reduce the sum of the allowed and disallowed NND abandonment loss deductions sequentially (allowed NND costs first, then disallowed NND costs) as opposed to proportionately as proposed by Mr. Warren in his calculation. ORS witness Kollen described how the Commission should calculate the NOL and NOL ADIT related to the allowed NND costs and recommended that the Commission specifically adopt that methodology to avoid any ambiguity in the proposed recovery of NND costs or in any other future ratemaking proceeding.

The Commission, as part of its review of this important tax matter, also examined the testimony of SCE&G witness Warren addressing whether the Commission should include or exclude the NOL ADIT on the $1.3 billion one-time rate credit from SCE&G's revenue requirement. If the Commission approves a $1.3 billion one-time credit, this will reduce SCE&G's taxable income and create an additional taxable loss and increase the NOL carryforward along with the related DTA. ORS witness Kollen directed the Commission's attention to Dominion rebuttal testimony in which Dominion's witness Warren stated:

> Under the Customer Benefits Plan, the payment is funded by shareholders to return amounts previously collected on the NND project. to the extent the $1.3 billion rate credit generates or adds to SCE&G's NOLC, that portion of the NOLC-related DTA will be borne solely by shareholders and will not increase the NOLC DTA included in the Capital Cost Rider.[21]

Because of the above statement from Dominion witness Warren, ORS witness Kollen recommended the Commission adopt a condition to ensure that SCE&G Customers will not incur this cost through the CCR rider or in any other future ratemaking proceedings. Mr. Kollen also

[21] Tr. p.991-21 – 991-22, 11. 20-2

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recommended the methodology necessary to ensure that the exclusion of the NOL ADIT was calculated properly.

The Commission was presented with tax concerns of a potential "normalization violation "raised by the Joint Applicants. Dominion witness Warren expressed his concern that the ORS recommendation might result in a normalization violation based on his review of certain IRS Private Letter Rulings ("PLR"). ORS witness Kollen testified that he had reviewed each of the PLR's cited by Mr. Warren and noted that none of the PLR's addressed the issue of an abandonment loss. The resolution of this normalization dispute rests on whether the abandonment loss in this proceeding is the last or next to the last deduction in the year of the NOL. ORS witness Kollen stated that in the absence of a specific IRS PLR, that Dominion witness Warren had "simply assumed" that the abandonment loss was the next to last deduction in 2017 without any authority for his concern of a potential normalization violation. Mr. Kollen noted that there can be no violation unless and until the IRS determines that there is a normalization violation and that determination is specific to the facts and circumstances of the taxpayer. It is worth noting that if Mr. Warren's argument regarding the tax depreciation deduction being the last deduction is correct, then the Applicants' commitment to exclude the NOL ADIT resulting from the $1.3B one-time customer rate credit would result in a normalization violation. As a result, the Applicants' positions on these two issues conflict with one another Mr. Kollen also noted that a claim of a normalization violation had never been raised by the Joint Applicants prior to the filling of Mr. Warren's testimony. ORS recommended that the Commission adopt the ORS calculation of NOL ADIT which assumes for ratemaking purposes that the disallowed costs were never incurred or deducted. The Commission agrees with the ORS proposed approach.

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We find that there is no specific period which the Commission may assign as an appropriate utilization period for the NOL carryforward and to amortize NOL ADIT. The NOL ADIT that is amortized or realized in future years is a function of the taxable income in those years and the magnitude of the NOL ADIT. It is therefore possible that the allowed NOL ADIT will be amortized or realized over a shorter period than the 10 years that Mr. Kollen reflected in the quantification of the ORS Optimal Plan.

Treatment of Construction Work in Progress

ORS' Position[22]

ORS obtained transaction-level detail of all new nuclear development and transmission charges to CWIP during each review period. (Tr. p. 916-3, ll. 15-16). ORS sampled transactions each month and tested the sampled invoices were verified by ORS for mathematical accuracy and related support, ensured that the transaction occurred during the review period, and that the nature of each expenditure was related to the project. (Tr. p. 916-3, ll. 17-21). Any expenditures that did not meet these criteria were deducted from the CWIP balance. (Tr. p. 916-3, l. 23, p. 916-4, l. 1). ORS calculated the allowable CWIP balance as of March 12, 2015, with an additional 12-day prorated balance of CWIP expenditures incurred during March 2015, less any adjustments ORS made in the previous rate proceedings to the CWIP balance in February 2015, for a resulting balance of $2,865,679,745. (Tr. p. 914, ll. 5-11). ORS then reduced that amount by $19,943,940 to reflect removal of expenditures incurred through March 12, 205, for all SCE&G bonuses, allocated NND, consultant fees, Company adjustments contained in SCE&G witness Kochem's

[22] While parties may differ on resulting CWIP disallowances, because this Commission agrees with the date of March 12, 2015 as the date of imprudence, it need not analyze each parties' CWIP recommendations.

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testimony and costs related to fraudulent procurement activity for a total of $2,845,735,805. (Tr. p. 914, ll. 12-22).

Commission Finding

Upon weighing the evidence presented to the Commission by the Parties into the record, this Commission finds the ORS calculation for allowable CWIP to be reasonable. No parties disputes the methodology used by ORS to calculate the CWIP, but rather only the date from which allowable CWIP is calculated. Because this Commission found that any costs incurred by the Company subsequent to March 12, 2015, were imprudently incurred, no CWIP shall be recoverable by SCE&G that occurred subsequent to that date. Therefore, the Commission finds that SCE&G shall be entitled to recover $2,845,735,805 in CWIP.

Proceeds from the Toshiba Settlement

After Westinghouse Electric Company LLC ("WEC") declared bankruptcy, SCE&G and Toshiba negotiated a settlement of the Toshiba Proceeds. Tr. p. 987-18, ll. 10-12. The settlement provided for a series of payments by Toshiba to SCE&G over five years totaling $1,192.4 million on a nominal dollar basis. Tr. p. 987-18, ll. 12-13. SCE&G received a single payment of $82.5 million from Toshiba on October 2, 2017. Tr. p. 987-18, ll. 13-14. SCE&G monetized the remaining payments through an agreement with Citibank and received $1,015.9 million from Citibank on September 27, 2017. Tr. p. 987-18, ll. 14-16. The proceeds from Toshiba and Citibank were recorded by SCE&G in account 254 as a regulatory liability pending a rate action by the Commission. Tr. p. 987-18, ll. 18-19, p. 987-19, l. 1.

ORS's Position

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Witness Kollen recommends that the Toshiba Proceeds regulatory liability be used to reduce the allowed NND costs recoverable through the CCR Rider. Tr. p. 987-20, ll. 14-15. In this manner, the Toshiba Proceeds regulatory liability would reduce the CCR Rider rates necessary to recover the NND costs less regulatory liabilities for the next 20 years, assuming that is the recovery period adopted by the Commission. Tr. p. 987-20, ll. 15-18. Using the Toshiba Proceeds regulatory liability in this manner provides a greater present value benefit to Customers than the Applicants' proposal. Tr. p. 987-20, ll. 18-20. Witness Kollen testified that the Joint Applicants proposal to reduce the Toshiba Proceeds by future contract lien payments would indirectly increase the allowed NND costs abandonment costs and the costs that may never be incurred and are not known and measurable. Tr. p. 987-19, ll. 18-20, p. 987-20, ll. 1-3.

According to witness Kollen, the regulatory liability for the deferred return on the Toshiba proceeds will be $109.6 million as of December 31, 2018. Tr. p. 987-26, ll. 9-12. Additionally, witness Kollen recommended that the Commission require SCE&G [to record a regulatory liability for a deferred return on the proceeds calculated using the same grossed-up rate of return used for the return on NND costs in revised rates and that the calculation of the deferral should start with the two dates of the Toshiba proceeds were received and continue through the effective date of this Order. Tr. p. 987-26, ll. 1-5.

Witness Kollen testified that SCE&G Customers are entitled to the return on those proceeds from the dates the proceeds were received until the regulatory liability is fully amortized as a reduction to the NND costs recovered by SCE&G. Tr. p. 987-24, ll. 3-7. Witness Kollen basis this recommendation on the fact that SCE&G recorded a $1,095.2 million regulatory liability for the Toshiba Proceeds ($82.5 million from Toshiba plus $1,015.9 million

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from Citibank less $3.2 million in fees and expenses), thus effectively imposing the $94.0 million monetization financing cost on Customers in the net Toshiba Proceeds regulatory liability. Tr. p. 987-24, ll. 16-20. Witness Kollen testified the accounting treatment associated with the financing cost is appropriate, but only if the Customers receive the return on the regulatory liability and only if they receive the return at the Company's grossed-up weighted average cost of capital. Tr. p. 987-24, ll. 20-22. In summary, Mr. Kollen recommends that SCE&G be required to record a regulatory liability for a deferred return on the Toshiba proceeds calculated using the same grossed-up rate of return used for the return on NND costs in revised rates. Tr. p. 987-26, ll. 1-3. The calculation of the deferral should start with the two dates the Toshiba Proceeds were received and continue through the effective date of the Commission's Order in this proceeding. Tr. p. 987-26, ll. 3-5. Witness Kollen recommends that the Commission direct SCE&G to reflect this regulatory liability as an offset to the allowed NND costs in the CCR rider and to credit (refund) these amounts through an amortization of the regulatory liability in the CCR Rider. Tr. p. 987-26, ll. 6-8.

Witness Kollen also testified that the Joint Applicants' proposed refund will increase the NOL ADIT, which will increase the CCR Rider revenue requirement until he NOL carryforward is fully utilized. Tr. p. 987-37, ll. 10-17.

Joint Applicants' Position

The Joint Applicants have provided several options related to the refund of the Toshiba Proceeds. First, the Joint Applicants propose, within the CBP, to provide Customers an up-front,

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one-time rate credit totaling $1.3 billion.[23] The Joint Applicants estimate a typical residential customer using 1,000 kWh per month would receive approximately $1,000 in the form of a check within 90 days of the Merger close. Tr. p. 2818-2, ll. 17-21, p. 2806-10, ll. 13-17. Second, the Joint Applicants propose that the Toshiba Proceeds regulatory liability be used as a reduction to the allowed NND abandonment costs under the No Merger BP and the Base Request. Tr. p. 3592-31, ll. 12-16, p. 3592-34, ll. 16-20. Third, the Joint Applicants propose in the context of the Plan B and Plan B-L that an amount equal to the Toshiba Proceeds and return on Toshiba Proceeds (net contractor lien payments) would be refunded to Customers over a 20-year period. Tr. p. 4217-4, ll. 11-16. The Joint Applicants have styled the Plan B-L to return a greater amount of the Toshiba Proceeds in the early years and a smaller amount in the later years to achieve a levelized bill amount for Customers. Tr. p. 4217-4, ll. 11-14.

Commission Finding

SCE&G has requested the Commission recognize that monetization of the Toshiba Settlement was just, reasonable and prudent.[24] ORS testified the sale to Citibank N.A. was a reasonable resolution, but only if the financing cost savings inure to the Customers through a regulatory liability. Accordingly, the Commission finds that SCANA's agreement to sell its shares of its settlement with Toshiba to Citibank N.A. was just, reasonable and in the public interest.

All parties agree that the Toshiba Proceeds should be returned to the customer; however, the amount and manner for return is in dispute between ORS and the Joint Applicants. After reviewing all evidence presented by the parties and introduced into the record, the Commission

[23] Application p.24

[24] Application p.43

finds that the Joint Applicants have offered to return the Toshiba Proceeds through mechanisms that are incomplete and imbalanced in a way that disproportionately benefits the Joint Applicants to the detriment of the Customers. This Commission heard from Customers who did not want to pay for a nuclear plant that would not generate electricity. These same Customers did not want a "loan" from Dominion in the form of a one-time $1,000 check that the customer would be required to pay back with interest over 20-years. This Commission has established that the Company is entitled to cost recovery of a portion of the abandoned NND Project. The Commission has a duty to protect the public interest and set rates that are just and reasonable.

Under the Applicants' Merger CBP, Customers not only will be required to pay back the Toshiba Proceeds regulatory liability, but also will be required to pay a return on the unamortized amount of the Toshiba Proceeds regulatory liability. Additionally, the proposed one-time refund will increase the asset NOL ADIT. The increase in the asset NOL ADIT will increase the rate base and the revenue requirement to be recovered through the CCR Rider from Customers. This tax-related cost is due solely to the proposed one-time refund and is avoidable.

Therefore, the Commission rejects the Joint Applicants CBP proposal to provide Customers a one-time rate credit totaling approximately $1.3 billion. The Commission agrees with ORS that the Toshiba Proceeds regulatory liability should be used to reduce the allowed NND costs recoverable through the CCR Rider for the next 20-years. Using the Toshiba Proceeds regulatory liability in this manner provides a greater present value benefit to Customers and is a just and reasonable result.

Furthermore, the Commission directs SCE&G to record a regulatory liability for a deferred return on the proceeds of $109.6 million calculated using the same grossed-up rate of

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return used for the return on NND costs in revised rates. The calculation of the deferral should start with the two dates the Toshiba Proceeds were received and continue through the effective date of the Commission's Order in this proceeding. This regulatory liability will be recorded as an offset to the allowed NND costs in the CCR rider and to credit (refund) these amounts through an amortization of the regulatory liability in the CCR Rider.

H. Return of Revised Rates Collected Post-Abandonment

Joint Applicants Position

The Joint Applicants have maintained entitlement to retain all revised rates collected under the BLRA. In a Motion for Declaratory Rulings and Motion in Limine filed with the Commission on October 19, 2018, the Joint Applicants set forth their argument that none of the other parties in the consolidated dockets could challenge or reopen any of the determinations that this Commission and the courts have made regarding the NND Project prior to SCE&G's decision to abandon the Project. They further claimed that the retroactive application of the prudency standard in Act 258 is precluded by the rules of statutory construction. Further, that the Commissions interpreting Act 258 such that it does not apply retroactively would avoid an alleged serious risk of compromising SCE&G's financial integrity and thereby violating the constitutional standards enunciated in *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) and *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692–93 (1923).

ORS and Intervenors Position

Numerous of the Parties opposing the Joint Applicants, most notably ORS and the SCEUC, provided substantial evidence arguing against the Joint Applicants claims to entitlement to all

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previously collected revised rates; including those collected between abandonment on July 31, 2017 and the imposition of experimental rates under Act 258 effective April 1, 2018.

SCEUC witness O'Donnell, in his testimony before the Commission, cited to S.C. Code Ann. §58-33-275(c) to support his position that "(I)n order for rate recovery to be allowed, the Base Load Review Act specifically requires completion, or continuation of construction, of a baseload generating facility." Tr. p. 2349- 4, Lines 9-11. He argued that as SCE&G ceased construction of the NND Project, under a plain reading of §58-33-275(c) it cannot be allowed to recovery capital costs related to the plant. He further opined that as SCE&G and other South Carolina utilities helped to write the details of the BLRA, they fully understood that abandonment of the plant in the manner as proposed in this docket would entail SCE&G losing all revenues associated with the construction of the Project. Tr. p. 2349-4, ll. 20-25.

ORS witness Kollen provided similar testimony but limited his argument to collection of revised rates. Mr. Kollen supported his contention that SCE&G's continued collection of revised rates after abandonment on July 31, 2017 is contrary to the BLRA by also citing to S.C. Code §58-33-275(C) and specifically noting the language in that statute that provides for the collection of revised rates "(F)or a nuclear plant under construction…." Tr. p. 987-26, ll. 10-18. Mr. Kollen additionally supported his testimony on this issue in large part on the order of Federal District Court Judge Childs, who in denying SCE&G's efforts to have a preliminary injunction issued to prevent the Commission from acting under Act 287, concluded that SCE&G had not shown that it had a property interest in revised rates. See, *SCE&G v. Cromer H. Randall, in his official capacity of the South Carolina Public Service Commission, et. Al.*, Civil Action No. 3:18-cv-01795-MNC, USDC SC (Columbia), August 6, 2018. According to Judge Childs, because SCE&G abandoned

the project on July 31, 2017, SCE&G cannot legitimately claim an entitlement of revised rates because it was no longer constructing the project. Id., Footnote 23. She also found, however, that SCE&G could recoup its prudently incurred capital costs by filing for abandonment, upon a finding that abandonment was prudent, and seeking recovery of those costs through either revised rates or a general rate case. See, Id., Paragraph 80.

Mr. Kollen concludes his testimony on this subject by stating that as SCE&G was no longer constructing the Project, but was continuing to collect revised rates, that "the PSC's discretion in setting rate recovery is not constrained" and that revised rates collected since August 1, 2017 "should not be allowed and that amount should be refunded/credited back to the Ratepayers." Tr. p. 987-27, l. 18 to p. 987-28, l. 2.

Commission Finding

It is an undisputed fact in this case that SCE&G elected to file to build its nuclear plants under the BLRA. We find that SCE&G's failure to comply with the BLRA abandonment provisions prohibits it from recovering any revised rates revenue under the BLRA after July 31, 2017. We therefore also deny the Joint Applicants Motion for Declaratory Rulings and Motion in Limine. SCE&G is not entitled to retain what it was never entitled to collect.

Upon its ceasing construction of its NND Project on July 31, 2017, SCE&G was no longer in compliance with the BLRA. Commission Order No. 2016-794, issued November 28, 2016, approved a budget for the nuclear plants of $7.7 billion and completion dates for the plants of August 31, 2019 and August 31, 2020. On August 1, 2017, Kevin B. Marsh, Stephen A. Byrne and Jimmy E. Addison presented an allowable ex parte briefing and informed this Commission

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that SCE&G had abandoned construction of both plants as of July 31, 2017 and that SCE&G officials concluded that the plants could not be completed before December 31, 2022 and March 31, 2024 and at a cost in excess of $2.2 billion greater than the cost authorized under Order No. 2016-794. See, August 1, 2017 Allowable Ex Parte Briefing, Tr. at pp. 7, 14, 15. In addition, SCE&G filed an application with the Commission August 1, 2017 in Docket No. 2017-244-E seeking a prudency determination of the abandonment of construction of the plants pursuant to S.C. Code Ann. Section 58-33-280(K). In its petition, SCE&G conceded that the forecasted costs to complete the nuclear plants would be $2.2 billion more than the costs approved in Order No. 2016-794. Further, SCE&G confirmed that the forecasted completion dates were December 31, 2022 and March 31, 2024. See, SCE&G Petition, pp. 6-7.[25] As of July SCE&G was no longer in compliance with Order No. 2016-794.

Recovery of rates through revised rates is a statutory benefit to which SCE&G was entitled only so long as it was in compliance with the schedule, estimates and projections in its BLRA Order. See, S.C. Code Ann. §58-33-275(C). As admitted by all parties in this case, the nuclear units are no longer being constructed. Consequently, SCE&G is no longer entitled to recovery of the revenues generated by the revised rates or recovery of capital costs of the abandoned units. South Carolina Electric and Gas Company, v. Randall, et al. C.A. No.:3:18-cv-01795-JMC Order at p. 20 -23. The Federal District Court's analysis reflected that for the purposes of recovery under the BLRA, three different rate periods are at issue.

> The court understands there to be three different rate periods at issue. This first period is the time during which SCE&G was either constructing or otherwise abandoning the Project and charging Ratepayers the revised rates approved by the nine base load review orders of the PSC. The second rate period is the time

[25] The application in Docket No. 2017-244-E was subsequently withdrawn.

> during which SCE&G was no longer constructing the Project but continued to charge the revised rates. The third time period will be governed by the outcome of the abandonment proceeding currently ongoing before the PSC, as the PSC must determine when SCE&G was either no longer constructing the Project or otherwise abandoning the Project and whether SCE&G decision to abandon was prudent, entitling SCE&G to continue to recover the capital costs of the Project. *See* S.C. Code Ann. § 58-33-280(K).

The Federal Court concluded that during the second and third periods, the "so long as the plan is constructed or being constructed" language ceases to constrain the discretion of the Commission. Id., Order at pp. 22 – 23. To recover revised rates under the BLRA, SCE&G must be constructing the plants at the time SCE&G files for recovery under the BLRA. It is undisputed that SCE&G had ceased construction seventeen months prior to filing for rate relief in this docket. Having ceased construction prior to its request for abandonment costs, SCE&G no longer satisfies the provisions of S.C. Code Ann. § 58-33-275(A) and is prohibited from recovering the revised rates revenues under the provisions of the BLRA.

Moreover, the Federal District Court's decision is supported by South Carolina decisional law. It is settled law that for a party to recover the benefits afforded it under a statute that the party must otherwise be in compliance with the other provision of that statute. SCE&G has ceased construction of the units and is no longer in compliance with Order No. 2016-794. Yet, SCE&G has accepted recovery of $2 billion in revised rates and has benefited from the upfront determination of its decision to build the units. Having elected to construct and finance its nuclear plants pursuant to the BLRA, having accepted the benefits provided by the BLRA, and having failed to comply with the BLRA, SCE&G is precluded as a matter of law from the continued recovery or retention of revised rates revenue for the abandoned nuclear plants under the BLRA.

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See, Southern Soya Corp. of Cameron v. Wasson, 252 S.C. 484, 167 S.E.2d 311 (1969); Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005).

I. Merger Conditions and Savings

Joint Applicants' Position

The Joint Applicants request that the Commission approve the Merger with no material changes to the terms of the CBP. (App. p. 51). Witness Addison testified that a condition of the Merger is that the Commission approve the CBP contained in the Joint Petition with no material changes to its terms, conditions or undertakings *and* no significant changes to the economic value of the plan. Tr. p. 1345-43, ll. 15-22. (emphasis added). Additionally, witness Addison testified that the Merger is also conditioned upon there being no change to the BLRA or any South Carolina public utility law that would reasonably be expected to have an adverse effect on SCANA or any of its subsidiaries. Tr. p. 1345-44, ll. 2-5. According to Dominion witness Farrell, the CBP and the closing of the Merger itself depend on approval by the Commission with no material changes to the terms of the CBP. Tr. p. 2993-9, ll. 12-14. The Joint Applicants detail a number of conditions that must occur in the Application.

According to Dominion witness Chapman, the Merger can only close if the Commission approves the CBP, with no material change to the terms, conditions, or undertakings set forth in the plan and no significant change to the economic value to the combined company of the plan. Tr. p. 2806-4, ll. 18-21.

Subsequent to Joint Applicant witnesses committing to the Commission that no material changes must be made to the CBP for the Merger to succeed, witness Purohit introduced another

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plan through supplemental testimony, which he termed the Alternative Customer Benefits Plan.[26] Tr. p. 2821-2, ll. 6-10. Witness Farrell testified that the Joint Applicants continue to support the CBP, but Plan B is in the interest of SCE&G's Customers and the public interest and does not change the economic value of the proposal to Dominion. Tr. p. 2997-2, ll. 3-12.

Witness Purohit filed a second supplemental rebuttal testimony in which he outlined yet another plan that the Joint Applicants "would accept as an outcome in this proceeding." Tr. p. 4217-1, ll. 17-22. Joint Applicants termed this third plan, Plan B-L. Tr. p. 4217, ll. 17-19. According to witness Purohit, Plan B-L reduces the net present value over twenty years by about $50 million, from about $1.010 billion in Plan A to about $962 million in Plan B-L. Tr. p. 4217-5, ll. 21-23. Witness Purohit claims Plan B-L preserves the merger economics of the original CBP. Tr. p. 4217-6, ll. 16-18. According to witness Purohit, the terms of the CBP, Plan B, or Plan B-L, "constitute the economic limit of benefits which the Joint Applicants can accept in order preserve the merger economics." Tr. p. 4217-9, ll. 2-5.

ORS' Position

While ORS does not oppose the proposed Merger, ORS detailed several material considerations that it believes to be necessary to ensure that the public interest is protected, and Customers are not harmed in the testimony of ORS witnesses Kollen, Baudino, and Seaman-Huynh. Tr. p. 987-65, ll. 14-16. The ORS ratemaking conditions achieve those important

[26] Witness Kollen testified that the Alternative CBP changes the fundamental economics of the original CBP and does not maintain the Joint Applicants' requested economics of the transaction. (Tr. p. 993-2, ll. 15-20, p. 993-3, l. 1-3). According to witness Kollen, the Alternative CBP will cost Customers more on a net present value basis and will provide greater value to Dominion's shareholders by charging Customers more. (Tr. p. 1345-3, l. 3-5).

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objectives and ensure that the costs recovered are prudent, just and reasonable, correctly calculated, and minimized. Tr. p. 987-65, ll. 16-18.[27]

Witness Kollen testified that it is necessary to include these Merger conditions in the Commission Order ensure that the conditions are clear and more readily enforced should the need arise in the future even where the Applicants have made certain commitments in testimony or responses to discovery. Kollen Surrebuttal, p. 36, ll. 1-15.

Commission Finding

The Commission concurs with witness Kollen that conditions are necessary to safeguard SCE&G Ratepayers and prevent subsequent ambiguity. Therefore, the Commission addresses each of the following proposed conditions, which shall apply only in the event the Merger succeeds and has condensed conditions into the attached Order Exhibit 1.

J. Ratemaking Conditions Related to Recovery of NND Costs and Related Regulatory Liabilities, Tax Savings, and Merger Savings

ORS' Position

ORS recognizes that Dominion offers significant financial resources and economies of scale that should result in improved service and lower costs to Customers, as a result ORS believes that all of these savings should be passed on to Customers. (Tr. p. 987-63, ll. 13-14). While Dominion has indicated that it would forego an opportunity to Merger with SCANA should the

[27] The ORS ratemaking recommendations for the recovery of NND costs and related regulatory liabilities and for the tax savings due to TCJA, including the one-time base rates and revised rates refund of TCJA savings in 2018, are the same regardless of whether the Commission approves the Merger; however, the ORS ratemaking recommendation for the Merger savings is dependent on the Merger. (Kollen Direct, p. 64, ll. 19-21, p. 65, ll. 1-2).

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Commission impose conditions that materially alter the proposed CPB,[28] ORS witness Kollen recommends the Commission not concede ORS's recommendations in response to Dominion's threat. (Tr. p. 987-66, ll. 3-5). Furthermore, ORS witness Kollen testified that, despite its statements to the contrary, Dominion has indicated its willingness increase the value of the Merger to Customers, and cited an article published in *The State*. According to the article,

> As S.C. lawmakers finalized their plans to cut SCE&G's electric rates this spring, the Cayce-based utility and Virginia-based Dominion Energy made a last-ditch effort to avoid the Legislature's ax, proposing to sweeten their 15 deal for SCE&G electric Customers. That offer would have increased to $1,530 from $1,000 the average amount that Dominion refunded to SCE&G's residential electric Customers for higher bills they have paid because of a failed nuclear construction project. The two utilities told state Senate leaders they would provide up to $300 million more in refunds for SCE&G's residential electric Customers if lawmakers killed their rate-cut bill and agreed to support Dominion's buyout of SCE&G's parent company, SCANA, Senate Majority Leader Shane Massey told The State.[29]

According to witness Kollen, if Dominion determines that the ORS recommendations will result in a material change that reduces the economic value of the Merger, then the remedy is to reduce the Dominion equity issued to acquire SCANA; the remedy is not to increase the SCE&G ratemaking recovery and the costs to SCE&G electric Customers. Tr. p. 987-66, ll. 26-27, p. 987-67, ll. 1-2.

SCE&G committed that it will not seek recovery of additional NND costs incurred after September 30, 2017, and witness Kollen recommends that the Commission formally recognize this commitment as a requirement of its Order. Tr. p. 987-67, ll. 5-8. According to witness Kollen, SCE&G has not committed to forego seeking recovery of any costs that may be incurred due to

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[28] *See* Joint Applicants' Application, pp. 2-3.

[29] Reported in *The State* on July 20, 2018.

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claims by the SC DOR for sales tax on the NND costs.[30] Tr. p. 987-67, ll. 9-11. If the Commission adopts the ORS Optimal Plan or the Joint Applicants alternative proposal to not seek recovery of NND costs incurred after March 12, 2015, then it should use that date in lieu of the September 30, 2017 date.

Witness Kollen also testified that SCE&G could seek recovery of demolition or decommissioning costs related to the abandoned physical assets at some later date. Tr. p. 987-67, ll. 14-15. As a result, witness Kollen recommended the Commission specifically preclude recovery of these costs through the CCR Rider or otherwise and modify the Company's merger commitment to reflect this determination. Tr. p. 987-67, ll. 18-20.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to include these Merger conditions. The Commission orders these conditions to ensure that Customers are not harmed. The evidence in the record indicates that SCE&G has committed that it will not seek recovery of additional NND costs and no counter has been offered. This Commission therefore finds that SCE&G shall not be entitled to recover NND costs incurred after March 12, 2015, to include costs incurred due to claims by the SC DOR for sales tax on the NND costs and demolition or decommissioning costs related to the abandoned physical assets, or any other costs that were incurred after that date or that are incurred at some later date related to the NND project.

Ratemaking Conditions Related to the Base Rate Freeze

Joint Applicants' Position

[30] *See* Response to AIR 7-25, included in Hearing Exhibit Hearing Exhibit 50 as LK-28.

According to Dominion witness Chapman, if the Merger succeeds, the Joint Applicants propose to freeze base rates until at least 2021 under the CPB. Tr. p. 2806-13, ll. 3-6.

Subsequent to witness Chapman's testimony being filed, as part of Plan B-L, witness Purohit stated that Dominion would file a general rate case on May 1, 2020, with rates effective January 1, 2021. Hearing Exhibit 69 Purohit Second Supplemental Rebuttal, Exhibit PP-1A, p. 5.

ORS' Position

ORS witness Kollen believes Joint Applicants' proposed condition is reasonable but not sufficient. Tr. p. 987-68, ll. 10-14. The Joint Applicants' proposed condition alone does not limit or preclude SCE&G from seeking deferrals for costs that historically have been recovered through base rates. Tr. p. 987-68, ll. 14-15. Witness Kollen testified that SCE&G should not be able to circumvent the commitment to freeze rates by seeking and obtaining authorization for new deferrals of costs so that it can recover those costs at a later date. Tr. p. 987-68, ll. 15-17. As a result, witness Kollen recommends the Commission modify the Joint Applicants' proposed condition to preclude seeking new deferrals for costs that historically have been recovered through base rates for the same two-year period. Tr. p. 987-68, ll. 19-21.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is in the public interest and just and reasonable to impose a Merger condition regarding a stay out provision. SCE&G has committed that it will not seek a change in base rates through 2020. This commitment alone, however, does not sufficiently protect ratepayers. As a result, in order to protect ratepayers, the Commission accepts SCE&G's agreement to freeze rates until 2021, and further orders that SCE&G not seek authorization for or record any new deferrals for costs that historically have been recovered through base rates during the stay-out period.

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Ratemaking Conditions Related to Merger Acquisition Premium, Goodwill, Transaction, and Transition Costs

- Merger Acquisition Premium and Goodwill Costs

Joint Applicants' Position

Witness Chapman testified that the Joint Applicants would not seek recovery of any acquisition premium (goodwill) costs, transition costs, or transaction costs associated with the Merger from its Customers. Tr. p. 2806-17, ll. 19-21.

The Joint Applicants relied on the definition of goodwill and acquisition premium as set forth in Accounting Standards Codification Topic 805.[31] Additionally, Joint Applicants agree that they will not record any acquisition premium or goodwill costs due to the Merger on SCE&G's accounting books or seek retail ratemaking recovery of these costs, and "[n]either SCANA nor SCE&G will seek recovery of any acquisition premium (goodwill) or any other fair value adjustments associated with the Merger from its Customers."[32]

As part of the Plan B-L, witness Purohit stated that Dominion would not record any portion of the purchase price allocation adjustments associated with the merger on SCANA or SCE&G's books and is planning to make the required accounting entries associated with the merger on that basis and that neither SCANA nor SCE&G would seek recovery of any acquisition premium (goodwill) or any or fair value adjustment associated with the Merger from its Customers. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, p. 1.

ORS' Position

[31] *See* Response to AIR 4-4, included in Hearing Exhibit 50 as LK-29.
[32] *See* Response to AIR 4-4, included in Hearing Exhibit 50 as LK-29.

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Witness Kollen recommends that the Commission adopt the above agreement as a condition in its final order and testified that this is a "hold harmless" condition necessary to protect Customers from any acquisition premium or any other fair value adjustments associated with the Merger. Tr. p. 987-69, ll. 21-23, p. 987-70, ll. 1-3. Witness Kollen also recommended that the Commission specifically include the definitions of the above-mentioned terms to avoid any ambiguity in future ratemaking proceedings. Tr. p. 987-70, ll. 3-4.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose certain Merger conditions upon the Joint Applicants regarding recovery of acquisition premium costs.[33] The Joint Applicants state they are not seeking recovery of these costs. The evidence presented by witness Kollen accords with Joint Applicants' position. Accordingly, this Commission finds that the Joint Applicants shall not recover any of these costs from its Customers in this proceeding or in any future filings with the Commission.

- Transaction Costs

Joint Applicants' Position

The Joint Applicants relied on the definition of Transaction Costs as set forth below:

> Transaction costs include costs incurred in connection with completion of the acquisition by Dominion Energy, Inc. of the equity interests of SCANA Corporation, including costs of obtaining all necessary regulatory approvals for the merger. Examples of such costs include legal fees and expenses, regulatory filing fees and costs of developing and pursuing regulatory approvals, accounting fees, costs related to securities issuances and proxy solicitations, financial advisory fees and investment banking fees.[34]

[33] As defined in Accounting Standards Codification Topic 805.
[34] *See* Response to AIR 4-8, included in Hearing Exhibit 50 as LK-30.

The Joint Applicants have agreed they will not record any Transaction Costs on SCE&G's accounting books or seek retail ratemaking recovery of these costs.[35]

As part of the Plan B-L, witness Purohit stated that SCE&G would not seek recovery of any transaction costs to the Merger from Customers. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, p. 2.

ORS' Position

According to witness Kollen this is another "hold harmless" condition necessary to protect Customers from any transaction costs to plan and implement the Merger. Tr. p. 987-71, ll. 21-25. Witness Kollen also recommended that the Commission specifically include the definitions of the above-mentioned terms to avoid any ambiguity in future ratemaking proceedings. Tr. p. 987-71, ll. 25-27.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose Merger conditions upon the Joint Applicants regarding recovery of transaction costs.[36] The Joint Applicant are not seeking recovery of these costs. The evidence presented by witness Kollen accords with Joint Applicants' position. Therefore, this Commission finds that the Joint Applicants shall not recover any of these costs from its Customers in this proceeding or in any future filing with the Commission.

[35] *See* Response to AIRs 3-12, 3-15, 3-16, included in Hearing Exhibit50 as LK-31.
[36] As defined in AIR 4-8, included in Hearing Exhibit 50 as LK-33.

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Conditions Affecting the Cost of New Generating Capacity

Joint Applicants' Position

According to witness Addison, SCE&G will write off the $180 million acquisition of the 540 MW Columbia Energy Center combined cycle gas generation facility in Gaston, South Carolina. (Tr. p. 1345-46, ll. 6-8). Similarly, the Application states, that the Applicants have agreed to permanently exclude the cost of the Columbia Energy Center from rate base and rate recovery under the No Merger BP and the Merger CPB. *See*, Joint Applicants' Application Exhibit 1, p. A-3(j); *see also* Tr. p. 987-73, ll. 11-19.

ORS' Position

According to witness Kollen, SCE&G's commitment is reasonable, and the Commission should affirm this commitment and direct SCE&G to exclude the cost of the Columbia Energy Center from rate base and all related costs from operating expenses, including, but not limited to, depreciation expense, and property tax expense, if any, in its Order. Tr. p. 987-73, ll. 20-24, to p. 987-74, ll. 1-2.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a condition upon the Joint Applicants regarding the recovery of costs from the Columbia Energy Center. SCE&G is not seeking recovery of these costs under the No Merger BP and the Joint Applicants do not seek recovery of the costs under the CBP or the other plans presented. The evidence presented by witness Kollen accords with Joint Applicants' position. Accordingly, this Commission finds that SCE&G shall not recover any of these costs from its Customers regardless of whether the Merger is consummated.

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Conditions Affecting Affiliate Transactions

Joint Applicants' Position

According to witness Blue, should the Merger succeed, affiliate transactions will be governed by Commission Order No. 92-931 and S.C. Code Ann. § 58-27-2090 such that "[g]oods and services sold or exchanged between SCE&G and SCANA or any subsidiary of SCANA must be transferred at a reasonable rate and with conditions consistent with the existing market prices and contract conditions for similar goods/services." Tr. p. 3012-6, ll. 14-22. According to witness Blue, the Joint Applicants do not believe that additional requirements regarding affiliate transactions are necessary. Tr. p. 3012-7, ll. 6-9. Witness Blue testified that the Joint Applicants would work collaboratively with the Commission and ORS regarding transition efforts and would seek prior approval to the extent such matters fall within the scope of the Commission' authority. Tr. p. 3012-p. 7, ll. 20-22; p. 3012-8, l. 1-2. Additionally, witness Blue testified that ORS's proposed recommendation that SCE&G be required to seek prior Commission approval for any structural reorganization is overly broad and unnecessary. Tr. p. 3012-8, ll. 2-4.

Dominion witness Chapman testified that Dominion does not permit any lending of cash or other capital from a utility subsidiary to any other entity within the Dominion family. Tr. p. 2806-7, ll. 19-21.

As part of the Plan B-L, witness Purohit stated that the Joint Applicant would commit to open and transparent communication with the Commission and ORS. Tr. p. 4217-12, l. 14.

In cross-examination, witness Blue testified that in circumstances where affiliate transactions occur and there is insufficient oversight, there is potential for competitive advantages to be diminished. Tr. p. 3048, ll. 1-14. Witness Blue also testified that should Dominion acquire SCANA, there is the potential for affiliate transactions to occur. Tr. p. 3048, ll. 15-18.

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ORS' Position

Witness Kollen had no concern with a properly structured money pool among utility subsidiaries of a utility holding company; however, Kollen did express his concern regarding a utility acting as a guarantor of the debt of a holding company or another affiliate. Tr. p. 987-74, ll. 13-15. As a result, witness Kollen recommended the Commission order that SCE&G shall not be guarantor of any debt of Dominion or any other Dominion affiliate. Tr. p. 987-74, ll. 17-20.

Witness Kollen testified regarding conditions pertaining to affiliate transactions necessary to ensure that Customers are not harmed. He recommended that the Commission place the following conditions regarding affiliate transactions in its Order:

1. SCE&G shall make a filing with the Commission to seek approval for any structural reorganization and shall not implement such reorganization until the Commission issues an order approving, rejecting, or modifying the planned reorganization.
2. Dominion Services, Inc. shall not modify its CAM or its affiliate billing practices to charge SCE&G a rate of return on rate base.
3. Dominion Energy, SCE&G, and its affiliates shall abide by the following standards regarding affiliate transactions as set forth in the NARUC's Guidelines for Allocations and Affiliate Transactions unless as otherwise directed by the Commission.
    a. Generally, the price for services, products and the 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. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.
    b. Generally, the price for services, products and the 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. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.
    c. 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, except as otherwise required by law or regulation. Generally, transfer of assets from an affiliate to the utility should be at the lower of prevailing market price or net book value, except as otherwise required by law or regulation. To determine prevailing market value, an appraisal should be required at certain value thresholds as determined by regulators.

d. Entities should maintain all information underlying affiliate transactions with the affiliated utility for a minimum of three years, or as required by law or regulation.

Tr. p. 987-75, ll. 14-25, p. 987-76, ll. 1-22.

According to witness Kollen, there are concerns that SCE&G may preferentially purchase products and services from Dominion affiliates when competitive alternatives exist. Tr. p. 987-77, ll. 23-26. Witness Kollen testified that if the Merger succeeds, Dominion will have substantial vertical market power, including the purchase of natural gas at the wellhead, transportation of gas to SCE&G's distribution system, supply to existing natural gas electric generation plants, selection and siting of new electric generation plants, and retail sale of electric power and natural gas to end use Customers. Tr. p. 987-77, ll. 31-32, p. 987-78, ll. 1-3. As a result, ORS witness Kollen offered the following additional recommendation for the Commission's consideration in drafting its Order:

> SCE&G shall not engage in improper self-dealing with other Dominion affiliates where there are competitive alternatives, such as the sourcing of natural gas supplies and transportation and storage services; in such circumstances, SCE&G shall competitively source its services or products using a "least cost" standard. SCE&G shall be required to maintain records and shall have the burden to prove that transactions with a competitive affiliate were sourced competitively and at least cost.
>
> Tr. p. 987-77, ll. 5-12.

<u>Intervenors' Positions</u>

> Transco witness Alattore testified that should the Merger succeed, Dominion would, have significant control over essential facilities in the sale, distribution, and transmission of natural gas and electricity in South Carolina. In effect, Dominion would control virually every link in the energy delivery chain – including the acquisition of natural gas at the wellhead, the transportation of gas to electric power generation facilities, the siting and operation of generation facilities, and the sale of electric power and natural gas to end users. This…could lead to decisions by the merged company that could result in South Carolina consumers paying higher prices.
>
> Tr. p. 3556-4, ll. 13-20.

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In particular, witness Alatorre testified that the Commission should be concerned regarding the ability of SC&G and SCANA to properly act when faced with affiliate and unaffiliated suppliers of a necessary product and whether the combined entity can engage in "arm's length" negotiations with its affiliates. Tr. p. 3556-4, ll. 20-21, p. 3556-5, ll. 1-3. According to witness Alatorre, in order to ensure that South Carolina consumers obtain the most cost effective and reliable service adequate controls, including audits by ORS, and appropriate merger conditions must be imposed upon SCE&G and SCANA. Tr. p. 3556-5, ll. 3-12.

Witness Alatorre also testified regarding Transco's concerns about the impact of the proposed Merger on the Customers of SCE&G and the necessity of safeguards to ensure that if the Dominion and SCANA Merger is approved, the new entity will use the most reliable, low-cost gas transportation services available to it and that South Carolina ratepayers will continue to receive the best service at the lowest cost. Tr. p. 3556-3, ll. 13-17.

Witness Lander testified that, should the Merger succeed, and SCE&G become a subsidiary of Dominion, SCE&G ratepayers could be exposed to same abuses of affiliate transactions that Dominion has saddled on its Virginia ratepayers. Tr. p. 2295-5, ll. 10-14. Witness Lander's concern is that Dominion, the potential utility holding company, would be a partner in the development of an interstate pipeline, and with the holding company entering into contracts for gas transportation with its subsidiary, which in this case would be SCE&G, thereby exposing SCE&G's captive ratepayers to the risk of overpayment. Tr. p. 2295-5, ll. 14-17. In order to protect South Carolina ratepayers, witness Lander recommended that it require SCE&G conduct in a "needs analysis" in a public proceeding where demand is identified, undertake a comparative cost analysis of meeting that identified demand with extension or expansion of SCE&G services

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and facilities, then, if necessary, require a public and transparent procurement process, and finally impose regulatory conditions to ensure vigorous ongoing oversight of affiliate transactions. Tr. p. 2295-12, ll. 9-23, p. 2295-13, ll. 1-16.

According to witness Lander, affiliate transactions generally squelch competition. Tr. p. 2328, ll. 8-9. In his surrebuttal testimony, witness Lander testified regarding utility utilizing affiliate transaction the resulting ratepayer abuses that occur. Tr. p. 2297-3, ll. 9-11. According to witness Lander, in order to prevent these abuses from occurring, the Commission must impose conditions on the Merger. Tr. p. 2297-3, ll. 15-16. Witness Lander testified that absent adequate Merger conditions, Dominion could exploit South Carolina ratepayers. Tr. p. 2297-6, ll. 16-21. Accordingly, South Carolina Customers could pay billions of dollars in the future with absolutely no benefit to them. Tr. p. 2297-7, ll. 3-6.

While discussing the recovery of abandoned assets, witness O'Donnell said it succinctly when he stated, "[t]ransparency is critical to the rebuilding of trust in the South Carolina utility regulatory system." Tr. p. 2349-8, ll. 24-25.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding affiliate transactions. Joint Applicants state that current rules in place are sufficient to govern affiliate transactions and new rules are not necessary. Additionally, Joint Applicants affirmed a commitment to work collaboratively with the Commission and ORS. Should the Merger succeed, Dominion would have significant control sale, distribution, and transmission of natural gas in South Carolina and SCANA/SCE&G would be an affiliate of Dominion. Dominion witness Blue testified that this has the potential to diminish competitive advantages and witness Lander testified

that these affiliate transactions could expose South Carolina's captive ratepayers to the risk of overpayment. According to witness Lander, affiliate transactions squelch competition.

In order for regulatory oversight to succeed, trust and transparency must be paramount. Therefore, in order to facilitate trust and transparency between all parties and in an effort to protect South Carolina ratepayers from the risk of overpayment, which can stem from affiliate transactions and a diminished competitive environment, the Commission finds that the implementation of safeguards is neccessary and the following conditions shall apply to the Merger, should it succeed:

1. SCE&G shall not be guarantor of any debt of Dominion or any other Dominion affiliate;
2. SCE&G shall make a filing with the Commission to seek approval for any structural reorganization and shall not implement such reorganization until the Commission issues an order approving, rejecting, or modifying the planned reorganization.
3. Dominion Services, Inc. shall not modify its CAM or its affiliate billing practices to charge SCE&G a rate of return on rate base.
4. Dominion Energy, SCE&G, and its affiliates shall abide by the following standards regarding affiliate transactions as set forth in the NARUC's Guidelines for Allocations and Affiliate Transactions unless as otherwise directed by an Order of the Commission.

a. Generally, the price for services, products and the 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. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.
b. Generally, the price for services, products and the 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. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.
c. 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, except as otherwise required by law or regulation. Generally, transfer of assets from an affiliate to the utility should be at the lower of prevailing market price or net book value, except as otherwise required by law or regulation. To determine prevailing market value, an appraisal should be required at certain value thresholds as determined by regulators.

5. Entities should maintain all information underlying affiliate transactions with the affiliated utility for a minimum of three years, or as required by law or regulation.

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6. SCE&G shall not engage in improper self-dealing with other Dominion affiliates where there are competitive alternatives, such as the sourcing of natural gas supplies and transportation and storage services; in such circumstances, SCE&G shall competitively source its services or products using a "least cost" standard. SCE&G shall be required to maintain records and shall have the burden to prove that transactions with a competitive affiliate were sourced competitively and at least cost.

Conditions Regarding Local Management, Headquarters, and Local Access to Books and Records

Joint Applicants' Position

Provided the merger is successful, Dominion witness Blue testified that Dominion would maintain SCE&G's headquarters in Cayce, South Carolina and manage SCE&G from an operations standpoint as a separate regional business under Dominion "with responsibility for making decisions that achieve the objectives of customer satisfaction, reliable service, customer, public, and employee safety, environmental stewardship, and collaborative and productive relationships with Customers, regulators, other governmental entities, and interested stakeholders." Tr. p. 3010-17, ll. 8-15. According to witness Blue, local control and the day-to-day operations will remain with SCE&G in Cayce. Tr. p. 3012-2, ll. 15-16. Additionally, according to Joint the Commission will continue to exercise its regulatory authority over SCE&G in the same way it does today, thereby ensuring continued protection of the interests of South Carolina Customers and officers and employees of Dominion, including SCE&G local management, will continue to be accessible to regulators and lawmakers, including the Commission. Tr. p. 3012-3, ll. 6-13. As part of this and future regulatory proceedings, Dominion and SCE&G will continue to provide information about Dominion or its other subsidiaries relevant to matters within the Commission's jurisdiction to the Commission upon request of the Commission. *Id*.

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According to witness Blue, Dominion and SCE&G are committed to providing information about Dominion or its other subsidiaries relevant to matters within the Commission's jurisdiction. Tr. p. 3012-4, ll. 5-7. Witness Blue testified that Dominion appreciates the importance of an open, transparent and collaborative relationship with regulators; however, he does not believe commitments proposed by witness Kollen are necessary. Tr. p. 3012-4, ll. 11-14; p. 3012-3, ll. 13-16.

ORS' Position

According to witness Kollen, the first of the Joint Applicants' two commitments is not sufficiently clear and is ambiguous. Tr. p. 987-78, ll. 8-10. Accordingly, ORS witness Kollen recommends that the Commission include the following condition in its Order:

> Dominion Energy will manage SCE&G from an operations standpoint as a separate regional business under Dominion Energy. SCE&G will retain local responsibility for making decisions that achieve the objectives of customer satisfaction, reliable service, customer, public, and employee safety, environmental stewardship, and collaborative and productive relationships with Customers, regulators, other governmental entities, and interested stakeholders.
>
> Tr. p. 987-78, ll. 17-22.

ORS witness Kollen testified to his support that the Commission adopt Dominion's commitment to retain SCE&G's headquarters in Cayce. Tr. p. 987-78, ll. 23-24. However, witness Kollen recommends that the third commitment to retain local access to Dominion and SCE&G management, including local access to books and records of SCE&G be modified so that it includes local access to the books and records of SCANA Services, Inc., and Dominion Energy Services, Inc. as well as any other affiliate that provides services to and charges SCE&G and without limitation to specific proceedings. Tr. p. 987-78, ll. 25-26, p. 987-79, ll. 1-2.

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Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding local employment, headquarters, and local access to books and records. Joint Applicants have committed to maintain SCE&G's headquarters in Cayce, South Carolina and keep the day-to-day operations and local control in Cayce. Additionally, the Joint Applicants have committed that the Commission will continue to exercise its regulatory authority over SCE&G in the same way it currently does and officers and employees of Dominion will be accessible to regulators and to provide information about Dominion and subsidiaries relevant to matters within the Commission's jurisdiction. As a result of these commitments, Joint Applicants do not believe the recommendations made by witness Kollen are necessary.

While Joint Applicants do not believe witness Kollen's recommendations are necessary, this Commission agrees that an open, transparent, and collaborative process between regulators and the regulated is of utmost importance and recognizes the trust placed with it by the public. The Commission further seeks to validate that trust by ensuring both the regulators and regulated operate in an open, transparent, and collaborate process. Accordingly, the Commission finds that the Merger, should it succeed, shall contain the following conditions:

1. SCE&G's headquarters shall continue to remain in Cayce and Dominion shall manage SCE&G from an operations standpoint as a separate regional business under Dominion.
2. SCE&G will retain local responsibility for making decisions that achieve the objectives of customer satisfaction, reliable service, customer, public, and employee safety, environmental stewardship, and collaborative and productive

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relationships with Customers, regulators, other governmental entities, and interested stakeholders.

3. Local access to Dominion and SCE&G management, including local access to books and records of SCE&G be modified so that it also includes local access by ORS to the books and records of SCANA Services, Inc., and Dominion Energy Services, Inc. as well as any other affiliate that provides services to and charges SCE&G without limitation to specific proceedings.

Conditions Regarding Local Employment

<u>Joint Applicants' Position</u>

Witness Chapman testified that the Joint Applicant's CBP, "[p]rotects, for a period of time, the status of thousands of South Carolina-based employees, in addition to the well-being of their families." Tr. p. 2808-3, ll. 1-2.

According to witness Blue, through centralization, Dominion creates economies of scale and provides resources more effectively and efficiently than would otherwise occur if standalone departments at each subsidiary existed. Tr. p. 3010-8, ll. 21 to p. 3010-9, ll. 2. Witness Blue testified that "…there could be some staffing changes over time—particularly on a shared services level." Tr. p. 3012-7, ll. 17-18. Additionally, witness Blue testified that SCANA employed a similar services company model through SCANA Services, Inc. and that, should the Merger succeed, SCANA's corporate functions will be reviewed to determine those that will remain local and those that will be centralized. Tr. p. 3010-9, ll. 5-12. Witness Blue testified that Dominion has no plans to change the organizational structure of SCE&G operations. Tr. p. 3010-16, ll. 6-7. However, witness Blue also testified that Dominion generally intends that SCE&G employees will

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remain local and has no plans to materially change operations. Tr. p. 3012-4, ll. 21-22, p. 3012-5, l. 1.

On cross-examination, witness Blue testified that Dominion would make reductions to SCE&G employees based on "what makes sense" rather than seeking to minimizing reductions. Tr. p. 3052, ll. 15-19.

As part of the Plan B-L, witness Purohit stated that the Joint Applicant would commit to extending non-executive employee pay protection to July 1, 2020, and that the President of SCE&G will continue to be a South Carolina resident with his/her primary office in Cayce. Tr. p. 4217-12, l. 11, p. 4217-13, ll. 2-3.

ORS' Position

According to ORS witness Kollen, the Joint Applicants offered no specific commitments regarding local employment. Tr. p. 987-79, ll. 4-6. Instead, witness Kollen testified that the Joint Applicants only offered to maintain compensation levels for employees of SCANA and its subsidiaries until January 1, 2020, and to provide due and fair consideration for other employment opportunities both inside and outside of South Carolina. Tr. pp. 987-79, ll. 10-16, *citing* Tr. p. 3010-18, ll. 1-7. Witness Kollen testified that the Commission should consider the fact that Dominion plans to transfer the shared and common services presently performed by SCANA Services, Inc. at the Cayce headquarters to Dominion Services, Inc, which is headquartered in Richmond, VA. Tr. p. 987-79, ll. 17-22. According to witness Kollen, Dominion plans to achieve significant economies and savings by providing shared services through Dominion Energy Services, Inc. rather than through SCANA Services, Inc. Tr. p. 987-79, ll. 23-24, p. 987-80, l. 1. According the Joint Applicants' Application, SCANA Services, Inc. currently employs 1,751 individuals. (Application at 17). Witness Kollen testified that the SCANA Services, Inc. functions

will be transferred to Richmond, VA, and it is highly likely that many SCANA Services, Inc. employees will be terminated or transferred. Tr. p. 987-80, ll. 2-4. As a result, witness Kollen recommended that the Commission, in its Order, require Dominion to minimize the reductions in local employment by relocating some of the Dominion Services, Inc. shared service functions to Cayce. Tr. p. 987-80, ll. 6-8.

Intervenors' Positions

According to SACE and CCL witness Lander, should the Merger succeed, it is going to mean job cuts and loss of high-paid corporate management jobs in South Carolina and safeguards are necessary. Tr. p. 2325, ll. 17-25; p. 2326, ll. 1-2.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose Merger conditions upon the Joint Applicants, should the Merger be consummated. The Commission Orders these conditions to make sure that the Merger is in the public interest and to ensure Customers are not harmed. The Joint Applicants have stated that SCE&G's employees are protected for a period of time, but that there could be some staffing changes over time, particularly on a shared services level. According to witness Lander this Merger will mean job cuts in South Carolina and witness Kollen testified that shared services presently performed in Cayce will be transferred to Dominion Energy Services, Inc. employees located in Richmond, Virginia. The Commission understands and appreciates the significant economies of scale and savings that may be achieved though this Merger but must also balance those with its obligation to fix just and reasonable practices. Accordingly, the Commission believes that safeguards are necessary, and the Joint Applicants shall work to minimize all

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reductions in local employment by relocating some of Dominion Services, Inc. shared service functions to Cayce, South Carolina.

Conditions Regarding Credit Quality

Joint Applicants' Position

Witness Chapman testified that, should the Merger succeed, Dominion would provide equity through SCANA, as needed, to SCE&G with the intent of maintaining SCE&G's capital structure and improving credit ratings. Tr. p. 2806-17, ll. 14-16. Additionally, witness Chapman stated that Dominion intends to maintain credit metrics that are supportive of strong investment-grade credit ratings for SCE&G. Tr. p. 2806-17, ll. 17-18. Witness Chapman testified that SCE&G would have enhanced ability to finance capital investments and that SCE&G could access short-term funds that provide liquidity at cost-effective rates. Tr. p. 2806-18, ll. 13-17. Witness Chapman also testified that witness Baudino's proposed conditions are unreasonable and should be disregarded. Tr. p. 2808-8, ll. 19-20. According to witness Chapman, the cost of equity should be determined based on past practice and precedent and the cost of debt used to set rates should reflect SCE&G's actual cost of issuing long-term debt. Tr. p. 2808-8, ll. 21-22; p. 2808-9, ll. 4-6.

SCE&G witness Lapson testified that witness Baudino's recommendations ignore how capital markets function and its adoption would make capital more expense for SCE&G. Tr. p. 1762-7, ll. 9-10. Witness Lapson also testified that the ROE of SCE&G should not be determined using a proxy group of investment grade utilities because it is not reasonable to determine the cost of equity for SCE&G based upon the cost determined for a group of companies of materially lower risk. Tr. p. 1762-16, ll. 12-20. According to witness Lapson, the cost of equity for SCE&G should be determined by comparison with companies of comparable risk. Tr. p. 1762-17, ll. 1-2.

Additionally, witness Lapson testified that the cost of debt used in the future for determining rates should be consistent with the actual cost of issuing debt. Tr. p. 1762-17, ll. 9-10.

ORS' Position

ORS witness Baudino recommended the Commission determine the ROE for SCE&G using a proxy group of investment grade regulated utilities and not allow Dominion or SCE&G to pass through increases in the cost of equity due to adverse effects from the abandonment of V.C. Summer Nuclear Units 2 and 3 prompting the proposed Merger or from any additional risk due to imprudent actions taken by SCE&G and/or SCANA. Mr. Baudino further recommended that the Commission should 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 or on SCE&G's actual cost of new long-term debt. Tr. p. 816-62, ll. 12-22, p. 816-63, ll. 1-2. According to witness Baudino, his recommendations would protect South Carolina's ratepayers from any adverse impacts the proposed Merger may have on SCE&G's ROE. Tr. p. 816-34, ll. 3-7. Additionally, witness Baudino testified that his recommendations would shield South Carolina ratepayers from any adverse financial consequences from SCANA and SCE&G's decisions and involvement in the abandoned V.C. Summer Nuclear Units 2 and 3, including any findings of imprudent actions. Tr. p. 816-64, ll. 14-16. Witness Baudino testified that a disallowance of costs from the abandoned Units 2 and 3 should not be partially or indirectly compensated for through a higher cost of capital. Tr. p. 816-64, ll. 17-18. Finally, witness Baudino testified that the cost of new long-term debt should be based on the average cost, or yield, on current investment grade long-term utility debt. Tr. p. 816-64, ll. 21-22, p. 816-65, ll. 1-2. He noted that if SCE&G/Dominion issues new long-term debt that is rated lower than SCE&G's current debt rating due to adverse consequences of the proposed Merger, then ratepayers should not be forced to pay

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for the higher cost of the new lower credit quality debt. Tr. p. 816-65, ll. 3-9. According to ORS witness Baudino, tying the cost of SCE&G's new post-Merger long-term debt to the lower of the actual cost or the cost of average investment grade long-term utility debt will help ensure South Carolina ratepayers protection from any lower post-Merger debt ratings for SCE&G that may occur. Tr. p. 816-65, ll. 1-4.

In his surrebuttal testimony, witness Baudino testified that the above credit quality conditions will appropriately protect South Carolina ratepayers if the cost of equity and debt increase because of the proposed combination. Tr. p. 820-18, ll. 5-7.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding credit quality. The Commission finds that the imposition of the following conditions would protect South Carolina ratepayers form any adverse impacts the proposed Merger may have on SCE&G's ROE: SCE&G's ROE should be determined using a proxy group of investment grade regulated utilities and Dominion or SCE&G shall not pass through increases in the cost of equity due to adverse effects from the proposed Merger or from any additional risk due to imprudent actions taken by SCE&G and/or SCANA; and 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 or on SCE&G's actual cost of new long-term debt. These conditions will shield South Carolina ratepayers from adverse financial consequences from SCANA and SCE&G's involvement in the abandoned V.C. Summer Nuclear Units 2 and 3 and associated imprudent actions. Witness Chapman testified that the cost of equity should be based on past practice, however, past practice in and of itself is not sufficient justification on which to base this Commission's decision. While

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witness Lapson recommended that the cost of equity be determined by comparison with companies of comparable risk, she admittedly offered that she knew of none.

Accordingly, to protect the ratepayers in this state, while not unfairly disadvantaging SCE&G, the Commission finds the conditions outlined by witness Baudino to be just and reasonable and adopts Mr. Baudino's recommendations as listed in his testimony.

Conditions Regarding Service Quality

Joint Applicants' Position

Dominion witness Blue testified that when service disruptions occur, Dominion's regulated public utilities subsidiaries respond as quickly and safely as possible. Tr. p. 3010-10, ll. 12-15. According to witness Blue, Dominion will maintain customer service at no less than current levels and will strive for continued improvements. Tr. p. 3010-17, ll. 16-17. Additionally, he testified that Dominion will not diminish SCE&G's focus on installing, upgrading, and maintaining facilities necessary for safe and reliable operations. Tr. p. 3010-17, ll. 18-20.

Dominion witness Blue testified that the Joint Applicants would not oppose a requirement to monitor and report service quality results for SCE&G's electric and gas operations to assure there is no degradation in service quality levels. Tr. p. 3012-11, ll. 4-6. However, the Joint Applicants do not believe that service quality levels need to be improved or that separate proceeding is appropriate. Tr. p. 3012-11, ll. 6-8.

SCE&G witness Raftery testified that SCE&G offered excellent customer service and would continue to do so should the Merger succeed; as a result, there is no reason to impose additional, inefficient regulatory reporting requirements on SCE&G in this proceeding. Tr. p. 2434-17, ll. 10-13. On cross-examination, SCE&G witness Raftery testified that SCE&G would be willing to its electric operations to provide quarterly SAIDI and SAIFI reports, the same as

provided by Dominion shown on Exhibit RAB-12, page 1, with the quarterly reporting to the Commission beginning no less than three months after the close of the proposed Merger. Tr. p. 2476, ll. 15-19. Additionally, witness Raftery testified that SCE&G would be willing to provide cost and/or performance metrics, reporting the same as provided by Dominion on Exhibit RAB-12, page 2, on a quarterly basis, to begin no less than three months after the close of the transaction, though witness Raftery did clarify that the SCE&G does not track the customer satisfaction in the manner the exhibit portrays. Tr. p. 2477, ll. 13-16. Witness Raftery testified that SCE&G would be provide to the Commission for SCE&G's electric operations, a yearly plan for addressing the five worst performing feeders on the SCE&G's system. Tr. p. 2478, ll. 16-19.

Witness Raftery testified that provided the data were available, SCE&G would file a detailed report with the Commission identifying opportunities for improving the service quality to electric Customers on SCE&G's system within six months after the close of the transaction. Tr. p. 2480, ll. 2-5. He further testified that for SCE&G's electric and gas operations, he could not object should the Commission wish to open a docket within two years from the filing of the service-quality improvement report to evaluate SCE&G's progress on service quality, whereby ORS and other parties may intervene, and SCE&G submit testimony to demonstrate its progress and experience with service quality for electric and gas operations since the close of the Merger. Tr. p. 2481, l. 15.

As part of the Plan B-L, witness Purohit stated that, should the Merger succeed, for SCE&G's electric operations, it shall provide quarterly SAIDI and SAIFI reporting the same as provided by Dominion and shown on Exhibit RAB-12, page 1, beginning no less than six months after the close of the transaction. (Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, p. 5). Additionally, witness Purohit stated that, should the Merger succeed, for

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SCE&G's electric operations it shall provide quarterly call center performance metrics reporting the same as provided by Dominion on Exhibit RAB-12, page 2, beginning no less than six months after the close of the transaction. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, p. 5. Witness Purohit stated that, should the Merger succeed, for SCE&G's gas operations it shall provide quarterly service quality reports with the same service quality metrics shown as provided by Dominion on Exhibit RAB-11, beginning no less than six months after the close of the transaction. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, p. 6. According to witness Purohit, the above-mentioned service quality reports shall be reviewed biennially in a Commission docket, with the first review to occur two years after the Merger close and any degradation in service levels shall be accompanied by a plan submitted by SCE&G to address the degradation. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, p. 6.

ORS' Position

ORS witness Baudino's testimony details his extensive experience testifying regarding service quality measures and reporting. Tr. p. 816-54, ll. 2-21. According to witness Baudino, the proposed acquisition of SCANA by Dominion provides an excellent opportunity for the Commission to review and establish service quality standards for SCE&G that protect South Carolina ratepayers. Tr. p. 816-54, l. 23, 816-55, ll. 1-2. According to ORS witness Baudino, service quality standards with regular reporting to the Commission will assure all stakeholders that the integrity of SCE&G's service quality will be maintained or enhanced. Tr. p. 816-60, ll. 6-8. Additionally, ORS witness Baudino pointed out that, should the Merger succeed, Dominion's subsidiaries currently have reporting requirements in place; therefore, Dominion already understands how to gather, evaluate, and report on service quality for its gas and electric

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operations, and South Carolina ratepayers would benefit from this expertise. Tr. p. 816-60, ll. 9-14. ORS witness Baudino also testified that he had concerns regarding SCE&G's quality of service of electric operations and cited the 2018 Electric Utility Residential Customer Satisfaction Survey from J.D. Power, which stated that SCE&G ranked next to last in residential customer satisfaction of the fourteen electric utilities surveyed in the South region. Tr. p. 816-60, ll. 15-26, p. 816-61, ll. 1-3. Mr. Baudino recommended that the Commission Order SCE&G to adopt service quality measures for its electric operations that include: quarterly SAIDI and SAIFI reports consistent with the manner now performed by Dominion North Carolina Power and shown on Hearing Exhibit 36, RAB-12, to begin no less than three months after the close of the proposed Merger; quarterly call center performance metrics reporting consistent with the manner performance by Dominion Energy North Carolina/Dominion Energy Virginia and shown on Hearing Exhibit 36, RAB-12, to begin no less than three months after the close of the proposed Merger; and an annual plan for addressing the 5% worst performing feeders on the Company's system to be reported to the Commission. Tr. p. 816-61, ll. 9-22. Additionally, witness Baudino recommended that within six months of the close of the proposed Merger, SCE&G file a detailed report to the Commission identifying opportunities for improving the service quality provided to electric Customers on SCE&G's system. Tr. p. 816-62, ll. 1-5. Lastly, witness Baudino recommends that the Commission open a docket within two years from SCE&G filing its service quality improvement report to evaluate SCE&G's progress on service quality, in which SCE&G must submit testimony regarding its progress and experience with service quality since the close of the proposed Merger. Tr. p. 816-62, ll. 12-16.

Regarding the service quality of gas operations, ORS witness Baudino recommended that SCE&G file quarterly service quality reports with the same service quality metrics shown in the

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report for Dominion contained in Hearing Exhibit 36, RAB-11. Tr. p. 816-62, ll. 17-21. ORS witness Baudino recommended that quarterly reporting on the gas service quality metrics commence no less than six months after the close of the proposed Merger and that SCE&G file testimony regarding its experience with gas service quality in the service quality proceeding he recommended for SCE&G's South Carolina electric operations. Tr. p. 816-63, ll. 3-8.

In his surrebuttal testimony, witness Baudino testified that the ORS Merger condition regarding service quality hold SCE&G accountable through quantifiable standards and regular reporting to the Commission. Tr. p. 820-18, ll. 17-18. Additionally, as witness Baudino testified, Dominion already performs this service quality reporting in its other jurisdictions. Tr. p. 820-18, ll. 19-20.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose Merger conditions upon the Joint Applicants. The Commission orders these conditions to ensure that the Merger is in the public interest, Customers are not harmed, and maximize service quality to the extent reasonable. The Joint Applicants have stated that Dominion will maintain service at no less than current levels and strive for continued improvements. Witness Baudino testified regarding the methodology that Dominion employs in some jurisdictions in which it operates as well as the fact that this Merger presents an excellent opportunity for the Commission to establish service quality standards for SCE&G that protect South Carolina ratepayers. Mr. Baudino cited J.D. Power studies that indicated that room for improvement exists on SCE&G's system. According to witness Baudino, the Commission should order SCE&G to adopt service quality measures for its electric operations that include:

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1. Quarterly SAIDI and SAIFI reports consistent with the manner performed by Dominion North Carolina Power and shown on Hearing Exhibit 36, RAB-12, to begin no less than three months after the close of the proposed Merger;
2. Quarterly call center performance metrics reporting consistent with the manner performance by Dominion Energy North Carolina/Dominion Energy Virginia and shown on Hearing Exhibit 36, RAB-12, to begin no less than three months after the close of the proposed Merger;
3. An annual plan for addressing the 5% worst performing feeders on SCE&G's system to be reported to the Commission;
4. Within six months of the close of the proposed Merger, SCE&G file a detailed report to the Commission identifying opportunities for improving the service quality provided to electric Customers on SCE&G's system;
5. Within two years from SCE&G filing its service quality improvement report to evaluate SCE&G's progress on service quality, in which SCE&G must submit testimony regarding its progress and experience with service quality since the close of the proposed Merger;
6. Regarding the service quality of gas operations, SCE&G file quarterly service quality reports with the same service quality metrics shown in the report for Dominion contained in Hearing Exhibit 36, RAB-11.
7. Quarterly reporting on the gas service quality metrics commence no less than six months after the close of the proposed Merger and that SCE&G file testimony regarding its experience with gas service quality in the service quality proceeding he recommended for SCE&G's South Carolina electric operations.

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According to witness Baudino, these conditions will work to hold SCE&G accountable through quantifiable standards and regular reporting to the Commission.

Joint Applicants offered somewhat contradictory testimony on this point. Witness Blue testified that Joint Applicants would not oppose a requirement to monitor, but that a separate proceeding is not appropriate. Witness Raftery testified that while SCE&G did not oppose witness Baudino's conditions, he did not believe they were necessary. When discussing the new Joint Applicant's Plan B-L, witness Purohit seemingly testified that the Joint Applicants were agreeable to the reporting requirements as well as the opening of a Commission docket. The Commission believes that safeguards are necessary and in the public interest and finds that in order to facilitate public trust, transparency, and collaboration, as well as an attempt to maintain accountability standards, the conditions put forth by witness Baudino, are to be implemented.

Most Favored Nation Clause

Joint Applicants' Position

Witness Blue testified that a "Most Favored Nation" clause in the Commission's Order is not appropriate or warranted. Tr. p. 3012-12, ll. 16-19.

ORS' Position

ORS recommends that the Commission include a "Most Favored Nation" clause in its final Order. Tr. p. 1268-5, ll. 5-6. According to witness Seaman-Huynh, a Most-Favored Nation clause would guarantee that both SCE&G electric and natural gas Customers would receive *pro rata* benefits and protections equivalent to those that may be approved by another state jurisdiction. Tr. p. 1268-5, ll. 11-13. Furthermore, witness Seaman-Huynh testified that a Most Favored Nation clause would allow the Commission to review and identify whether other state jurisdictions provide a greater level of benefits and protections to Customers than those currently approved by

the Commission and make any corresponding adjustments to ensure SCE&G's South Carolina Customers receive the greatest level of benefits and protections. Tr. p. 1268-5, ll. 11-17. Also, witness Seaman-Huynh testified regarding the Commission's approval of a Most Favored Nation clause in a previous merger. Tr. p. 1268-5, ll. 20-22.

In his surrebuttal testimony, witness Seaman-Huynh testified the inclusion of a "Most Favored Nation" clause in the Commission's Order would ensure that SCE&G's South Carolina electric and natural gas Customers receive the same benefits and protections as those received by other SCANA Corporation subsidiaries. Tr. p. 1268-5, ll. 1-4.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate and in the public interest to impose a Merger condition upon the Joint Applicants regarding a Most Favored Nation Clause. The Commission finds that a Most Favored Nation clause would guarantee that both SCE&G electric and natural gas Customers receive *pro rata* benefits and protections equivalent to those that are approved in other state jurisdictions. According to the Joint Applicants, a Most Favored Nation clause is not appropriate or warranted. However, Joint Applicants agreed to one in their North Carolina Merger proceeding. Based on the evidence presented, the Commission finds that the imposition of a Most Favored Nation clause as a condition of the Merger to be just and reasonable, would protect South Carolina ratepayers, and is warranted in this proceeding.

Natural Gas

Joint Applicants' Position

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Dominion witness Farrell testified that Dominion's experience brings to the Merger a deep understanding of the responsibilities and challenges of current U.S. gas utilities. Tr. p. 3010-19, ll. 7-11.

In his rebuttal testimony, witness Blue testified that, while he believes the merger would provide benefits to SCE&G's natural gas Customers, the Joint Applicants believe the rates and service with respect to SCE&G's natural gas Customers to be beyond the scope of the proceeding. Tr. p. 3012-12, ll. 11-15.

As part of the Plan B-L, witness Purohit stated that the Joint Applicant would commit to bill credits for SCE&G natural gas Customers for refunds of 2017 revenues. Tr. p. 4217-12, l. 13. According to witness Purohit, upon closing of the Merger, SCE&G will create a regulatory liability $2.45 million representing a refund to natural gas Customers of 2017 revenues and will provide the refund to natural gas Customers as a bill credit of $820,000 on January 1, 2019 or as soon thereafter as practicable, another bill credit of $815,000 on January 1, 2020, and a final bill credit of $815,000 on January 1, 2021. Hearing Exhibit 69, Purohit Second Supplemental Rebuttal, Exhibit PP-4A, pp, 6, 7.

On cross-examination, witness Blue testified that the Merger would affect SCE&G's natural gas Customers. Tr. p. 3050, ll. 19-23.

ORS' Position

According to witness Seaman-Huynh, the Joint Applicants made no commitments to providing any quantifiable benefits to the SCE&G natural gas Customers. Tr. p. 1268-6, ll. 4-5. ORS witness Seaman-Huynh identified that the North Carolina Public Staff believes that a level of savings will be realized by natural gas Customers should the proposed Merger succeed, and he cites a Settlement Agreement reached between the Joint Applicants and the Public Staff in North

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Carolina whereby by Public Service of North Carolina Customers receive a bill credit of $3.75 million. Tr. p. 1268-6, ll. 6-13. Accordingly, should the Merger succeed, ORS recommends that SCE&G natural gas Customers receive a commensurate benefit and SCE&G provide a total bill credit of $2.45 million to its natural gas Customers over three years beginning with the first year of the proposed Merger. Tr. p. 1268-6, ll. 15-19. Witness Seaman-Huynh testified that this amount is derived from the total number of Customers for each company and the agreed amount of the total bill credit from the North Carolina Stipulation Agreement. Tr. p. 1268-6, ll. 19-21.

In his surrebuttal testimony, witness Seaman-Huynh testified that Dominion and SCE&G did address impacts to natural gas Customers in this docket. Tr. p. 1268-6, ll. 21-22, p. 1268-7, ll. 1, 6-8.

Intervenors' Positions

In his Direct testimony, witness Alatorre testified that Transco intervened in this docket because Transco's interests in providing natural gas transportation and storage services to SCE&G will be substantially affected by the Commission's decisions in this proceeding and any changes of the contracts between Transco and Dominion and/or Transco and SCE&G. Tr. p. 3556-2, ll. 10-18.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding natural gas. The Commission finds that a level of savings would be realized by natural gas Customers should the Merger succeed. The Joint Applicants and ORS witnesses testified regarding a bill credit of $2.45 million to SCE&G's natural gas Customers over a three-year period. Witness Purohit, when discussing the Plan B-L stated that SCE&G would commit to bill credits

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for SCE&G natural gas Customers for refunds of $2.45 million in the manner recommended by witness Seaman-Huynh.

Accordingly, to protect SCE&G's natural gas Customers in South Carolina, this Commission finds the proposal put forth by witness Seaman-Huynh and Purohit to be just and reasonable and orders its imposition as a condition should the Merger succeed.

Atlantic Coast Pipeline

Intervenors' Positions

According to witness Alatorre, Dominion witness Farrell has stated that, "[t]his combination can open new expansion opportunities including the Atlantic Coast Pipeline that is now under development brining lower cost to the region." Alatorre Tr. p. 3556-4, ll. 3-6. Furthermore, witness Alatorre quoted Dominion's Vice President, Dan Weekly, when he was discussing the Atlantic Coast Pipeline and stated, "everybody knows it's not going to end in Lumberton." AlatorreTr. p. 3556-4, ll. 9-11.

Witness Alatorre further testified that capacity on the existing Transco pipeline system is much lower in cost than capacity on new greenfield pipelines like the Atlantic Coast Pipeline. Alatorre Tr. p. 3556-8, ll. 11-17. He also testified that the gas supply region in the Marcellus accessed by the Atlantic Coast Pipeline project is available already through Transco's existing system. Tr. p. 3569, ll. 6-10. Witness Alatorre further testified that the gas price differential between Marcellus-sourced gas and other regions is shrinking. Tr. p. 3568, ll.19-22.

Despite this testimony, Mr. Alatorre ultimately supported the Settlement Agreement between Transco and the Joint Applicants. Tr. p. 3554, l. 20 to p. 3555, l. 4.

SACE and CCL witness Lander testified that Dominion is exploiting a regulatory failure at the federal level when it proposes pursuing a new pipeline project and that FERC conducts no

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independent analysis of whether these pipeline projects are necessary or for the public good, nor has Federal Energy Regulatory Commission ("FERC") employed any heightened scrutiny when capacity purchase are affiliated entities of the pipeline developers. Tr. p 2286, 11. 3-18 Specifically, Witness Lander identified a regulatory "gap" where the FERC, approves construction of new interstate natural gas pipelines without sufficiently evaluating whether that pipeline is necessary. Lander Tr. p. 2297-4, ll. 6-13. As long as a pipeline developer has sold capacity on its pipeline, FERC assumes – without any independent analysis of the individual contract – that there is a need for the pipeline. *Atlantic Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at ¶ 41 (2018) ("Order on Reh'g") ("[E]ven though all but one of the ACP Project's shippers are affiliated with Atlantic, the Commission is not required to look behind precedent agreements to evaluate project need."). Witness Lander further testified that holding companies like Dominion have exploited this regulatory gap by having their regulated utility subsidiaries act as anchor tenants on pipelines built by separate Dominion subsidiaries. Tr. p 2297-4. 11. 17-20. Witness Lander also testified that Dominion has done exactly this in Virginia by having its regulated utility (Virginia Electric and Power Co. d/b/a Dominion Energy Virginia) sign a multi-decade, multi-billion dollar capacity contract on the Atlantic Coast Pipeline, also a Dominion project, without every studying whether it needed that capacity for power generation. Tr.. p. 2287, 11. 4-14. Additionally, witness Lander testified that Dominion intends to charge its Customers a hundred percent of the capacity contract costs, regardless of whether Dominion actually uses the pipeline to fuel its power plants, and that the contract will not save Customers money. Tr. p.2288, 11. 1-5. Witness Lander testified that the ACP is billions of dollars over budget and years behind schedule. Tr. p. 2290, 11. 17-19. Accordingly, witness Lander recommended that the Commission should order, should the Merger succeed that SCE&G must first engage in a needs analysis in a public proceeding before this

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Commission to identify demand, including analysis of the severity, frequency, and seasonal timing of such demand. Tr. p. 2290, 11. 12-18. Second, witness Lander recommended the Commission require SCE&G undertake a comparative cost analysis identifying demand and possible extension of expansion of services and facilities, including cost-effective demand-side management and energy efficiency and utilization of its and others available peaking facilities. Tr. p. 2292, 11. 1-9. Witness Lander recommends that should the identified demand cost warrant additional fuel supplies, then the Commission should require a public, transparent procurement process, possibly involving a competent third-party evaluator, reviewers, and reports to this Commission. Tr. p. 2292. 11. 1-9. Finally, witness Lander testified that the Commission should impose regulatory conditions on the proposed Merger that ensure vigorous, ongoing oversight of affiliate transactions. Tr. 2292-3, 11. 24-5. Witness Lander for example testified that the Commission could require affiliate transactions exceed a Commission defined monetary and/or duration threshold, be subject to a public RFP and bidding process that would be reviewed prior to execution of a contract. Tr. p. 2293, 11.14-25.

ORS' Position

ORS witness Kollen testified that an affiliate transaction occurred when Dominion's regulated utility arm in Virginia signed with Atlantic Coast Pipeline, LLC ("ACP"). Tr. p. 1008, ll. 3-13. Additionally, witness Kollen testified that he believes affiliate natural-gas purchase will be in excess of market prices and he is concerned about affiliate contracts, similar the one described above, happening in South Carolina. Tr. p. 1010, ll. 8-21. Finally, witness Kollen testified that he believed it would be appropriate for the Dominion to get approval from the Commission before it signs contracts with itself when those contracts deal with "billions of dollars." Tr. p. 1011, ll. 1-14.

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ORS witness Seaman-Huynh, testified that ORS recommended that this Commission scrutinize affiliated transactions. Tr. p. 1289, ll. 11-15. Additionally, witness Seaman-Huynh testified that should the merger succeed, the ACP be extended into South Carolina, and SCE&G were to sign a contract for capacity on the ACP, that would constitute an affiliate transaction. Tr. p. 1290, ll. 6-16.

Joint Applicants' Position

Dominion intends to operate SCE&G exactly how it operates its Virginia utility. (Tr. p. 3134, ll. 2-4. Although Mr. Farrell has testified there are no "plans" to bring the Atlantic Coast Pipeline to South Carolina, he has also stated Dominion would like to do so. Tr. p. 3206, ll. 6-10. ("We would hope that demand will arise, and that the pipeline would be extended into South Carolina, but we have no plans to do so today, but I would hope that that happens.").

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants, should the Merger be consummated, regarding extension of the Atlantic Coast Pipeline. According to the evidence presented, the Atlantic Coast Pipeline could be extended into South Carolina and a FERC analysis may not be sufficient to protect South Carolina ratepayers. In an effort to ensure protection of South Carolina Customers, while not dampening the ability to extend the Atlantic Coast Pipeline, should the need exist, witness Lander recommended that SCE&G first engage in a needs analysis in a public proceeding before the Commission to determine the demand for an extension of the ACP. Witness Kollen testified that, should the Merger succeed and SCE&G contract with the Atlantic Coast Pipeline, then an affiliate transaction would occur and it would be

appropriate for Dominion to get approval from the Commission before it signed a contract with itself when those contracts are monetarily material.

The V.C. Summer project was billions of dollars over budget and years behind schedule. Dominion's Atlantic Coast Pipeline Project is also billions of dollars over budget and years behind schedule. Tr. p. 3158, ll. 5-15. This is the same project that Witness Lander has testified will saddle Dominion's Virginia Customers with billions of dollars in unnecessary costs. This is also the same project that Dominion CEO Tom Farrell testified Dominion would like to extend into South Carolina. We have no intention of allowing SCE&G Customers – once again – to bear the financial burden of a bad project that has already run several billion dollars over budget and years behind schedule, especially if there is no analysis of whether its needed before Dominion imposes that obligation on ratepayers.

If Dominion wants to bring the Atlantic Coast Pipeline to South Carolina's Pee Dee region, it may try to do so by going to market for unaffiliated Customers; nothing in Mr. Lander's testimony prevents that. Tr. p. 2336, ll. 12-19. What Dominion may not do, however, is manufacture a "market" that FERC will not review using captive SCE&G Customers who do not actually need the pipeline.

The Settlement Agreement between Transco and the Joint Applicants is insufficient to achieve this protect against this threat. Witness Alatorre testified that existing capacity is cheaper for SCE&G Customers than new greenfield capacity. SEC&G Witness Jackson agreed. Tr. p. 4007, ll. 9-11 ("[L]egacy capacity is going to be so much lower than any greenfield capacity."). Neither the Joint Applicants' case nor the Settlement Agreement with Transco adequately ensure that SCE&G only signs contracts that are necessary and lowest cost. The Settlement Agreement Witness Alatorre supports does not provide sufficient oversight. The Settlement Agreement

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requires SEC&G to issue an RFP before signing any new capacity contracts over 100,000 dekatherms per day. Tr. p. 3571, ll. 3-4. The Settlement Agreement does not, however, specify the nature of the RFP. Tr. p. 3571, ll. 11-13. The Settlement Agreement does not specify the screening SCE&G will use to evaluate RFP responses. Tr. p. 3571, ll. 14-16. The Settlement Agreement does not give this Commission any prior review of either the RFP or the screening criteria. Tr. p. 3571, ll. 20-22. As Witness Alatorre conceded, an "RFP's results are only as good as the RFP itself." Tr. p. 3571, ll. 17-19.

Extending the Atlantic Coast Pipeline into South Carolina is a threat to ratepayers unless we impose adequate ratepayer protections. The Atlantic Coast Pipeline would be more expensive to use than the exiting Transco system, as both Witness Alatorre and SCE&G Witness Jackson agree. The Atlantic Coast Pipeline accesses gas that is readily available via the existing Transco system, and – although that gas has historically been lower cost than other supplies – that cost savings is shrinking, which in turn makes the value of accessing that gas supply region lower.

Dominion intends to operate SCE&G exactly how it operates its Virginia utility. Tr. p. 3134, ll. 2-4. Although Mr. Farrell has testified there are no "plans" to bring the Atlantic Coast Pipeline to South Carolina, he has also stated Dominion would like to do so. Such an extension would require FERC approval, which as Mr. Lander has testified, and as FERC itself has confirmed, does not involve any scrutiny of individual contracts. Absent FERC scrutiny, such review would fall to us. It is concerning that Mr. Farrell testified that Dominion would likely oppose a requirement that the Company withstand such scrutiny before signing any new precedent agreement. Tr. p. 3113, ll. 8-13. To the extent that includes using captive ratepayers to bear the cost and risk of pipeline infrastructure projects, new protections are necessary.

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This Commission concurs it should scrutinize affiliate transactions and that regulatory conditions should ensure vigorous, ongoing oversight of affiliate transactions. This Commission believes that the conditions set forth above, which specifically deal with affiliate transactions, are sufficient to deal with affiliate transactions; however, the burden that could be shifted onto South Carolina ratepayers associated with an extension of the Atlantic Coast Pipeline is so great, this Commission finds an additional condition is necessary to protect ratepayers from an unnecessary extension of the Atlantic Coast Pipeline into South Carolina. Accordingly, the Commission finds neither SCE&G nor any of its subsidiaries, over which the Commission has jurisdiction, shall enter into any contract, whether for purchase of gas or for firm transportation capacity, that entails transportation using capacity on any interstate natural gas pipeline where such capacity does not already have a certificate from FERC, unless the Company proves, in a public proceeding before the Commission, by a preponderance of the evidence that the Company has (i) identified and determined the date and amount of new fuel delivery resource it needs, (ii) objectively studied all available alternative fuel delivery resource options, including options other than such contract(s) to meet the identified and determined need, and (iii) determined that such contract(s) was the lowest cost available option taking into consideration fixed and variable costs and a reasonable projection of utilization..

Net Operating Loss-related Accumulated Deferred Income Tax

<u>Joint Applicant's Position</u>

In his rebuttal testimony, witness Warren stated,

> Under the Customer Benefits Plan, the payment is funded by shareholders to return amounts previously collected on the NND project. To the extent the $1.3 billion rate credit generates or adds to SCE&G's NOLC, portion of the NOLC-related DTA will be borne solely by shareholders and will not increase the NOLC DTA included in the Capital Cost Rider.

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Tr. p. 991-21, ll. 21-23, p. 991-22, ll. 1-2, *citing* Tr. p. 2835-15, ll. 19-22, p. 2835-16, ll. 1-

ORS' Position

According to witness Kollen, this was the first time that the Joint Applicants committed to not seek recovery of the incremental NOL ADIT that will result from the proposed $1.3 billion one-time customer rate credit. Tr. p. 991-5, ll. 6-10. Witness Kollen testified that this was a significant commitment and should be formally included in the final Commission Order. Tr. p. 991-22, ll. 3; 7-10. According to witness Kollen, it is important to ensure that any portion of the NOL ADIT due to the one-time customer rate credit is excluded from any recovery in any future proceeding. Tr. p. 991-22, ll. 10-13. Witness Kollen testified that the Commission should specify the methodology to calculate the NOL ADIT related to the one-time customer rate credit to correctly exclude it from the Merger CBP, or any alternative, and any future proceedings. Tr. p. 991-22, ll. 14-18. According to witness Kollen, the Commission should assume the $1.3 billion is the last deduction each year in the calculation of the NOL ADIT for ratemaking purposes. Tr. p. 991-22, ll. 20-21. This will ensure that the NOL ADIT caused by all other allowed deduction is amortized first and used to reduce the NOL ADIT included in rate base. Tr. p. 991-22, ll. 21-23.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding NOL ADIT. Witness Warren and witness Kollen agree that the Joint Applicants shall not seek recovery of the incremental NOL ADIT that will result from the proposed $1.3 billion one-time customer

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rate credit. This Commission concurs and finds that this is a just and reasonable condition of the Merger. Accordingly, as a condition of the Merger the NOL ADIT will be excluded from the revenue requirement in any future proceeding and the $1.3 billion will be the last deduction each year in the calculation of the NOL ADIT for ratemaking purposes.

Litigation Expenses

Joint Applicants' Position

Witness Farrell testified that he could read the Merger Agreement where it stated that Dominion agreed to pay attorney's fees for civil and criminal investigations and cases as well as judgments, fines, and liabilities of all these current and former officers and directors for all civil, criminal and investigative matters. Tr. p. 3074, ll. 6-10. Regarding this indemnification provision, witness Farrell doubts that any of these costs will be put into rates for ratepayers to pay. Tr. p. 3088, ll. 8-12.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding benefits to the litigation expenses. This Commission agrees with the contention of Dominion's CEO that ratepayers should not be required to pay litigations expenses arising out of SCE&G's imprudent actions and the resulting litigation. Therefore, litigation expenses associated with the NND Project, the NND costs and abandonment and all related claims, state court lawsuits related to the BLRA and the collection of revised rates, administrative and law enforcement investigations and proceedings related in any way to the Project including the Consolidated Docket (Docket Nos. 2017-370-E, 2017-305-E, and 2017-207-E), and the federal court actions filed by or against SCANA/SCE&G or any of its officers or directors, and including any appeals, shall be incurred

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and expensed at the respective Dominion Energy and SCANA corporate (Holding Company) level, except to the extent such expenses are required to be recorded on the books of SCE&G under Generally Accepted Accounting Principles, in which case any such expenses will be reflected on SCE&G's books below-the-line in the appropriate FERC account to ensure the amounts are excluded from rate recovery. SCE&G shall not seek recovery of these costs from ratepayers. This includes any costs that have been incurred or may in the future be incurred, including, but not limited to, legal expenses or consulting expenses associated with those listed above.

Energy Efficiency

Joint Applicants' Position

Dominion witness Thomas F. Farrell, II testified that, following the merger, "Dominion Energy plans to operate SCE&G in substantially the same manner as it is operated today." Tr. p. 2993-14, 11. 5-6. Although witnesses for the Joint Applicants contended that the topic of energy efficiency is outside the scope of these proceedings, they did offer testimony on energy efficiency. Dominion witness Blue testified regarding Dominion Virginia Power's energy efficiency programs. Witness Blue testified that in Virginia, recently enacted legislation requires Dominion to seek approval for $870 million in energy-efficiency programs over the next 10 years. Tr. p. 3232.

SCE&G witness Raftery also testified regarding demand-side management ("DSM"), including energy efficiency. Mr. Raftery agreed that efficiency programs can help participating Customers reduce their bills, Tr. p. 2457, 11. 17-21, and that efficiency programs reduce the fuel costs that are passed on to Customers, Tr. p. 2458, 11. 10-22. Yet Mr. Raftery acknowledged that rather than increase the energy savings from its efficiency programs, SCE&G has allowed those savings to decline for four straight years. Tr. p. 2461-2, 11. 5-10. Mr. Raftery conceded that

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currently, SCE&G's DSM programs reduce retail sales by only 0.37%. Tr. p. 2462, 11. 11-14. Witness Raftery pointed to an energy efficiency potential study that is currently underway for SCE&G's service territory, Tr. p. 2464, 11. 3-10; however, the results of that study are unknown at this time, and Mr. Raftery offered no assurances that SCE&G would pursue the energy savings identified in the potential study.

Intervenors' Positions

CCL and SACE witness Binz testified that the proposed merger provides the Commission with an opportunity to impose conditions on the merging parties that ensure the merger is in the public interest, including conditions relating to energy efficiency.

Witness Binz pointed to the State Energy Plan, which "repeatedly commits to more diverse energy resources, more renewable energy, and greater energy efficiency," as "[p]ossibly the clearest statement of public-interest goals in the energy realm in South Carolina." Tr. p. 2201, ll. 13-18. Witness Binz further testified that energy efficiency is a low-cost resource that can help Customers save money on their bills. Tr. p. 2201, ll. 18-21.

Mr. Binz's testimony also showed that among large utilities, Dominion Virginia Power and SCE&G each rank near the bottom for their energy efficiency programs. Mr. Binz testified, based on data from the American Council for an Energy Efficient Economy ("ACEEE"), that SCE&G's energy efficiency performance lags far behind most of its peers, and that SCE&G ranks 39th out of the nation's 51 largest utilities with regard to the performance of its efficiency programs. Dominion ranks even lower than SCE&G in ACEEE's national rankings of efficiency performance—50th out of 51. Tr. pp. 2207-9 and 10.

Commission Finding

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As discussed in further detail in the previous sections, as proposed, the merger between Dominion and SCANA does not offer sufficient benefits to Customers for the Commission to determine it is in the public interest. We must ensure that the merger furthers state policy goals, including those goals of "maximiz[ing] . . . energy conservation and efficiency and minimiz[ing] the cost of energy throughout the State." S.C. Code Ann. § 48-52-210.

From the controversy surrounding recovery of SCE&G's NND costs is the fact that the Company's ratepayers have been saddled with the cumulative effect of multiple rate increases under the BLRA as a result of the V.C. Summer project. Numerous public witnesses testified during the public hearings in this matter that they are struggling to pay their bills in the face of these large increases. An expanded and improved suite of energy efficiency programs would help ratepayers to manage their electric bills in the face of increased rates. CustomersNeither is there any assurance in Dominion witness Farrell's promise that Dominion intends to improve SCE&G's DSM and EE programs.

Accordingly, to further the public interest, the Commission finds and determines that it is necessary to include conditions on the merger aimed at improving the performance of SCE&G's DSM and energy efficiency portfolio. If the merger is consummated, SCE&G shall be required to meet a gradually increasing energy efficiency savings target corresponding to a percentage of the prior year's retail electricity sales, as follows: 0.50% in 2019, 0.75% in 2020, 1.0% in 2021, and 1.5% in 2022 and thereafter. To ensure compliance with the target, if the Company's actual energy savings are below the agreed-upon target in any given year, the Company shall quantify the fuel savings that could have been avoided if DSM/EE savings were achieved, and refund that amount through a decrement rider established in the following year's fuel rider proceeding.

Clean Energy Procurement

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Joint Applicants' Position

As discussed previously, the Joint Applicants have requested that this Commission either 1) approve the proposed merger of Dominion and SCANA or 2) find that: (a) the combination is in the public interest; or (b) there is an absence of harm to South Carolina ratepayers as a result of the combination.

Dominion witness Thomas F. Farrell, II testified that, following the merger, "Dominion Energy plans to operate SCE&G in substantially the same manner as it is operated today." Tr. p. 2993-14; ll. 5-6. Witnesses for the Joint Applicants generally opined that issues related to clean energy are outside the scope of these proceedings, however. SCE&G witness John Raftery testified regarding the Company's practices with regard to renewable energy and the process for procurement of distributed energy resources. Witness Raftery pointed to the State Energy Plan and the ongoing stakeholder process to implement that plan, then stated that it is not appropriate to "short-circuit" that process in this proceeding. Dominion witness Robert Blue, however, claimed that the matters of energy efficiency and renewable energy resources are beyond the scope of this proceeding.

Intervenors' Positions

CCL and SACE witness Binz testified that the proposed merger provides the Commission with an opportunity to impose conditions on the merging parties that ensure the merger is in the public interest.

Mr. Binz pointed to the State Energy Plan, which "repeatedly commits to more diverse energy resources, more renewable energy, and greater energy efficiency," as "[p]ossibly the clearest statement of public-interest goals in the energy realm in South Carolina." Tr.. 9, p. 2201,

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ll. 13-18. Renewable energy and energy efficiency are low-cost, low-risk resources that can help Customers save money on their bills. Tr.. 9, p. 2201, ll. 18-21. To ensure that the merger is in the public interest, witness Binz recommended that the Commission place conditions on the merger that will move the state toward achievement of the state policy goals encouraging the use of clean energy resources. Tr.. 9, p. 2201, ll. 21-26.

Mr. Binz testified that adopting a competitive framework for resource acquisition provides SCE&G with a path forward toward greater investment in South Carolina that will move the state past the failed V.C. Summer nuclear plant and toward a clean energy future. Further, rigorous competition among suppliers will assure that the Commission can obtain the lowest cost, consistent with the needs of the utility and the state. Tr. 9, p. 2200, ll. 19-23. As a condition of any approval of the merger, therefore, Mr. Binz recommended that the Commission require SCE&G to conduct an open, transparent, competitive solicitation for any new energy resources that may be needed to meet the Company's energy and capacity needs. Tr. p. 2204, ll. 1-6 Mr. Binz explained that he was suggesting "that [the Commission] specify the manner in which they acquire additional resources, not which ones they acquire." Tr. 9 at 2221, ll. 22-25.

SBA did not pre-file witness testimony; however, after the evidentiary hearing concluded, SBA and the Joint Applicants filed a settlement agreement (the "SBA Settlement") that largely implements the recommendations of witness Binz regarding a competitive, all-source procurement of energy resources, as well as improvements to SCE&G's existing integrated resource planning process.

<u>Commission Finding</u>

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As discussed in further detail in the previous sections, as proposed, the merger between Dominion and SCANA does not offer sufficient customer protections for the Commission to determine it is in the public interest.

The Commission's public interest inquiry is informed by state energy policy. The South Carolina legislature has enacted legislation requiring a "comprehensive state energy plan that maximizes to the extent practical environmental quality and energy conservation and efficiency and minimizes the cost of energy throughout the State." S.C. Code Ann. § 48-52-210. The General Assembly articulated its priorities explicitly in terms of the "public interest." S.C. Code Ann. § 48-52-210(10) (The energy plan must, in part, "ensure that state government is organized appropriately to handle energy matters ***in the best public interest***.") (emphasis added). Thus, for the Commission to determine that the proposed merger would be in the public interest, we must ensure that the merger would further the Act's statutory goals, including the goals of "ensur[ing] access to energy supplies at the lowest practical environmental and economic cost;" "ensur[ing] that demand-side options are pursued wherever economically and environmentally practical; "encourag[ing] the development and use of clean energy resources, including . . . energy conservation and efficiency, and indigenous, renewable energy resources;" and "ensur[ing] that basic energy needs of all citizens, including low income citizens, are met . . . ." S.C. Code Ann. § 48-52-210(B). Such public interest considerations are clearly not beyond the scope of this proceeding, as contended by the Joint Applicants. On the contrary, they are core to the Commission's responsibilities in a merger review. As proposed, however, the merger does not adequately address state energy policy goals.

The existing practices and processes testified to by Joint Applicants witnesses Raftery and Blue do not preclude the Commission from approving the SBA settlement or otherwise adopting

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Witness Binz's recommendation that the SCE&G initiate a competitive bidding process for resource procurement. Witness Binz's recommendation would not expand the Commission's existing authority to review IRPs, nor would it intrude on the utility's ability to make its own decisions about resource procurement.

Therefore, the Commission finds and determines that without additional conditions to further state policy goals, the proposed merger would not be the public interest. Accordingly, as condition on its approval of the merger, the Commission will require that SCE&G conduct an open, transparent, competitive solicitation for any new energy resources that may be needed to meet the Company's energy and capacity needs. The language of the SBA Settlement largely implements the condition envisioned by the Commission and is generally consistent with recommendations of Witness Binz and otherwise supported by competent and substantial evidence in the record. The SBA Settlement is therefore approved as being in the public interest. The terms of the SBA Settlement, as modified by the Commission, are accordingly incorporated into a condition on approval of the proposed merger.

Public Interest Benefit

<u>Joint Applicants' Position</u>

Witness Blue testified that Dominion is seeking the Commission find the Merger not contrary to the public interest. Tr. p. 3051, ll. 4-7. Additionally, witness Chapman agreed that the merger is in the public interest. Tr. p. 2854, ll. 11-17. Joint Applicants' CBP proposes that SCE&G Customers receive 65% of the costs paid to date by SCE&G Customers for the abandoned project. Application, p. 24,See Iris Griffin Testimony, 82:8-11, *S.C. Elec. & Gas Co. v. Randall*, CA No. 3:18-cv-01795, July 30, 2018, submitted by ORS to Commission on October 24, 2018, Docket No. 2017-370-E and Consolidated Proceedings; see also *S.C. Elec. & Gas Co. v. Randall*, CA No.

3:18-cv-01795-JMC, 2018 WL 3725742 at *3, ¶ 12 (D.S.C. Aug. 6, 2018) ("Ratepayers have paid to SCE&G roughly $2 billion in revised rates for financing the Project." (citing SCE&G testimony)).

Intervenors' Position

Santee Cooper argues that in order for the Merger to succeed, it must be shown that it is in the public interest to all of South Carolina and must likewise must ease the burden for all South Carolina Customers affected by the abandonment. Santee Cooper Pre-Trial Brief, p. 8. Santee Cooper proposes that the same 65% ratio should be applied to the $540 million paid through 2017 by Santee Cooper Customers for the abandoned plants, which equals $351 million. *Id*. at 10.

Commission Finding

After reviewing the evidence presented by the parties in this proceeding, this Commission finds that it is appropriate to impose a Merger condition upon the Joint Applicants regarding benefits to the public interest. Joint Applicants have agreed that the Merger should be in the public interest and the Commission finds that the Merger should benefit all South Carolina Customers affected by the abandonment. Santee Cooper is responsible for 45% of the capital costs of the Project excluding an AFUDC, Owner's Costs and items already in service. Santee Cooper has paid over $3 billion as its 45% share of those costs. Tr. pp. 4049:13-4054:3. The General Assembly authorized Santee Cooper to own a 45% interest in the Project. S.C. Code Ann. § 58-31-200. To construct the Project, Santee Cooper contracted with SCE&G for SCE&G to serve as Santee Cooper's agent in managing the day-to-day aspects of the Project. Tr. p. 359:14-21. SCE&G thus undertook a duty to Santee Cooper, its ratepayers, and the State. Tr. pp. 695:11-696:4.

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The State Supreme Court has recognized that Santee Cooper is an "instrumentality of the State" *S.C. Pub. Serv. Auth. v. Citizens & S. Nat'l Bank*, 300 S.C. 142, 165, 386 S.E.2d 775, 778 (1989), and that it "is . . . in a real sense a part of the State . . . ." *Rice Hope Plantation v. S.C. Pub. Serv. Auth.*, 216 S.C, 500, 516, 59 S.E.2d 132, 138 (1950). The interests of Santee Cooper are the public interest as it is owned by and for the people of South Carolina. Moreover, Joint Applicant Dominion recognizes Santee Cooper was created for, and exists to serve, public purposes. Tr. pp. 2858:23-2859:2; Joint Motion to Dismiss and Strike Santee Cooper Pre-hearing Brief (Oct. 30, 2018), Ex. 1, 10/29/2018 Ltr from Thomas Farrell to James Brogdon. Because Joint Applicants have made the abandonment of the Project a critical issue in this proceeding, the public interest inquiry here must account for Santee Cooper's participation in the Project.

The Joint Applicants seek a finding that the merger is in the public interest. The CBP, like the later filed alternative plans, does not include any benefit specifically for Santee Cooper's ratepayers. Tr. p. 2860:1-5. Dominion's CEO admitted that "We're here offering $4 billion in benefits to SCE&G's Customers and nobody's offering any benefits to Santee Cooper's Customers." Tr. p. 3249:5-6. It is admitted, however, that SCE&G's abandonment affected Santee Cooper's direct and indirect Customers. Tr. pp. 2856:24-2857:2. Accordingly, Dominion shall create a Public Interest Fund for the benefit of the wholesale and retail Customers of the Santee Cooper, in accordance with Paragraph 12(A) of the Order Exhibit 1 and not to be recovered from SCE&G Ratepayers. Additionally, Dominion shall make annual charitable donations and investments in the communities that SCE&G serves. Dominion charitable giving in South Carolina shall increase, at minimum, by $1 million above SCE&G's current contributions, so that the Merger will serve the people and communities of South Carolina.

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IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. We approve the merger of the Joint Applicants. We find that the proposed merger by the Joint Applicants is not prohibited under any applicable law or the other findings of this Commission in the Consolidated Docket. We further find that the proposed merger is not counter to the public interest.

2. South Carolina Code Ann. § 58-33-275(A) gives preclusive effect to a prior determination of prudency only to the extent the project is constructed within the parameters of the schedule and capital costs approved by the Commission. The record demonstrates that, as of March 12, 2015, the project was no longer being constructed within the parameters of the Commission-approved construction schedule and capital cost estimates in Order No. 2012-884. Because the Project was not within those parameters, costs incurred after March 12, 2015 are subject to being disallowed if it was imprudent for SCE&G to avoid incurring those costs. S.C. Code Ann. §58-33-280(K). Based on the testimony and other evidence in the record with respect to the project schedule and cost, including the associated loss of production tax credits, continuing the NND project was no longer economically prudent as of March 12, 2015, and abandoning the project in favor of another generation alternative showed an economic advantage over continuing the NND project in all scenarios forecast by the parties' experts. Continuing construction of the NND project under those circumstances was imprudent, and NND costs incurred after March 12, 2015 cannot be recovered from SCE&G Customers because it was imprudent for SCE&G to avoid incurring those costs.

3. After a review of the full record of testimony and evidence compiled in this case, this Commission disallows as imprudent all NND costs incurred by SCE&G after March 12, 2015.

4. The evidence in the record demonstrates that SCE&G is entitled to recover its prudently incurred NND costs under the authority of S.C. Code Ann. §§58- 33-275 (C) and 58-33-280(K). Those NND costs incurred prior to March 12, 2015 and presented to the Commission for review and approval are deemed prudent and recoverable.

5. The evidence in the record further demonstrates that SCE&G is entitled to recover through rates $2.772 billion ($2.683 billion retail) in NND costs amortized over twenty years with a 9.1% return on equity and 5.56% cost of debt under a capital structure consisting of 52.81% equity and 47.19% debt. The return component shall be fixed for the twenty-year amortization period. The NND rate base is to be offset by the full regulatory liability Toshiba Guarantee Payment of $1.06 billion and a return on that amount.

6. We find that the acquisition of SCE&G by Dominion is in the public interest and authorize the merger of these two companies under the specific terms and conditions as set forth in the Order. We find that all of these conditions, which are discussed at length in the Order, are relevant, in the public interest and achievable.

7. As to an allowable Return of Equity, we find most compelling and give greatest weight on this subject to ORS witness Baudino as detailed in the discussion contained herein. We find that the recommendation of SCE&G witness Hevert of a 10.75% ROE to be unreasonably high and not a fair balancing of the interests of both the utility and its Customers. SCE&G represents, that the Company's financial condition warrants a higher ROE. However, we agree with the ORS and Intervenor assertions that the Company should not profit by an award from this Commission of a higher ROE based on the poor financial condition of SCE&G which is a result of its own mismanagement. For that reason, we hereby authorize an ROE of 9.1% for SCE&G on

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its allowable NND costs based on the reliable, probative, and substantial evidence presented by the ORS.

8. Securitization of the allowable NND costs has the potential to be advantageous for SCE&G, which would unload its substantial debt incurred on the NND Project, and for the ratepayers, who would have lower rates due to a lower cost of debt. The evidence in the record demonstrates that securitization would be beneficial for South Carolina Customers and could save them hundreds of millions of dollars. All parties agree that there is currently no law in South Carolina under which these costs could be securitized. We therefore find and order that, if the South Carolina General Assembly enacts a securitization law at any date prior to the full amortization of the allowed NND costs, any party may file a petition or motion to request either a partial or full securitization of the remaining unrecovered costs of the NND project.

9. As discussed herein above, under both the plain language of the BLRA and the Order of Federal District Court Judge Childs, SCE&G was not entitled to collect, and is therefore not entitled now to retain, any revised rates collected after its abandonment of the NND project effective July 31, 2017. SCE&G is therefore ordered to credit or refund to its ratepayers all revised rates collected between August 1, 2017 and April 1, 2018.

10. Certain ratemaking conditions and benefits for ratepayers as proposed by ORS are also hereby accepted by the Commission and made conditions to our approval of the merger of the Joint Applicants. As more specifically detailed in this Order, the recommendations of ORS are hereby found to be reasonable and a fair balancing of the interests of the Joint Applicants and SCE&G Ratepayers. We adopt ORS's recommendation for establishment of a regulatory liability for deferral of the BLRA Transmission revenue requirement and find that he has more accurately

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defined the income tax savings resulting from the Federal TCJA, which is hereby ordered to be credited to ratepayers, as well as the NOL ADIT.

11. The Commission will recognize Joint Applicants merger savings by approving a Merger Savings Rider of $35 million to be applied during the first 12 months after merger approval starting in 2019. In addition, the Merger Savings Clause will then adjust to $70 million in 2020, subject to true up in a 2021 rate filing.

V. IT IS THEREFORE ORDERED THAT:

1. NND costs after SCE&G's March 12, 2015 Commission filing were imprudently incurred because SCE&G withheld its decision to retain a third party to review the status of the project and withheld material and adverse information regarding the anticipated increases in the capital cost schedule of an additional $500 million above the $698 million sought. SCE&G also withheld material and adverse information regarding projected delays of the schedule completion dates of up to 18-36 months from the Commission. The resulting allowable CWIP after removal of the imprudently incurred NND costs is $2,845,735,805. After adjustments to reduce the CWIP to remove expenses for consultant fees, transfers, miscellaneous adjustment requested by the Company, expenditures related to equipment and materials that have been or will be sold before the same date, other costs deemed non-allowable, and all SCE&G bonuses allocated to NND, the allowed NND cost is $2,771.6 million (total Company) or $2,6837 million (retail).

2. We find that SCE&G's decision to abandon is prudent.

3. SCE&G's continued collection of revised rates after abandonment from August 1, 2017 are disallowed and that amount shall be credited back to the ratepayers including the associated return.

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4. Securitization of the allowable NND costs has the potential to be advantageous for the Company, which would unload its substantial debt incurred on the NND Project, and for the Ratepayers, who would have lower rates due to a lower cost of debt. The evidence in the record demonstrates that securitization would be beneficial for South Carolina Customers and could save them hundreds of millions of dollars. All parties agree that there is currently no law in South Carolina under which these costs could be securitized. If the South Carolina General Assembly enacts a securitization law at any date prior to the full amortization of the allowed NND costs, any party may file a petition or motion to request either a partial or full securitization of the remaining unrecovered costs of the NND project.

5. The $445.0 million previously recovered in revised rates revenue that provided SCE&G a grossed-up return on the NND costs of $413 million and related BLRA transmission costs of $32 million incurred through June 30, 2016 is terminated. The $367.4 million rate credit reflected in Order No. 2018-460 adopting experimental rates is also terminated.

6. The BLRA transmission costs currently collected in revised rates of $32 million is deferred to the next general rate case proceeding. SCE&G is authorized to defer a rate of return using the cost of long-term debt, depreciation, incremental operation and maintenance expenses, other incremental taxes expense (payroll and property tax expenses), and other incremental operating expenses, e.g., insurance expense, until a future rate case proceeding addressing the prudence and recovery of the BLRA transmission costs.

7. SCE&G is authorized an allowed ROE of 9.1% on those NND costs determined to be allowable as provided in this Order.

8. A Capital Cost Recovery Rider of $86.2 million is authorized to be collected over 20 years on a levelized (annuitized) basis using a fixed rate of return that includes a 52.81% equity

ratio and a long-term debt ratio of 47.19%, a return on equity of 9.1%, and a cost of debt of 5.56% to recover the allowed NND costs less related regulatory liabilities.

9. Regulatory liabilities include: the settlement proceeds received from Toshiba of $1.06 billion; a return on the settlement proceeds received from Toshiba of $106 million (retail); a credit of revised rates for the return on NND CWIP costs that are disallowed; and a credit of revised rates for the return on Summer 1, switchyard costs, and other costs that were transferred from the NND costs, but still are included in revised rates of $392 million; a return on the credit of the revised rates for the return on NND costs that are disallowed and a return on the credit of the revised rates for the Summer 1, switchyard costs, and other costs that should not have been included in revised rates or $37.3 million; and a credit for the excess liability ADIT due to the TCJA, net of a reasonable allocation of the excess asset NOL ADIT or $115.6 million.

10. All effects of the TCJA on the NND costs and regulatory liabilities in the CCR Rider, including the reduction in the federal income tax rate on the income tax expense resulting from the equity return and the amortization of excess liability and asset NOL ADIT are included, and SCE&G is allowed, through a CCR Rider, to recover prudently incurred allowable NND abandonment costs less related regulatory liabilities and a return on these costs, net of the related liability ADIT and asset NOL ADIT.

11. SCE&G is directed to calculate the asset NOL ADIT based on the allowed NND costs in the same manner as the liability ADIT is calculated for the allowed NND costs. The asset NOL ADIT included in the CCR Rider rate base will be approximately $67.1 million at December 31, 2018.

12. The full benefits of the TCJA unrelated to the NND costs and related regulatory liabilities are passed through to Customers. A rate reduction of $98.7 million in the form of a Tax

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Savings Rider is authorized for the base rate savings due to the TCJA unrelated to the NND costs and related regulatory liabilities. The Tax Savings Rider will remain in place until base rates are reset to reflect these savings in a future rate case proceeding. SCE&G shall also provide a one-time refund of $68.2 million for the base rate and revised rate income tax savings in 2018 due to the TCJA.

13. A 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 for the estimated savings in operating expenses if the Merger occurs is authorized. The Merger Savings Rider will remain in place until a future general rate case proceeding and a true-up of the savings can occur.

14. SCE&G is directed to conduct and report to the Commission annually its true-up of the CCR Rider, Tax Savings Rider and Merger Savings rider. The true-up shall identify the actual recoveries compared to the allowed recoveries.

15. The ORS Optimal Plan is both fair and reasonable and will allow SCE&G to continue to provide its Customers with adequate electric and natural gas services and is approved. If the proposed Merger of the Joint Applicants does not occur, we specifically reject both the SCE&G Base Request and No Merger Benefit Plans.

16. Revised tariffs shall be filed within 10 days of receipt of this Order, consistent with the Commission's Rules and Regulations. The tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (https://dms.psc.sc.gov). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (http://etariff.psc.sc.gov.) Future revisions should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and agreements with the other parties to this case. SCE&G shall provide a reconciliation of each tariff rate change approved

as a result of this order to each tariff rate revision filed in the ETariff System. Such reconciliation shall include an explanation of any differences and be submitted separately from the Company's ETariff System filing.

17. SCE&G shall charge the rates approved herein for service rendered after January 1, 2019. The schedules will be deemed filed with the Commission under S.C. Code Ann. § 58-27-870.

18. The Merger request of the Joint Applicants is deemed not adverse to the public interest, provided SCE&G and Dominion comply with the terms and conditions set forth and adopted in this Order and in Order Exhibit 1.

19. SCE&G's request to terminate the requirement to submit the semi-annual update on construction progress as required by Order No. 2016-794 is granted.

20. SCE&G shall cease filing quarterly reports required under S.C. Code Ann. §58-33-277 and Order No. 209-104(A).

21. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

_____
Comer H. "Randy" Randall, Chairman

ATTEST:

_____
Elliott Elam, Vice-Chairman

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