ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 1 of 12

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2021-93-E

In the Matter of: Dominion Energy South Carolina, Incorporated's Request for "Like Facility" Determinations Pursuant to S.C. Code Ann. § 58-33-110(1) and Waiver of Certain Requirements of Commission Order No. 2007-626 (This Filing Does Not Involve any Change to the Retail Electric or Natural Gas Base Rates)	)	**JOINT MOTION TO MODIFY PROCEDURAL SCHEDULE**

The Sierra Club, South Carolina Coastal Conservation League, the Southern Alliance for Clean Energy, and the Carolinas Clean Energy Business Association (collectively, "Movants") respectfully request that the Commission issue an order establishing a briefing schedule regarding the legal issues raised by the requests made by Dominion Energy South Carolina ("DESC" or the "Company"), hold the prefiled testimony deadlines in abeyance, and continue to hold the evidentiary hearing in abeyance pending a decision from the Commission on the legal issues. The Movants would also request a slight delay in the current schedule in order to give the parties adequate time to submit briefing.

A. Procedural Background

1. On March 10, 2021, DESC filed a request for "Like Facility" Determination pursuant to S.C. Code Ann. § 58-33-110(1) and a waiver of certain requirements of Commission Order No. 2007-626 with respect to its proposal to replace ten existing Combustion Turbine units

("CTs") and one gas-fired steam unit with five new aeroderivative CTs and retire three other CTs ("CT Plan").[1] DESC also requests a waiver of the merger Settlement Agreement with the South Carolina Solar Business Alliance in Docket No. 2017-370-E.

2. On July 1, 2021, the Commission issued a scheduling order.[2]
3. On July 15, 2021, the Movants filed a Joint Motion to Hold Proceeding in Abeyance to ensure that the Commission, parties to this docket, and the South Carolina public have the information from the 2021 Integrated Resource Plan ("IRP") Update to inform any Commission determination on the CT Plan.
4. On July 29, 2021, in Order No. 2021-521, the Joint Motion to Hold Proceeding in Abeyance was granted, the following scheduling order was adopted, but no hearing date has been set:

Event:	**Date:**
Applicant/Complainant/Petitioner Testimony Due	October 18, 2021
All Other Parties Due Date	November 10, 2021
Rebuttal Testimony Due	November 17, 2021
Surrebuttal Testimony Due Date	November 24, 2021
Hearing	TBD but not sooner than December 1, 2021

5. On August 17, 2021, DESC filed its 2021 IRP Update where it stated: "[t]he Company intends to issue a binding, all-source RFP related to its CT Plan to confirm that it has selected the most cost-effective resources and to further promote transparency in the Company's resource planning activities. The Company expects for the RFP to be issued in

[1] DESC Request for Like Facility Determination, Docket No. 2021-93-E (March 10, 2021).
[2] Prefile Testimony Ltr., Docket No. 2021-93-E (July 1, 2021).

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 2 of 12

the fall of 2021 and concluded before the end of the year so that procurement and construction can begin soon."[3]

6. On September 8, 2021, during oral argument regarding the Joint Motion for an Amended Procedural Schedule in Dominion Energy South Carolina's 2021 IRP Update, Docket No. 2021-9-E and 2019-226-E, Sierra Club was asked by Commissioner Ervin to work with the parties to see if we could agree on a procedural sequencing of the hearings for Docket Nos. 2021-93-E ("Like Facility Docket") and 2021-192-E ("Coal Retirement Docket"). Commissioner Ervin stated that "[i]t would be helpful to know what you can agree on first rather than us set a procedural schedule without input."

7. On September 27, 2021, the Sierra Club submitted a status report on discussions with the parties on delaying or sequencing the procedural schedule stating that the intervenors were still in discussions and DESC would "proceed to a determination in the Like Facility Docket without further delay and is not willing to delay that proceeding further."[4]

8. On September 30, 2021, DESC filed a status report in Docket No. 2021-9-E and 2019-226-E; Docket Nos. 2021-93-E and 2021-192-E requesting that the Commission "leave the current schedule for this docket in place and review the prefiled direct testimony of the parties before it makes any decision concerning a delay in the proceeding."[5]

9. In its September 30th Status Report, DESC went on to state that "the Company is drafting a technology-neutral set of requirements for an RFP to be issued in early November. If the RFP results in the identification of a new resource that is more beneficial (which is highly unlikely but not impossible), the Company will file an amended request for a like facility

[3] DESC 2021 IRP Update at 22, Docket No. 2021-9-E (August 17, 2021).
[4] Sierra Club Status Report, Docket No. 2021-93-E (September 27, 2021).
[5] DESC Sept. 30 Status Report, Docket No. 2021-93-E, 2021-9-E, 2-19-226-E, and 2021-192-E (September 30, 2021) at 8.

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 3 of 12

determination for that resource or a full Siting Act certification before proceeding with the bid."[6]

B. The issues in this case raise threshold questions of law that would be best resolved by legal briefing.

In its Like Facility Request, DESC is essentially asking for four things: (1) a determination that the Bushy Park replacement unit and the Parr unit replacements are not a "major utility facility" as that term is defined in S.C. Code Ann. § 58-33-20 and therefore do not require siting approval or a like facility determination under S.C. Code Ann. § 58-33-110(1); (2) a waiver of Commission Order No. 2007-626 if the Commission determines that replacements at Bushy Park, Parr and Urquhart sites are "new peaking generation;" (3) a waiver of the merger Settlement Agreement with the South Carolina Solar Business Alliance in Docket No. 2017-370-E if the Commission determines that the Settlement Agreement applies to the Urquart facilities; and (4) a determination that the replacement units at Urquhart qualify as a "like facility."[7] These four questions require legal interpretation of S.C. Code Ann. §§ 58-33-20 and -110, Order No. 2007-626, Order No. 2018-810 as it pertains to the merger Settlement Agreement, and any relevant Commission Orders or case law interpreting or applying these provisions. These legal questions do not require the testimony of expert witnesses nor would cross-examination on these questions be helpful since it would require a legal conclusion from the witness.

Prior cases involving requests for a Like Facility Determination have been resolved with no testimony or expert witness hearing. In Duke Energy Carolinas, LLC Request for Like Facility Determination, Docket No. 2013-430-E, South Carolina Electric & Gas Company's ("SCE&G") Request for Like Facility Determination, Docket No. 2014-421-E, and Duke Power's Petition for

[6] *Id.*
[7] DESC Request for Like Facility Determination at 2-6.

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 4 of 12

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 5 of 12

a Declaratory Order for a Like Facility Determination, Docket No. 2005-332-E, the only documents filed were the utility's request and the Office of Regulatory Staff's ("ORS") review letter. The Commission treated these cases as requests for a declaratory order and issued orders accordingly.[8]

In this case, DESC is essentially seeking a Declaratory Order on its CT Plan. A Commission ruling on the legal issues raised by the Company's requests could obviate the need for prefiled testimony and an evidentiary hearing. Such an approach would promote judicial economy and make efficient use of the parties' resources. If, after briefing and argument, the Commission determines that factual issues remain whose resolution requires the development of an evidentiary record, the Commission could then set new prefiled testimony deadlines and schedule an evidentiary hearing on those issues, with the benefit of having resolved the legal issues.

Due to the nature of the questions presented in this docket, the history of how the Commission has handled these types of cases, and in the interests of judicial economy, the Movants ask that the Commission issue an order establishing a briefing schedule on the above four questions.

Due to the upcoming October 18th deadline for DESC to files its Direct Testimony, we also ask that the Commission hold the prefiled testimony deadlines in abeyance and implement the following procedural schedule:

Event:	**Date:**
DESC Opening Brief	November 10, 2021

[8] Declaratory Order on Status of Conversion and Repowering the 170 MW Lee Unit 3 from Coal to Natural Gas, Order No. 2014-118, Docket No. 2013-430-E (January 16, 2014); Order Determining Like Facility Status, Order No. 2014-963, Docket No. 2014-421-E (December 2, 2014); and Order Granting Petition for Declaratory Order, Orde No. 2005-635, Docket No. 2005-332-E (October 31, 2005).

Other Parties Briefs	December 1, 2021
DESC Reply Brief	December 10, 2021
Oral Argument on Briefs, if warranted	TBD

This schedule would keep in place the November 10th deadline, which was originally the deadline for Intervenors to file their direct testimony and would also give parties adequate time to file responsive briefs, taking into consideration the Thanksgiving Holiday. This adjustment would delay the overall schedule by only a few days and could still conclude before the end of the calendar year, something which is not likely under the current schedule since a hearing has yet to be rescheduled.

C. Since DESC requested a waiver from Order No. 2007-626 the Commission should direct the Company to pause its RFP until *after* the Commission rules on the legal issues.

Order No. 2007-626 requires the issuance of mandatory RFPs for new peaking generation requirements. In its Like Facility Request, DESC specifically requested a waiver from Order 2007-626 if the Commission determines that the new combustion turbines it proposes to build at the Bushy Park, Parr and Urquhart sites are "new peaking generation."[9] It is inconsistent for DESC to, on the one hand, request a waiver of Order No. 2007-626, but then on the other hand, to move forward with a binding all-source RFP to be issued in early November "to confirm that it has selected the most cost-effective resources and to further promote transparency in the Company's resource planning activities."[10] Yet in its initial filing, DESC claims that time is of the essence to avoid the "risk[s] [of] loss of the current contracts and the pricing and delivery schedules that they

[9] DESC Request for Like Facility Determination at 2-6.
[10] DESC 2021 IRP Update at 22.

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 6 of 12

represent."[11] The parties have not yet submitted any testimony or briefing on the issues presented, nor has the Commission rendered a decision. To promote transparency, DESC should pause the RFP process and wait for a decision from the Commission on the legal issues.

Moving forward with an RFP *before* the Commission has determined that one is required under Order No. 2007-626, as well as any Commission direction for developing and conducting such an RFP, risks inconsistent results and would be wasteful of the Commission and the Parties time and resources. If, as DESC states, the RFP results identify another resource, other than a CT, as more beneficial, the "Company will file an amended request for a like facility determination for that resource or a full Siting Act certification before proceeding with the bid."[12] Those results are not likely to be available until *after* the parties have submitted their briefs or testimony and *after* a hearing has taken place, however. For DESC to amend its Request and/or request a full Siting Act certification *after* the conclusion of this docket would require the parties and the Commission to start the entire process over. If the Commission determines, after reviewing the briefing, that an RFP is warranted, then DESC should move forward under the direction of the Commission determinations in this proceeding.

WHEREFORE, Movants respectfully request that the Commission issue an order establishing a briefing schedule regarding the legal issues raised by DESC's request, hold the prefiled testimony deadlines in abeyance, and continue to hold the evidentiary hearing in abeyance pending a decision on the legal issues. The Movants would also request a slight delay in the current schedule in order to give the parties adequate time to submit briefing. Due to the approaching

[11] DESC Request for Like Facility Determination at 6-7.
[12] DESC Sept. 30 Status Report at 8.

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 7 of 12

deadlines for this proceeding, Movants further request that the Commission act on this motion on an expedited basis as permitted by S.C. Code Ann. Regs. 103-829(A).[13]

Respectfully submitted this 12 day of October, 2021.

s/Dorothy E. Jaffe
Managing Attorney (*pro hac vice*)
Sierra Club
50 F Street NW Floor I
Washington, DC 20001
dori.jaffe@sierraclub.org

Robert Guild
S.C. Bar No. 2358
314 Pall Mall Street
Columbia, SC 29201
(803) 917-5738
bguild@mindspring.com

Counsel for Sierra Club

s/Emma Clancy
Staff Attorney
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
eclancy@selcsc.org

Counsel for South Carolina Coastal Conservation League and Southern Alliance for Clean Energy

[13] To act on an expedited basis, the Commission or its designee may condense the period of time normally permitted to respond and reply to a motion where there is "good cause." S.C. Code Ann. Regs. 103-829(A). In recent years, the hearing officer has found good cause to modify the time permitted to file a response and reply when the question presented in the motion is an "important one" and the hearing date is not far away, as is the case here. Order No. 2018-135-H, Docket Nos. 2017-370-E, 2017-207-E, and 2017-305-E (Oct. 2, 2018); *see also* Order No. 2021-28-H, Docket No. 2020-229-E (Mar. 12, 2021).

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 8 of 12

s/Richard Whitt
Whitt Law Firm, LLC
P.O. Box 362
Irmo, SC 29063
richard@rlwhitt.law

Counsel for Carolinas Clean Energy Business Association

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 9 of 12

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 10 of 12

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2021-93-E

In the Matter of: Dominion Energy South Carolina, Incorporated's Request for "Like Facility" Determinations Pursuant to S.C. Code Ann. § 58-33-110(1) and Waiver of Certain Requirements of Commission Order No. 2007-626 (This Filing Does Not Involve any Change to the Retail Electric or Natural Gas Base Rates)	)))))))))))))	**CERTIFICATE OF SERVICE**

I certify that the following persons have been served with one (1) copy of the Joint Motion to Modify Procedural Schedule by electronic mail at the addresses set forth below:

Alexander W. Knowles, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Charleston, South Carolina 29201
aknowles@ors.sc.gov

Andrew M. Bateman, Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Charleston, South Carolina 29201
abateman@ors.sc.gov

Carri Grube Lybarker, Counsel
S.C. Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250
clybarker@scconsumer.gov

Matthew W. Gissendanner, Senior Counsel
Dominion Energy Southeast Services, Inc.
220 Operation Way, MC – C 222
Cayce, South Carolina 29233
Matthew.gissendanner@dominionenergy.com

Roger P. Hall, Assistant Consumer Advocate
S.C. Department of Consumer Affairs
Post Office Box 5757
Columbia, South Carolina 29250
rhall@scconsumer.gov

Dorothy E. Jaffe, Esquire
Sierra Club
50 F Street, NW Floor I
Washington, D.C. 20001
Dori.jaffe@sierraclub.org

Robert L. Whitt, Esquire
Whitt Law Firm, LLC
Post Office Box 362
Irmo, South Carolina 29063
Richard@rlwhitt.law

Robert Guild, Counsel
Robert Guild – Attorney at Law
314 Pall Mall Street
Columbia, South Carolina 29201
bguild@mindspring.com

This 12th day of October, 2021.

s/Emma Clancy

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 11 of 12

This the 12th day of October, 2021.

Respectfully,

ELECTRONICALLY FILED - 2021 October 12 5:31 PM - SCPSC - Docket # 2021-93-E - Page 12 of 12