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October 14, 2016

**VIA ELECTRONIC FILING**

The Honorable Jocelyn G. Boyd  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

Re: BYPAS International v. SCANA/South Carolina Electric & Gas Company and  
The Electric Cooperatives of South Carolina  
Docket No. 2016-334-E

Dear Ms. Boyd:

On behalf of SCANA/South Carolina Electric & Gas Company (collectively, "SCE&G" or the "Company"), enclosed for filing in the above-referenced docket is SCE&G's Motion to Dismiss and for the Imposition of Sanctions or in the Alternative, for More Definite Statement, and to Hold Testimony in Abeyance ("Motion").

By copy of this letter, we are also serving the Company's Motion upon Joseph Wojcicki of BYPAS International as well as counsel of record and enclose a Certificate of Service to that effect.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

Matthew W. Gissendanner

MWG/kms  
Enclosures

cc: Joseph Wojcicki  
Dawn Hipp  
Shannon Bowyer Hudson, Esquire  
Christopher R. Koon, Esquire  
Frank R. Ellerbe III, Esquire  
(all via electronic mail and U.S. First Class Mail w/enclosures)

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2016-334-E**

IN RE:

BYPAS International, )  
)  
Complainant/Petitioner )  
v. )  
SCANA/South Carolina Electric & )  
Gas Company, and The Electric )  
Cooperatives of South Carolina, )  
)  
Defendants/Respondents )  
\_\_\_\_\_ )

**MOTION TO DISMISS AND FOR  
THE IMPOSITION OF SANCTIONS  
OR, IN THE ALTERNATIVE, FOR  
MORE DEFINITE STATEMENT,  
AND TO HOLD TESTIMONY IN  
ABEYANCE**

SCANA Corporation and South Carolina Electric & Gas Company (collectively, "SCE&G" or the "Company") jointly move that the Public Service Commission of South Carolina ("Commission") dismiss the complaint filed by Joseph Wojcicki on behalf of BYPAS International ("BYPAS" or the "Complainant") with the Commission on or about September 7, 2016<sup>1</sup> ("Complaint") for the reasons explained below. *See* 10 S.C. Code Ann. Regs. 103-829 (2012). The Company further moves that the Commission impose sanctions against Complainant and its representative, Mr. Joe Wojcicki. Alternatively, SCE&G moves that the Commission require Complainant to amend the Complaint so as to make a more definite statement. Finally, SCE&G moves that the Commission hold in abeyance the

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<sup>1</sup> SCE&G was served with a copy of the Complaint on September 16, 2016.

testimony filing dates until such time as the Commission may consider and resolve this matter. In support of this motion, SCE&G would respectfully show as follows:

### **BACKGROUND**

In Docket No. 2008-196-E, SCE&G applied for a Certificate of Environmental Compatibility and Public Convenience and Necessity and for a Base Load Review Order for the construction and operation of a nuclear facility in Jenkinsville, South Carolina (“Units”). Following his intervention in that proceeding, Mr. Wojcicki challenged the proposed site of the Units as being unsuitable because of concerns about the sufficiency of water supply and its distance from load centers in coastal areas of SCE&G’s service territory. Order No. 2009-104(A) at 52, 54. The Commission disagreed, finding that the water supplies available at the site are more than adequate to support reliable operations and that the decision to locate the Units in central South Carolina is prudent and reasonable. *Id.* at 52-54. Pursuant to the Base Load Review Act, S.C. Code Ann. § 58-33-210 *et seq.* (“BLRA”), the Commission also established a rate design and class allocation factors to be used in calculating revised rates related to the Units. *Id.* at 108. *See also* Order No. 2009-218 at 28-29 (denying Mr. Wojcicki’s Petition for Rehearing or Reconsideration and finding the water supply and transmission issues are not likely to compromise the reliability of the Units).

Since that time, Mr. Wojcicki has made numerous filings in Docket No. 2008-196-E attempting to challenge the Units on various grounds and re-litigate matters previously ruled on by the Commission. Among other things, Mr. Wojcicki has alleged or requested:

- 1) That there is a “lack of legal ground to apply” the BLRA, Mr. Wojcicki’s Request for Review filed on April 3, 2014;
- 2) That “[t]he public interest of SC people and businesses require engineering and legal review applicability of BLRA,” *id.*;
- 3) A *de novo* review of SCE&G’s application, *id.*;
- 4) That studies of the Broad River flows were not done, *id.*;
- 5) Financial fraud by SCE&G, Motion for Reconsideration of Orders Using False Pretence (*sic*) of SC Base Load Review Act (BLRA) filed on May 13, 2014;
- 6) That the BLRA has resulted in “overcharges,” Declaration to Protest and Challenge the Baseless Usage of SC Base Load Review Act (“FCA of BLRA”) to Increase kWh Rates filed on August 11, 2014;
- 7) The interest of the public was ignored, Response to Matter ID 252149 in Docket No. 2014-187-E filed on August 28, 2014; and
- 8) A Rule to Show Cause “to avoid obstruction of justice,” Petition for Rulemaking, Petition for Rehearing and/or Reconsideration, and Petition for Rule to Show Cause filed on September 4, 2014.

Mr. Wojcicki also has filed similar requests in numerous other related dockets, each generally expressing dissatisfaction with the application of the BLRA. In each instance, the Commission has rejected Mr. Wojcicki’s requests, finding that Mr. Wojcicki merely seeks to re-litigate issues long-decided in Docket No. 2008-196-E

and that “the Commission [should] disregard [his] arguments. *See* Order No. 2014-764. *See also* Order Nos. 2014-404, 2014-445, 2014-733.

As the Commission has previously noted, these “repetitive and unrelenting petitions” are “without regard to [its] prior rulings.” Order No. 2015-420. “These filings, the subject matter of which has been previously addressed, now cause great waste of Commission resources and neither merit nor require further action by this Commission.” *Id.* As a result, the Commission “direct[ed] staff to reject and return to Mr. Wojcicki any and all future similar filings concerning the qualification of the nuclear units pursuant to the [BLRA] **as vexatious litigation that is considered an abuse of the judicial process.**” *Id.* (emphasis added).

Despite the Commission’s admonitions, Mr. Wojcicki continues to file repeated, meritless, and unsupported petitions and requests, each of which requires the Commission and SCE&G to devote time and resources to addressing. Now acting through BYPAS, Mr. Wojcicki again has raised these same issues in the Complaint thus demonstrating his blatant disregard for the Commission’s previous orders and lack of respect for this tribunal. These unrelenting filings only serve to intentionally waste the Commission’s limited administrative resources and to unreasonably and unnecessarily increase the costs ultimately borne by SCE&G’s customers.

## ARGUMENT

### **I. The Commission should dismiss the Complaint as frivolous and impose sanctions against BYPAS and Mr. Wojcicki.**

The present action is a frivolous proceeding in that the Complaint is baseless and, in fact, asserts matters that have been rejected by the Commission numerous times. Based on the frivolous allegations and Mr. Wojcicki's history, the Complaint has been filed purely to harass the Company with oft repeated and unfounded allegations. The Commission should summarily dismiss this action as frivolous and, at a minimum, sanction Mr. Wojcicki and BYPAS by prohibiting them from advancing similar claims in the future and by issuing an order protecting SCE&G from having to respond to future filings on these frivolous allegations.

By attempting to raise issues that have previously been addressed and resolved, BYPAS and Mr. Wojcicki have filed the Complaint in violation of Commission regulations, the South Carolina Rules of Civil Procedure ("SCRCP"), and state statutes. Specifically, 10 S.C. Code Ann. Regs. 103-822 states:

All pleadings filed with the Commission shall be signed. The signature of the person, or its authorized representative, submitting the pleading, shall constitute an admission that such person or representative has read the pleading and knows the contents thereof, and, if the signatory is acting in a representative capacity, that such signatory has the capacity and authority specified therein. A verification under oath shall be required if facts are alleged to be true within the knowledge of the person filing the pleading.

Rule 11(a), SCRCP, requires every pleading to be signed by the party or its attorney, which constitutes a certificate that the person has read the pleading, that

to the best of his knowledge, information and belief there is good ground to support it, and that the pleading is not interposed for delay. Further, S.C. Code Ann. § 15-36-10(A)(3) states:

The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

- (a) the person has read the document;
- (b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;
- (c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and
- (d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

In light of the Commission's prior orders, SCE&G asserts that the language and issues contained in the Complaint demonstrate that BYPAS and Mr. Wojcicki did not read the Complaint prior to filing and that a reasonable person would not believe that the claims asserted in the Complaint are warranted. The Complaint has no basis in law or fact, is totally without merit, fails to comply with the Commission's regulations, and simply wastes the Company's and the Commission's time. SCE&G also submits that the continued attempt to advance issues previously

decided against Mr. Wojcicki shows that this Complaint has been filed solely to harass the Company, to injure SCE&G by requiring it to expend time and resources in responding to it, to interpose delay in this and related dockets, and for other wrongful purposes. SCE&G therefore requests that the Commission find the Complaint is frivolous and dismiss it.

In addition, the Company submits that, given the nature of the Complaint and Mr. Wojcicki's history with these matters, it is appropriate for the Commission to impose sanctions on Mr. Wojcicki and BYPAS. S.C. Code Ann. § 15-36-10(B)(2) states "the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances." Further, Section 15-36-10(G)(1) provides that sanctions may include "an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party." Mr. Wojcicki has taken no heed of the Commission's previous findings that such filings are "vexatious litigation that is considered an abuse of the judicial process." Order No. 2015-420. Under these circumstances, it would be equitable and proper for the Commission to renew its holdings in Order No. 2015-420 that Mr. Wojcicki be barred from filing future petitions or complaints pertaining to the BLRA. Further, the Commission should find that Mr. Wojcicki should reimburse SCE&G for its attorneys' fees and costs incurred in responding to this matter.<sup>2</sup> Finally, SCE&G requests an order protecting it from any future obligation to respond to such

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<sup>2</sup> Although the Commission may not have the statutory authority to require the payment of attorneys' fees, if such relief is granted or recognized as appropriate, SCE&G asserts that the circuit court could enforce such an order.

meritless claims so as to protect the Company's unnecessary use of resources to addressing Mr. Wojcicki's repeated assertion of these frivolous contentions.

**II. The Complaint fails to satisfy the Commission's pleading requirements and is defectively drawn.**

The Complaint is legally insufficient and is so deficiently drawn that it fails to support the request for a hearing or for further proceedings in this matter. BYPAS makes vague and convoluted assertions of a "false claimed application of [the] SC Base Load Review Act," errors in the regulatory process, and that "SCANA has blocked other public servants with a perceived conflict of interest by donations." However, BYPAS neither presents any facts to support its allegations nor sets forth details sufficient to demonstrate that any relief is warranted or permitted.

The Complaint therefore does not satisfy the Commission's pleading requirements which requires complaints to include "[a] concise and cogent statement of the factual situation surrounding the complaint" and "[a] concise statement of the nature of the relief sought." 10 S.C. Code Ann. Regs. 103-824(A.) Similarly, 10 S.C. Code Ann. Regs. 103-819 requires that pleadings contain "[a] concise and cogent statement of the facts such person is prepared to present to the Commission." SCE&G therefore asserts that the Commission should dismiss this matter as failing to meet the pleading requirements and for insufficiently placing the Company on notice as to the issues specifically raised therein.

And because of these manifest deficiencies, SCE&G cannot answer the Complaint or file direct testimony addressing the allegations. *See Burns v. Wannamaker*, 286 S.C. 336, 339, 333 S.E.2d 358, 360 (Ct. App. 1985) ("The purpose

of a pleading is to put the adversary on notice as to the issues involved.”); *see also* 10 S.C. Code Ann. Regs. 103-826(A) (requiring answers to “be drawn so as to fully and completely advise the Commission and any party as to the nature of the defense” and to “admit or deny, specifically and in detail, each material allegation.”). Therefore, the Complaint should be dismissed or, in the alternative, BYPAS should be required to amend the Complaint to comply with 10 S.C. Code Ann. Regs. 103-826 and make a more definite statement within 15 days after an order to that effect is issued by the Commission, or have its Complaint dismissed. *Cf.* S.C. Code Ann. § 1-23-320(b)(4) and Rule 12(e), SCRCP.

**III. The Commission should dismiss the Complaint because neither BYPAS nor Mr. Wojcicki have standing to pursue any claim against the Company.**

As addressed numerous times by SCE&G, Mr. Wojcicki is not a customer of SCE&G and the Commission repeatedly has concluded that Mr. Wojcicki does not have standing in SCE&G’s BLRA proceedings. Because neither BYPAS nor Mr. Wojcicki have not sustained and is not in danger of sustaining any cognizable injury from SCE&G or matters pertaining to the BLRA and the Units, they also do not have standing to bring this newly filed Complaint.

To establish standing, Complainant has the burden of showing that (1) they have suffered an injury-in-fact; (2) there is a causal connection between the injury and the conduct about which they complain; and (3) it is likely, rather than merely speculative, that their alleged injury will be redressed by a favorable decision. *Sea Pines Ass’n for the Prot. of Wildlife, Inc. v. S.C. Dep’t of Natural Res.*, 345 S.C. 594,

601, 550 S.E.2d 287, 291 (2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The person asserting standing “must be affected in a personal and individualized way by the [regulatory] decision.” *Smiley v. S.C. Dep’t of Health and Envtl. Control*, 374 S.C. 326, 330, 649 S.E.2d 31, 33 (quoting *Lujan*, supra). The “imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public.” *Sea Pines Ass’n*, 345 S.C. at 600, 550 S.E.2d at 291.

BYPAS and Mr. Wojcicki have failed to state or provide any plausible basis supporting an assertion that they have an actual or likely “invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Smiley*, 374 S.C. at 329, 649 S.E.2d at 32-33 (quoting *Lujan*, supra). Furthermore, the Company does not provide electric service to BYPAS or Mr. Wojcicki. See Affidavit of Carolyn B. Frick, attached hereto as Exhibit A. Because they are not SCE&G customers, BYPAS and Mr. Wojcicki do not possess the requisite standing to advance the Complaint.<sup>3</sup> Cf. *Duke Power Co. v. S.C. Pub. Serv. Comm’n*, 284 S.C. 81, 326 S.E.2d 395 (1985) (holding that the actual ratepayers lacked standing because their asserted interests were “too contingent, hypothetical, and improbable to support standing to attack the ... practices of the Public Service Commission.”). Mr. Wojcicki’s assertion that he is “a SCANA shareholder” does not constitute a “personal stake” necessary to establish the

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<sup>3</sup> In numerous proceedings, the Commission has concluded that Mr. Wojcicki lacked the requisite standing to intervene in proceedings pertaining to SCE&G and the BLRA. See Order Nos. 2010-221, 2012-495, 2012-628, 2013-481, 2014-733, and 2016-525. This same lack of standing to intervene in the Company’s BLRA proceedings similarly forestalls BYPAS’s and Mr. Wojcicki’s ability to bring a Complaint proceeding against SCE&G.

requisite standing before this Commission. *Id.* See Order No. 2012-495. For these reasons, the Complaint should be dismissed.

**IV. The Complaint fails to state a claim upon which relief can be granted.**

The Complaint also should be dismissed for failing to state a claim upon which relief can be granted because BYPAS cannot prevail on any legal theory. A defendant may move for dismissal when the plaintiff does not allege facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). If the plaintiff is not entitled to relief, then it is proper to dismiss the case. *Spence v. Spence*, 368 S.C. 106, 122, 628 S.E.2d 869, 877 (2006).

Although unclear, BYPAS appears to request that the Commission reconsider its decision approving the Company's BLRA Application by way of Order No. 2009-104-A issued in Docket No. 2008-196-E. In Order No. 2014-764, the Commission rejected these same attempts concluding that these matters had been previously litigated and long decided in Docket No. 2008-196-E. Similarly, in Order No. 2014-445, the Commission recognized that the BLRA does not provide for a *de novo* review of the application. In sum, because the Commission cannot grant the relief sought by BYPAS and Mr. Wojcicki, the Complaint should be dismissed.

**V. The Complaint should be dismissed as it is the product of the unauthorized practice of law.**

To the extent Mr. Wojcicki filed the Complaint on behalf of BYPAS, Mr. Wojcicki's is engaged in the unauthorized practice of law. "The generally understood definition of the practice of law embraces the preparation of pleadings, and other

papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.” *Roberts v. LaConey*, 375 S.C. 97, 103, 650 S.E.2d 474, 477 (2007) (citing *Brown v. Coe*, 365 S.C. 137, 139, 616 S.E.2d 705, 706-07 (2005) (emphasis supplied). See *In re Duncan*, 83 S.C. 186, \_\_\_, 65 S.E. 210 (1909). Pursuant to the Commission’s Practice and Procedure Regulations, 10 S.C. Code Ann. Reg. R. 103-804(O) (2012), a “pleading” is defined as a “document seeking relief in a proceeding before the Commission, including [a] complaint, answer, application, protest, request, motion ... or petition.” (Emphasis added). Thus, by filing the Complaint on behalf of BYPAS, Mr. Wojcicki by definition is engaging in the practice of law.

However, Mr. Wojcicki is not licensed as an attorney or authorized to practice law in South Carolina and, therefore, is unable to lawfully prepare and file pleadings on behalf of an entity such as BYPAS. There are only two instances in which persons may appear before the Commission in a representative capacity:

- (a) An individual may represent himself or herself in any proceeding before the Commission.
- (b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission.

Commission Regulation 103-804.T; see also Order No. 2003-550, dated September 8, 2003, in Docket No. 2003-162-T (dismissing petitions signed by persons who are not attorneys on behalf of another person). To the extent the Complaint has been brought in the name of BYPAS, Mr. Wojcicki’s appearance on behalf of BYPAS in this matter therefore directly contravenes the Commission’s

regulations and precedent. Accordingly, the Complaint should be summarily dismissed.

### CONCLUSION

For the foregoing reasons, SCE&G respectfully requests that BYPAS's Complaint be dismissed as (1) it is frivolous, (2) it fails to satisfy the Commission's pleading requirements and is defectively drawn, (3) BYPAS and Mr. Wojcicki do not have standing to advance the claims set forth therein, (4) it fails to state a claim upon which relief may be granted, and (5) it is the unlawful product of the unauthorized practice of law. Furthermore, SCE&G requests that the Commission impose appropriate sanctions upon BYPAS and Mr. Wojcicki. In the alternative, SCE&G requests that the Commission require BYPAS to amend the Complaint so as to make a more definite statement and appropriately advise the Company as to the issues involved. SCE&G further moves that the Commission hold in abeyance the testimony deadlines set forth in the Scheduling Notice dated September 14, 2016, until such time as this matter may be considered and resolved by the Commission.

**[SIGNATURE PAGE TO FOLLOW]**

Respectfully submitted,



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Matthew W. Gissendanner, Esquire  
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*Attorneys for South Carolina Electric &  
Gas Company and SCANA Corporation*

October 14, 2016

Cayce, South Carolina

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2016-334-E

IN RE:

BYPAS International, )  
)  
Complainant/Petitioner )  
)  
v. )  
)  
SCANA/South Carolina Electric & )  
Gas Company, and The Electric )  
Cooperatives of South Carolina, )  
)  
Defendant/Respondent )  
\_\_\_\_\_)

AFFIDAVIT OF  
CAROLYN B. FRICK

Personally appeared before me Carolyn B. Frick who, having first been duly sworn, deposes and states as follows:

1. My name is Carolyn B. Frick and I am a Lead Analyst for South Carolina Electric & Gas Company ("SCE&G" or "Company"). Among other things, I am responsible for the investigation of customer complaints received through the South Carolina Office of Regulatory Staff as well as customer complaints filed with the Public Service Commission of South Carolina ("Commission") requesting a hearing before the Commission. I am competent to make this affidavit.

2. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by SCE&G. I am familiar with the records of SCE&G that pertain to its customers.

3. I conducted a search of the Company's records and determined that neither BYPAS International nor Mr. Joseph Wojcicki is an electric customer of SCE&G.

[SIGNATURE PAGE FOLLOWS]

FURTHER AFFIANT SAYETH NOT.

Carolyn B. Frick 10/14/16  
Carolyn B. Frick

Sworn to and subscribed before me  
this 14 day of October, 2016

Argeline H. Peppel  
Notary Public for South Carolina  
My Commission Expires: 09/10/19

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2016-334-E**

IN RE:

BYPAS International,	)	
	)	
Complainant/Petitioner,	)	<b>CERTIFICATE</b>
	)	<b>OF SERVICE</b>
v.	)	
	)	
SCANA/South Carolina Electric & Gas	)	
Company, and The Electric Cooperatives	)	
of South Carolina,	)	
	)	
Defendants/Respondents.	)	
_____	)	

This is the certify that I have caused to be served this day one (1) copy of  
SCANA/South Carolina Electric & Gas Company's **Motion to Dismiss and for the  
Imposition of Sanctions or, in the Alternative, for More Definite Statement, and to  
Hold Testimony in Abeyance** via electronic mail and U.S. Mail to the persons named  
below at the addresses set forth:

Joseph Wojcicki  
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\_\_\_\_\_  
Karen M. Scruggs

Cayce, South Carolina

This 14th day of October 2016