STATE OF SOUTH CAROLINA

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

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2016 - 223 - E

(Please type or print)
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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition
☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)
☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other: ____________________________

NATURE OF ACTION (Check all that apply)
☐ Affidavit
☐ Agreement
☐ Answer
☐ Appellate Review
☐ Application
☐ Brief
☐ Certificate
☐ Comments
☐ Complaint
☐ Consent Order
☐ Discovery
☐ Exhibit
☐ Expedited Consideration
☐ Interconnection Agreement
☐ Interconnection Amendment
☐ Late-Filed Exhibit
☐ Letter
☐ Memorandum
☐ Motion
☐ Objection
☐ Petition
☐ Petition for Reconsideration
☐ Petition for Rulemaking
☐ Petition for Rule to Show Cause
☐ Petition to Intervene
☐ Petition to Intervene Out of Time
☐ Prefiled Testimony
☐ Promotion
☐ Proposed Order
☐ Protest
☐ Publisher's Affidavit
☐ Report
☐ Request
☐ Request for Certification
☐ Request for Investigation
☐ Resale Agreement
☐ Resale Amendment
☐ Reservation Letter
☐ Response
☐ Response to Discovery
☐ Return to Petition
☐ Stipulation
☐ Subpoena
☐ Tariff
☐ Other: ____________________________
December 6, 2016

Ms. Jocelyn D. Boyd
Chief Clerk
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

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

Dear Ms. Boyd:

Enclosed please find for filing and consideration the Petition for Rehearing or Reconsideration of Sierra Club, together with Certificate of Service reflecting service upon all parties of record.

With kind regards I am

Sincerely,

Robert Guild

Encl.s
CC: All Parties
Sierra Club, Intervener in the above-referenced proceeding, hereby petitions the Commission pursuant to S.C. Code Ann. Section 58-27-2150 (1976) and Rule 103-854 of the Commission's Rules, for rehearing or reconsideration of Order No. 2016-794, dated November 28, 2016, approving the Petition of South Carolina Electric & Gas Company for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina and the Settlement Agreement proposed by the settling parties, excluding Sierra Club and others. Sierra Club urges the Commission to reconsider said Order, to correct the errors therein as set forth below, and to reject said Petition and Settlement Agreement.

In support of this petition for rehearing or reconsideration of Order No. 2016-794, Sierra Club would respectfully show that:

1. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where such costs are not sufficiently known and measurable values but are merely values negotiated by the Company and its contractor in settlement of disputed claims;
where such costs are not capital costs within the meaning of the Baseload Review Act, but are merely values negotiated by the Company and its contractor to induce completion of the units pursuant to the exercise of the so-called “fixed price option” provision of its amended EPC contract; where incurring the proposed additional costs to complete the units pursuant to the negotiated amended EPC contract and so-called “fixed price option” represent the exercise of utility management judgement and risk appropriately borne by Company stockholders and not appropriately subject to endorsement by the Commission or borne by ratepayers; and, where, such additional costs to complete the units represent imprudent costs which should have been avoided by the Company and, therefore, must be borne by its stockholders and not its ratepayers.

2. The Commission erred in approving the Petition and Settlement Agreement where such approval denies Sierra Club due process by accepting a settlement agreement to which Sierra Club is not a party and failing to resolve all issues disputed by the non-settling parties, including Sierra, through the normal adjudicatory process—applying pertinent law to the evidence of record, employing the appropriate burden of proof and rules of evidence, contrary to the authority of Leventis v. SCDHEC, 530 S.E.2d 643, 340 S.C. 118,131-135 (S.C. App., 2000) and the Baseload Review Act, SC Code Section 58-33-270 (G).

3. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where such costs are imprudently incurred and should have been originally anticipated, avoided or minimized contrary to the Baseload Review Act, South Carolina Code
Sections 58-33-270 (E) and 275 (E).

4. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where such costs are not sufficiently itemized, are speculative and are not be "known and measurable within a degree of reasonable certainty." Hamm v. S.C. Pub. Serv. Comm'n, 309 S.C. 282, 291, 422 S.E.2d 110 (1992).

5. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where such costs are speculative and imprudent; and, therefore, contravenes the legislative purpose of the Baseload Review Act of balancing the interests of the utility with the protection of its ratepayers, by protecting customers 'from responsibility for imprudent financial obligations or costs." South Carolina Energy Users Committee v. South Carolina Public Service Commission, 697 S.E.2d 592, 388 S.C. 486 at 495 (2010).

6. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where such costs are the appropriate responsibility of utility management to prudently manage a project of such technical complexity. Protecting the interests of ratepayers requires that the utility be held responsible for an especially high duty of care to prudently manage and bear excessive costs of nuclear plant construction. Application of the proper standard of prudence under the Baseload Review Act requires imposition of these cost overruns on the utility and not its ratepayers. Georgia Power Co. v. Georgia Public Service Comm'n, 196 Ga. App. 572, 578-579, 396 S.E.2d 562 (1990).
7. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where such costs are not used and useful in providing utility service for which the utility is entitled to earn a fair rate of return within the meaning of those traditional public utility regulatory terms. Sou. Bell Tel. & Tel. Co. v. Pub. Ser. Comm., 270 S.C. 590 at 595, 244 S.E.2d 278 (1978), citing, Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923), and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944). The Commission's role is not to insulate utility management or its stockholders from the normal management risk borne by non-monopoly enterprises in a non-regulated marketplace. Management decisions such as those presented here to renegotiate the EPC contract with Westinghouse, to settle disputed claims with Westinghouse involving plant construction costs, or to negotiate and exercise the so-called "fixed price option" to induce completion of the subject units represent utility management judgments for which the utility and its stockholders must be held uniquely responsible. It is not the Commission's lawful responsibility under the Baseload Review Act or traditional regulatory principles to protect the Company from bearing the normal risks of its management judgment.

8. The Commission erred in approving the $831.3 million in additional capital costs claimed by the Company to complete the proposed new nuclear generating units, where the only, uncontested, expert testimony of record in this proceeding, presented by the Office of Regulatory Staff (ORS), the party charged by statute with monitoring, reviewing and auditing the construction schedule and expenditures for this nuclear
project, compels denial of the Company’s Petition and rejection of the proposed Settlement Agreement as contrary to the Baseload Review Act and established law. S.C. Code Section 58-33-277(B) (2015).

9. The Commission erred in approving the $505.5 million costs associated with the utility’s exercise of the fixed price option, where these negotiated costs are not “capital costs” of the units within the meaning of the BLRA, SC Code Section 58-33-220 (5); they are “speculative” and “un-itemized expenses, SC Energy Users Committee v. SC Public Service Commission, 388 S.C. 486 at 496, 697 S.E. 2d 587 (2010); and they fail to meet traditional regulatory principles requiring utility demonstration that ratepayers costs be “known and measurable within a degree of reasonable certainty.” Hamm v. S.C. Pub. Serv. Comm’n, 309 S.C. 282, 291, 422 S.E.2d 110 (1992).

10. The Commission erred in approving the $505.5 million costs associated with the utility’s exercise of the fixed price option, where the costs of exercising the option may not be approved as prudent changes to the project capital cost schedule to be borne by ratepayers. These negotiated costs must be borne by the Company and its stockholders and they must bear the risk of this negotiated bargain which should not be the responsibility of the Commission to endorse. Georgia Power Co. v. Georgia Public Service Comm’n, 196 Ga. App. 572, 578-579, 396 S.E.2d 562 (1990). Sou. Bell Tel. & Tel. Co. v. Pub. Ser. Comm., 270 S.C. 590 at 595, 244 S.E.2d 278 (1978), citing, Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923), and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 64 S.Ct. 781, 88 L.Ed. 333 (1944). The Commission should deny approval of the $505.5 million in costs associated with the
fixed price option and decline to approve this contract option negotiated by the Company and Westinghouse.

11. The Commission erred in approving the $137.5 million "in costs to resolve outstanding disputes." This cost element represents a negotiated value which comprehensively settled a range of disputed claims; but which "did not credit specific amounts to specific items." As ORS's expert Jones testified, adequately "detailed, auditable estimates to back up changes" in plant capital costs are necessary for approval of such new costs under the Baseload Review Act; yet such documentation for this negotiated dispute settlement, for the most part, "do not exist." Such costs are imprudently incurred and the Commission's approval of such cost increases is not supported by substantial evidence.

WHEREFORE: for the foregoing reasons, Sierra Club hereby urges the Commission to reconsider said Order, to correct the errors therein as set forth above, and to reject said Petition and Settlement Agreement.

Robert Guild
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December 6, 2016
CERTIFICATE OF SERVICE

I hereby certify that on this date I served the above Petition by placing copies of same in the United States Mail, first-class postage prepaid, addressed to:

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December 6, 2016

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