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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,

Complainants/Petitioners,

v.

South Carolina Electric & Gas Company,

Defendant/Respondent.

IN RE:

Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920.

IN RE:

Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc., for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., 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 plan.

SCE&G'S AND DOMINION ENERGY'S RESPONSE TO PETITIONS FOR REHEARING OR RECONSIDERATION IN THE FORM OF A PROPOSED ORDER

This matter comes before the Public Service Commission of South Carolina ("Commission") pursuant to Petitions for Rehearing or Reconsideration ("Petitions") filed by the Friends of the Earth and Sierra Club ("FOE/Sierra"), AARP, South Carolina Office of

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Regulatory Staff ("ORS"), South Carolina Coastal Conservation League and Southern Alliance for Clean Energy ("SCCCL/SACE"), and Frank Knapp, Jr. (collectively, the "Petitioners") pursuant to S.C. Code Ann. § 58-27-2150 and S.C. Code Ann. Regs. 103-825. On December 21, 2018, the Commission issued Order No. 2018-804 finding that the decision by South Carolina Electric & Gas Company ("SCE&G" or the "Company") to abandon its nuclear development project (the "Project") on July 31, 2017, was prudent, approving the proposed merger of SCANA Corporation ("SCANA") with Dominion Energy, Inc., ("Dominion Energy") and adopting the voluntary plan proposed by Dominion Energy and SCE&G in support of the merger as the most appropriate resolution to the rate and rate regulatory matters associated with the Project. That plan is the Customer Benefits Plan–B Levelized ("Plan–B Levelized").[1]

On December 24, 2018, FOE and the Sierra Club filed a timely Petition for Rehearing or Reconsideration of Order No. 2018-804. ORS did the same on December 28, 2018; and AARP, SCCCL/SACE and Mr. Knapp did so on December 31, 2018. On December 31, 2018, Lynn S. Teague filed a letter joining in these requests.

Having carefully considered the matters raised in these Petitions, the Commission finds that they fail to identify any basis for granting rehearing or reconsideration of Order No. 2018-804. Instead, the Commission affirms the findings and conclusions set forth in that Order and finds that they are amply supported by the law and the evidence and further in the best interest of SCE&G's customers.

STANDARD OF REVIEW

Under S.C. Code Ann. Reg. 103-825(4):

[1] In this Proposed Order, SCE&G and Dominion Energy incorporate and do not waive all arguments made previously in these dockets, either at the hearing, pre-hearing, or post-hearing.

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> A Petition for Rehearing or Reconsideration shall set forth clearly and concisely:
> (a) The factual and legal issues forming the basis for the petition;
> (b) The alleged error or errors in the Commission order;
> (c) The statutory provision or other authority upon which the petition is based.

The purpose of a petition for rehearing and reconsideration is to allow the Commission to identify and correct specific errors and omissions in its prior rulings. Conclusory statements and general and non-specific allegations of error do not satisfy the requirements of the rule. *See In re S.C. Pipeline Co.*, Docket No. 2003-6-G, Order No. 2003-641, at 6 ("[A] conclusory statement based upon speculation and conjecture is no evidence at all and is legally insufficient to support a [petition for reconsideration]"). While the requirement of specificity in post-trial motions is interpreted with flexibility, at minimum the decision-making body must be "able to both comprehend the motion and deal with it fairly." *See Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010). Additionally, a party cannot raise issues in a motion to reconsider that were not raised during the proceeding. *See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

ALLEGED ERRORS CONTAINED IN THE ORDER

A. The Request for an Imprudency Finding

ORS's primary argument in its petition for rehearing, echoed by several of the other Petitioners, is that the Commission failed to make a determination that SCE&G's investment in the Project after March 12, 2015 was imprudent, a determination that the Petitioners assert the Commission was required to make under the law. *See* ORS Pet. at 6; FOE/Sierra Pet. ¶¶ 2-6;

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AARP Pet. ¶¶ 2, 4(a)-(c); Knapp Pet. ¶ 2. The Commission finds these arguments to be without merit. The relief granted by Order No. 2018-804 does not require a finding of imprudence, nor does the evidence justify such a finding.

In Order No. 2018-804, the Commission determined that Plan–B Levelized was the plan that most clearly benefited customers over the short and long term and chose it as the basis for the rates SCE&G was ordered to charge going forward. The Commission chose this plan because, among other things, it provided a residential bill reduction of approximately 15% compared to prior, permanent rates and did so while protecting SCE&G's creditworthiness and future ability to serve customers safely and reliably.

Under Plan–B Levelized, SCE&G voluntarily offered to write off for regulatory purposes $1.962 billion in Project-related assets with financial support from Dominion Energy. Tr. at 1140; 4217-3–4217-4. Dominion Energy agreed to provide financial support to recapitalize SCE&G in the face of these write offs and to provide cash to replace revenue that would not be collected from customers thereby allowing SCE&G to sustain the offered bill relief related to the Project over 20 years. *Id.* at 1109; 4217-4.

The combination of immediate write offs and long-term funding from Dominion Energy was sufficient to achieve bill levels comparable to those temporarily imposed by the General Assembly through Act 258 without endangering SCE&G's long-term financial stability and ability to serve customers. The plan brings SCE&G's bills into alignment with regional averages and puts them substantially below national averages.[2]

[2] The Commission also notes that, in good faith reliance on Order No. 2018-804, Dominion Energy closed its merger with SCANA Corporation on January 1, 2019.

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The primary alternative to Plan–B Levelized was the Optimal Benefits Plan proposed by ORS. The Optimal Benefits Plan was premised on a finding that all investment in the Project after March 12, 2015, was imprudent. Tr. at 267, 288-5, 916-5, 1799. As the Commission found in Order No. 2018-804, there were serious questions about the lawfulness of key components of the Optimal Benefits Plan. Order No. 2018-804 at 62-66, 79. Furthermore, the adoption of the Optimal Benefits Plan could have placed the Dominion Energy merger in fatal jeopardy, and could have left SCE&G in so weakened a state financially that it would not be able to meet customers' expectations for reliable and efficient service. Tr. at 1752-12–1752-25, 2296-4, 2988–89.

In its Petition for Rehearing or Reconsideration, ORS does not challenge the adoption of Plan–B Levelized. Instead, ORS challenges the Commission's decision not to enter a finding affirming ORS's assertion that SCE&G engaged in a "deliberate and ongoing effort . . . to conceal, omit, misrepresent and fail[] to disclose" certain analyses related to the Project. ORS Pet. at 9. ORS alleges that this concealment began with a petition under S.C. Code Ann. § 58-33-270(E) that SCE&G filed with the Commission on March 12, 2015. *See id.* at 8.

Mootness of the ORS Prudency Issues: As the Commission found in Order No. 2018-804, the finding requested by ORS was not necessary to the relief granted in that order. As Order No. 2018-804 states, "the Joint Applicants have agreed to voluntarily forego recovery of all Project costs incurred after March 12, 2015." Order No. 2018-804 at 14. And again, "Plan–B Levelized as proposed by Dominion [Energy] recognizes that no capital investment will be recovered after March 12, 2015. Such an agreement makes claims of imprudent expenditures after that date moot." *Id.* at 18.

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Neither ORS nor any of the other parties who join ORS in this matter have challenged the Commission's finding that the adoption of Plan–B Levelized moots the issues surrounding prudency after March 12, 2015. Nor does ORS point to any reason why, in light of the Joint Applicants' agreement to forego recovery of capital investment after March 12, 2015, embracing ORS's assertion of wrongdoing by SCE&G is necessary to the relief granted in these proceedings or germane to the adoption of Plan–B Levelized in preference to ORS's Optimal Benefits Plan. The Commission is aware of none.

"It is elementary that the courts of this State have no jurisdiction to issue advisory opinions." *Booth v. Grissom*, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975). "A case [or an issue] becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." *Mathis v. S.C. State Highway Dep't,* 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "If there is no actual controversy, this Court will not decide moot or academic questions." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).[3]

The finding of imprudence as requested by ORS and the other parties will have no practical effect on any aspect of the Commission's order; therefore, the point is moot. Having

[3] ORS's prudency challenges are centered around the disclosure of specific analyses related to the Project, as discussed below. In that regard, ORS and other Petitioners argue that the Commission's prudency determination is governed by the definition of prudency adopted as part of Act 258, which specifically seeks to expand the definition of prudency to require disclosure of material information. But Act 258 was enacted well after all of the conduct challenged here took place. For constitutional reasons there is a strong presumption that recently enacted laws are intended to apply only prospectively. *See Kirven v. Cent. States Health & Life Co., of Omaha*, 409 S.C. 30, 39-40, 760 S.E.2d 794, 799 (2014). Interpreting a statute of this kind to apply retroactively is likely to violate due process. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994) (recognizing that a retroactive statute may violate due process if it "attaches a new legal consequence to events completed before its enactment."); *Immigration and Naturalization Serv. v. St. Cyr*, 533 U.S. 289, 321 (2001) (noting that a retroactive statute may violate the takings clause if it "attaches a new disability … in respect to transactions or consideration already past") (internal citation and quotation marks omitted)); *Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 207 S.E.2d 75 (1974) (recognizing that a statute designed to overrule a judicial determination retroactively might violate the separation of powers doctrine). The Commission does not have to address this constitutional problem because, under the Plan B-Levelized proposal, SCE&G and Dominion Energy have agreed to forego recovery of all of the costs that ORS contends to be imprudently incurred.

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adopted Plan–B Levelized, and in light of SCE&G and Dominion Energy agreeing not to seek recovery of costs incurred after March 12, 2015, to adopt ORS's assertions of wrongdoing would be to issue an advisory opinion, which is outside of the Commission's jurisdiction.

No Statutory Requirement: Petitioners also argue that a finding of imprudence is statutorily required, citing the language of S.C. Code Ann. § 58-33-280(K) that capital costs "may be disallowed only to the extent" that they are found to be imprudent. But the petitioners misread the statute. Before the Commission may disallow a cost, the utility must first seek recovery of that cost. *See* S.C. Code Ann. § 58-33-280(K). (permitting disallowance only when a utility seeks "recovery of capital costs"). Through Plan–B Levelized, SCE&G is not requesting to recover capital costs incurred after March 12, 2015. As a result, there is no claim for recovery of these costs, and no prudency issue concerning them is raised under S.C. Code Ann. § 58-33-280(K).

Factual Rulings Related to Prudency: Although it is unnecessary to further address this issue for the reasons above, the Commission further finds that the evidence presented in this matter does not support ORS's prudency challenges.

The Commission finds that the reliable, probative and credible evidence in the record does not support any findings beyond those in Order No. 2018-804. As stated in in Order No. 2018-804, at page 18, the Commission has "heard conflicting testimony on the reasons of the withholding of [certain] information." All parties, including SCE&G, acknowledge there has been a "loss of trust" in the regulatory process resulting from the alleged "lack of transparency," but the Commission does not believe that the facts and testimony in the record of this proceeding rise to the level of demonstrating a "deliberate and ongoing effort by the company to conceal,

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omit, misrepresent and fail to disclose material facts concerning significant economic information and dates of completion from the Commission," as ORS alleges. ORS Pet. at 9; s*ee* *Cammer v. Atl. Coast Line R. Co.*, 214 S.C. 71, 81, 51 S.E.2d 174, 178 (1948) (holding that the tasks of resolving contradictions in evidence, determining witnesses' credibility, and deciding what testimony to accept when resolving a case are all left to the jury as fact-finder) (cited with approval in *State v. Simmons*, 384 S.C. 145, 161, 682 S.E.2d 19, 27 (Ct. App. 2009)). The evidence simply does not support the finding ORS seeks.

Bechtel Assessment: The principal focus of ORS's prudency allegations relates to the Bechtel assessment, which was conducted in late 2015 at the direction of the construction attorney representing SCE&G and Santee Cooper at the time, Mr. George Wenick. Tr. at 659-12, 659-15–659-20, 2510–11. The Commission finds credible the testimony of Mr. Wenick that it was his independent determination, reached without direction from either SCE&G or Santee Cooper, that the Bechtel assessment was without material value beyond certain specific suggestions for improvement in construction processes.[4] *Id.* at 2561-64, 2571–72. There is no evidence contradicting Mr. Wenick's unequivocal testimony that as counsel for SCE&G and Santee Cooper, he engaged Bechtel for entirely justifiable reasons, and not in an attempt to withhold Bechtel's analysis or its results from the ORS or the Commission. Indeed, the decision from Mr. Wenick's law firm to hire Bechtel in anticipation of litigation and thus protect Bechtel's work as privileged was made before Bechtel conducted its work or reached any

[4] At footnote 9, on page 11 of its Petition for Rehearing and Reconsideration, ORS states that it does not believe Mr. Wenick's direct and unequivocal testimony that he made the decisions related to the Bethel drafts without input from Mr. Byrne. This accusation constitutes a charge of perjury against an attorney who voluntarily agreed to come and testify in this proceeding, and it is made purely on conjecture and without any evidentiary support. The Commission directs the clerk to strike this footnote from the Petition for Rehearing or Reconsideration as posted on the public docket.

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conclusions regarding the Project. The evidence does not support the assertion that Bechtel's hiring by Mr. Wenick was devised with the intent to deceive.

Mr. Wenick is a construction attorney with an international practice and over 40 years' experience in litigating utility generation and megaproject disputes.[5] Tr. at 2496–97. His testimony clearly shows him to be an expert in the scoping, evaluation and critique of construction project analyses of the type conducted by Bechtel in 2015. The Commission finds that Mr. Wenick was well qualified to assess the value of the Bechtel analysis and that his testimony is credible and convincing. Mr. Wenick, based on his independent and contemporaneous assessment of the assessment, concluded that the assessment was without substantial material value. The Commission further finds, given Mr. Wenick's qualifications and experience as a construction attorney who regularly evaluates such assessments, that SCE&G's reliance on Mr. Wenick's opinion about the lack of value in the assessment was reasonable. *See Daufuskie Island Util. Co., Inc. v. S.C. Office of Regulatory Staff*, 420 S.C. 305, 316–17, 803 S.E.2d 280, 286 (2017) ("The credibility and weight of the evidence submitted is particularly within the Commission's purview."); *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997) ("The fact finder is imbued with broad discretion in determining credibility or believability of witnesses.").

The Commission also finds that there is substantial evidence elsewhere in the record of this proceeding supporting Mr. Wenick's conclusions that the Bechtel assessment was without substantial material value. Mr. Wenick's conclusion was validated by Dr. Kenneth Petrunik, a

[5] Although no longer employed by SCE&G or Santee Cooper, and outside of the subpoena power of the Commission, Mr. Wenick voluntarily agreed to appear and testify under oath in this proceeding without compensation.

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senior nuclear construction expert with over 40 years' experience in the industry. Tr. at 3648-1–3648-2. Dr. Petrunik's experience includes responsibility for the construction of 12 new nuclear units worldwide. *Id.* Dr. Petrunik testified that the Bechtel assessment did not uncover any issues with the Project that were not generally known within the industry at the time and that the issues Bechtel identified were plainly discussed in the regular construction reports provided to ORS throughout the course of the Project. *Id.* at 3648-14. The Commission finds that Dr. Petrunik's testimony in this regard is also credible.

The same conclusion was reached by the senior SCE&G executive with direct oversight of the Project, Mr. Stephen Byrne, who testified, "I did not believe that the final Bechtel report I received in late February 2016 identified any significant issues that the owners were unaware of or that was not mooted by the EPC amendment." Tr. at 4076. Even ORS's nuclear construction expert, Mr. Gary Jones, similarly testified that he was familiar with effectively all of the issues and concerns raised in the Bechtel assessment. *Id.* at 466.

Finally, the conclusions of Dr. Petrunik and Mr. Wenick are buttressed by the text of the Bechtel documents themselves, which specifically indicate that Bechtel's conclusions, particularly as to the schedule analysis Bechtel volunteered, were preliminary, based on limited data and should not be used for establishing a new schedule for completion of units.[6] *See, e.g.*, Hearing Exhibit 15, GCJ-2.46A, at p. 8 (Bechtel's own finding that "[a] more robust probability

[6] SCE&G provided testimony and documents establishing that the schedule assessment prepared by Bechtel was based on inadequate information and in fact was outside the scope of the work Bechtel was hired to perform. Mr. Troutman, senior executive for Bechtel, sought to buttress the validity of the Bethel analysis and to vindicate Bechtel's decision to perform this schedule analysis. However, the Commission finds the testimony Mr. Wenick, Mr. Byrne and Dr. Petrunik to be more persuasive and to establish that the schedule analysis prepared by Bechtel in fact was not authorized nor was it materially useful in assessing the Project for the reasons set forth in their testimony.

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assessment approach would be needed before finalizing any changes to the project baseline target schedule."); Tr. at 458, 2570–71.

The evidence of record further establishes that SCE&G did not conceal from ORS the fact that the Bechtel assessment was conducted. It disclosed to ORS the invoices for Bechtel's work and provided ORS the opportunity to review. Beyond that, ORS's construction expert, Mr. Jones, testified that: (a) he was aware at the time that Bechtel had conducted an assessment of the Project; (b) he discussed the existence of that assessment with SCE&G Project team members in 2015 and 2016; (c) he was informed by them that SCE&G had determined that the Bechtel assessment did not contain meaningful new information concerning the Project; and (d) when he reviewed the Bechtel report after its public disclosure by Santee Cooper, he concluded that the substance of the information Bechtel provided was, apart from a handful of items that he acknowledged to be largely insignificant, already known; and (e) he knew that the issues identified were in the process of being addressed through the EPC Amendment and otherwise. Furthermore, as to the construction schedule, he was aware of information that would have allowed him to develop a schedule analysis rivaling that of Bechtel based on the data regularly provided to ORS by SCE&G. Tr. at 429-430, 443, 466.

ORS points specifically to SCE&G's alleged deceptiveness in responding to ORS's Discovery Request 1-38. *See* Hearing Exhibit 28; ORS Pet. at 12. Request 1-38 asked SEC&G to provide ORS with an economic analysis of delay scenarios of 18, 24, 36 and 46 months beyond the then forecasted commercial operation dates. Hearing Ex. 28. SCE&G initially responded that such forecasts had not been prepared at that time and would be highly speculative and of no probative value. However, SCE&G subsequently did prepare a study responsive to

Request 1-38 and provided that study to ORS. Tr. at 3335–36. Thus, ORS's allegations that SCE&G's responded deceptively to Request 1-38 is without merit and does not support a finding of imprudence from this Commission.

The evidence of record also does not support a finding that SCE&G's statement to Mr. Jones that the Bechtel assessment did not generate meaningful new information was deceptive, intentionally false or fraudulent.[7] Instead, the evidence adduced at the hearing shows that this statement accurately reflected SCE&G's assessment of the assessment, as testified to by Mr. Wenick and Mr. Byrne and as validated by Dr. Petrunik. It also comports with what Mr. Jones admitted when, in connection with these proceedings, Mr. Jones had an opportunity to review the full Bechtel report.

[7] In order to sustain a finding of fraud under South Carolina law, a party must prove by "clear, cogent, and convincing evidence," the following elements:

> (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444–45 (Ct. App. 2003) *citing First State Sav. & Loan v. Phelps*, 299 S.C. 441, 446–47, 385 S.E.2d 821, 824 (1989); s*ee also Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993) ("Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence."). The Commission notes that under S.C. Code Ann. §§ 58-33-277(B), 280(D) and 295, ORS was under a legal obligation to provide independent oversight to the Project and had the right to hire, at utility expense, the staff and experts needed to provide independent oversight and evaluation. In this context, and in light of the "right to rely" element under a standard fraud analysis, it is not at all clear that ORS would have the right to complain that it was the victim of fraud where it was under a legal obligation to undertake independent evaluation and oversight related to the matters in question. Furthermore, to constitute fraud under South Carolina law, a false representation "must be predicated upon misstatements of fact *rather than upon an expression of opinion,* an expression of intention or an expression of confidence that a bargain will be satisfactory." *Bishop Logging Co.,* 317 S.C. at 527, 455 S.E.2d at 187 (internal citations omitted) (emphasis added); *Gilbert v. Mid–South Mach. Co., Inc.,* 267 S.C. 211, 220–21, 227 S.E.2d 189, 193 (1976) (fraud must be "predicated on misstatements of fact rather than misstatements of opinion").

SCE&G's assessment of the lack of material information in the Bechtel report was an opinion, not a statement of fact, so it could not sustain a claim for fraud under South Carolina law even if it were shown to be demonstrably inaccurate. In any event, ORS has not presented any evidence to demonstrate that SCE&G's opinion statements related to the Bechtel analysis were factually untrue nor has it shown that they were made with an intent to deceive, as the fraud analysis requires. All evidence received at the hearing in this proceeding was to the contrary.

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In light of the circumstances at the time, the fact that Mr. Jones and others at ORS did not follow up on the inquiries concerning Bechtel is not surprising. Just after the Bechtel analysis was concluded, SCE&G and Westinghouse announced a sweeping restructuring of the Project that included scrapping the consortium structure, hiring a new on-site construction company, converting on-site construction from cost-plus to fixed price, and adding nearly $1 billion in completion penalties and incentives to motivate achievement of contractually guaranteed completion dates. Tr. at 3648-15. The new on-site construction manager, Fluor Corporation, was conducting thorough work process reviews to identify and streamline inefficient construction and engineering processes and preparing a full re-baselining of the Project schedule to meet the contractually guaranteed completion dates. *Id.* at 3648-16, 3733, 3748. For its part, Westinghouse was de-scoping inefficient subcontractors and shifting work to new vendors.

The Bechtel assessment predated these changes, and, other than noting that some of them were ongoing, did not account for them. As Dr. Petrunik and others testified, Bechtel's findings and recommendations were largely outdated at the time the assessment was issued. Tr. at 3648-16. It is quite understandable that in early 2016, all parties, including ORS, would have shifted focus from the problems that Bechtel had noted under the prior project structure to a forward-looking review of the ability of Westinghouse and Fluor Corporation to deliver the Project under the new contractual and management structures.[8] Even today ORS does not allege that there was evidence that would have justified terminating the Project prior to Westinghouse's bankruptcy. Tr. at 417. As the Commission found in Order No. 2018-804, at page 13, "ORS does not allege

[8] The Commission also finds credible the testimony of Mr. Wenick and Mr. Byrne that SCE&G considered the Bechtel assessment to be subject to attorney-client privilege and/or work-product doctrine and thus could not be properly disclosed in that form. But the question is more one of form than substance since, as ORS's expert Mr. Jones testified, the problems with the project that Bechtel identified were disclosed and well known to him, and he had at his disposal much the same information as Bechtel used in its schedule and other analysis. Tr. at 466.

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that the Project should have been cancelled on March 12, 2015, or on any other date prior to July 31, 2017." ORS does not challenge this finding in its Petition for Rehearing or Reconsideration.

The 2014 EAC Analysis: ORS also alleges that the Commission was required by law to find that expenditures on the Project after March 12, 2015, were imprudent because "SCE&G deliberately hid from the Commission its own late 2014 internal estimate at completion (EAC) that was $500 million more than the cost filed with the Commission on March 12, 2015." ORS Pet. at 8. ORS asserts that SCE&G wrongfully hid this analysis from the Commission by basing its petition in Docket No. 2015-103-E on the cost and schedule data provided by its construction contractors, and by not discussing the earlier estimate with ORS or providing information about it to the Commission through testimony or exhibits filed in that docket.

ORS does not say that disclosing the study would have changed the ultimate decision in the 2015 proceeding. As mentioned above, ORS affirms that there was no basis for terminating the Project in 2015 or at any other time prior to Westinghouse's bankruptcy. Tr. at 417. This admission puts ORS in the awkward position of acknowledging that even if SCE&G had disclosed the 2014 EAC study, the Commission still would have properly ruled that continuing to invest in the Project was prudent. Now, some five years later, ORS argues that because the 2014 EAC study was not disclosed, all expenditures on the Project since March 12, 2015, are imprudent. The logic of this argument is difficult to follow. Factually, however, ORS's position is correct as to the study's lack of relevancy to the prudency question.

The facts show that in 2014, a group in SCE&G's accounting area was asked to prepare an analysis that would assist in ongoing commercial negotiations with the Project's contractors. Those negotiations concerned who would pay for costs related to poor productivity and

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mitigations plans to recover delays and incentives for achieving promised improvements in the Project. *See, e.g.*, Tr. at 275, 561, 3734-38, 3783-84. Testimony indicated that the EAC study at issue here was one of a number of sensitivity studies that were performed to arm SCE&G's negotiating team with information for its negotiations with the contractors. These studies were designed to assist in negotiations regarding the drivers for payment to the contractors. In other words, the studies were designed to identify the most significant factors impacting the potential cost of the Project so that the Owners could isolate those factors that should be measured in a revised commercial relationship to incentivize the contractors to perform.

When the EAC team concluded its work in October of 2014, it recommended that SCE&G should consider negotiating with the contractors to revise the commercial relationship and obligate the contractors to meet a required PF in order to receive promised payments. This is the context for the EAC team's work. This context makes clear that the EAC team did not determine an alternative EAC that could be used to establish the Project's likely cost. The EAC team was created for the purpose of supporting negotiations of EPC Contract terms to avoid continued cost increases of the sort the EAC team modeled. Thus, it is simply inaccurate for the ORS to assume, as they do, that the EAC team had concluded there would be a different cost to complete than what the contractors had suggested. The premise for the ORS's requested imprudency finding is factually wrong.

Nevertheless, and read in the light most favorable to ORS, the 2014 EAC study showed that completing the Project might have cost approximately $500 million more than the contractors estimated if promised productivity improvements were not achieved. But Dr. Lynch presented studies in Docket No. 2015-103-E showing that it would have taken an increase in

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Project cost of approximately $3.1 billion to have made the Project uneconomical at that time. Order No. 2018-804 at 22–23. Those studies were not seriously challenged in the 2015 proceeding.

Furthermore, within less than 90 days after the Commission issued Order No. 2015-661, Westinghouse agreed to a fixed price to complete the Project. Uncontroverted studies presented in the 2016 proceeding showed that it would have required an increase of $3.8 billion in Project cost above the fixed price amount to have made the Project uneconomical. *Id.*

Therefore, the potential for additional costs as identified in the EAC study was not material to the prudency questions before the Commission in 2015 or 2016. In no meaningful sense did the failure to disclose the 2014 EAC report lead to expenditures that would otherwise have been deemed to be imprudent.[9] The amount of additional cost identified by the 2014 EAC study would not have changed the outcome of the Commission's prudency analysis, as ORS admits.

The record further shows that in Docket No. 2015-103-E, SCE&G presented to the Commission cost and completion schedules for the Project that accurately reflected the schedules that were provided to SCE&G by its contractors in the fall of 2014. In the 2015 proceeding, SCE&G disclosed that these estimates were based on productivity factors that the contractors had yet to achieve, that the historical productivity factors for the Project were much higher, that it would take significant productivity increases to achieve those estimates, that there was no

[9] The Commission also finds that these issues concerning the record in Docket No. 2015-103-E and parties' conduct in that proceeding are untimely raised. Such issues would have been properly heard in that docket or on appeal from it. The issues Petitioners raise have been decided by final and unappealed orders of the Commission. Petitioners have presented no evidence that would be sufficient for the Commission to determine that the final orders in that docket should be reopened and overturned. *Chewning v. Ford Motor Co.*, 354 S.C. at 78, 579 S.E.2d at 608; *Cleveland Demolition Co., Inc. v. Azcon Scrap Corp,* 827 F.2d 984, 986 (4th Cir. 1987); *Ray v. Ray*, 374 S.C. 79, 83, 647 S.E.2d 237, 239 (2007).

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guarantee that those productivity achievements could be achieved, and that SCE&G intended to challenge any future invoices for costs incurred as a result of the contractors not achieving their stated productivity factors. *See* Hearing Ex. 64 at 21–22, 38–39; Hearing Ex. 156, Dep. Ex. 10 at 274, 490, 493-94, 677.

The evidence, therefore, shows that SCE&G did not misrepresent the basis of the cost projections that it provided the Commission in Docket No. 2015-103-E or the risks associated with achieving those projections. In fact, it disclosed those matters openly. In fact, the evidence shows SCE&G fully disclosed to ORS the basis of the cost projections that SCE&G provided the Commission in Docket No. 2015-103-E and the risks associated with achieving those projections. SCE&G provided ORS with a copy of the same materials that were provided to SCE&G when SCE&G's contractors presented their cost and schedule projection in mid-2014. *See* Tr. at 526-30; Hearing Ex. 26. These materials spelled out the specific productivity factors and other assumptions on which the contractors' estimate was based. The record shows that during discovery in Docket No. 2015-103-E, ORS used its audit and discovery powers to question SCE&G about the productivity assumptions underlying its cost projections. SCE&G accurately responded by explaining both the productivity factor upon which the contractors' estimate was based and why SCE&G found it reasonable to rely on that estimate despite the historical productivity factor being significantly higher. *See* Tr. at 531-34; Hearing Ex. 27. Through discovery, ORS obtained the historical productivity factors for the Project. And with this information in hand, ORS concluded that it had sufficient information to enter into a settlement in the 2015 proceeding and recommend to the Commission that the requested cost and schedule update be approved. *See* Dkt. No. 2015-103-E, Order No. 2015-661, Exhibit 3

(Settlement Agreement in 2015 PSC Proceeding). In the settlement agreement, ORS specifically represented that it had received the information needed to determine that SCE&G's requested schedules were reasonable and should be adopted.

The evidence shows that SCE&G provided to ORS, as the entity charged with protecting the public interest in these matters, the information necessary to evaluate the cost and construction schedules it filed with the Commission. SCE&G disclosed the productivity factors on which they were based and the risks that those factors would not be achieved. Accordingly, and for all of the reasons set forth above, the evidence does not support ORS's contention that investment in the Project after March 12, 2015, must be found to be imprudent because the EAC study was not disclosed at that time.

B. The Used and Useful Standard and the BLRA

In their Petitions, FOE/Sierra and AARP assert that the Commission erred in approving the Joint Application pursuant to the Base Load Review Act, S.C. Code Ann. §§ 58-33-210 *et seq.* ("BLRA"), because the BLRA, on its face and as applied in Order No. 2018-804, "takes money from ratepayers and gives it to investors of a private company for a private use for a utility plant which is now abandoned and not 'used and useful' in producing utility service to ratepayers." FOE/Sierra Pet. ¶ 1; *see also* AARP Pet. ¶ 1. On this basis, FOE/Sierra and AARP assert that Order No. 2018-804 is contrary to the public interest and violates Article I, section 13(A) of the South Carolina Constitution. *Id.*

In public utility ratemaking, however, a utility that is owned by private investors is subject to a statutory duty to provide service to the public on demand. *See, e.g.*, *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989); *De Pass v. Broad River Power Co.*, 173 S.C. 387, __,

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176 S.E. 325, 333 (1934). Moreover, the utility must offer its service at rates set by the government. *See, e.g., Verizon Commc'ns, Inc. v. F.C.C.*, 535 U.S. 467, 527 (2002). Because the utility is compelled to use its property for the public good, without any control over the price it charges, the government cannot set a rate that is so low as to be confiscatory. *See, e.g., Duquesne*, 488 U.S. at 307; *In re Railroad Commission Cases*, 116 U.S. 307, 331 (1886). This is a requirement of the Takings Clause of the United States Constitution.

In contrast, courts have consistently held that, while utility customers can and do have a statutorily protected interest in the ratemaking process, they do not have constitutionally protected property interests in rates or ratemaking and thus cannot challenge rates on constitutional grounds related to confiscation or an unconstitutional taking of property. *See Holt v. Yonce*, 370 F. Supp. 374 (D.S.C. 1973) (three-judge panel) (per curiam), *aff'd* 415 U.S. 969 (1974). Accordingly, "ratefixing power operates exclusively within a range of reasonableness, bounded on the one hand by the utility's ***constitutional*** right to a fair and reasonable return and on the other hand by its customers' ***statutory*** right to rates that are not unreasonable or exorbitant." *Gulf States Util. Co. v. Pub Util. Comm'n*, 784 S.W.2d 519, 520 n.2 (Tex. App. 1990), *aff'd* 809 S.W.2d 201 (Tex. 1991) (emphasis added). On this basis, the South Carolina Supreme Court has held that the constitutionality of rates should be assessed based on their financial impact on the utility and that burdensomeness to customers should be considered only to the extent that rates exceed the constitutional requirement of just compensation:

> [T]he reasonableness of rates should be determined by an evaluation of the utility's holdings and obligations and the return which the utility realizes from the rates. The focus is upon the financial condition of the utility, particularly whether the return realized from the rates is so low as to be confiscatory to the utility or so high as to be unduly burdensome to the utility's customers.

Mims v. Edgefield Cty. Water & Sewer Auth., 278 S.C. 554, 555-56, 299 S.E.2d 484, 485-86 (1983).

Through the BLRA, the General Assembly struck a balance between investors and the State of South Carolina with the intent to make it possible for investors to underwrite costly investments in nuclear power, which were seen at the time as providing important benefits for South Carolina and its citizens. The BLRA therefore was based on an implicit bargain that, if investors would provide the billions of dollars needed to finance the plants for the benefit of South Carolina and its people, the General Assembly, through the BLRA, would ensure that those investors were repaid. And one of the risks that the BLRA expressly sought to address was the potential for construction to be abandoned after the project was undertaken for reasons that were not envisioned at the time. *See* S.C. Code Ann. § 58-33-280(K). In this regard, the General Assembly expressly chose not to make the "used and useful" test operative for recovering the costs of plants that were constructed under the BLRA and later abandoned.

FOE/Sierra and AARP mistakenly assert that the "used and useful" standard is a constitutionally mandated rate making principle. It is not. The "used and useful" standard, which was enunciated in *Smyth v. Ames*, 169 U.S. 466 (1898), was overturned in *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602–03 (1944). *Duquesne*, 488 U.S. at 308; *accord*, *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1175 (D.C. Cir. 1987) (en banc).

As one court has noted, with the doctrinal shift from *Smyth* to *Hope*, "the constitutional basis for 'used and useful' was swept away." *Wash. Gas Light Co. v. Baker*, 188 F.2d 11, 19 (D.C. Cir. 1950). Or, as another court noted, after *Hope*, "'used and useful' ceased to have any constitutional significance." *Jersey Cent. Power & Light*, 810 F.2d at 1175. Though South

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Carolina authorities have referenced the "used and useful" principle in quoting general ratemaking principles from older cases, there is no constitutional mandate that such a principle be applied in all cases, and the holdings in the cases that quote this language so demonstrate. *See Hamm v. Pub. Serv. Comm'n*, 309 S.C. 282, 285 n.1, 291, 422 S.E.2d 110, 112 n.1, 115 (1992).

Specifically, this Commission has consistently allowed utilities to include construction costs in their base rates since at least 1974, a clear departure from "used and useful" as a constitutional mandate. *See* Comm'n Directive (Nov. 13, 1974). The South Carolina Supreme Court has also approved this practice of including construction work in progress costs in the base rates for utilities. *Hamm*, 309 S.C. at 291, 422 S.E.2d at 115. In fact, the Supreme Court expressly approved of base rates that included base property not being used to provide electricity to customers in *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 244 S.E. 2d 278 (1978), when it held that the Commission should have made a factual determination regarding the exclusion from rate base of property held for future use instead of "arbitrarily excluding all such property from the rate base." *Id.* at 600-01, 244 S.E.2d at 283-84; *see also Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 313, 313 S.E.2d 290, 292 (1984) ("[R]ate 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.").

In 2006, the General Assembly determined that the public interest warranted an incentive for investor-owned utilities to construct nuclear plants and in enacting the BLRA included provisions that expressly allow an electric utility to recover its investment in an abandoned plant after a prudent decision to abandon has been made. S.C. Code Ann. § 58-33-280(K). None of the Petitioners has challenged the determination in Order No. 2018-804 that the decision to

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abandon this Project was prudent. Accordingly, abandonment of the Project at issue here does not put the Project outside of the scope of the BLRA. S.C. Code Ann. § 58-33-280(K) specifically states the contrary. Nor does it change the fact that the BLRA was and is a constitutionally valid exercise of legislative authority by the General Assembly to advance the public interest as understood at the time and must be enforced according to its terms. *See* S.C. CONST. art. IX, § 1; *S.C. Pub. Serv. Auth. v. Summers*, 282 S.C. 148, 151, 318 S.E.2d 113, 114 (1984) (The "'question of whether an act is for a public purpose is primarily one for the Legislature,'" and that determination can be rejected only if it is "clearly wrong." (quoting *Elliott v. McNair*, 350 S.C. 75, 88, 156 S.E.2d 421, 428 (1967))); *Nucor Steel, a Div. of Nucor Corp. v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 543, 426 S.E.2d 319, 321–22 (1992) ("[T]he Commission is created by statute and its authority is limited to that granted by the legislature.").

Consequently, FOE/Sierra's and AARP's assertions that Order No. 2018-804 is contrary to the public interest and violates Article I, section 13(A) of the South Carolina Constitution are without legal or evidentiary support and do not demonstrate any error or omission by the Commission. Instead, the Commission properly relied upon the provisions of the BLRA by allowing SCE&G to recover its capital costs and Allowed Funds related to the Project as approved in Order No. 2018-804.

C. Refunds of Revised Rates

ORS, AARP, FOE/Sierra, and Mr. Knapp assert that it was error for the Commission not to require SCE&G to refund past revised rates collections. ORS Pet. at 13-17; AARP Pet. ¶ 3; FOE/Sierra Pet. ¶ 6; Knapp Pet. ¶ 6. ORS seeks refunds of rates collected after March 12, 2015, or associated with amounts of Project investment in excess of $2.8 billion. The other Petitioners

seek refunds going back further—in some cases, back to the beginning of the Project. These allegations are without merit.

As stated in Order No. 2018-804, at page 48, Plan–B Levelized provides for write offs, refunds and restitution totaling approximately $3 billion. By requesting refunds of past revised rates collections, the Petitioners are asking, in effect, for SCE&G and Dominion Energy to add additional bill mitigation funds to what has already been offered and accepted as reasonable.

The Commission declines to do so. In Order No. 2018-804, the Commission found that Plan–B Levelized provides the appropriate measure of bill mitigation. Additional refunds or restitution are not warranted and would not lead to a reasonable balancing of investor and customer interests or to a just and reasonable result.

The rates Petitioners seek to have refunded were approved in final orders of the Commission that are not subject to review in this proceeding. As mentioned above, "the Commission is created by statute and its authority is limited to that granted by the legislature." *Nucor Steel*, 310 S.C. at 543, 426 S.E.2d at 321–22. The statutes under which the Commission regulates electric utilities authorize the Commission to set rates prospectively. *See* S.C. Code Ann. §§ 58-27-810 *et seq.* The only exception to prospective rate regulation is found in S.C. Code Ann. § 58-27-960, which allow refunds of unreasonable, excessive or discriminatory amounts, but not where, as here, "the charge has been authorized by law." *S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n,* 275 S.C. 487, 488, 272 S.E.2d 793, 794 (1980). This is in keeping with South Carolina's general prohibition on retroactive ratemaking as long recognized by the South Carolina Supreme Court. *See Porter v. S.C. Pub. Ser. Comm'n*, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1977).

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None of the Petitioners have alleged that SCE&G's revised rates collections were not authorized by revised rates orders duly issued by this Commission. Nor is there any basis in the record of this proceeding to overturn these orders.[10] As a result, the conclusion is inescapable that ordering refunds would be retroactive rate making and outside of the authority granted to the Commission.

Additionally, FOE/Sierra argues that "SCE&G lost the benefit of the BLRA bargain when it ceased construction of the nuclear construction project 'within the parameters' of the approved Commission construction and capital cost order, as required by S.C. Code Ann. § 58-33-275(A)." FOE/Sierra Pet. ¶ 2. However, S.C. Code Ann. § 58-33-280(K) explicitly governs cost recovery after abandonment, as is the case here, and it expressly authorizes cost recovery in these circumstances. The more specific S.C. Code Ann. § 58-33-280(K), rather than the more general S.C. Code Ann. § 58-33-275(A) on which FOE/Sierra relies, expressly contradicts FOE/Sierra's argument. It does not require continued construction to support cost recovery, and it authorizes recovery in precisely the circumstances applicable to the Project. Costs can be disallowed after abandonment only upon a showing that abandonment is imprudent, and there is no dispute over the prudency of abandonment in this proceeding.

ORS argues that the filed-rate doctrine does not apply to the previously collected revised rates because the Commission may disallow recovery of imprudent capital costs under S.C. Code Ann. § 58-33-280(K). ORS Pet. at 13-14. This argument misinterprets that statute. S.C. Code Ann. § 58-33-280(K) authorizes the Commission to set rates for the recovery of investment in abandoned BLRA projects prospectively. In calculating those prospective rates, the Commission

[10] See footnote 7 above, which discusses the application of fraud principles to the facts in this proceeding.

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may exclude investment that it determines to have been imprudent. Nothing in this statute authorize *ex post facto* prudency determinations or refunds and reparations of rates lawfully collected in contravention of the limits imposed under S.C. Code Ann. § 58-27-960 and *S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n,* 275 S.C. at 488, 272 S.E.2d at 794. To read such an authority into the statue would violate the prohibition on retroactive rate making.[11]

D. Merger Conditions

SCCCL/SACE alleges that it was error for the Commission to approve the merger between SCANA and Dominion Energy without including adequate conditions "to fully protect SCE&G's captive retail ratepayers from costs that arise from affiliate transactions involving unnecessary pipeline capacity." SCCCL/SACE Pet. at 1-2. Petitioners make specific reference to the Atlantic Coast Pipeline ("ACP"), of which Dominion Energy is a 25% owner. Likewise, FOE/Sierra and ORS assert that the Commission erred in approving the proposed merger without assuring that the merger was adequately conditioned to protect the public interest and to protect ratepayers from the imposition of unjust and unreasonable rates, again with reference to the ACP. *See* FOE/Sierra Pet. ¶ 7; ORS Pet. at 17. None of the Petitioners cite any statutes or regulations requiring such conditions as part of the Commission's approval of this merger.[12]

[11] The Commission notes that ORS also asserts that the South Carolina Supreme Court recognized an exception to the filed rate doctrine in *Edge v. State Farm Mutual Auto Insurance Company,* 366 S.C. 511, 517, 623 S.E.2d 387, 391 (2005). ORS Pet. at 15-16. Specifically, ORS argues that the filed rate doctrine does not apply if regulatory approval for the rate was obtained through fraudulent means. *Id*. The Commission disagrees. In *Edge*, the South Carolina Supreme Court did not hold that there are exceptions to the doctrine but, rather, declined to address that issue. *Id.* at 517, 623 S.E.2d at 391. In a 2010 decision, five years after *Edge*, the Supreme Court again was presented with the question of whether South Carolina law recognizes an exception to the filed rate doctrine and, again, declined to resolve this question. *See Temp. Servs., Inc. v. Am. Int'l Grp., Inc.,* 388 S.C. 348, 350–51, 697 S.E.2d 527, 529 (2010). In any event, the Commission does not find any evidence that the revised rate orders were obtained through fraud.

[12] SCCCL/SACE reference the statute requiring the South Carolina Energy Office to promulgate a Plan for State Energy Policy and setting forth general policy goals to inform that plan. However, this statute confers no specific regulatory authorities or obligations on this Commission. The statute authorizes the State Energy Office to

However, even if such conditions were required, Order No. 2018-804 adequately addressed them, as explained below.

1. The Atlantic Coast Pipeline

Petitioners, several of whom have been fierce opponents of the siting and permitting of the ACP in other jurisdictions, suggest that the Commission is legally mandated under general public interest principles to take action in this proceeding to protect ratepayers from future, potentially unjustified affiliate transactions involving the hypothetical extension of the ACP into South Carolina. FOE/Sierra Pet. ¶ 7. The Commission finds this request to be premature. There is currently no proposal to extend the ACP into South Carolina. There is no affiliate transaction to review.

Absent a contrary agreement by the utility, the review and approval of affiliate transactions or intercompany dealings properly comes before the Commission when there is an actual transaction and the utility seeks to include its costs in rates or otherwise brings it before the Commission. *See, e.g., Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n,* 338 S.C. 92, 525 S.E.2d 863 (1999). "To the extent a transaction [*i.e.*, an affiliate transaction] is not done at 'arms-length,' or is found by the PSC to be unreasonable, it is properly excluded from the rate-base, thereby ensuring that improper or unreasonable transaction costs are not passed on to rate-payers." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n*, 357 S.C. 232, 239, 593 S.E.2d 148, 152 (2004).

Accordingly, in the general course of regulation, when affiliate transactions are presented for ratemaking review, the Commission will "review and analyze [the transactions] and

formulate the required plan and provides that "[t]he State Energy Office must not function as a regulatory body." S.C. Code Ann. § 48-52-410.

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determine if they are reasonable." *Id.* at 237; 593 S.E.2d at 151. In this case, as required by South Carolina law, the Commission will conduct a review of transactions involving the ACP if and when (1) the ACP is actually extended into South Carolina; and (2) SCE&G seeks a rate adjustment or other Commission review of any associated affiliate transactions. The Petitioners seek merger conditions to govern future speculative transactions. The Commission finds that imposing such conditions is neither necessary nor required by South Carolina law nor sound regulatory policy.

Furthermore, the Commission's role in oversight and approval of the interstate pipelines is limited. The Federal Energy Regulatory Commission ("FERC") regulates interstate natural gas transportation and will be required to approve any extension of the ACP into South Carolina. Any such extension must also satisfy the strict environmental protection requirements of the National Environmental Policy Act ("NEPA"). Finally, after meeting NEPA requirements, and if approved by FERC, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") will be responsible for protecting South Carolina residents and the environment from risks associated with the ACP.

In addition, as part of a settlement agreement entered into with Transcontinental Gas Pipeline Company, LLC, SCE&G and Dominion Energy have voluntarily agreed to certain protections that will apply if SCE&G seeks to secure more than 100,000 dekatherms per day (dt/d) of additional natural gas transmission capacity from an interstate pipeline. In such cases, SCE&G will issue an RFP. If SCE&G chooses to purchase capacity that is not the least-cost capacity offered, then SCE&G will request a public proceeding before the Commission concerning the purchase. At SCE&G's and Dominion Energy's request, these settlement terms

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have been included in Order No. 2018-804 at pages 31 to 32. Order No. 2018-804 also imposes a number of specific standards regarding affiliate transactions that Dominion Energy, SCE&G, and its affiliates must meet, in addition to the requirements currently in place pursuant to Order No. 92-931 and S.C. Code Ann. § 58-27-2090. The Commission finds that the affiliate transaction provisions voluntarily agreed to by SCE&G and Dominion Energy and contained in in Order No. 2018-804, and as supplemented by the Commission's existing regulatory powers, adequately protect the public interest related to affiliate transactions in the context of this merger. The Petitioners point to no legal or factual error on the part of the Commission in this regard or make any effort to demonstrate why these conditions are insufficient to protect the interest of the public and ratepayers. Rehearing on these matters is denied.

2. Energy Efficiency Programs

FOE/Sierra also alleges that the Commission should require that the merger assure implementation of effective energy efficiency programs and policies and access to expanded renewable energy resources. *See* FOE/Sierra Pet. ¶ 7. And, FOE/Sierra and AARP both assert that the Commission should require Dominion Energy to provide additional protections for low-income and other special needs customers. *Id.*; AARP Pet. ¶ 5. However, as SCE&G's witness Mr. John Raftery testified, such matters are more appropriately addressed in the context of a rate-making or energy efficiency proceeding, such as SCE&G's annual fuel case. Tr. at 2434-10–2434-11, 2434-13–3434-14.

Even so, as part of the settlement agreement with the South Carolina Solar Business Alliance, SCE&G also agreed to (1) develop a protocol for the curtailment of dispatchable resources in circumstances where curtailment of solar resources is necessary due to system

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conditions or is otherwise required; (2) devise and propose modifications to SCE&G's interconnection procedures to address operating conditions that may necessitate curtailment; and (3) consider an additional power purchase agreement form to accommodate the addition of energy storage resources to solar generating facilities that currently have power purchase agreements with SCE&G. Order No. 2018-804 at 33. Further, SCE&G has agreed (1) to make fixed-price contracts at avoided costs available to independent power producers for durations of not less than ten years; (2) apply to the Commission for approval of avoided cost rates for storage as a separate resource or for technology-neutral avoided cost rates for dispatchable renewable generating facilities, such as solar plus storage; and (3) add certain clarifying language regarding Variable Integration Charges in new Public Utility Regulatory Policies Act of 1978 (PURPA) Qualifying Facility power purchase agreements. These provisions were voluntarily agreed to by SCE&G and Dominion Energy and at their request are included in the terms of Order No. 2018-804. As supplemented by the Commission's existing regulatory power over renewable energy and energy efficiency programs, they adequately protect the public interest related to renewable energy and energy efficiency in the context of this merger.

3. Bill Requirements

Petitioners assert that the Commission should require the utility to explicitly itemize the portion of the customer bill associated with the abandoned nuclear project costs. *See* FOE/Sierra Pet. ¶ 7. The Commission declines to do so for reasons of law and sound regulatory policy.

As the testimony in this proceeding demonstrates, the calculation of the portion of the customer bill associated with the abandoned nuclear project investment is highly complex. It involves recording write offs, recognizing regulatory assets, amortizing those assets into

expense, calculating and adjusting ADIT offsets and other tax effects, recognizing regulatory liabilities, amortizing those liabilities into revenues, determining interclass allocations of revenue requirements and performing rate design. Under the Capital Cost Rider Component, these calculations will need to be made and adjusted year by year for 20 years.

Customers will be able to access and review those calculations in public documents that will be filed on the Commission's docket management system website each time that the calculation is revised. However, presenting these amounts separately on customers' bills would invite customer confusion, complicate the work of call center personnel, and engender customer complaints. It will result in additional call center and customer relationship expense that would eventually be reflected in rates.

As a matter of regulatory policy, the Commission favors simplicity and clarity in customer billing. Including a separately stated charge for the Capital Cost Rider Component on customers' bills will frustrate that policy. Accordingly, the Commission's regulations currently set forth the information that must be provided on customers' electric bills. Specifically, S.C. Code Ann. Reg. 103-339(2) provides that bills issued by electric utilities under the Commission's jurisdiction must reflect the following information:

a. The reading of the meter at the beginning and at the end of the period for which the bill is rendered.
b. The date on which the meter was read, and the date of billing and the latest date on which it may be paid without incurring a penalty, and the method of calculating such penalty.
c. The number and kind of units metered.
d. The applicable rate schedule, or identification of the applicable rate schedule. If the actual rates are not shown, the bill shall carry a statement to the effect that the applicable rate schedule will be furnished on request.
e. Any estimated usage shall be clearly marked with the word "estimate" or "estimated bill."

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f. Any conversions from meter reading units to billing units or any information necessary to determine billing units from recording or other devices, or any other factors used in determining the bill. In lieu of such information on the bill, a statement must be on the bill advising that such information can be obtained by contacting the electrical utility's local office.
g. Amount for electrical usage (base rate).
h. Amount of South Carolina Sales Tax (dollars and cents).
i. Total amount due.
j. Number of days for which bill is rendered or beginning and
k. The ending dates for the billing period.

From a legal standpoint, changing the standard for what information should be provided on electric bills is properly implemented through regulatory amendment. *See Myers v. S.C. Dep't of Health & Human Servs.*, 418 S.C. 608, 620, 795 S.E.2d 301, 307 (Ct. App. 2016) ("When [an agency's] action or statement so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion, then it is a binding norm which should be enacted as a regulation") (citations omitted). In fact, the Commission has recognized to be the case on two previous occasions:

> [I]ssuing an order in this proceeding is not the appropriate manner in which to implement a change to S.C. Code Ann. Regs. 103-339(2). Rather, the appropriate mechanism for such a change would be to initiate a rulemaking proceeding where the Commission receives public comment and the General Assembly has the requisite opportunity to review and approve the regulation.

Order No. 2012-884 at 12; *see also* Order No. 2012-951 (denying an identical request for relief for the same reasons set forth in Order No. 2012-884).

Petitioners have not presented any argument demonstrating a change in law, regulation or regulatory policy is warranted here. *See 330 Concord St. Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 517, 424 S.E.2d 538, 540 (Ct. App. 1992) ("An administrative agency . . . cannot act arbitrarily in failing to follow established precedent."). Therefore, the request is denied.

E. Return on Equity ("ROE")

ORS and Mr. Knapp argue that "the Commission erred in awarding an excessively high ROE to the Joint Applicants for recovery of Project costs." ORS Pet. at 18; *see* Knapp Pet. ¶ 7. The Commission disagrees. In Order No. 2018-804, at pages 89-90, the Commission adopted as a reasonable and accurate assessment of SCE&G's cost of equity the results of the analysis provided by SCE&G witness Mr. Hevert. The Commission found that "there is ample evidence and reason to conclude that the analyses conducted by Mr. Hevert are accurate and reliable estimates of SCE&G's cost of equity." On that basis, the Commission found that "the Company's current cost of equity most likely ranges from 10.25% to 11% as determined by Mr. Hevert, and that the most likely point estimate of the cost of equity is 10.75%, assuming that the merger is approved." *Id.* at 90.

The Commission declined to adopt as reasonable the testimony of ORS's expert, Mr. Baudino. He based his analysis on companies with more favorable credit and risk profiles than SCE&G, which, as he admitted, result in ROEs that are lower than those that would actually be required by SCE&G's investors given its risk profile. Tr. at 861-866. For that reason, Mr. Baudino's analysis does not accurately reflect SCE&G's actual cost of capital. The decision to adopt Mr. Hevert's return on equity calculation is supported by the evidence and is neither capricious nor arbitrary. *See S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 598, 244 S.E.2d 278, 282 (1978) (finding that a return of equity is appropriate if supported by the evidence and neither capricious nor arbitrary). It supports a cost of equity of 10.75%.

However, to provide additional bill mitigation to customers, in proposing Plan–B Levelized Dominion Energy and SCE&G agreed to lower the ROE to be applied to the NND capital costs to 9.9%. Agreeing to a lower ROE on this investment than would otherwise be

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authorized is clearly within the rights of Dominion Energy and SCE&G. Law and logic support the Commission accepting this voluntary reduction in ROE and setting rates on a lower ROE than the evidence justified.

The Commission also rejects ORS's assertion that the 9.9% ROE on Project costs rewards SCE&G for mismanagement. The actual market cost of SCE&G equity is accurately estimated at 10.75%. The 9.9% return is substantially lower. Furthermore, the 9.9% ROE does not provide any recovery whatsoever on approximately $4.5 billion in write-offs and customer benefits for which Dominion Energy investors will be solely responsible. Considering all of these factors, the Commission finds that the 9.9% ROE to be applied to Project costs in no way rewards SCE&G investors for mismanagement as ORS suggests. Even if ORS's allegations of error related to the approved ROE for the Project costs have any merit, which they do not, the benefits to customers from the $4.5 billion in capital they will have no responsibility for repaying more than offsets any bill impacts of the 80 basis point difference in allowed ROE (9.9%-9.1%) of which Petitioners complain.

F. The TCJA Calculations

In Order No. 2018-804, the Commission ruled that it was appropriate for SCE&G to use the twelve months ended December 31, 2017, to calculate savings to customers under the Federal Tax Cuts and Jobs Act of 2018 ("TCJA"). The TCJA savings are being passed through to customers through the Tax Rider approved in this proceeding.

For the reasons stated in the testimony of SCE&G witnesses Ms. Nagy and Ms. Griffin, the Commission reaffirms its decision that 2017 calendar year data provide the most accurate basis on which to measure savings from the TCJA. Tr. at 991-16–9-121; 2020-52–2020-54. At

the time of hearing, 2017 was the most recent calendar year for which tax liabilities could be calculated. ORS asserts that the Commission was required to adopt the tax saving calculation performed by its witness Mr. Lane Kollen using seven-year-old data and relatively crude pro-rating techniques. In no sense is Mr. Kollen's approach more "exact" than that adopted in Order No. 2018-804. Specifically, calculations based on 2017 data provide a more accurate measure of actual tax saving than calculations based on relatively stale 2011 data. For that reason, the Commission did not adopt Mr. Kollen's calculations.

ORS argues that the use of 2017 data is not consistent with the Commission guidance in generic Docket No. 2017-381-A, specifically Order No. 2018-308, concerning TCJA ratemaking. The nature of the alleged inconsistency is not apparent. ORS asserts that the use of 2017 test year data is inconsistent with the requirement that utilities begin recording TCJA savings to a regulatory liability account on January 1, 2018. But there is no inconsistency. SCE&G in fact began recording TCJA savings to regulatory accounts on January 1, 2018, and the balance in that account will be refunded to customers beginning with the first billing cycle of February 2019, as Order No. 2018-804 provides at page 112. The use of test year 2017 data to measure the amount of savings in no way conflicts with the fact that the savings, as so measured, have been recorded as required by Order No. 2018-308 beginning on January 1, 2018, and will shortly be refunded to customers. To the extent that there is any other conflict between Order No. 2018-804 and the generic guidance given in Order No. 2018-308, the Commission affirms that the terms of Order No. 2018-804 concerning the TCJA are fully justified by the record in this proceeding and should be applied. Any contrary terms in Order No. 2018-308 are waived as to this matter.

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ORS further asserts that the calculation of tax benefits approved in Order No. 2018-804 does not pass along the full amount of tax savings from the TCJA to customers. ORS Pet. at 19. The Commission is hindered in responding to this allegation because ORS provides no factual or legal basis for it. Accordingly, under *Camp v. Camp*, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010), this claim must be considered to be waived. Nonetheless, the Commission affirms that the record is replete with evidence establishing that the calculation of the Tax Rider is appropriate as a matter of law and regulatory policy and that the full measure of appropriate and reasonably anticipated benefits from the TCJA are properly being returned to customers.

G. Pre-2015 Abandonment Claims

FOE/Sierra claims that the evidence in the record required the Commission to enter a finding that SCE&G should have abandoned the Project as much as "ten years earlier," than July 2017. *See* FOE/Sierra Pet. ¶ 5. Specifically, FOE/Sierra points again to Dr. Mark Cooper's 2012 analysis that abandonment at that time "was the only prudent course." *Id.* FOE/Sierra also point to Dr. Cooper's testimony regarding claimed mismanagement of the Project beginning in 2012 to support the claim that costs prior to 2015 were also imprudent. *Id*.

Similarly, AARP contends that the Order "barely mentions the evidence presented by AARP's expert witness Mr. Scott Rubin and it does not address the reliability of his testimony." AARP Pet. ¶ 4(a). Mr. Rubin's testimony argued that the Project should have been abandoned by at least May 2014, as the Project would have been "uneconomic" at that time. *Id.*

To the contrary, the Commission properly held in Order No. 2018-804 that the economic analyses presented by SCE&G were tested in Docket No. 2008-196-E and were found to be based on reasonable and industry-standard methodologies. Furthermore, this analysis and the

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updated analyses performed in 2012, 2015 and 2016 were well justified, not materially flawed, and reflected reasonable information and assumptions at the time they were prepared. They established the economic prudency of continuing construction of the Project through 2016 and beyond. *See In re South Carolina Elec. & Gas Company*, Order No. 90-655, dated July 3, 1990, Docket No. 89-6-E at 7 (The Commission "must evaluate the prudence of [a] decision and the [ensuing] actions at the time the decision was made and the actions undertaken.").

The Commission gave full consideration to the testimony of FOE/Sierra's witness, Dr. Cooper, and AARP's witness, Mr. Rubin, but in carefully weighing the relevant evidence of record and evaluating the witnesses' positions and ability to observe and know the accurate facts at the time decisions were made and not by benefit of hindsight, found that the testimony of SCE&G and its witness, Dr. Joseph M. Lynch, to be more credible. *See Mkt. St. Ry. Co. v. R.R. Comm'n of State of Cal.*, 324 U.S. 548, 560 (1945) (holding that experts' judgments do not bind commissions and that "[t]heir testimony would be in the nature of argument or opinion, and the weight to be given it would depend upon the Commission's estimate of the reasonableness of their conclusions and the force of their reasoning"). The Commission is entitled to determine what weight should be given to the testimony of the witnesses. *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 507 S.E. 2d 328 (1998). As reflected in Order No. 2018-804, this Commission made specific findings that the analyses conducted by SCE&G in support of the Project were reasonable and credible. Order No. 2018-804 at 46.

Specifically, in Dockets 2012-203-E, 2015-103-E and 2016-223-E, Dr. Lynch presented economic analyses comparing the alternative of continuing construction of the nuclear units to that of stopping construction and building combined cycle units instead. *See* Order No. 2012-

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884 at 28-32; Order No. 2015-661 at 62-63; Docket No. 2016-223-E, Tr. at 783. In all three dockets, SCE&G's analyses showed that continuing construction of the nuclear units was in the best interest of customers. The Commission evaluated both Dr. Cooper's and Dr. Lynch's 2012 analyses in 2012, and did so again in the present dockets. It determined that Dr. Lynch's "analyses and their underlying assumptions were well justified in the record in that case and entirely reasonable and proper." Order No. 2018-804 at 45. The Commission further found that Dr. Lynch's subsequent analyses "reflected reasonable information and assumption" and "show the reasonableness of continuing construction" in 2012, 2015 and 2016. *Id.* at 46. The Commission finds no basis in the Petitions to alter those rulings.

Regarding Dr. Cooper's claim that SCE&G grossly mismanaged the project, he provides no substantive basis for this assertion. By contrast, the diligence and logic in SCE&G's oversight of the Project was clearly and persuasively explained in the testimony of Mr. Young, Mr. Byrne and Dr. Petrunik. *See, e.g.*, Tr. at 3619-16–3619-40;3623-4–3623-5, 3648-22–3648-26, 4069-4070 (discussing project management and oversight). The Commission finds this testimony to be credible and persuasive. The Commission finds, as Dr. Petrunik testified, that SCE&G's graduated approach to oversight was logical and effective. He testified that in its relationship with the contractors, SCE&G struck an appropriate balance between careful and timely oversight and dysfunctional intrusiveness, and that over the course of the Project SCE&G identified issues in promptly and took aggressive action as required to motivate improvement. The Commission further finds, as Mr. Byrne testified, that it was not SCE&G's "mismanagement" but Westinghouse's bankruptcy and Santee Cooper's withdrawal from the Project that was the proximate cause of its abandonment. Tr. at 4081, 4149–51. For these

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reasons, the Commission finds that the evidence does not support Dr. Cooper's claim of mismanagement.

Additionally, AARP claims that the Order should have specifically addressed Santee Cooper's attempt to sell its portion of the Project in 2011. *See* AARP Pet. ¶ 4a. The Commission does not agree. The Order referenced the extensive analyses prepared by Dr. Lynch and reviewed by ORS and the parties in past proceeding, which conclusively established the economic logic of continuing the Project through 2017. Order No. 2018-804 at 46. Santee Cooper's inability to resell its interest in the Project is at best circumstantial evidence of the Project's economic value to SCE&G's customers and is of limited relevance in comparison to the direct analysis Dr. Lynch performed.

Furthermore, the Commission finds that Santee Cooper's resale of its interest in the project would depend on many extraneous factors such as the current supply portfolio of neighboring utilities, their load growth projections, the cost of wheeling power across intervening transmission systems to them, and local regulatory and political attitudes toward nuclear power. These extraneous factors make the success of Santee Cooper's marketing efforts highly questionable relevance in assessing the value of continuing the Project to SCE&G's customers.

Additionally, the Commission ruled on the prudency of continuing construction when it entered its rate orders in the prior dockets. *See, e.g.*, Order No. 2016-794, Ex. 2. Accordingly, the Petitioners are collaterally estopped from re-opening the issue here. *See Carman v. S. Carolina Alcoholic Beverage Control Comm'n*, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (S.C. 1994) (holding that an agency erred by reconsidering the legal effect of prior actions when the legal

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effect had been determined in a prior decision by the agency); *Bennett v. S.C. Dep't of Corr.*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (S.C. 1991) (doctrine of collateral estoppel applies in administrative proceedings). Indeed, the South Carolina Supreme Court has directly held that prior prudency determinations made under the BLRA "'may not be challenged or reopened in any subsequent proceedings.'" *S.C. Energy Users Committee v. S. Carolina Elec. and Gas*, 410 S.C. 348, 359, 764 S.E.2d 913, 918 (S.C. 2014) (quoting S.C. Code Ann. § 58-33-275(B)). Because the prudency of previously considered costs is not properly before the Commission, it would be error for us to review it again. However, even if the Commission were to re-evaluate the previously approved costs, the evidence of record shows that they were properly determined to be prudent at the time.

H. Bifurcation of the Proceedings

Mr. Knapp asserts that the Commission erred in denying a motion filed by the SCCCL/SACE for the Commission to bifurcate or sequence the hearing held in this matter. *See* Knapp Pet. ¶ 3. Mr. Knapp argues that issues pertaining to the merger unduly influenced the Commission's decisions in this matter regarding cost recovery of the abandoned nuclear plants. *Id.* As the Commission has previously ruled, however, the rate and regulatory issues associated with the merger and the abandonment of the Project are factually and legally related. Both sets of issues were raised and considered by the Commission in Docket No. 2017-370-E. Order No. 2018-634 at 1-2. Because that docket was filed under the provisions of the BLRA, Act No. 258 of 2018, by its terms, required the Commission to rule upon both the merger and the associated rate issues no later than December 21, 2018. Therefore, it was not feasible for the requests made in Docket No. 2017-370-E to be separately considered in multiple or bifurcated proceeding.

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In addition, soon after the Joint Application in Docket No. 2017-370-E was filed, multiple parties supported consolidation of these matters and the proposed procedural schedule based on consolidation. Mr. Knapp failed to make a timely objection to that proposal.

Based on its inherent powers over proceeding before it, the Commission was well within its discretion to consider these issues as part of a single hearing. Doing so avoided the inevitable duplication, delay, confusion, disorder, and waste of administrative resources that would have resulted from holding multiple hearings in this matter. *See* S.C. Code Ann. Regs. 103-802.

I. Procedural Due Process

AARP further alleges that prior proceedings under the BLRA did not grant AARP a full and fair opportunity to challenge the prudency of the nuclear project in violation of constitutional due process. *See* AARP Pet. ¶ 1. At the outset, the Commission notes that AARP presents no argument, factual basis, or authority to support its contention in this regard or to demonstrate error by the Commission. Such a general, non-specific, and conclusory statement as to the alleged unconstitutionality of the BLRA on "due process" grounds simply is insufficient to put the Commission and parties on notice of any specific alleged constitutional defect and do not provide an adequate opportunity for the Commission to identify a specific problem with the application of the BLRA and address it on rehearing. *See, e.g., S.C. Dep't of Soc. Serv. v. Mother ex rel. Minor Child*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct. App. 2007) (finding claim of violation of due process abandoned where party made a conclusory argument without citation of any authority to support her claim); *R & G Const., Inc. v. Lowcountry Regional Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) ("An issue is deemed

abandoned if the argument in the brief is only conclusory.") *Camp v. Camp*, 386 S.C. at 575, 689 S.E.2d at 636 (lack of specificity in a petition for rehearing constitutes waiver of the issue).

Even so, a party may not complain of a due process violation if he has had recourse to a constitutionally sufficient administrative procedure but declined or failed to take advantage of it. *Zaman v. S.C. State Bd. Of Med. Exam'rs*, 305 S.C. 281, 408 S.E.2d 213 (1991). The remedy for the specific harm AARP alleges—the lack of a full and fair opportunity to challenge the prudency of the nuclear project—was for AARP to have sought intervention as a party of record in the prior BLRA proceedings. AARP had every right and opportunity to do so. AARP cannot now challenge the Commission's decision in this matter on due process grounds when it failed to avail itself of its rights to participate in the prior proceedings.

J. Limited Review of Plans

Mr. Knapp alleges that the Commission arbitrarily and capriciously chose to limit its consideration of the issues in these dockets to only two specific regulatory plans—the ORS Optimal Benefits Plan and the Plan–B Levelized. *See* Knapp Pet. ¶ 5. However, this is not the case. The Commission fully considered all issues raised by the Petitioners and other parties and evidence presented in these dockets. The Commission then concluded that Plan–B Levelized appropriately resolved the rate and regulatory matters associated with the abandonment of the Project. In drafting Order No. 2018-804, the Commission chose ORS's Optimal Benefits Plan as an appropriate point of comparison for presenting its reasons for choosing Plan–B Levelized, but the Commission in no way limited its consideration of other proposals as Mr. Knapp asserts. Mr. Knapp and certain other parties made proposals which were more draconian, and hence posed more risk to customers' interests, than the Optimal Benefits Plan. As stated in Order No.

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2018-804, the Commission's reasons for choosing Plan–B Levelized over the Optimal Benefits Plan apply *a fortiori* to the proposals made by other parties. In any case, all such proposal were given due consideration.

K. Securitization

Mr. Knapp states that the Commission erred by not considering the prospective use of securitization in Order No. 2018-804. *See* Knapp Pet. ¶ 8. But including a securitization mandate in Order No. 2018-804 would have been inappropriate for several reasons.

First, Dominion Energy's witnesses were clear that including a securitization mandate in Order No. 2018-804 would defeat the merger economics, prevent Dominion Energy from closing the merger and thus make it impossible for customers to receive the some $4.5 billion in benefits provided under Plan–B Levelized. Tr. at 4217-10–4217-12, 4263-64.

Furthermore, the feasibility and cost of any future securitization proposal necessarily depends on the terms of the enabling legislation, the financial markets' assessment of that legislation, the resulting credit rating of the securities to be offered, and other factors such as the breakup fees that bondholders would have to be paid in order to extinguish their interests and allow SCE&G to be recapitalized. Securitization proposals are entirely hypothetical at this stage. There is no enabling legislation and nothing for markets to evaluate. Costs and benefits of a securitization transaction are not subject to quantification at this time. It is unclear whether there is market capacity for a securitization transaction of the size necessary to securitize the NND costs. Furthermore, while the Commission has statutory authority to approve securities issued by utilities, it presently has no factual, legislative or statutory basis to order securitization at this time.

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L. Speaker's January 9, 2019 Filing

On January 9, 2019, the Speaker of the House of Representatives filed a document supporting certain arguments raised in the ORS petition. As a petition for rehearing in its own right, this filing would be untimely. However, responding to the arguments raised, the Commission finds that they have been adequately addressed above in response to ORS's Petition for Rehearing or Reconsideration.

M. Other Issues

Several of the Petitions for Rehearing or Reconsideration consist largely of alleged lists errors presented in conclusory language unsupported by citations to the transcript of record or any sort of sustained legal or regulatory analysis.[13] As such, the assertions of errors are insufficient standing alone to support a petition for rehearing or reconsideration. *See Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.").

Contrary to Petitioners' conclusory assertions, Order No. 2018-804 is a comprehensive order setting forth specific findings and conclusions regarding the matters raised in this proceeding. It is based on a thorough review and analysis of the facts and evidence presented in the hearing in this matter, including that presented in the public hearings. Upon review, the Commission finds that the Petitioners do not raise any issues of law or fact that were omitted from consideration or misconstrued by the Commission in the prior order. Indeed, the preponderance of the evidence, the law, and sound rate-making policy support each of the

[13] *See* FOE/Sierra Pet. ¶¶ 1-7; AARP Pet. ¶¶ 1, 5; Knapp Pet. ¶¶ 1-8.

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findings and conclusions contained in Order No. 2018-804.[14] Should any Petitioner assert that it intended to raise challenges that are not discussed here, the Commission's failure to discuss them is the result of the Petitioner failing to raise those challenges with clarity and specificity as S.C. Code Ann. Reg. § 103-825(4) and *Camp* require. Those challenges are deemed to be abandoned.

CONCLUSION

The Commission has considered the issues presented in the Petitions for Rehearing or Reconsideration. There is substantial, adequate, and sufficient evidence contained in the record to support the Commission's decision to approve the merger and Plan–B Levelized as proposed by SCE&G and Dominion Energy. In addition, the merger conditions set forth in Order No. 2018-804 and the settlements agreements entered into by various parties sufficiently protect the public interest and those of ratepayers as it pertains to the issues presented in this proceeding. Therefore, based upon the testimony and evidence contained in the record before us, the Petitions do not present sufficient grounds to modify, amend, or rehear the matter decided in Order No. 2018-804 and, accordingly, the Commission denies the Petitions.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

[14] The letter of Lynn Teague was not an actual petition; rather, it was a letter in support of the Petitioners, whose arguments are incorporated below. Therefore, no action needs to be taken with regards to Ms. Teague's letter, and to the extent that there is any argument that action should be taken, any request in the letter is denied for the reasons explained in this Order.

_____
Comer H. "Randy" Randall, Chairman

ATTEST:

_____
____, Vice Chairman
(SEAL)

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