ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 1 of 10

December 31, 2018

Ms. Jocelyn Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, SC 29210

Re: Dockets 2017-207-E, 2017-305-E and 2017-370-E

Dear Ms. Boyd,

Please find enclosed, for filing and consideration in these consolidated dockets, my Petition for Rehearing or Reconsideration. I certify that I am, this day, filing and serving the parties with these documents electronically.

Sincerely,

Frank Knapp Jr.
118 E. Selwood Lane
Columbia, SC 29212

Cc: All Parties

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 2 of 10

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

IN THE MATTER OF:

Friends of the Earth and Sierra Club, Complainants/Petitioners, v. South Carolina Electric & Gas Company, Defendant/Respondent	)	
Petition 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	)	**FRANK KNAPP, JR. PETITION FOR REHEARING OR RECONSIDERATION**
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.	)	

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 3 of 10

Frank Knapp Jr. ("Knapp"), a party to the above referenced consolidated proceedings, pursuant to S.C. Code § 58-27-2150 and 10 S.C. Code Ann. Regs. 103-854 of the Public Service Commission of South Carolina ("Commission") rules and applicable South Carolina law, hereby respectfully petitions the Commission to rehear or reconsider its findings and conclusions in Order No. 2018-804 ("Order"), dated December 21, 2018.

As to this petition for rehearing or reconsideration of Order No. 2018-804, Knapp cites the "Standard of Review and Applicable Law" as detailed in the South Carolina Office of Regulatory Staff ("ORS") Petition for Rehearing or Reconsideration filed December 28, 2018.

In support of this petition for rehearing and reconsideration of Order No. 2018-804, Knapp respectively makes these arguments:

1. **SCE&G was out-of-compliance with the Base Load Review Act (BLRA) and therefore the Commission erred in not following that law and should not have allowed any cost recovery.** Friends of the Earth ("FoE") and Sierra Club stipulate, and Knapp concurs,

   "The Commission erred in approving the Joint Application pursuant to the Baseload Review Act, S.C. Code Ann. Sections 58-33-210, et seq., where SCE&G lost the benefit of the BLRA bargain when it ceased construction of the nuclear project 'within the parameters' of the approved Commission construction and capital cost order, as required by S.C. Code Ann. Section 58-33-275(A)." (No. 2, Page 3)

2. **The Commission erred in disallowing recovery of all nuclear project capital costs incurred by SCE&G after March 12, 2015, without the legally required finding that SCE&G acted imprudently when incurring those costs.** Knapp cites and concurs with the arguments detailed in the FoE and Sierra Club petition (No. 3, Page 3) and the ORS

petition (Pages 6-13). Knapp also cites and concurs with Commissioner Tom Ervin's "Specific Findings On SCE&G's Imprudence" contained in the Commissioner's Concurring Opinion (Page 114 of the Order).

Also, the Commission failed to cite any legal justification for not allowing SCE&G's capital costs after March 12, 2015, to be recovered under the BLRA. Instead the Order (page 18) simply states: *"Plan-B Levelized as proposed by Dominion recognizes that no capital investment will be recovered after March 12, 2015. Such an agreement makes claims of imprudent expenditures after that date moot."*

The absence of an imprudence finding not only is an erroneous decision under the law, it also opens the door to a future challenge of the order by Dominion Energy or another party, including SCE&G should the merger fail in the future. In this scenario, SCE&G ratepayers are put in jeopardy of being responsible for all capital costs of this abandoned project if this Order is not amended to correct this issue.

3. **The Commission erred in its ruling on a motion in this consolidated Docket to bifurcate or, in the alternative, to sequence the hearing, which was made by the South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE").** This motion to hold separate hearings on SCE&G's cost recovery and the merger was supported by Knapp and other parties. The Commission was warned by CCL and SACE: *"Finally, if it is the Companies' intention to influence the Base Load Review Act-related determinations by inclusion of the merge proposal and cost recovery options, this makes bifurcation all the more necessary to avoid confusion and prejudice to other parties and SCE&G customers."* (Page 12 of CCL and SACE Reply in Support of Motion)

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 4 of 10

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 5 of 10

In his support for the motion Knapp said, *"Addressing these separate issues in the same hearing will allow the merger issue to influence the Commissioners' decision, consciously or subconsciously, on the more important issue of rate reduction."*

The Commission's Order clearly shows that the concern regarding the merger issue unduly influencing the cost recovery decision was well founded. The Order clearly shows the well-documented prejudicial influence of the merger issue and that the Commissioners' desire to approve the merger was the first order of business driving all other decisions:

"But more importantly, the Optimal Benefits Plan is not structured to achieve the specific accounting and regulatory treatment that the Joint Applicants say is required to support Dominion Energy's investment in providing merger benefits to customers while maintaining SCE&G's ongoing financial and credit metrics. Dominion Energy's Chief Executive Officer, Mr. Thomas Farrell, has testified unequivocally that adoption of the Optimal Benefits Plan will result in Dominion Energy not closing the merger." (Page 14 of the Order)

No less than 10 times the Order references the Commissioners' prejudicial requirement that there should be no decision made that threatens the primary goal of approving the merger. (Pages 15, 21, 53, 57, 62, 64, 66, 74, 83 and 93)

4. **The Commission failed to follow its own criteria for determining the Order.**

"*In issuing its Order in this matter, the Commission must determine which plan (1) provides maximum customer benefits, (2) brings finality and certainty, and (3) is in the public interest of South Carolina ratepayers."* (Page 15 of the Order)

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 6 of 10

The Order clearly does not meet the first criteria of "providing maximum customer benefits." *"The Optimal Benefits Plan produces a rate for the typical residential customer of $116.77 per month. The comparable rate under Plan-B Levelized is $125.26, and the pre-Act 258 rate is $147.53."* (Page 62 of the Order)

Proposals offered by FoE and Sierra Club, AARP and the South Carolina Energy Users Committee ("SCEUC") all provide different cost recovery amounts resulting in the typical residential customer bill being less than the Plan-B Levelized approved in the Order.

The Order clearly does not meet the second criteria of "finality and certainty". The Commission accepts as gospel that an Order varying in any way from the Plan-B Levelized would result in Dominion Energy not completing the merger, the Commission's presumed pathway to "finality and certainty". This conclusion is based on testimony by Dominion Energy CEO, Mr. Thomas Farrell, (Page 14 of the Order) and the testimony of other Dominion Energy witnesses. However, Mr. Farrell and SCE&G CFO, Mr. Jimmy Addison, testified at the hearing that one of the conditions for the merger, that there be no changes to the BLRA, had already been violated causing serious problems for SCE&G yet Dominion Energy still wanted the merger. SCE&G witness Dr. Glenn Hubbard, an economics professor at Columbia University, testified that Dominion Energy might continue with the merger even if the Order called for a rate reduction greater than the 15 percent in Plan-B Levelized. Dr. Hubbard explained that it would be a business decision by Dominion Energy. Dominion Energy's Director of Mergers and Acquisitions, Mr. Prabir Purohit, testified at the hearing that factors other than rates go into a merger business decision. The Commission incorrectly, as shown by the facts,

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 7 of 10

concludes that any variation from Plan-B Levelized would result in Dominion Energy not completing the merger. "Finality and certainty", defined as completing the merger, is clearly not contingent upon 100 percent fidelity to Plan-B Levelized.

The Commission maintains that its Order achieves "finality and certainty" by eliminating the risk of appeal. (Pages 21 and 22 of the Order)

However, the Order is already being challenged by parties today and an appeal to the South Carolina Supreme Court is also possible if not probable, a process that could take up to a year. The Order does not achieve "finality and certainty" in relation to an appeal.

5. **The Commission erred in arbitrarily and capriciously limiting its options for making its "Operative Decision" for its Order.**

"Within the bounds of the law and the evidence of record in this case, the Commission must decide whether customers' interests are better served by adopting the Customer Benefits Plan-B Levelized and allowing the Dominion Energy merger to close, or, adopting ORS's Optimal Benefits Plan and almost certainly letting the Dominion Energy merger fail." (Page 15 of the Order)

The Commission had numerous proposals for cost recovery and the setting of rates using a variety of methodologies. However, the Commission arbitrarily and capriciously chose to limit its choice to only two specific formulas, the ORS Optimal Benefits Plan and the Dominion Energy Customer Benefits Plan-B Levelized.

Yet the Order recognizes: *"The South Carolina Supreme Court has held, based on U.S. Supreme Court authority, that ratemaking does not require 'the use of any single formula or combination of formula' but instead 'involves the making of pragmatic adjustments'*

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 8 of 10

such that 'it is the result reached not the method employed which is controlling.'" (Page 15 of the Order)

The Commission ignored its legal ability to consider other proposals and to make "pragmatic adjustments" to craft an Order for cost recovery and the setting of rates that would be more in the public interest than the Plan-B Levelized. However, the Commission tied its hands by first determining that the merger was a higher priority. At that point, even the only other plan the Commission contends that it considered, the Optimal Benefits Plan, was not a viable option because of the Commission's incorrect belief in Mr. Farrell's threat to "walk away" from the merger.

The Commission thus errored in not seriously considering the merits of any of the numerous recommendations within the ORS proposal or within the proposals of any other party and instead only using the singular formula of the Plan-B Levelized.

6. **The Commission erred in failing to give credit to customers for all revised rates in the 2015 and 2016 Commission Orders as well as for all revised rates collected after abandonment of the nuclear project.** Knapp cites and concurs with the arguments detailed in the FoE and Sierra Club petition (No. 6, Page 4) and the ORS petition (Pages 13-17). Legally and logically the Commission should credit the customers for approximately $400 million, the amount collected by SCE&G for financing costs of construction now denied by the Commission for recovery. This recommendation, which is in the record, would result in a rate decrease larger than 15 percent for SCE&G customers.

7. **The Commission erred in awarding an excessive ROE that was unsubstantiated by any evidence during the hearing.** ORS stipulates, and Knapp concurs,

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 9 of 10

"There was no evidence presented by any party to support the Commissions award of a 9.9% ROE. The only evidence presented to the Commission supported ROEs of either 10.75% or 9.1%. Yet, the Commission chose to take an unsupportable conciliatory ROE proposed by the Joint Applicants as appropriate. The total lack of substantial evidence in the record in this case to support the Commission's awarding a ROE of 9.9% constitutes reversible error, as it is unsupported by the record, and should be reconsidered by the Commission." (Page 19)

Conversely, if the awarding of a ROE unsupported by the record is determined to be an example of "pragmatic adjustments" as allowed by the South Carolina Supreme Court, then the Commission should not have artificially and improperly limited its options to only accepting, as proposed, the Plan-B Levelized Plan and the Optimal Benefits Plan. Instead, the Commission should have used its power of "pragmatic adjustments" to weigh the merits of each recommendation in the record from all parties to produce an Order that was in the best interest of the customers.

8. **The Commission erred in its summarily dismissal of the prospective use of securitization in its Order.** Much testimony during the hearing was devoted to a discussion of using the financing method of securitization to reduce the costs to consumers for the allowed capital cost recovery. Expert witnesses acknowledged that this financing method used by over 17 states to achieve interest rates as low as 3.2 percent is not presently allowed in South Carolina. Dominion Energy CFO, Mr. James Chapman, testified that the Commission could include securitization in some manner in its Order.

However, the Commission's Order fails to cite any precedent or legal argument that prohibits an Order from including a prospective use of securitization as was proposed. Instead, the Order simply says, *"The securitization question is, at this point, entirely hypothetical, and the Commission does not fashion hypothetical remedies or decide questions that are not actively before it."* (Page 93 of the Order)

Conclusion

For the above stated reasons, I respectfully request that the Commission reconsider its ruling in Order No. 2018-804.

FRANK KNAPP, JR.
118 EAST SELWOOD LANE
COLUMBIA, SC 29212
(803)-765-2210
FKNAPP@KNAPPAGENCY.COM

December 31, 2018

ACCEPTED FOR PROCESSING - 2018 December 31 1:42 PM - SCPSC - 2017-370-E - Page 10 of 10