BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E – ORDER NO. 2018-804

DECEMBER 21, 2018

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.

ORDER ADDRESSING SOUTH CAROLINA ELECTRIC & GAS NUCLEAR DOCKETS

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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.	**ORDER ADDRESSING SCE&G NUCLEAR DOCKETS**

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Joint Application and Petition of South Carolina Electric & Gas

Company ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy") (collectively the "Joint Applicants") in Docket No. 2017-370-E. The Joint Applicants seek an order approving a plan for the regulatory treatment of costs associated with SCE&G's recently abandoned nuclear development project (the "Project"), and a proposed transaction whereby SCE&G's parent company?, SCANA Corporation ("SCANA"), will become a wholly-owned subsidiary of Dominion Energy (the "Merger"). The closing of the Merger is conditional on the regulatory plan that is approved here.

By Order No. 2018-81H dated July 5, 2018, the Commission consolidated the hearing in Docket No. 2017-370-E with those in Docket Nos. 2017-207-E and 2017-305-E. The Sierra Club and Friends of the Earth filed a petition in Docket No. 2017-207-E (*Friends of the Earth and the Sierra Club v. South Carolina Electric & Gas Co.*) prior to abandonment of the Project asking the Commission to end funding for the Project and to grant reparations under S.C. Code Ann. § 58-27-960. The South Carolina Office of Regulatory Staff ("ORS") filed a petition in Docket No. 2017-305-E (*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)* before the announcement of the merger proposal, seeking emergency rate relief under S.C. Code Ann. § 58-27-920. The Commission's rulings in Docket No. 2017-370-E are determinative of the principal issues raised in these two earlier dockets and the legal issues specifically related to them are discussed below.

OVERVIEW OF THE MATTER AND SUMMARY OF THE BASIS FOR THE COMMISSION'S RULING

Origins of Docket No. 2017-370-E

In 2008, SCE&G began construction of two Westinghouse AP1000 nuclear units at the V.C. Summer site in Jenkinsville, South Carolina. Over the course of the following nine years, SCE&G invested approximately $5 billion dollars in the Project, an amount roughly equal to its non-nuclear electric rate base.

SCE&G abandoned the Project on July 31, 2017. This happened approximately four months after its contractor, Westinghouse Electric Company, LLC ("Westinghouse" or "WEC"), filed bankruptcy and immediately after SCE&G's co-owner, the South Carolina Public Service Authority ("Santee Cooper"), ceased funding the Project. At the time of the abandonment, recovery of capital costs on its investment in the Project constituted approximately 18% or $445 million of SCE&G's annual retail electric revenue.

Shortly after abandoning the Project, SCE&G filed an application under the abandonment provisions of the Base Load Review Act (the "BLRA"), and other statutes, seeking approval of a schedule of costs regarding abandonment. SCE&G also sought authorization to amortize net investment in the Project into electric utility expenses under S.C. Code Ann. § 58-33-280(K). No change in rates was requested.

The filing triggered a strong and negative political and public reaction, and SCE&G, as requested by the General Assembly, withdrew the application approximately one month after it was filed. Committees of both the South Carolina Senate and House of Representatives opened investigations into SCE&G's management of the Project and questioned whether SCE&G concealed material information concerning the problems the Project was encountering

in the 2014-2016 period. A number of civil actions were also filed against SCE&G. *See, e.g.*, *Richard Lightsey et al. v. South Carolina Electric & Gas Co., et al.*, 2017-CP-25-335 (class action filed on behalf of ratepayers)

Numerous parties intervened in PSC Dockets Nos. 2017-207-E and 2017-305-E, and after receiving and reviewing myriad filings by the various parties, the Commission, then chaired by the Honorable Swain E. Whitfield, heard two days of arguments to determine whether these dockets would proceed. On December 20, 2017, in Order Nos. 2017-769 and 2017-770, the Commission found that the Office of Regulatory Staff and Friends of the Earth and the Sierra Club had met the threshold required for their respective dockets to continue, and therefore denied SCE&G's motions to dismiss.

During the fall of 2017, SCE&G proposed various permanent rate and regulatory plans to reduce impacts from the abandoned Project on its customers. None of these plans gained significant political or public support.

In late 2017, Dominion Energy approached SCE&G and SCANA to propose a business combination that would include merger benefits of approximately $3.8 billion to be provided to SCE&G's customers in resolution of the regulatory issues surrounding the Project. This amount of merger benefits appears to be unprecedented in utility mergers. The merger's benefits initially offered included immediate one-time payments to customers of $1.3 billion upon closing of the merger, write-offs of nuclear Project and other generation assets and regulatory assets of $1.9 billion, and reductions to on-going bills of $575 million, all of which were included in a regulatory proposal known as the "Customer Benefits Plan." To offset the financial impacts of these concessions on SCE&G, Dominion Energy offered to use capital from its balance sheet to infuse equity into SCE&G and to support the refund benefits offered

under the Customer Benefits Plan. Dominion Energy also agreed to merger conditions including protections for SCE&G employees and customers, infrastructure investment and service level commitments, and continued local leadership of SCE&G's operations. SCANA announced its agreement to the plan of merger on January 3, 2018.

On January 7, 2018, the Joint Applicants initiated Docket No. 2017-370-E, seeking approval of the merger[1] and adoption of the regulatory plan proposed by Dominion Energy (the "Customer Benefits Plan"). The Joint Application also presented two disfavored alternative plans that SCE&G proposed absent the merger. Those plans are the "No Merger Benefits Plan" and the "Base Request." The primary relief sought in the Joint Application was approval of the merger and adoption of the Customer Benefits Plan.

On June 28, 2018, the General Assembly adopted legislation ("Act 258") requiring, among other things, a temporary reduction in SCE&G retail electric rates of approximately 15%, amending the BLRA. The Commission implemented the mandated rate reduction by Order No. 2018-459, dated July 2, 2018.

Overview of the Regulatory Proposals in Docket No. 2017-370-E

Summary of the Joint Applicants' Principal Claims

As developed during the course of the proceedings, to support the closing of the merger, SCE&G and Dominion Energy now propose that the Commission adopt the Customer Benefits Plan–B Levelized, described below, as the appropriate resolution of the rate and regulatory matters associated with the abandonment of the Project. To that end, SCE&G and Dominion

[1] The Joint Application seeks Commission approval of a proposed business combination between Dominion Energy and SCANA, SCE&G's parent corporation under S.C. Code Ann. § 58-27-1300, or, alternatively, a finding that the proposed combination is in the public interest or that there is an absence of harm to South Carolina ratepayers as a result of the Merger. *See* Joint Pet. at 2.

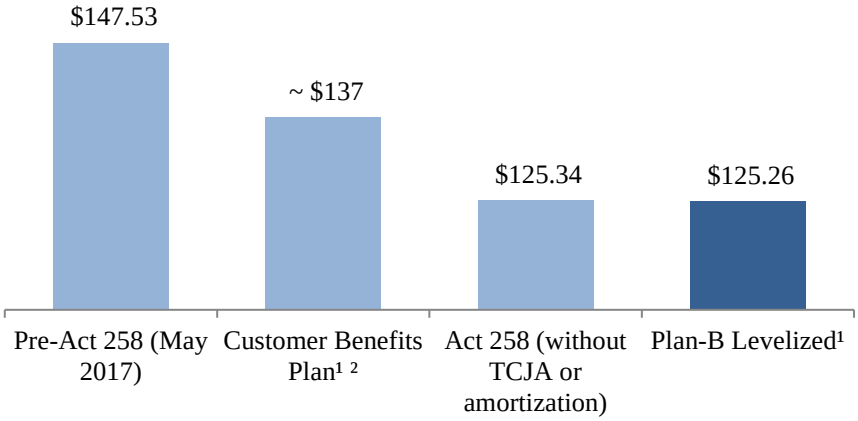
Energy request approval of a schedule of the allowable capital costs for the Project in abandonment under S.C. Code Ann. §§ 58-33-270(E) and 58-33-280(K)[2] and adoption of a number of specific accounting and ratemaking adjustments related to the Project along with voluntary bill reductions to reduce impacts on customers.[3] They also ask the Commission to find under S.C. Code Ann. § 58-33-280(K) that SCE&G's decision to abandon the Project on July 31, 2017, was prudent.

Since initiating Docket No. 2017-370-E, the Joint Applicants have proposed two modified versions of the Customer Benefits Plan. The first ("Plan–B") eliminates up-front payments to customers and uses that cash to reduce bills to customers going forward. The second modification ("Plan–B Levelized") levelizes the annual recovery of costs from customers. In Plan B and Plan–B Levelized, the Joint Applicants also propose to reduce the cost of equity that applies to Project investment from 10.25% to 9.9%, to reduce the cost of debt on that investment from 5.85% to 5.56%, and to exclude costs incurred after March 12, 2015, and certain other Project costs.

Under Plan–B Levelized, bills to a typical SCE&G residential customer would be approximately $125.26 per month, compared to $147.53 per month under the pre-Act 258 rates as of May 2017 and $125.34 per month under the Act 258 temporary rate reduction, which are the rates customers are currently paying.[4] Chart 1 compares the resulting electric bills for typical residential customers using 1,000 kWh per month.

[2] That schedule is attached to the Joint Application at Exhibit 13 and, as updated, is found at Hearing Exhibit 141.
[3] These matters are discussed in more detail below.
[4] The rate stated for Plan–B Levelized includes rate reductions associated with the Tax Cuts and Jobs Act ("TCJA") of 2017. The Act 258 rate, as adopted by the South Carolina General Assembly, does not reflect TCJA impacts.

Chart 1: Comparison of Estimated Typical Residential Electric Bills



[1] Inclusive of estimated tax reform impacts and relative to May 2017 bill
[2] Average of Year 1 and Year 2 impact

Plan–B Levelized results in rates to residential customers that are 9% below the national average and roughly comparable to the residential rates charged by neighboring investor owned utilities. Tr. at 3424-3425. The resulting industrial rates are approximately 15% below the South Atlantic average.

Both versions of the Alternative Customer Benefits Plan involve SCE&G voluntarily writing down its investment in the Project to a level that is less than or equal to the level of expenditures as of March 2015.

According to Dominion Energy, each of the three versions of the Customer Benefits Plan retains the economics of the original merger proposal while modifying the means by which merger benefits are provided to customers. Dominion Energy has testified that each of the plans is offered as a package, and that any changes that materially alter the plan economics or its accounting treatment would defeat the merger and result in the loss of the benefits to customers and the financial and other support Dominion Energy plans to offer SCE&G.

Summary of ORS's Principal Claims in this Proceeding

ORS rejects the plans proposed by SCE&G and Dominion Energy and instead proposes its own plan (the "Optimal Benefits Plan"). That plan is premised on the Commission finding that all spending on the new nuclear Project after March 12, 2015, was imprudent and should be disallowed. ORS does not allege that the Project should have been cancelled on March 12, 2015, or any other date prior to July 31, 2017, and does not challenge the prudence of investments made prior to March 12, 2015. Instead, ORS alleges that SCE&G's failure to disclose certain information to ORS and the Commission in past BLRA cases is, in itself, sufficient grounds to invalidate Project costs after March 12, 2015.

ORS's position is described in detail below. In short, ORS identifies March 12, 2015, as the date after which costs should be disallowed because this date is when SCE&G filed its petition in Docket No. 2015-103-E. Tr. at 702. The petition in that docket sought Commission approval of a newly baselined cost and construction schedule for the Project, which had been provided some months earlier to SCE&G by Westinghouse and its consortium partner Chicago Bridge & Iron ("CB&I") (collectively, the "Consortium" or "WEC/CB&I"). ORS asserts that in its 2015 petition, SCE&G should have disclosed to ORS and the Commission certain internal analysis regarding the Consortium's cost estimate at completion ("EAC") for the Project. Tr. at 275-76. The Company asserts that the analysis was conducted by SCE&G's new nuclear finance team to support on-going commercial negotiations with Westinghouse and CB&I concerning schedule mitigation options and payment responsibility for the increased costs under that new schedule. *Id.*; Tr. at 3734. ORS also contends that SCE&G's 2015 filing was improper because it did not disclose certain information regarding the Bechtel assessment, which began in August 2015.

Rates under the Optimal Benefits Plan: Under the Customer Benefits Plan in its various forms, the Joint Applicants have agreed to voluntarily forego recovery of all Project costs incurred after March 12, 2015, if the merger is approved and Plan–B Levelized is adopted. Therefore, the prudency challenges raised by ORS do not drive the rate differences between the ORS Optimal Benefits Plan and Customer Benefits Plan–B Levelized. Instead, through various accounting adjustments and rate making approaches, the Optimal Benefits Plan reduces SCE&G retail electric revenues to levels that are lower than those under Plan–B Levelized.

As a result of these proposed disallowances and adjustments, the Optimal Benefits Plan produces monthly charges to a typical SCE&G residential customer of $116.77 compared to $147.53 under the pre-Act 258, rate and $125.34 under the Act 258 temporary rate reduction, which is the rate customers are currently charged.[5] This is $8.49 per month less than the comparable rate of approximately $125.26 that would be charged under Plan–B Levelized.[6] 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.

[5] The rate stated for the Optimal Benefits Plan and Plan–B Levelized include rate reductions associated with the TCJA. The Act 258 rate, as adopted by the South Carolina General Assembly, does not reflect TCJA impacts.
[6] The Act 258 rate does not reflect TCJA impacts.

The Principal Claims of Other Parties

Apart from the Joint Applicants and ORS, there are nineteen other parties in this proceeding. Many of these parties have aligned themselves in support of ORS and the Optimal Benefits Plan. Others, like the Speaker of the South Carolina House of Representatives, have come out in favor of the Customer Benefits Plan, specifically in the form of Plan–B Levelized. Other parties have asserted that deeper disallowance should be required. These specific claims are discussed in more detail below.[7]

The Operative Decision before the Commission

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. 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.

These questions are in no sense alien to the legal standards under which the Commission operates. 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 formulae" but instead "involves the making of pragmatic adjustments" such that "it is the result reached not the method employed which is controlling." *Southern Bell Tel. & Tel. Co.*

[7] In discussing the financial and other risks to customers, the risks identified with the Optimal Benefits Plan apply with equal or greater force to the proposals of other intervenors. Discussion of the Optimal Benefits Plan applies, a fortiori, to those proposals.

v. Public Service Comm'n, 270 S.C. 590, 596-97, 244 S.E. 2d 278, 281 (1978) (*"Southern Bell")* (quoting *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) ("*Hope*")). Utility investors have a lawful and constitutionally protected interest in the financial soundness of the utilities in which they invest just as customers have an interest in being served by utilities that have the financial wherewithal to provide good quality service and to invest in safe, reliable and efficient utility systems. *See Hope*, 320 U.S. 591 at 603. These are among the interests which the Commission is lawfully empowered and required to consider, evaluate and balance in a pragmatic and non-formulaic way. The Commission's duty and goal is to reach a conclusion that best protects the long and short-term interests of both customers and investors.

The importance of the Commission's role in striking the balance required to determine just and reasonable rates has greatly increased with the passage of Act 258. In past proceedings, ORS acted to lead and facilitate settlement agreements which balanced utility and consumer interests. In all of the proceedings conducted under S.C. Code Ann. § 58-33-270(E), ORS presented settlement agreements it had developed among itself, SCE&G, and other interests. The Commission reviewed those settlement agreements to ensure that they complied with the law and the evidence.

Act 258 of 2018, Section 8, repealed Act 175 of 2004, Section B (3), which authorized the ORS to consider the "preservation of the financial integrity of the state's public utilities" as part of its assessment of the public interest. However, under S.C. Code Ann. § 58-4-10(B), the public interest is still defined to include the "preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." Without preservation of a utility's financial integrity, the public interest of South Carolina in

preserving "continued investment in" facilities so as "to provide reliable and high quality utility services" cannot be met. Thus, assessing the public interest today must account for the financial integrity of the utility in order to fulfill the demands of the public interest. Thus, establishing just and reasonable rates requires consideration of the financial integrity of the utility. *Southern Bell Tel. & Tel. Co. v. Public Service Comm'n*, 270 S.C. 590, 596-97, 244 S.E. 2d 278, 281 (1978) (quoting *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944)). The Commission is the regulatory body with primary responsibility for considering and deciding the public interest and determining just and reasonable rates that are consistent with the public interest and the constitutional standards of *Bluefield*, *Hope*, and *Southern Bell*.

` **Balancing the Interests**

For reasons that are both pragmatic and legal, the Commission has decided that SCE&G's customers will be best served by adopting Plan–B Levelized and approving SCANA's proposed merger with Dominion Energy. As discussed in more detail in the latter sections of this order, both of these actions are within the scope of the Commission's legal powers and are fully supported by the facts of record in this proceeding.

Plan–B Levelized, backed by Dominion Energy's balance sheet, will provide immediate and sustained bill reductions to customers coupled with strong assurances that SCE&G will continue to operate as a financially sound, reliable, and responsible utility going forward. SCE&G's rates will be brought into alignment with neighboring utilities and will be well below national averages. This result will be achieved without material risk to SCE&G's solvency, creditworthiness, or ability to conduct its future utility operations safely, reliably, and efficiently. No other option before the Commission provides this combination of benefits.

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. Indeed, adoption of this Plan would remove from consideration the effect on rates of the withholding of information from ORS and this Commission related to the SCE&G internal estimate at completion (EAC) calculations and the Bechtel Report. We have heard conflicting testimony on the reasons for the withholding of that information, but even SCE&G recognizes the resulting loss of trust from its lack of transparency, and it is beyond dispute that SCE&G failed to disclose any iteration of the Bechtel Report to ORS or the Commission. SCE&G and Dominion have agreed to use the ORS date of March 12, 2015, as the end date for reimbursement of capital investment, which is further recognition of the harm that comes from a lack of transparency. Although we have serious concerns about these matters, we are economic regulators, responsible for setting rates. We adopt the agreed-upon cut-off date for investment.

In adopting Plan B-Levelized, we have considered the Optimal Benefits Plan and believe that it should be rejected for the reasons discussed below.

Customers' Interest in SCE&G Financial Integrity

The Optimal Benefits Plan creates certain financial risks for SCE&G. The specific risks include:

(1) The risk that a credit-impaired SCE&G would not be able to continue to invest in its utility operations at the levels needed to sustain the quality of reliability and utility service that customers rightfully expect and the Commission's responsibility requires;

(2) The risk (or likelihood) that SCE&G's cost of capital and cost of utility service would increase materially, putting upward pressure on rates;

(3) The risk that SCE&G could not absorb future financial shocks without impairment of its solvency; and

(4) The risk that SCE&G could lose access to capital to support its operations entirely in adverse market conditions.

The possibility of adverse financial impacts from adopting the Optimal Benefits Plan cannot be ignored. SCE&G has issued approximately $3.5 billion in long-term corporate bonds to finance the Project. This amount represents more than 60% of SCE&G's approximately $5.5 billion in outstanding bonds. These bonds are secured by first mortgage liens on SCE&G's electric assets and have been matched by a generally comparable amount of equity capital used to finance the Project. As a result of the political and regulatory uncertainty surrounding its finances, SCE&G's issuer ratings are currently set at or below minimum investment grade by its three credit rating agencies. Tr. at 2020-19–2020-20, 2024-6–2024-9. The rating agencies have clearly indicated that additional downgrades of SCE&G's credit rating to levels that are below or more deeply below investment grade could be forthcoming. Tr. at 2020-34. The rating agencies have clearly signaled that such downgrades are likely if rate reductions of the magnitude proposed in the Optimal Benefits Plan are imposed without the financial support that the Dominion Energy merger can provide. Tr. at 2024-7. Also, as a result of the political and regulatory uncertainty surrounding these matters, SCANA's equity investors lost approximately $3.4 billion in value prior to the announcement of the Dominion Energy merger proposal. Tr. at 3488-45.

SCE&G has presented analyses that indicate that adoption of the Optimal Benefits Plan would result in write downs, including capital cost impairments, of $2.5 billion and a return on equity of only 7.66%. Tr. at 1784-4. These analyses indicate that returns under the Optimal Benefits Plan would be insufficient to support SCE&G's creditworthiness and financial stability. They are based on accepted rate-making methods and publicly reported data and are credible assessments of future operating results. The evidence of record establishes that there would be substantial risk to SCE&G's ongoing creditworthiness and ability to invest in its utility system if the Optimal Benefits Plan was adopted.

Customers' Interest in SCE&G's Parent Company

As several witnesses pointed out, adoption of the Optimal Benefits Plan and breakup of the Dominion Energy merger would make SCANA the likely target of future takeover attempts. Tr. at 2353-43; 2385-86. In that case, there would be no way to guarantee who the next potential acquirer might be and whether SCANA shareholders would vote to support another offer with the required two thirds majority. The evidence of record shows that Dominion Energy has a track record for safe, reliable, and efficient utility operations, a strong customer service culture, and a demonstrated commitment to investing in its utility systems and the communities it serves for the long term. Tr. at 2993-11–2993-14, 3010-12–3010-13. Adopting the Optimal Benefits Plan puts SCANA's customers at risk that SCE&G has an alternative future parent that is less committed to these values than Dominion Energy is, or less capable of achieving them.

Customers' Interest in Avoiding Constitutional and Statutory Risks on Appeal

Under the Takings Clause of the United States Constitution, rates which do not provide just and reasonable benefits to a regulated utility have been determined to be an illegal confiscation of private property. ORS admits that it has not conducted any financial analysis to determine if the rates proposed in the Optimal Benefits Plan result in returns that are "just and reasonable" as those terms have been defined by the courts. Having identified these same constitutional issues, the General Assembly considered analyses showing that imposing a 15% rate reduction on a temporary basis was constitutionally supportable while a deeper or more permanent reduction might not be. The Optimal Benefits Plan goes well beyond the Act 258 rate reduction both in amount and in permanence.

In its testimony, SCE&G provided an analysis of the impact of the Optimal Benefits Plan on its earnings and financial integrity, mentioned above, which strongly supports a finding that the rates proposed by ORS would not pass constitutional muster. Tr. at 2022-17–2022-18. There is no contrary evidence in the record.

For these reasons, the possibility of a successful challenge to the Optimal Benefits Plan on constitutional or statutory grounds is a significant risk to customers. Dominion Energy's testimony indicates that, before that challenge could be heard, the Dominion Energy merger offer would have been terminated and the benefits that it supports would no longer be available. In such circumstances, the rate options remaining open at that time might be far less favorable to customers than those that would have been available had Plan–B Levelized been adopted and the merger closed. Adopting the Optimal Benefits Plan represents an all-or-nothing risk for customers that is avoided by adoption of Plan–B Levelized.

Customers' Interest in Avoiding Appeal Risks Associated with Factual Prudency Issues

As part of the Plan–B Levelized proposal, Joint Applicants have agreed to forego recovery of NND Project costs incurred after March 12, 2015. Tr. at 2821-5. Involuntarily imposing the Optimal Benefits Plan takes this voluntary proposal off the table and requires ORS to establish as a matter of fact that all investments after that date were imprudent.

There is substantial risk that ORS could not sustain such a finding successfully if challenged on appeal. The factual findings ORS proposes here are contrary to the position it put forward through signed settlement agreements, sworn testimony, and audit reports provided to the Commission in prior proceedings. Order No. 2016-794 ex. 1 at 4; James Settlement Testimony at 4, Docket No. 2015-103-E (June 29, 2015). ORS's position would be challenged by express statements made in settlement agreements and in testimony where ORS affirmed that it had been given all information required to inform its position supporting the prudency of continued investment in the Project. James Settlement Testimony at 4, Docket No. 2015-103-E (June 29, 2015) (discussing the "enormous" amount of data reviewed by ORS). In addition, ORS's sworn testimony in those proceedings included statements that it was aware of the risks to construction and cost schedules at all relevant times. Order No. 2016-794 ex. 1 at 4; James Settlement Testimony at 4, Docket No. 2015-103-E (June 29, 2015). ORS's understanding of these challenges could call into question the claim that disclosure of these documents would have had a material effect on ORS's support for the Project during that time. *Id.*

As to materiality, the economic analyses provided by SCE&G's witnesses established that it would have taken between approximately $3.1 billion and $3.8 billion of additional costs

to have made the Project uneconomical based on what was known at the time of the 2015 and 2016 proceedings, respectively. Tr. at 2414-24, 2414-27. The amounts of additional costs ORS now claims were concealed from it are far less.

Adopting the Optimal Benefits Plan puts customers at risk for the loss of important benefits provided under the Dominion Energy plans should ORS's factual assertions not be sustainable. This represents a potential risk to customers that is excessive given the value of what could be lost.

Conclusion Concerning the Balancing of Interests

In the sections of this Order that follow, the Commission will review and make findings concerning each of the claims discussed here. Nothing in the present summary of the Commission's reasons for adopting the plan proposed by Dominion Energy is meant to short-change issue-specific legal and factual analysis. However, it is important to recognize that customers' interests strongly support the Commission adopting Plan–B Levelized, as voluntarily offered by SCE&G and Dominion Energy, rather than involuntarily imposing ORS's Optimal Benefits Plan with the risks that such a decision entails. The incremental, short-term benefits ORS claims would be provided to customers by the Optimal Benefits Plan do not justify the risk, uncertainty, and loss of long-term benefits that could result from rejecting Plan–B Levelized.

Prior Orders

Prior BLRA Orders

On March 2, 2009, the Commission issued Order No. 2009-104(A), which approved the prudency of the Project, the choice of contractors, the terms of the EPC Contract, and an initial capital cost schedule and construction schedule for the Project. As approved in that

Order, the capital cost for the Project was $4.5 billion in 2007 dollars.[8] In that proceeding, risk factors for the Project were presented and evaluated and initial contingency amounts were established. With forecasted escalation, this resulted in an estimated cost for the Project at completion of $6.3 billion in future dollars. The construction schedule approved in Order No. 2009-104(A) anticipated that Unit 2 would be completed by April 1, 2016, and the Project as a whole would be completed by January 1, 2019. The South Carolina Energy Users Committee ("SCEUC") appealed Commission Order No. 2009-104(A) to the South Carolina Supreme Court. An appeal from Order No. 2009-104(A) was also taken by Friends of the Earth. *Friends of Earth v. Pub. Serv. Comm'n*, 387 S.C. 360, 692 S.E.2d 910 (2010). In that case, the Court affirmed the Commission's determination that the decision to construct the units was reasonable and prudent. *See id.*

In April 2009, SCE&G received the initial site-specific, integrated construction schedule for the Project. It was compiled by Westinghouse and Stone & Webster, a subsidiary of the Shaw Group, who were the contractors for the Project under the EPC Contract. At that time, SCE&G filed a proceeding under S.C. Code Ann. § 58-33-270(E) (an "update proceeding") for approval of the updated construction schedule for the Project and an updated capital cost schedule, which reflected the new schedule of cash flows associated with the updated construction schedule. The updated schedules did not alter the total estimated capital cost for the Units of $4.5 billion in 2007 dollars, nor did they change the estimated completion

[8] Unless otherwise noted, all dollar amounts used in this Order reflect the cost associated with SCE&G's 55% share of the ownership of the Units. Unless otherwise noted, amounts other than those associated with the October 2015 Amendment to the Engineering, Procurement and Construction Agreement and the option it contains are expressed in 2007 dollars. For those two items, amounts are expressed in future (*i.e.*, escalated) dollars.

dates for the Units. In Order No. 2010-12 dated January 21, 2010, the Commission approved the updated schedules.

On August 9, 2010, the South Carolina Supreme Court issued its decision in SCEUC's appeal of Order No. 2009-104(A), *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 697 S.E.2d 587 (2010) (the "Opinion"). In the Opinion, the Court ruled that contingency costs were not permitted as a part of approved capital cost schedules under the BLRA. Among the enumerated items of disallowed contingencies were contingencies based on risks related to the units of labor required to complete the Project which is what productivity factors measure. The effect of this decision was to require the removal of $438.3 million in projected contingency costs from the capital cost schedules approved in Order No. 2009-104(A) and Order No. 2010-12.

In the Opinion, the Supreme Court acknowledged that S.C. Code Ann. § 58-33-270(E) allowed SCE&G to petition the Commission to update the capital cost schedule for the Units as SCE&G identified and itemized non-contingent items of cost. The Court noted, "the General Assembly anticipated that construction costs could increase during the life of the Project. Under S.C. Code Ann. § 58-33-270(E), SCE&G may petition the Commission for an order modifying rate designs." *S.C. Energy Users Comm.*, 697 S.E.2d at 592-93.

In response to the Opinion, SCE&G filed a petition in November 2010 for approval of an updated capital cost schedule with contingencies eliminated. The Commission approved that schedule in Order No. 2011-345, dated May 16, 2011. Because the amount of the newly identified costs was less than the amount of the Owner's contingency that was removed from the approved forecasts, the cost schedule approved in Order No. 2011-345 showed a reduction in the total estimated capital cost for the Units from $4.5 billion to $4.3 billion.

On May 15, 2012, SCE&G petitioned the Commission pursuant to S.C. Code Ann. § 58-33-270(E) for an order approving an updated construction schedule and capital cost schedule for the Units. SCE&G based its request primarily on the fact that the Nuclear Regulatory Commission ("NRC") had issued the Combined Operating Licenses (the "COLs") for the Units approximately nine months later than originally anticipated. This resulted in a rescheduling of the substantial completion dates for the Units. Based on the information available at that time, the updated substantial completion dates reflected a delay for Unit 2 until March 15, 2017, and an acceleration of Unit 3 to May 15, 2018. SCE&G's request also reflected a settlement agreement between SCE&G and WEC/Shaw related to cost increases caused by the COL delay, design changes to the AP1000 Shield Building, redesign of certain structural modules, and unanticipated subsurface rock conditions for Unit 2. Additionally, SCE&G requested updated Owner's Costs based on information and experience gained over the course of the Project, new safety standards issued after the Fukushima event and other matters. SCE&G also included three smaller change orders in its schedules of anticipated costs.

In July of 2012, CB&I announced its intention to acquire the Shaw Group. When that transaction closed in February of 2013, CB&I became a member of the Consortium and a prime construction contractor on the Project.

In Order No. 2012-884 dated November 15, 2012, the Commission approved updating the estimated capital cost for the Units from $4.3 billion to approximately $4.5 billion in 2007 dollars. The Commission also approved a new milestone schedule tied to substantial completion dates for Units 2 and 3 of March 15, 2017, and May 15, 2018, respectively. Order No. 2012-884 was appealed to the South Carolina Supreme Court. The Supreme Court

affirmed the Commission's ruling in all respects in *S.C. Energy Users Comm. v. S.C. Elec. & Gas*, 410 S.C. 348, 764 S.E.2d 913 (2014).

On March 12, 2015, SCE&G filed a petition seeking revised cost and construction schedules principally resulting from a revised, fully integrated schedule which WEC/CB&I had provided to SCE&G some months earlier. That new schedule included several alternative completion dates and associated mitigation plans with associated cost schedules. SCE&G's Project construction team had reviewed that schedule and the potential mitigation plans with WEC/CB&I in the months preceding the filing and was in active commercial negotiations with WEC/CB&I concerning payment responsibility and other matters up to the filing and thereafter. SCE&G sought Commission approval of an updated cost schedule increasing costs by $698.2 million and an updated construction schedule showing completion dates for Units 2 and 3 for June 19, 2019, and June 16, 2020, respectively.

The primary issues in Docket No. 2015-103-E were resolved by a settlement agreement, which ORS, the SCEUC, SCE&G, and others signed. In Order No. 2015-661 dated September 10, 2015, the Commission approved the settlement and revisions to the construction schedules, BLRA milestones, and guaranteed substantial completion dates. No parties appealed the Commission's September 10th Order.

On May 26, 2016, in Docket 2016-223-E, SCE&G filed a petition with the Commission pursuant to S.C. Code Ann. § 58-33-270(E), seeking an order approving an updated construction schedule and capital cost schedule for the Units. SCE&G requested new schedules for the Project that reflected the 2015 Amendments to the EPC Contract, the release of Chicago Bridge & Iron ("CB&I") from the Consortium, the hiring of Fluor as subcontractor, Westinghouse's agreement to a fixed price contract, and an extensive restructuring of the EPC

Contract. SCE&G requested that the Commission modify the construction schedules and accompanying BLRA milestones to reflect new guaranteed substantial completion dates of August 31, 2019, and August 31, 2020, for Unit 2 and 3, respectively. SCE&G also requested an increase to the capital cost estimates of approximately $846 million in future dollars, which was approximately 21% higher than the comparable cost schedule approved in Order No. 2009-104(A).

Certain parties, including ORS and SCE&G, entered into a settlement agreement and, again, stipulated that the agreement would fully resolve all issues in that proceeding. As with the prior settlement, ORS and other settling parties further stipulated that the modified construction and capital cost schedules were not the result of imprudence by SCE&G and were fully consistent with the BLRA. In her September 1, 2016, testimony before the Commission, ORS witness Allyn H. Powell characterized the settlement as reasonable. In Order No. 2016-794, dated November 28, 2016, the Commission approved the Settlement and revised construction and cost schedules accordingly. No parties appealed the Commission's Order.

Prior Revised Rates Orders

The initial revised rates adjustment was contained in Order No. 2009-104(A). Thereafter, SCE&G proposed revised rates adjustments each year from 2009 to 2016. In all cases, the revised rates applications were reviewed and audited by ORS in conformity with the BLRA. In all cases, the Commission entered revised rates orders in reliance upon audit reports

from ORS affirming the validity of the request and the amounts that were properly considered to be prudent and necessary capital costs of a BLRA approved Project.[9]

Interventions in the Present Dockets

Interventions in the Friends of the Earth and Sierra Club Docket

Timely petitions to intervene in Docket No. 2017-207-E were received from Central Electric Power Cooperative, Inc. ("Central") and The Electric Cooperatives of South Carolina, Inc. (the "Cooperatives"); Office of Regulatory Staff; and the South Carolina Coastal Conservation League ("SCCCL").

On September 6, 2017, the following persons and entities collectively moved to intervene in Docket No. 2017-207-E: Joseph Cali, Joan Brown, John Hull, John Halley, Linda Ensor, Tim Higgins, Jim Emery, Scott Turner, Gerald Ziegler, Steven C. Anderson, Lester Dempsey, Larry Hargett, Martin Karl Sessler, Peggy Bangle, Christine Czarnik, Wiley Johnson, Joseph Meehan, David Messinger, Henry Proctor, Ashley Nicole Croy, Glenda Bolyn, Eugene Lemieux, Martin Boyle, Judith Marshall, Christian Beiler, James McDonald, the Dorchester County Republican Party, and the Dorchester County Taxpayers Association. On August 1, 2018, these parties moved to withdraw their motion to intervene. The Commission granted the motion to withdraw on August 15, 2018.

[9] The orders in question were Order No. 2009-104(A), Docket No. 2008-196-E; Order No. 2009-696, Docket No. 2009-211-E; Order No. 2010-625, Docket No. 2010-157-E; Order No. 2011-738, Docket No. 2011-207-E; Order No. 2012-761, Docket No. 2012-186-E; Order No. 2013-680(A), Docket No. 2013-150-E; Order No. 2014-785, Docket No. 2014-187-E; Order No. 2015-712, Docket No. 2015-160-E; Order No. 2016-758, Docket No. 2016-224-E, and all were approved pursuant to S.C. Code Ann. § 58-33-280(G), which required the Commission to give substantial weight to an agreement between ORS and SCE&G as to the revised rates to be implemented.

Interventions in the ORS Request for Emergency Rate Relief Docket

In Docket No. 2017-305-E, timely petitions to intervene were received from AARP South Carolina ("AARP"); Central; the Cooperatives; CMC Steel South Carolina ("CMC Steel"); Dino Teppara; Frank Knapp, Jr.; Friends of the Earth; Lynn Teague; Sierra Club; South Carolina Attorney General ("Attorney General"); SCCCL; SCEUC; South Carolina Solar Business Alliance, Inc. ("SCSBA"); Southern Current, LLC ("Southern Current"); Speaker of the South Carolina House of Representatives James H. "Jay" Lucas; and Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart").

Interventions in the SCE&G and Dominion Energy Merger Approval Docket

In Docket No. 2017-370-E, timely petitions to intervene were received from Frank Knapp, Jr.; AARP; the Cooperatives; Central; City of Orangeburg; CMC Steel South Carolina; Friends of the Earth; Lynn Teague; ORS; Sierra Club; the Attorney General; SCEUC; Santee Cooper; SCSBA; Southern Alliance for Clean Energy ("SACE"); SCCCL; Speaker James H. Jay Lucas and the South Carolina House of Representatives; United States Department of Defense and all other Federal Executive Agencies ("DOD"), Wal-Mart; and William T. Dowdey. Transcontinental Gas Pipeline Company, LLC ("Transco") petitioned to intervene out of time, and the Commission granted the request.

Notice

In compliance with S.C. Code Ann. § 58-33-270(E), SCE&G provided timely notice of the Joint Petition in Docket No. 2017-370-E to ORS. Pursuant to S.C. Code Ann § 58-4-10 (2015), ORS is automatically a party to this proceeding. Notice of the other two dockets was provided by posting on the Commission's website.

By letter dated February 6, 2018, the Commission's Clerk's Office instructed SCE&G to publish by March 22, 2018, a Revised Notice of Filing for Docket No. 2017-370-E in newspapers of general circulation in the area where SCE&G serves retail electric customers and to furnish by March 22, 2018, the Revised Notice of Filing by U.S. Mail via bill inserts or by electronic mail to customers who agreed to receive notice by electronic mail. The Clerk's Office also instructed SCE&G to provide it proof of publication by April 12, 2018. On March 6, 2018, and March 27, 2018, SCE&G timely filed affidavits with the Commission demonstrating that the Revised Notice of Filing had been duly published and furnished to customers in accordance with the instructions of the Clerk's Office.

By letter dated August 16, 2018, the Clerk's Office instructed SCE&G to publish a Notice of Public Night Hearings by U.S. Mail via bill insert by August 22, 2018 (the "Night Hearing Notices"). The Clerk's Office also instructed SCE&G to provide proof of publication of the Night Hearing Notices by August 29, 2018. On August 21, 2018, SCE&G filed with the Commission affidavits demonstrating that the Night Hearing Notices for all three dockets had been duly published in accordance with the instructions of the Clerk's Office.

Settlements

The Settlement with Transco

On October 24, 2018, the Joint Applicants and Transco filed a settlement agreement with this Commission which places certain conditions on SCE&G when it seeks to secure more than 100,000 dekatherms per day (dt/d) of additional natural gas transmission capacity from an interstate pipeline. This agreement is incorporated by reference and accepted in its entirety, without change, in this Order. In doing so the Commission rejects arguments by SCCCL and SACE and their witness, Gregory M. Lander, seeking to modify the settlement and inject issues

that are beyond the scope of this proceeding. There are other adequate remedies available to SCCCL and SACE to address SCE&G's fuel costs and affiliate transactions, and those matters will remain subject to the Commission's review in all future relevant proceedings. We reject other proposed additions to the terms of the settlement agreement as being outside the Commission's jurisdiction and as matters for the South Carolina General Assembly.

In summary, the conditions of the Settlement Agreement include (1) a requirement to issue an RFP to obtain capacity exceeding 100,000 dt/d; and (2) an agreement not to contract for capacity with an interstate pipeline unless such a contract is either with the least cost provider of such capacity or this Commission approves the contract. Further, the parties agreed to define a contract as being "for more than 100,000 dt/d" even if it takes the form of two or more contracts, and/or contains different material terms, if such contracts arise out of the same interstate pipeline Project or the same capacity posting.

The Settlement with SCSBA

On November 30, 2018, the Joint Applicants and SCSBA filed a settlement agreement with this Commission which provides certain conditions on the Integrated Resource Planning ("IRP") process through 2023. Although we approve the agreement in principle, we believe that two modifications are in order. First, the $25/ton for carbon is acceptable for the development of one or more scenarios under an Integrated Resource Plan ("IRP"), but not for all scenarios. Application of the $25/ton criterion to all scenarios is inconsistent with the South Carolina statutes governing IRPs, S.C. Code Ann. Section 58-37-10, *et seq. See* S.C. Code Ann. Section 58-37-10 (2), which requires an IRP containing multiple options for accomplishing a program for meeting the requirements shown in a producer's or supplier's forecast in an economic and reliable manner. Further, we hold that the Joint Applicants'

commitment to funding of an outside consultant and an Independent Evaluator to examine IRPs shall be provided through shareholder funds and not ratepayer funds.

Accordingly, among other conditions, the modified approved conditions include (1) the ability of intervenors from the previous year's IRP to request a limited evaluation of no more than 5 alternative scenarios; (2) the required presentation of at least 3 alternative portfolios alongside the preferred portfolio to this Commission; (3) IRP sensitivities for fossil fuel prices with an imputed value of at least $25/ton for carbon emissions in one or more scenarios; and (4) Dominion Energy will fund an outside consultant and an Independent Evaluator with shareholder funds to audit SCE&G's IRP methodologies and submit an independent report to the Commission.

Also, Dominion Energy agrees that SCE&G will not procure or apply to certify a new generating resource with a nameplate capacity of more than 75 MW without first conducting an all-source competitive RFP, and SCE&G will fund pursuant to S.C. Code Ann. § 58-4-100 (2015) an Independent Evaluator ("IE") agreed upon by SCE&G and ORS and funded with shareholder funds, which IE will report to the Commission regarding the transparency, completeness and integrity of SCE&G's bidding process and evaluation of bids. SCE&G will commit to a stakeholder process to (1) develop a protocol for the curtailment of dispatchable resources in circumstances where curtailment of solar resources is necessary due to system conditions or 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 ("PPA") form to accommodate the addition of energy storage resources to solar generating facilities that currently have PPAs with SCE&G.

Further, SCE&G agrees to make fixed price contracts at avoided costs available to independent power producers, for durations of not less than ten years, 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 add certain clarifying language regarding Variable Integration Charges in new Public Utility Regulatory Policies Act of 1978 (PURPA) Qualifying Facility power purchase agreements.

Hearing

Consolidation of the Dockets

On January 31, 2018, in Order No. 2018-80, the Commission consolidated the three SCE&G Nuclear Dockets, Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E. In Order 2018-81H, the Commission set forth a procedural schedule and directed all parties to file direct, responsive, rebuttal, and surrebuttal testimony and exhibits. Although the Commission established separate pre-filing schedules for each docket, the Commission ordered that the three dockets would be heard together in a single, consolidated proceeding beginning at 10:00 a.m. on November 1, 2018. Any party to one or more of the dockets at issue would be deemed parties to all three dockets, and each witness offered would be permitted to present pre-filed testimony and exhibits on the merits of all three matters.

Participating Parties and Attorneys

The Commission conducted an evidentiary hearing on this matter beginning on November 1, 2018, and concluding on November 21, 2018. The Honorable Comer H. Randall, III, Chairman, presided. F. David Butler, Hearing Officer, appeared as advisor to the Commission. SCE&G was represented by K. Chad Burgess, Esq.; Belton T. Zeigler, Esq.;

David L. Balser, Esq.; Jonathan R. Chally, Esq.; Brandon R. Keel, Esq.; Julia C. Barrett, Esq.; Matthew W. Gissendanner, Esq.; and Mitchell Willoughby, Esq. Dominion Energy, Inc. was represented by Lisa S. Booth, Esq.; Joseph K. Reid, III, Esq.; and J. David Black, Esq.

ORS was represented by Nanette S. Edwards, Esq.; Jeffrey M. Nelson, Esq., Andrew M. Bateman, Esq.; Steven Hamm, Esq.; Matthew T. Richardson, Esq., James E. Cox, Esq.; and Eric B. Amstutz, Esq. Friends of the Earth and Sierra Club were represented by Robert Guild, Esq. Wal-Mart was represented by Stephanie U. Roberts Eaton, Esq. Speaker James H "Jay" Lucas and the South Carolina House of Representatives were represented by Michael Anzelmo, Esq. and Robert E. Tyson Jr., Esq.

The Cooperatives were represented by Frank R. Ellerbe, III, Esq.; Christopher S. McDonald, Esq.; Christopher S. Koon, Esq.; and Kevin K. Bell, Esq. SCCCL and SACE were represented by Elizabeth Jones, Esq.; J. Blanding Holman, IV, Esq.; William C. Cleveland, IV, Esq.; and Gudrun Elise Thompson, Esq. SCEUC was represented by Scott Elliott, Esq.

The Attorney General was represented by J. Emory Smith, Jr., Esq. and Robert D. Cook, Esq. SCSBA was represented by Richard L. Whitt, Esq., Benjamin L. Snowden, Esq., and Joseph Dowdy, Esq. AARP was represented by John B. Coffman, Esq., Susan B. Berkowitz, Esq., and Adam Protheroe, Esq.

DOD was represented by Emily W. Medlyn, Esq. Santee Cooper was represented by William C. Hubbard, Esq.; J. Michael Baxley, Esq.; and Carmen Harper Thomas, Esq. Southern Current, LLC was represented by Richard Whitt, Esq.

Transco was represented by Jefferson D. Griffith, III, Esq. Frank Knapp, Jr., William T. Dowdey, and Lynn Teague participated pro se.

Testifying Witnesses

In support of the Joint Petition, SCE&G presented the testimony of Jimmy E. Addison, President and Chief Executive Officer of SCANA Corporation and Chief Executive Officer of SCE&G; Iris N. Griffin, Senior Vice President, Chief Financial Officer and Treasurer of SCANA Corporation and SCE&G; Robert B. Hevert, Partner of Scott Madden, Inc.; Ellen Lapson, Founder and Principal of Lapson Advisory, a division of Trade Resources Analytics, LLC; R. Glenn Hubbard, Ph.D., Dean of the Graduate School of Business at Columbia University; Kyle M. Young, Manager, Nuclear Plant Demobilization for SCE&G; Dr. Kenneth Petrunik, Consultant; Dr. Joseph M. Lynch, Manager of Resource Planning at SCANA; Kevin R. Kochems, Manager of Regulatory Accounting for SCANA Services, Inc.; Joseph Wade Richards, Senior Engineer in Transmission Planning for SCE&G; Allen W. Rooks, Manager of Electric Pricing and Rate Administration at SCANA Services, Inc.; Angela Nagy, Executive Director at Ernest & Young; and John Raftery, General Manager of Renewable Products/Services and Energy Demand Management for SCE&G. George Wenick and Stephen Byrne also testified orally on behalf of SCE&G. On December 5, 2018, SCE&G further filed in the record the deposition testimony of Dan Magnarelli, Terry Elam, and Ron Jones.

In support of the Joint Petition, Dominion Energy presented the testimony of Thomas F. Farrell II, Chairman, President, and Chief Executive Officer of Dominion Energy, Inc.; Robert M. Blue, Executive Vice President of Dominion Energy, Inc. and President and Chief Executive Officer of the Power Delivery Group; James R. Chapman, Senior Vice President, Mergers and Acquisitions and Treasurer of Dominion Energy, Inc.; Prabir Purohit, Director of Mergers and Acquisitions and Financial Analysis at Dominion Energy, Inc.; and James I. Warren, Tax Partner with the law firm of Miller & Chevalier Chartered.

Friends of the Earth and Sierra Club presented the testimony of Dr. Mark Cooper, Director of Energy and Research for the Consumer Federation of America.

ORS presented the testimony of M. Anthony James, P.E., Director of Energy Policy; Gary C. Jones, P.E., President of Jones Partners, Ltd.,; Norman K Richardson, Consultant; Kelvin L. Major, Audit Manager; Daniel F. Sullivan, Deputy Director, Audit Department; Elizabeth H. Warner, Vice President, Legal Services and Corporate Secretary, Santee Cooper; Richard Baudino, Consultant; Lane Kollen, Consultant; and Michael Seaman-Huynh, Senior Regulatory Manager. Carlette Walker and Kenneth Brown testified orally under subpoena on behalf of ORS. ORS further filed for the record the deposition testimony of Ty Troutman and Joni Falascino.

Wal-Mart presented the testimony of Steve W. Chriss, Director, Energy and Strategy Analysis. DOD presented the testimony of James T. Selecky, Consultant. SCCCL and SACE presented testimony of Ronald J. Binz, Consultant; Uday Varadarajan, Consultant; and Gregory M. Lander, Consultant.

AARP presented the testimony of Scott J. Rubin, Consultant. SCEUC presented testimony of Kevin W. O'Donnell, Consultant.

STATUTORY STANDARDS AND REQUIRED FINDINGS

The overarching legal standard that must be met by all electric utility rates approved by this Commission is found in S.C. Code Ann. § 58-27-810. That statute provides: "Every rate demanded or received by any electrical utility . . . shall be just and reasonable." The "just and reasonable" standard incorporates the rule that unjust or insufficient rates constitute an unconstitutional taking of private property for public use without just compensation in violations of the Takings Clause of the United States and South Carolina Constitution. U.S.

Const. amend. V; S.C. Const. art. I, § 13(A); *see also Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989) ("If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.").

As mentioned above, the South Carolina Supreme Court has held that, in determining what constitutes a just and reasonable rate:

> [T]he Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of pragmatic adjustments'.... Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling.... The ratemaking process under the Act, i.e., the fixing of 'just and reasonable' rates, involves the balancing of the investor and the consumer interests. Thus we stated in the *Natural Gas Pipeline Co*. case that 'regulation does not insure that the business shall produce net revenues.' … [B]ut such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Southern Bell, 270 S.C. at 596-97, 244 S.E. 2d at 281 (quoting *Hope*, 320 U.S. at 602-03).

These legal standards have been consistently employed by the Commission and the South Carolina Courts and reflect the fact that utility customers have a direct interest, not only in low rates today, but also in the financial soundness of the utilities that serve them going forward. This is especially true for electric utility customers because of the universal and immediate importance of the electric utility service to the public and the capital investment

that a utility must be able to make month-by-month to provide the quality of service that customers expect and depend on.

As the U.S. Supreme Court stated in *Hope*:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope, 320 U.S. at 603 (citations omitted). This principle is often supplemented with language from *Bluefield*, where the U.S. Supreme Court held that:

> The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692–93 (1923) ("*Bluefield*") (citations omitted).

Together, the *Hope* and *Bluefield* cases provide "the basic principles of utility rate regulation" in South Carolina. *Southern Bell*, 270 S.C. at 595, 244 S.E.2d at 281; *Patton v. S.C. Pub. Serv. Comm'n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984).

Concerning the specific claims in this case, S.C. Code Ann. § 58-33-280(K) governs the recovery of capital investment in a BLRA-approved project after abandonment:

> Where a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. Without limiting the effect of Section 58-33-275 (A), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or

> minimize the costs. The commission shall order the amortization and recovery through rates of the investment in the abandoned plant as part of an order adjusting rates under this article.

S.C. Code Ann. § 58-33-280(K). Thus, in abandonment, "capital costs shall . . . nonetheless be recoverable," provided that the decision to abandon was prudent. *Id.* Even in that case, the disallowances of either capital costs themselves, or of the costs of capital applied to them, is permitted only for the specific costs that were imprudently incurred or could have been avoided. *Id.* The language in the statute also provides that the "recovery of . . . the cost of capital associated with abandonment may be disallowed only to the extent [costs were imprudently incurred]." *Id.* This mandates that revised rates are to continue to be collected after abandonment because to terminate them would be to disallow recovery of the cost of capital on capital costs previously determined to be prudently incurred and previously included in rates. *Id.* Nor is there any provision for terminating revised rates once they have been granted, which is itself an implicit recognition that recovery of capital costs on investment previously determined to be prudent, and previously included in revised rates, does not end on abandonment of a project. Confirming this reading of the statute is the provision that determinations made in prior BLRA orders "may not be challenged or reopened in any subsequent proceeding." S.C. Code Ann. § 58-33-275(B).

S.C. Code Ann. § 58-33-270(E) governs proceedings to update capital cost schedules and construction schedules that have been previously approved under the BLRA and applies to the Joint Applicants' request for approval of a schedule of capital costs for the Project in abandonment. Under this statute, the Commission must grant the relief requested if, after a hearing, the Commission finds, "as to the changes in the schedules, estimates, findings or conditions, that the evidence of record justifies a finding that the changes [in previously

approved schedules] are not the result of imprudence on the part of the utility." The Joint Applicants seek to update the approved cost schedules for the Project under S.C. Code Ann. § 58-33-270(E) in order to bring them into conformity with the costs of the Project after abandonment. This is consistent with the language and purpose of the BLRA and specifically S.C. Code Ann. § 58-33-270(E)(1) and provides a proper statutory vehicle for evaluating the costs involved.

S.C. Code Ann. § 58-33-280(K) allows the Commission to provide for "the amortization and recovery through rates of the investment in the abandoned plant" by issuing "an order adjusting rates under this article [the BLRA]." The Joint Applicants cite this provision of the BLRA as authority for approval of their requests related to the voluntary rate reductions that they propose. In addition, the Joint Applicants invoke S.C. Code Ann. § 58-27-870(F) as statutory authority allowing the Commission to approve the voluntary rate reductions proposed by the Joint Applicants without the necessity of a full rate case review.

Specifically, S.C. Code Ann. § 58-27-870(F) allows voluntarily proposed rate reductions filed by the utility to be considered without a full review of retail electric revenue requirements, cost of service, or rate design, and is applicable to the utility's rate reduction requests here. Nevertheless, SCE&G has provided testimony and exhibits demonstrating that the rates it has voluntarily agreed to accept under the Joint Applicants' various rate plans result in returns to the company that are well below the returns that could be considered to be sufficient in a general rate proceeding. *See* Hearing Exhibits 14, 15, and 16, Joint Application at Exhibits 14, 15, 16, and 17; Tr. at 2020-40–2020-42. In these exhibits to the Joint Application, and testimony, SCE&G has provided evidence that its current returns on electric operations are well below allowable returns, such that a full review of retail electric revenue

requirements, cost of service and rate design would have resulted in increases, not decreases in retail electric rates as proposed. This evidence is uncontested on the record in this proceeding.

However, S.C. Code Ann. § 58-27-870(F) applies only to voluntary rate reduction requests filed by the utility. It does not apply to involuntary rate reductions proposed by other parties, like ORS. Where parties seek to impose rate reductions on a utility involuntarily, they must show that the rates they propose can meet the statutory and constitutional requirement that they be "just and reasonable." S.C. Code Ann. § 58-27-810. The parties proposing them must show that the statutorily required "determination of a fair rate of return" can be made and can be "documented fully in [the Commission's] findings of fact and based exclusively on reliable, probative and substantial evidence on the whole record." S.C. Code Ann. § 58-27-870(G). S.C. Code Ann. § 58-27-870 is meant to be read in conjunction with its companion statute, S.C. Code Ann. § 58-27-860, which immediately preceded it prior to insertion of the Fuel Clause Statute, S.C. Code Ann. § 58-27-865, into this chapter of the code of laws. S.C. Code Ann. § 58-27-860 set out the procedural requirements that must be met "[w]henever a utility desires to put into operation a new rate" and specifically references provisions of S.C. Code Ann. § 58-27-870 concerning those requirements. Thus, the triggering event for a proceeding under S.C. Code Ann. § 58-27-860 and S.C. Code Ann. § 58-27-870 is the utility voluntarily filing a rate application which, if it includes only a rate reduction, is exempt from many of the processes and the protections that would apply to a rate increase application.

Language in S.C. Code Ann. § 58-27-870 (A), (D), and (E) further confirms that S.C. Code Ann. § 58-27-870(F) is intended to apply to utility-filed rate applications. These provisions state that, when filed, the rate application must be provided to ORS, that the utility

may adopt the requested rates if a timely order is not issued, and that the utility may not file a second rate increase until 12 months have passed since its last rate increase filing. These provisions clearly envision that S.C. Code Ann. § 58-27-870(F) apply to rate proposals filed by the utility.

This distinction is particularly important here because the Joint Applicants' primary rate proposals involve the offer to offset otherwise insufficient rates with billions of dollars of merger benefits which are available only if the Joint Applicants' plans are accepted and the merger closes. ORS's proposed rate reductions, however, are not supported by merger benefits. As a result, in this proceeding, the need is particularly important for ORS to make an affirmative showing that its proposals result in just and reasonable rates.

As to the merger approval request, the Joint Applicants, through their filing, have submitted themselves to the jurisdiction of the Commission to apply the provisions of S.C. Code Ann. § 58-27-1300 at the holding company level.

ALLOWABLE PROJECT COSTS

The July 31, 2017 Abandonment Decision

The evidence of record shows that, on July 31, 2017, SCE&G made its decision to abandon the Project after a review of all relevant information, attempts to find co-owners to replace Santee Cooper, and attempts to obtain government assistance to complete the Project. Tr. at 4084-51, 3472-31, 1345-5, 1345-38–1345-39. No party has challenged the prudency of the decision to abandon the Project. The Commission finds that this decision was prudent.

Allowable Costs

The statement of allowable costs for the Project was provided in Exhibit 13 to the Joint Application and as KRK-1 to the testimony of Mr. Kevin Kochems. Hearing Ex. 141.

For reasons stated below, the Commission orders the Company to reduce these amounts by the amounts included in them for consulting contract payments to Mr. William Timmerman, bonuses paid to senior executives related to the Project, and payments to the Bechtel Corporation for the 2015-2016 Project assessment. The Joint Applicants are directed to file a revised schedule within 30 days of the issuance of the order in this matter reflecting these changes. The Commission finds this schedule, as updated as ordered above, constitutes an appropriate schedule of capital costs for the Project in abandonment, under S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-33-280 (K), subject to the voluntary exclusions and other electric bill mitigation measures adopted below.

The Claim that Construction Should Have Been Cancelled before 2015

Friends of the Earth, the Sierra Club and AARP have further argued that the evidence presented supports their claims that the Project should have been cancelled even earlier, before 2015. Dr. Mark Cooper for Friends of the Earth and the Sierra Club contends that the Project has been mismanaged since "the very beginning," such that all costs incurred since the inception of the Project should be disallowed. Tr. at 119-5. Alternatively, Dr. Cooper says that the Project was imprudent beginning in 2012 and relies on his 2012 testimony to support that position. *Id.* at 119-7. Therefore, Dr. Cooper believes that all costs incurred since 2012 should be disallowed as imprudent pursuant to the BLRA. *Id.* at 119-45.

Dr. Cooper points to four reasons to support his finding of imprudence: (1) mismanagement of the Project; (2) misrepresentation of the chaos in the construction process; (3) misunderstanding of the economic reality in the electricity sector; and (4) misinterpretation of the Baseload Review Act (BLRA). *Id.* at 119-5. Similarly, AARP witness Scott Rubin contends that SCE&G should have cancelled the Project during 2013, or, at the latest, mid-

2014. *Id.* at 1908-7. Mr. Rubin largely bases this contention on information regarding module delay, specifically, the CA-20 module. *Id.* at 1908-13–1908-15.

Dr. Cooper also argues that Dr. Lynch's economic analyses presented during prior hearings were flawed. Tr. at 119-6. The Commission disagrees. First, a detailed review performed by ORS' consultants in 2008 verifies that the methodology used was reasonable and standard in the industry. *See* Order No. 2009-104(A) at 12-13. In the 2008 analyses, Dr. Lynch showed that using base assumptions, the additional cost of a natural gas resource strategy was $15 million dollars per year less than the alternative natural gas strategy levelized over forty years. In other words, the nuclear resource strategy was the least costly resource, and one scenario quantified that this lower cost resulted in levelized savings to customers of $15 million per year. *See* Order No. 2009-104(A); *Friends of Earth v. Pub. Serv. Comm'n*, 387 S.C. 360, 369, 692 S.E.2d 910, 915 (2010). Dr. Lynch also provided a sensitivity analysis, which demonstrated that if natural gas prices were higher than forecasted by 25%, the comparative benefit of the nuclear resource strategy increased over the gas resource strategy from $15 million to $53.4 million per year. *Id.*

In 2012, as he notes, Dr. Cooper challenged the methodology of Dr. Lynch's analyses. However, in Order No. 2012-884, the Commission reviewed and rejected this challenge. Order No. 2012-884 at 32. The analyses and their underlying assumptions were well justified in the record in that case and entirely reasonable and proper. They showed that under the most reasonable cost scenario, cancelling the Units and switching to natural gas would increase the cost to SCE&G's customers for electric service by $290 million per year on average over a 40-year planning horizon. *Id.* at 31-32.

In 2015, updated analyses concluded that under the most reasonable cost scenario, cancelling the Units and switching to natural gas would increase the cost to SCE&G's customers for electric service by $278 million per year on average over a 40-year planning horizon. Order No. 2015-661 at 63. Further, the future capital costs of the Units would have had to increase by about $3.1 billion above the current forecasts to overcome the benefit of $278 million per year from completing the Units at their then current cost. *Id.* No party challenged these analyses, and the Commission properly accepted them as reliable in Order No. 2015-61.

In this proceeding, Dr. Cooper challenges the analyses presented in those dockets. The Commission finds that they were not materially flawed, but that they reflected reasonable information and assumptions available at the time they were prepared, as SCE&G represented. Tr. at 2418-4. Dr. Lynch's economic analyses show the reasonableness of continuing construction, and the criticisms of them are not sufficient to overcome the fact that cancelling the Units early would not have been economical, as the reduction in Project benefit was not significant. Tr. at 2420-4–2420-5, 2424-13–14. Regarding criticism's about SCE&G's future natural gas prices, SCE&G did not make a forecast of natural gas prices but conducted a sensitivity analysis using a range of future prices, as future prices cannot be projected with confidence. Tr. at 2418-6–2418-8. Likewise, regarding criticisms that SCE&G's expectation for CO_2 emissions costs was too high, it is evident that SCE&G did not make a forecast of CO_2 emission costs but conducted a sensitivity analysis using a range of possible future CO_2 emission costs. Tr. at 2418-10–2418-12. For these reasons, and as discussed in the prior Orders, the Commission finds that Dr. Lynch's analyses are both credible and reliable evidence

sufficient to support prudency of the Project in all respects and meet all relevant and material points raised in Dr. Cooper's and Mr. Rubin's testimony.

The Commission finds in addition that Dr. Lynch and SCE&G properly considered the benefits of fuel diversity and the flexibility to respond to future environmental regulations as important factors in assessing its generation plans. The Commission further finds, as Dr. Lynch testified, that any effect of potential adjustments to his analyses would have no effect regarding the conclusion as to economic feasibility of the Project. Rather, all analyses support the conclusion that the Project was economically feasible and prudent from 2009 to the relevant date of March 12, 2015, and provided other benefits as well related to fuel diversity, carbon emissions and the mitigation of environmental risks.

ADJUSTMENTS TO COSTS

There are a number of issues raised in this proceeding that cut across the principal regulatory plans presented.

Miscellaneous Regulatory Assets

Under the Plan-B Levelized and related plans, the Joint Applicants propose to forego recovery of a group of regulatory assets associated with the Project in the amount of approximately $361 million. Tr. at 2806-11. These regulatory assets are related to the cost of rate swaps entered into to lock in interest rates on bonds that were scheduled to be issued to finance the Project as well as regulatory assets associated with various tax matters. *Id.* No

party objects to the Joint Applicants' proposal to forego recovery of these assets through rates and the Commission hereby approves it as part of the acceptance of Plan-B Levelized.

Refunds of Revised Rates Recovery

ORS contends that SCE&G should be required to refund (1) all revised rates collected after August 1, 2017, the date the NND Project was abandoned,[10] and (2) the revised rates associated with capital costs exceeding $2.772 billion, the total capital costs that ORS believes were prudently incurred. Combined, these refunds would equal $392 million, which ORS proposes to treat as a regulatory liability that reduces the allowable capital costs associated with the Project. *Id.* ORS further proposes that the Commission require SCE&G to provide a return on this amount equal to SCE&G's grossed-up return on capital from the time the rates were collected to the time the Commission enters its order in this case. *Id.* This additional amount, $37 million, would also be applied to reduce the rate base. *Id.* All told, ORS proposes that the Commission reduce the rate base for the NND Project by about $429 million to account for the rate refunds and the time value of money. Tr. at 987-26; Tr. at 987-31.

We disagree. First, the Joint Applicants have proposed in Plan–B Levelized to voluntarily reduce the recoverable Project investments to be recovered by approximately $1.962 billion (inclusive of previous impairments) and to establish a regulatory liability for

[10] The amount of revised rates collected after abandonment was reduced, but not eliminated when the experimental rates mandated by Act 258 were put into effect on April 1, 2018.

customer refunds and restitution of $1.007 billion to be credited to customers. Tr. at 4217-3–4217-4.

In addition, as a general principle of law, the Commission is without statutory authority to order involuntary refunds of rates collected under duly approved tariffs. Doing so constitutes a violation of both the filed rate doctrine and retroactive rate-making. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 391 (2005) (stating that the filed rate doctrine bars collateral attacks on previously determined rates); *Porter v. S.C. Pub. Serv. Comm'n*, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1997) ("Retroactive rate-making is prohibited."). Furthermore, the collection of revised rates after abandonment is authorized under S.C. Code Ann. § 58-33-280(K) which states, "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article."

The Acquisition Cost of the Columbia Energy Center

After abandonment of the Project, SCE&G was able to close on the purchase of a 540 MW natural gas fired combined cycle generating facility known as the Columbia Energy Center. Tr. at 3592-24. That acquisition replaced a significant portion of the base-load generation capacity that would have been provided to SCE&G's customers through the first unit of the Project. Under Plan-B Levelized and related plans, the Joint Applicants propose for shareholders to absorb the acquisition cost of this asset, in the amount of $180 million, and to forego recovery of this amount in rates. Operating and maintenance costs of the plant, as well as fuel costs and future capital maintenance would be treated as ordinary costs of utility operations. *Id.;* Tr. at 987-8 n. 2. No party objects to the Joint Applicants' proposal to forego

recovery of this $180 million capital expense through rates and the Commission hereby approves it as part of the acceptance of the Customer Benefits Plan-B Levelized.

Toshiba Proceeds

Toshiba Corporation provided a parental guarantee for the obligations of Westinghouse under the EPC Contract. Tr. at 1124-26. The principal damages provisions under that contract made Westinghouse liable upon default for 25% of the amount that had been paid as of the date of the default against fixed price obligations. Tr. at 1125. Payments associated with liens on the Project were outside of this amount. Tr. at 987-19; 991-12; 3596-5–3596-6. Contrary to suggestions by some parties, the release of CB&I did not reduce the amount due under the guarantee. Tr. at 2581. Instead, it shifted the full payment obligation to Toshiba, and increased rather than decreased the amount payable.

In fact, under the 2015 Amendments to the EPC Contract, the amount of guarantee related to the 25% damages provision increased greatly since all payments made after that date were payments against fixed price amounts and so were considered in calculating that amount. In the end, SCE&G negotiated a payment which was approximately $500 million greater than what would have been due under a strict application of the EPC Contract terms. The cash associated with the net amount of the payment was used to provide short-term liquidity for SCE&G during a time of stress on its short-term borrowing capacity in late 2017 and 2018. Tr. at 2022-24–2022-25. For regulatory accounting purposes, SCE&G recorded the amount, net of contractor liens, in a regulatory liability account.

ORS objects to using the Toshiba Proceeds to pay for the mechanics and other liens filed by contractors and vendors on the Project's real property after the Westinghouse bankruptcy was announced. Tr. at 3596-5. However, the testimony clearly shows that these

lien amounts were included in the Toshiba settlement for the specific purpose of satisfying these liens. *Id.* at 3596-7. For these reasons, the Commission finds it appropriate to recognize the liens, as proposed by SCE&G, as a reduction in the Toshiba Proceeds that are available for rate mitigation at this time.

Test Year for Calculating TCJA Savings

The Optimal Benefits Plan would calculate the "gross-up" portion of the Tax Savings Rider by adjusting SCE&G's 2011 income (the test year used in the last base rate proceeding) for sales growth through 2018 and then applying the new corporate income tax rate to that notional amount. The Joint Applicants, by contrast, propose to calculate the effect of the reduction in the corporate income tax rate based on actual 2017 results, as adjusted for standard rate making pro forma adjustments.

The 2011 figures ORS uses are nearly seven years old. They do not reflect current economics. Furthermore, ORS's proposal to estimate SCE&G's income by simply adjusting the 2011 numbers to account for sales growth through 2018 entirely neglects the effect of any and all changes in expenses and rate base since that last proceeding.

We agree with the Joint Applicants that adjusting the "gross-up" factor based on actual information from the 2017 test period is a much more accurate basis for assessing tax benefits. Because 2017 represents the most recent 12-month calendar year period for which data is available, it provides the most current assessment of realizable tax savings. These figures more accurately reflect the actual savings SCE&G will recognize as a result of the TCJA. Accordingly, we approve the calculation of the Tax Rider amount as proposed in Plan–B Levelized found in 2017 data.

Quantification of the Accumulated Deferred Income Tax Asset ("DTA") produced by SCE&G's Net Operating Loss Carryforward ("NOLC")

SCE&G's NOLC produced more than a $500 million DTA which represents the tax effect of tax deductions it claimed, but could not use due to the lack of taxable income. The Optimal Benefits Plan proposes that only $67.1 million of this DTA should be included in rates and that the rest should be absorbed by shareholders. Its premise is that, had SCE&G not incurred the imprudent costs, the NOLC would be much lower than it is. In other words, the Optimal Benefits Plan presumes that the NOLC was created by imprudent costs to the extent of those costs. This presumed ordering of deductions (prudent costs used first only then followed by imprudent costs) is in error. All deductions, whether relating to allegedly imprudent expenditures or prudent ones, are exactly the same from a tax perspective. Since they are indistinguishable from one another, Mr. Warren proposed to allocate the DTA between customers and shareholders based on the relative amounts of NND costs each group ends up bearing. Each dollar deducted is treated as part customer funded and part shareholder funded. This results in a more equitable allocation of the NOLC as well as being aligned with the actual treatment of these expenditures on SCE&G's tax return.

Mr. Warren also testified that, for purposes of the tax normalization rules, an NOLC is deemed attributable to accelerated depreciation to the extent it was claimed in the year the NOLC was produced. Moreover, those rules require that the DTA attributable to accelerated depreciation be included in rates. Looking at ORS's proposal through this prism, the $67.1 million DTA proposed by ORS would be insufficient insofar as it is not enough to "cover" the accelerated depreciation SCE&G claimed in 2017 – the year in which the NOLC was created. In short, the Optimal Benefits Plan would result in a normalization violation that would have

severe consequences for SCE&G and its customers, including the loss of the ability to claim accelerated depreciation deductions.

The Plan–B Levelized, by contrast, would recognize a $574 million NOLC-related DTA. We agree that the Plan–B Levelized provides the proper calculation for this DTA. Commission approval of an NOLC of $1.5 billion and NOLC-related DTA of $574 million are necessary conditions of merger closing. Deviation from this NOLC-related DTA would change the merger economics in a way that could prevent Dominion Energy closing the merger.

Accordingly, the Commission rejects the Optimal Benefits Plan's treatment of the ADIT and adopts the method proposed by the Joint Applicants in the Plan–B Levelized.

Treatment of Excess Accumulated Deferred Income Tax

Federal law governs the timing of sharing a portion of the excess accumulated deferred income tax ("EDIT") resulting from the TCJA's reduction in the corporate income tax rate ("protected EDIT") on base rates. Specifically, protected EDIT may not be returned to customers any faster than allowed by the Average Rate Assumption Method ("ARAM"). However, the timing of the distribution of the remainder of the EDIT ("unprotected EDIT") is not similarly constrained by the tax law. ORS proposes returning the entirety of plant-related unprotected EDIT over a five-year period in the Tax Savings Rider; the Joint Applicants propose returning the unprotected EDIT over the remaining book life of the property generally in accordance with the ARAM, which tracks and provides symmetry between the reductions in plant-related EDIT with the period of depreciation of the underlying assets to which the EDIT relates.

The Commission agrees with the Joint Applicants' approach for several reasons. First, the ORS approach would create a significant mismatch between the amortization of the unprotected EDIT and the actual depreciation of the related assets. Second, the five-year amortization period would (in isolation) result in the potential for an increase in customer rates in year six. Third, we find that applying the ARAM method to both protected and unprotected plant-related EDIT results in uniformity, ease of administration, and sound regulatory economics including providing intergenerational equity and rate stability to current and future customers. Accordingly, the return of both protected and unprotected plant-related EDIT should be calculated using ARAM, as proposed in Plan–B Levelized.

Transmission Projects that Were Part of the BLRA Project

As part of the project, SCE&G's transmission planning department conducted the generation siting studies required under the Federal Power Act and related FERC orders, and undertook a major expansion and strengthening of the backbone of SCE&G's transmission system. The total amount invested was approximately $322 million and all aspects of the project will be in service as of January 31, 2019. Only the financing cost associated with $275 million in capital is in rates today, which is equivalent to approximately $32 million in revenue requirement. The return of capital of the entire amount invested and the financing cost of the remaining approximately $47 million is not in rates today.

As SCE&G's witness Mr. Wade Richards testified, SCE&G's transmission system principally interconnects load centers and generation assets located in northern and southern areas of SCE&G's service territory. Tr. at 3349-5–3349-6. Richards further testified that the transmission upgrades included in the Project were undertaken to strengthen both the capacity and resiliency of the north-south backbone of SCE&G's system while increasing the capacity

and reliability of service to important or growing areas like the I-77 corridor and Northeast Columbia, Lake Murray and Lexington, and the Columbia metropolitan area. Aging, wooden transmission structures were replaced with higher capacity, multiple circuit lines on steel structures that require significantly less maintenance and are far more resistant to storm damage.

Mr. Richards provided modeling studies showing that SCE&G's transmission system could not meet reliability standards without the upgrades in question. *Id*. at 3349-20. He testified that, as a result of the upgrades, SCE&G's transmission system has performed far better in storms and storm restoration than might otherwise be expected. *See id.* at 3349-8.

The Commission finds Mr. Richards' testimony regarding the general necessity and benefits of the transmission upgrades to be persuasive. The revenue requirement currently in rates is approximately $32 million. The Commission further notes that the Unit 2 & 3 switchyard constructed as part of the Project is not included in these transmission projects, but was included as part of the approximately $85 million in projects placed in service that will be written off under Plan–B Levelized.

SCE&G is not currently seeking any additional rate recovery for these assets under Plan–B Levelized, but asks that these transmission investments be deferred for consideration of recovery in base rates, and the current approximately $32 million revenue requirement associated with them remain in base rates under the terms of the Plan–B Levelized. *Id.* SCE&G seeks to defer, as a regulatory asset for consideration in a future proceeding, the ongoing operating costs associated with these transmission assets to include O&M expenses, depreciation and property taxes. A determination of capital costs and remaining financing costs will be determined in the next rate case.

The Investment in Miscellaneous Used and Useful Generating Assets

After abandonment, SCE&G identified a number of assets that were constructed as part of the Project that will not be abandoned. Instead, these assets are being placed in service to support generation activities at the V.C. Summer site. They include the Unit 2 & 3 switchyard: water, wastewater, office, training and security facilities that support operations at Unit 1; and software and other IT assets that support Unit 1 operations. These are used and useful assets. However, under Plan-B Levelized and other versions of the Customer Benefits Plan, the Joint Applicants propose for shareholders to absorb the acquisition cost of these assets, in the amount of approximately $85 million, and to forego recovery of this amount in rates. No party objects to the Joint Applicants' proposal to voluntarily forego recovery of these assets through rates and the Commission hereby approves it as part of the acceptance of Plan-B Levelized.

Merger Savings

ORS proposes an electric rate reduction of $35 million in the first year, $70 million in the second year, and annually thereafter in the form of a Merger Savings Rider to account for the anticipated savings in operating expenses due to the merger. The evidence of record does not substantially support this calculation and is comprised of two historical transactions, both of which are over 20 years old and both of which involve gas distribution utilities. These examples do not provide a reasonable basis for determining future merger savings. ORS's calculation also do not account for implementation costs, which the Joint Applicants have agreed to absorb as part of their comprehensive merger commitments, and the protections for SCE&G employees and local operations that Dominion Energy is providing. The calculation of merger benefits is premature for purposes of ratemaking.

Moreover, adding any such rate reductions to the customer benefits already included in Plan–B Levelized could upset the economic balance of Plan–B Levelized necessary to close the merger. It is also unnecessary since Dominion Energy has pledged to pass through merger savings to customers following the first electric base rate case after the merger, with rates effective January 1, 2021.[11] The Commission rejects ORS's proposal.

The Timmerman Consulting Contract

Upon his retirement from SCE&G, its former CEO, Mr. William B. Timmerman received a contract under which he was to be paid $360,000 per year until completion of Unit 2 to secure his availability to consult on commercial matters associated with the Project. Tr. at 2356. Mr. Timmerman was paid as the contract required, but there is no record of the services he performed. *Id.* at 930, 931. Under Plan–B Levelized, the Joint Applicants propose for shareholders to absorb the full cost of all payments made under this contract and to forego recovery of this amount in rates. Tr. at 4216, 4217-12. No party objects to the Joint Applicants' proposal to reduce the allowable investment in the Project by this amount and the Commission hereby approves it as part of the acceptance of the Plan-B Levelized.

Office Furniture Bid Rigging

Auditing invoices for the Project from CB&I, SCE&G identified evidence of bid rigging related to a provider of office furniture. Tr. at 3589. However, SCE&G refused payment of the associated invoices and determined that, based on publicly quoted pricing, the price increase associated with the bid rigging was approximately $42,000. *Id.* This amount became part of the global settlement of claims between SCE&G and CB&I that formed part

[11] Purohit Rebuttal at 5:14-7:9.

of 2015 Amendment to the EPC Contract and was resolved in that context. *Id.* The Commission finds that no further action related to this claim is warranted. Order No. 2016-794 at 9; Hearing Ex. 114 at ¶ 3(h).

RATE PLANS

Plan–B Levelized

Through September 30, 2017, SCE&G incurred approximately $5.053 billion in capital costs for the Project. After transferring $322 million in transmission costs to transmission plant in service, this results in a remaining amount of $4.730 billion. *See* Tr. at 3592-19; Hearing Ex. 141.[12] Plan–B Levelized provides for SCE&G/Dominion Energy to voluntarily write down this amount by approximately $1.962 billion including impairments taken to date. The remaining amount is approximately $2.768 billion. *See* Tr. at 4217-3.

Plan–B Levelized provides for the resulting amount, approximately $2.768 billion (net of the related deferred taxes discussed below), to be amortized through rates over 20 years. *See* Tr. at 4217-4. That cost of capital reflects a return on equity at 9.9% (compared to the current allowed return of 10.25%) and the cost of debt set at 5.56% (as recommended by ORS), which is lower than SCE&G's actual cost of debt of 5.58%. *Id.*; Tr. at 2022-12, 2022-17. The capital structure for this recovery would be fixed at the pre-impairment ratios of 52.81% equity and 47.19% debt, which is a further benefit to customers. Tr. at 4217-3.

[12] This amount represents SCE&G's 55% interest in the Project. All other numbers in this Order also represent SCE&G's share. Furthermore, this amount does not include any costs incurred after September 30, 2017, because SCE&G has written off those costs as they were incurred.

The Capital Cost Rider

The recovery of all costs associated with the Project investment will be reflected in a separate Capital Cost Rider. Hearing Ex. 169 at 4. This segregates the recovery of those costs from other components of SCE&G's retail electric rates. All tax costs or benefits associated with Project investment will flow through the Capital Cost Rider.

Plan–B Levelized also includes a total of $2.039 billion in refunds and restitution over a 20-year NND recovery period. Tr. at 4217-3. Of this amount, $1.032 billion represents the amount equivalent to net Toshiba Proceeds, which SCE&G will refund to customers over 20 years at the fixed annual amounts as specified in Exhibit PP-2A (Toshiba Settlement Regulatory Liability). Payments of these funds to customers will decrease the regulatory liability recorded by SCE&G on the set schedule in Exhibit PP-2A. Tr. at 4217-4. In addition to the refunds equivalent to the Toshiba Proceeds, a further regulatory liability of $1.007 billion for refunds of amounts previously collected from customers under the BLRA will be established upon closing of the merger and credited to customers over approximately 11 years (NND regulatory liability). Instead of evenly distributing these refunds over the entire period, Plan–B Levelized shapes the refunds credited to customers so that the resulting bills to be paid by SCE&G's customers under the Capital Cost Rider will be levelized taking into account the amortization that reduces the balance of the unrecovered Project investment, thereby reducing the capital cost associated with it. Each year SCE&G shall compute the Capital Cost Rider Revenue Requirement (inclusive of the associated NND EDIT amortization) and apply the annual refund amount per the fixed amortization schedule shown in Hearing Exhibit 169 at page 20 against the Capital Cost Rider Revenue Requirement. The difference between this calculated amount and the cash collected from customers related to NND shall be deemed a

refund to customers (NND refund), and reduce the corresponding NND regulatory liability. Any remaining amounts in the NND regulatory liability after the unrecovered Project investment has amortized below the Capital Cost Revenue requirement including the Toshiba refund will be refunded to customers as deemed appropriate by the Commission.

The $2.039 billion in refunds and restitutions under the Plan–B Levelized compensates the ratepayers for the time value of the delayed refund on the Toshiba Proceeds, refunds and provides restitution for any rate overpayments previously collected amounts under the BLRA, and provides merger benefits compensation. Tr. at 4217-4–4217-5. When combined with the expected bill reductions resulting from the TCJA, these refunds would reduce bills by approximately 15% from the pre-petition levels. *Compare* Hearing Ex. 141, *with* Tr. at 4217-3.

In addition, under Plan–B Levelized, SCE&G estimates that, as to the Capital Cost Rider, the DTL for 2019 will be $1.059 billion and the DTA will be $574 million. Hearing Ex. 170. Applying the net DTL of $485 million and accumulated depreciation to the rate base would further reduce the net rate base to about $2.283 billion in 2019. *Id.*

TCJA Tax Rider

The Joint Applicants propose to use a Tax Rider to reduce customers' rates for certain impacts of the TCJA. Hearing Ex. 169 at 4. The impacts of the TCJA that relate to the NND Project investment would be handled through the Capital Cost Rider, and other TCJA-related tax benefits including those related to other components of SCE&G's rate base would flow through the Tax Rider. *Id.* Although the tax benefits would normally fluctuate year-to-year based on SCE&G's earnings and other tax-related factors, the Plan–B Levelized would fix the base rate tax savings for the years 2019 and 2020, subject to tax normalization requirements.

Tr. at 2020-52–2020-53. In calculating the fixed amount for the Tax Rider, SCE&G used the twelve months ended December 31, 2017, to quantify the benefits of the TCJA Tr. at 2020-53. SCE&G computes its tax liabilities on a calendar year basis, and 2017 is the most recent calendar year for which tax liabilities can be calculated. As a result of the Tax Rider, SCE&G will reduce base rates to customers by approximately $67 million per year in 2019 and 2020, in addition to the approximately $25 million in 2019 TCJA benefits built into the Capital Cost Rider. Tr. at 2020-54.

Other Benefits to Customers under Plan–B Levelized

Plan–B Levelized would also provide a number of other benefits to the ratepayers as discussed above. These include the agreement not to seek rate recovery for the approximately $180 million in costs incurred for the acquisition of the Columbia Energy Center, the write-off of the approximately $85 million related to other generation investment placed in service to support Unit 1 operations, and benefits to the ratepayers in the form of merger conditions detailed in Exhibit 169, at pages 22–28. The Joint Applicants agree to file a general rate case no earlier than May 1, 2020, in order to ensure that actual merger-related savings are reflected on a timely basis, but would further agree to not file for a base rate adjustment before that time. Hearing Ex. 169, at 5.

Customer Bill

Under Plan–B Levelized, SCE&G's customers would pay approximately $145 million related to the NND Project and the Transmission Costs in 2019, a decrease of $300 million from May 2017. Hearing Ex. 170; Tr. at 1345-41. In addition, the customer bills would be further reduced by about $67 million by the Tax Rider for a net rate impact of approximately

$78 million during the initial year. *See* Tr. at 2020-54. This amount is slightly below current bills, which include the temporary rate reductions imposed under Act 258.

Conclusion as to Plan–B Levelized

The Commission finds that Plan–B Levelized provides significant customer bill relief for SCE&G's customers without damaging SCE&G's creditworthiness or putting at risk SCE&G's financial soundness or ability to continue providing reliable, cost-effective utility service to customers. Under Plan–B Levelized, SCE&G can provide this combination of sustained rate benefits to customers and security for future service because of the financial support and infusions of capital that Dominion Energy will provide to SCE&G and its customers as merger benefits. Apart from the plans proposed by the Joint Applicants, no other plan can provide the same combination of benefits to customers that Dominion Energy offers. Accordingly, under S.C. Code Ann. § 58-33-280(K), the Commission adopts Plan–B Levelized as the appropriate resolution to the matters associated with the recovery of Project investment.

Review of ORS's Optimal Ratepayer Benefits Plan

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. Thus, the Optimal Benefits Plan and Plan–B Levelized produce significant reductions (21% vs. 15%) from pre-Act 258 rates. However, the Optimal Benefits Plan uses a very different mechanism to reach its result, and according to Dominion, that mechanism does not support the economics required for the merger to close.

Both the Optimal Benefits Plan and Plan–B Levelized include a Capital Cost Rider to recover project costs and a Tax Rider to flow non-project-related TCJA savings to customers.

However, Plan–B Levelized provides for refunds and restitution of $2.039 billion to reduce bills to customers over 20 years, which are not contained in the Optimal Benefits Plan.

Specifically, under Plan–B Levelized, Dominion Energy will provide SCE&G capital from its balance sheet ($1.007 billion) that, along with an amount equivalent to the Toshiba Regulatory Liability ($1.032 billion), will allow SCE&G to pass refunds and restitutions on to customers while recovery on and of approximately $2.768 billion in Project investment over 20 years is reflected in SCE&G's financial returns. This approach supports SCE&G's financial health, credit profile, and access to capital while allowing for bill relief.

Adopting the Optimal Benefits Plan would require the Commission to embrace a number of adjustments to SCE&G's actual investment and financial metrics, making results that are legally and factually unsupportable. As to the recoverable investment, the Optimal Benefits Plan and Plan–B Levelized start with a comparable amount of Project investment after the initial write downs (approximately $2.772 billion vs. approximately $2.768 billion in Plan–B Levelized).[13] However, while the write downs necessary to achieve these results are voluntary under Plan–B Levelized, under the Optimal Benefits Plan the inclusion of additional liabilities and a purported return on those liabilities is involuntary.

[13] The amount of the write down under the Optimal Benefits Plan is about $4 million less than the write down under Plan–B Levelized due to the specific challenged items that the Joint Applicants propose to deduct from that amount. The testimony supporting the Optimal Benefits Plan states that the "disallowed costs are $1,873.9 million." Tr. at 987-15. However, this amount does not include the $85.6 million in costs for the switchyard, which ORS agrees the Joint Applicants should write off. *Id.* Accordingly, the total number of write offs under the Optimal Benefits Plan is $1,959.5 million (numbers do not add due to rounding).

To achieve the reduction in Project investment to $715 million, the Optimal Benefits Plan requires that Toshiba Proceeds be used to immediately reduce the balance of the project costs to be recovered.[14]

In addition, the Optimal Benefits Plan does not provide any mechanism to support SCE&G's revenue requirements, credit metrics, and returns during the 20-year recovery period. Instead, the Optimal Benefits Plan requires the Commission to order SCE&G to immediately encumber Project investment which reduces the rate base from approximately $2.768 billion to $715 million—an additional reduction of approximately $2.053 billion. Doing so would severely depress SCE&G's credit metrics and reported earnings for 20 years, leaving Dominion Energy without the mechanism to support its investment in SCE&G's creditworthiness as envisioned under Plan–B Levelized. Accordingly, Dominion Energy's CEO has testified unequivocally that the merger cannot close if the Commission adopts the Optimal Benefits Plan. Tr. at 2295-4, 2988.

As to tax matters, the Optimal Benefits Plan recognizes an unreasonably low NOLC by understating SCE&G's NOLC-related DTA that must be included in rate base. Under the Optimal Benefits Plan, ORS estimates that the DTL on the NND Costs in 2018 will be $1.027 billion and the NOLC-related DTA for that year will be only $65 million after applying the retail allocation factor.[15] According to ORS estimates, the rate base would reflect refunds and

[14] Although the testimony of ORS witness Lane Kollen uses a figure of $1.095 billion when referring to the Toshiba Proceeds regulatory liability, this number has not yet been adjusted by the approximate 97% retail allocation. *Compare* Tr. at 987-24, *with* Hearing Ex. 50 at 160. After adjustment, the figure is approximately $1.062 billion.

[15] The retail allocation of $65 million of NOLC-related DTA is significantly different than the estimates provided by the Joint Applicants in support of the Customer Benefits Plans (approximately $763 million under Plan A to $574 million under Plans B and B Levelized). The Joint Applicants have provided significant evidence that this $65 million figure is improperly calculated and allocated between customers and shareholders and would lead to

returns on those refunds representing the Toshiba Proceeds and refunds of all revised rates collected after August 1, 2017, and all revised rates associated with capital costs exceeding $2.772 billion (or $2.684 billion on a retail level) proposed in the Optimal Benefits Plan, which would generate additional rate base reductions, net of deferred taxes, in the Capital Cost Rider of approximately $1.006 billion in 2018.

ORS has grossed up the refunds and returns, with the exception of the Toshiba Proceeds regulatory liability for SCE&G's cost of capital. As discussed above, these additional refunds are not supportable.

To achieve its total rate reduction, ORS further eliminates any recovery through rates for $275 million of the total of SCE&G's $332 million investment in transmission projects. ORS further reduces SCE&G's return on equity for project investment to 9.1% from the allowed return of 10.25% and assumes merger savings of between $35 million and $70 million per year without an adequate basis. It also calculates an overstated amount of tax benefits from the TCJA in the amount of approximately $32 million per year primarily attributable to the amortization of unprotected EDIT over a shorter period than the associated book depreciation to which that EDIT relates.

As discussed above, these specific adjustments are not appropriate. Moreover, they result in a return to SCE&G on its investment in electric utility system that is too low to support its creditworthiness or its ability to continue to invest in its utility systems. Returns at these levels are insufficient and violate fundamental rate making standards as discussed

a normalization violation because it does not cover the DTL's created by SCE&G's deductions related to accelerated depreciation reflected on the Company's 2017 tax return. A normalization violation would lead to draconian tax penalties for SCE&G and its customers.

below. In the end, the ratemaking structures used in the Optimal Benefits Plan could cause the Dominion Energy merger to fail and result in a financially unsustainable utility.

By contrast, Plan–B Levelized is structured to minimize the long-term tax and accounting impacts on the Joint Applicants' financial well-being, while the Optimal Benefits Plan is not. The rate making structure proposed by the Joint Applicants would not depress SCE&G's income as much as it would under the Optimal Benefits Plan, allowing its finances to recover more quickly. In contrast, the structure of the Optimal Benefits Plan would significantly weaken SCE&G's financial position.

For these reasons, the Commission finds the Optimal Benefits Plan not to be legally or factually justified and its adoption not to be in customers' best interest or the public interest.

COST OF CAPITAL

Legal Standards

While the facts of this case are unique, establishing the allowed return on equity is not and is moored in and supported by nearly a century of bedrock constitutional law. As discussed previously, in 1923 in *Bluefield*, the United States Supreme Court expressed the constitutional standards for determining an appropriate rate of return, and these standards still apply with equal force today:

> A public utility is entitled to such rates as will permit it to earn a return upon the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit, and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield, 262 U.S. at 692, as quoted in *Southern Bell*, 244 S.E. 2d at 281. Then, just over 20 years later in 1944, the Supreme Court revisited this issue and in *Hope*, the Court reiterated and reaffirmed these financial integrity and capital attraction principles holding:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.... By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope, 320 U.S. at 603.

In sum, these decisions recognize and hold that (1) a regulated public utility cannot remain financially sound unless the return it is allowed to earn on its invested capital is at least equal to the Cost of Capital (the principle relating to the demand for capital); and (2) a regulated public utility will not be able to attract capital if it does not offer investors an opportunity to earn a return on their investment equal to the return they could expect to earn on other investments of similar risk (the principle relating to the supply of capital).

This century of constitutional law, as well as statutory mandates, charge the Commission with the duty to determine the fair rate of return that SCE&G should be allowed to earn on capital devoted to public use. In fact, S.C. Code Ann. § 58-33-280(K) expressly provides, "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a

preponderance of the evidence that the decision to abandon construction of the plant was prudent."[16]

With these basic constitutional and statutory standards in mind, the Commission notes that South Carolina law requires "[t]he determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record." *Porter v. S.C. Public Service Commission*, 332 S.C. 93, 98, 504 S.E.2d 320, 323 (1998), citing S.C. Code Ann. § 58-5-240 (Supp. 2003); accord S.C. Code Ann. § 58-27-870(G) (Supp. 2003). Accordingly, the Commission now carefully evaluates the evidence submitted in this case as to what ROE SCE&G should be authorized to earn on those assets prudently invested in the NND Project.

History of SCE&G's Credit Worthiness

It is clear that ORS's request to immediately suspend the revised rates that SCE&G collects pursuant to the BLRA and the legislative mandate to implement the experimental rate established by Act 258 resulted in visible and measurable adverse impacts upon SCE&G's credit ratings and equity valuation. As a direct result of these regulatory and legislative actions and as shown in Tables 1 and 2 below, Fitch Ratings ("Fitch"), Standard & Poor's Corporation ("S&P"), and Moody's Investor Service ("Moody's") have significantly downgraded their published credit ratings of SCE&G and SCANA. Tr. at 1756-6:7-10.

[16] The Commission notes that no party challenges SCE&G's decision on July 31, 2017, to abandon further construction of the NND Project, but ORS and most other parties assert that the abandonment decision should have been made earlier.

Table 1: South Carolina Gas & Electric Credit Ratings & Outlook Status

Rating Agency	Jan. 2017	Nov. 1 2017	Feb. 5 2018	July 3 2018	Current Rating
Fitch	BBB (Neg. Watch)	BBB– (Neg. Watch) 09/29/17	BBB– (Evolving Watch) 01/03/18	BBB– (Evolving Watch) 07/03/18	BB+ (Evolving Watch) 08/08/18
S&P	BBB+ (Outlook Stable)	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 07/03/18	BBB– (Watch Neg.) 08/09/18
Moody's	Baa2 (Outlook Neg.)	Baa2 (On Review for Downgrade 11/01/17	Baa3 (On Review for Downgrade) 02/05/18	Baa3 Outlook Neg. 07/03/18	Baa3 Outlook Neg. 07/03/18

Table 2: SCANA Credit Ratings & Outlook Status

Rating Agency	Jan. 2017	Nov. 1 2017	Feb. 5 2018	July 3 2018	Current Rating
Fitch	BBB– (Neg. Watch)	BB+ (Neg. Watch) 09/29/17	BB+ (Evolving Watch) 01/03/18	BB+ (Evolving Watch) 07/03/18	BB (Evolving Watch) 08/08/18
S&P	BBB+ (Outlook Stable)	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 09/29/17	BBB (Watch Neg.) 07/03/18	BBB– (Watch Neg.) 08/09/18
Moody's	Baa3 (Outlook Neg.)	Baa3 (On Review for Downgrade 11/01/17	Ba1 (On Review for Downgrade) 02/05/18	Ba1 Outlook Neg. 07/03/18	Ba1 Outlook Neg. 07/03/18

In particular, in September 2017, Fitch explained its rating actions as follows:

Fitch is concerned with the sharp deterioration in the legislative and regulatory environment in South Carolina. There is a significant risk that SCE&G may have to cease collection of revenues related to the new nuclear units, as petitioned by the Office of the Regulatory Staff (ORS) to the SC Public Service Commission (PSC) until the legal issues regarding the BLRA are resolved. Fitch could consider additional negative rating actions if the BLRA were to be found unconstitutional and material refunds required. The Rating Watch Negative primarily reflects the risk that adverse regulatory orders could lead to restricted liquidity, constrained capital access and incremental debt issuance

> that alters the structural priority of debt levels. Fitch expects to resolve the Rating Watch [Negative] once better visibility is obtained regarding the PSC order on the ORS petition as well as the liquidity and financing strategy at both SCANA and SCE&G….[17]

Moody's expressed similar concerns in early November 2017, including the concern regarding a possible default by exceeding leverage covenants:

> Specifically, if the ORS recommendations were to be adopted, there would be a significant reduction in cash flow and a meaningful impact on credit metrics. For example, we estimate the companies' ratios of cash flow from operations excluding changes in working capital (CFO pre-WC) to debt, which are currently in the high-teens to twenty percent range, could move to the mid-to-low teens range. In addition, implementation of the ORS recommendation could lead to a substantial asset impairment, which in some downside scenarios, could result in a covenant violation under the companies' credit facilities, restricting their access to liquidity. In light of the increased regulatory and political uncertainty, the resulting metrics would likely no longer be appropriate for the companies' current ratings.[18]

Following the enactment of Act 258, Order No. 2018-459, and the implementation of the experimental rate, S&P announced on July 3, 2018, it would lower the issuer credit ratings for the group by one notch if SCE&G's request enjoining the implementation of the Experimental Rate were not granted, explaining:

> We are maintaining the CreditWatch [Negative] to reflect the potential for a downgrade if the Court does not issue an injunction prohibiting the SCPSC from implementing the new law. The rate reduction would significantly weaken the company's financial measures, despite its recent announced plan to reduce its dividend by about 80%."[19]

Fitch likewise addressed its credit ratings of SCANA and SCE&G on July 3, 2018, stating that it would maintain the ratings for SCE&G and SCANA and noting that its ratings were bolstered by the positive implications of the proposed merger:

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[17] Hearing Ex. 72 at 9.
[18] Hearing Ex.72 at 14.
[19] Hearing Ex. 72 at 20.

> Fitch's Rating Watch Evolving also considers the potential positive implications of the proposed merger between SCG and Dominion Energy (DEI, BBB+/Stable). … If the merger were consummated as originally envisioned, Fitch would expect a stabilization of SCG's and SCE&G's credit metrics and would consider an upgrade.[20]

Moody's announced a Rating Action on July 2, 2018 that also confirmed the ratings for SCE&G and for SCANA, but expressed concerns about the impairment of the companies' ongoing liquidity and access to funding, stating that it would lower the ratings in response to the following circumstances:

> Downward pressure on the ratings could again increase if SCE&G is ordered to refund amounts previously collected under the BLRA, particularly without the benefit of a larger, better capitalized partner; or if rates established by the SCPSC later this year do not provide an opportunity for SCE&G to maintain a ratio of CFO pre-WC to debt that is at least in the low-teens on a sustained basis. Furthermore, if the company's liquidity becomes constrained, such as being unable to draw on its credit lines or to issue additional debt, there could also be downward movement in the ratings. [21]

On August 6, 2018, the United States District Court for the District of South Carolina denied a Motion for Preliminary Injunction filed by SCE&G seeking to stay the effect of Act 258 and to enjoin the Commission from instituting or implementing Act 258, including the Experimental Rate mandate. *S.C. Elec. & Gas Co. v. Randall*, 333 F. Supp. 3d 552 (D.S.C. 2018). Following this adverse decision to SCE&G, Fitch downgraded the long-term credit ratings of SCE&G and SCANA on August 8, 2018, stating that "[i]f the PSC issues an order in December 2018 with a permanent cut of a similar magnitude, additional downgrades may be warranted."[22] The next day, on August 9, 2018, S&P also announced a credit downgrade of SCANA and SCE&G from BBB to BBB– commenting that:

[20] Hearing Ex. 72 at 25.
[21] Hearing Ex. 72 at 33.
[22] Hearing Ex. 73 at 70.

> We could lower ratings again if credit metrics weaken further beyond those in our base-case scenario, which assumes the temporary rate cut is made permanent. This could occur following the pending Summer abandonment proceeding if the PSC orders a permanent rate reduction or rate credits that lead to incrementally weaker financial measures than those resulting from the temporary 15% rate cut.[23]

As a result of these credit rating downgrades, SCE&G's current ratings are in the bottom 3% of the credit ratings of all U.S. rate-regulated, investor-owned electric and gas utilities. Tr. at 1753:22 – 1754:1. In fact, SCE&G is the lowest rated of 111 utilities rated by Moody's due to its negative credit outlook and credit watch negative status. Tr. at 1754:1-4; Hearing Ex. 39.

Operating an electric utility is a capital-intensive business that requires continuous access to both debt and equity capital markets. Regulated utilities, such as SCE&G, typically issue common stock and long-term debt as primary securities used to finance the acquisition of permanent property, plant, and equipment needed to serve their customers. In particular, SCE&G serves a growing service territory and typically invests approximately $500 million of new capital in its utility businesses in South Carolina each year to meet the needs of its new and existing customers. Tr. at 2014:7-15. These recent regulatory and legislative actions have had a profound impact on SCE&G's ability to secure adequate funding at a reasonable price. Notably, SCE&G's most recent long-term bond issuances required the Company to offer a risk premium that was 80% higher than utility companies without SCE&G's credit challenges. Tr. at 2015:13-19. As one example, Ms. Griffin reported that South Carolina Fuel Company, Inc. ("FuelCo"), a separate SCANA subsidiary was successful in placing only 7.6% of the

[23] Hearing Ex. 73 at 93.

commercial paper it sought to issue in April 2018 as shown in Table 3 below. Tr. at 2020-31–2020-32.

Table 3: COMMERCIAL PAPER SOLICITATION BY FUELCO

Date	Amount Solicited	Amount Placed	Percent Placed
4/2/2018	$ 150,000,000	$ 2,500,000	2%
4/3/2018	$ 150,000,000	$ -	0%
4/4/2018	$ 150,000,000	$ 11,000,000	7%
4/5/2018	$ 120,000,000	$ 2,000,000	2%
4/6/2018	$ 120,000,000	$ -	0%
4/9/2018	$ 120,000,000	$ 4,200,000	4%
4/10/2018	$ 120,000,000	$ 16,500,000	14%
4/11/2018	$ 120,000,000	$ 14,000,000	12%
4/12/2018	$ 120,000,000	$ 15,000,000	13%
4/13/2018	$ 120,000,000	$ 9,500,000	8%
4/16/2018	$ 120,000,000	$ 4,800,000	4%
4/17/2018	$ 120,000,000	$ 11,000,000	9%
4/18/2018	$ 120,000,000	$ 17,110,000	14%
4/19/2018	$ 120,000,000	$ 11,300,000	9%
4/20/2018	$ 120,000,000	$ 10,000,000	8%
4/23/2018	$ 120,000,000	$ 30,100,000	25%
4/24/2018	$ 120,000,000	$ -	0%
4/25/2018	$ 120,000,000	$ 8,500,000	7%
4/26/2018	$ 120,000,000	$ 27,000,000	23%
4/27/2018	$ 120,000,000	$ 3,000,000	3%
4/30/2018	$ 120,000,000	$ -	0%
Total	**$ 2,610,000,000**	**$ 197,510,000**	**7.6%**

From the body of evidence in the record, it is clear the Company is currently in a weakened and vulnerable financial position. In its current weakened financial condition, any additional stress, such as an economic down-turn, major storm event, loss of customers, or other need requiring immediate financing could cause SCE&G's debt to rise, which could result in a default of its financial covenants on its revolving credit facilities. Tr. at 1748:21 – 1749:3. A utility in such a weak financial condition will have difficulty fulfilling its obligation to meet the needs of electricity consumers. In short, the "public interest" in the "preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services," S.C. Code Ann. § 58-4-10(B)(2018), is in jeopardy unless SCE&G is allowed to collect rates to recover the capital costs of the Project with a return on equity sufficient to allow it to secure access to the financial markets at reasonable rates in the future.

Optimal Benefits Plan

As part of the Optimal Benefits Plan, ORS witness Richard Baudino recommends that the Commission authorize an ROE of 9.1% for those NND Project costs that ORS proposes to be allowed for rate recovery. Tr. at 816-4:21-22. He also endorses ORS's capital structure recommendation of 52.81% equity to total capital as of September 30, 2017. Tr. at 816-6:3-5. Finally, he recommends modifying the cost of SCE&G's long-term debt to incorporate the cost of debt issued by the Company in August 2018. Tr. at 816-6:6-8.

As previously recognized, the Optimal Benefits Plan, if approved, could prevent the proposed business combination between the Company and Dominion Energy. Specifically, Mr. Farrell testified on behalf of Dominion Energy that, if the Optimal Benefits Plan or anything close to it were adopted, Dominion Energy would not close on the proposed business

combination, and the plan would be devastating to SCE&G's future and to the interests of SCE&G's customers and the state of South Carolina in reliable electric service at reasonable rates. Tr. at 2997-3:17-20. Mr. Farrell also stated the Optimal Benefits Plan so severely restricts recovery of the NND Project investments that the necessary cash flows would not be available for SCE&G reasonably to service the debt incurred to finance construction and make continued investment in modernizing its electric system. In short, the public interest in having reliable electric service at reasonable rates would be harmed.

Ms. Griffin also testified about the harm to SCE&G posed by the Optimal Benefits Plan and quantified the financial results to be anticipated if the Optimal Benefits Plan were to be adopted. As of December 31, 2017, SCE&G's issued and outstanding long-term debt totaled approximately $4.929 billion and its total equity outstanding totaled approximately $5.533 billion, reflecting a capital structure of 47.11 percent long-term debt, a 5.86% cost of debt, and an equity ratio of 52.89%. Mr. Hevert reported in his testimony that, based on the Company's December 2017 financial statements, SCE&G's South Carolina retail jurisdictional earned return on equity was only 8.30%, well below the Company's authorized return on equity of 10.25%. Tr. at 1778-60:21 – 1778-61:3.[24] However, on a *pro forma* basis, Ms. Griffin testified that, had the Optimal Benefits Plan been in effect during an adjusted test period reflecting the 12 months ended December 31, 2017, SCE&G would have earned a return on equity of only 7.66%, which is 259 basis points lower than its allowed ROE of 10.25% as established in Order No. 2012-951, and $103 million in revenue less than authorized. Tr. at 2022-17:13-20. Ms. Griffin further noted that this 7.66% would be achieved only after

[24] This snapshot of the Company's earnings is prior to the reduction in rates of 14.8% mandated by Act 258 on June 28, 2018. This rate reduction would further erode the earned ROE.

SCE&G writes off approximately $2.5 billion in assets, resulting in an additional capital cost impairment of $1.4 billion above the $1.1 billion in impairments already recorded. Tr. at 2022-18:1-4. Thus, in addition to earning only a 7.66% ROE on remaining assets, SCE&G's investors will not earn any return at all on $2.5 billion in investment, and this investment will never be returned to them through depreciation or amortization under the Optimal Benefits Plan. Tr. at 2022-18:4-7.

Ms. Griffin further testified that this ROE assumes that the TCJA and merger savings proposed by ORS would be realized. Tr. at 2022-18:7-9. Ms. Griffin testified that, if SCE&G provides savings that it is not currently realizing, this 7.66% ROE would be further decreased, resulting in the need for additional annual retail electric revenues in order to raise SCE&G's ROE to the Commission approved 10.25%. Tr. at 2022-18:9-13. Mr. Hevert also stated that, under the Optimal Benefits Plan, the additional return required by equity investors will be in the range of 220 to 650 basis points, indicating a likely cost of equity in the range of 12.95% to 17.25%, with the Company's cost of equity lying toward the upper end of that range. Tr. at 1784-64:3-7. In addition, Mr. Hevert reported that, of the 1,395 vertically-integrated electric utility rate cases since 1980 provided by Regulatory Research Associates that disclosed the awarded ROE, only one authorized ROE has been as low as 9.00%. Tr. at 1778-27:4-7.

Ms. Lapson also testified that implementing the Optimal Benefits Plan will not strengthen or improve the credit standing of SCE&G, but in fact would result in additional credit downgrades. Tr. at 1762-9:9-13. For example, the S&P July 3, 2018 Research Update makes it quite clear that S&P's concern is focused on weakened credit metrics resulting from the reduced rates imposed by the Experimental Rate:

> We could lower the ratings if the Court does not issue an injunction prohibiting the SCPSC from implementing the new law [Act 258]. A rate decrease of the magnitude reflected in the law would weaken credit metrics significantly. We could also lower ratings even if the Court issues an injunction that is subsequently followed by a SCPSC order to reduce rates or an order to provide rate credits for Summer-related costs that results in weaker financial measures.[25]

In a subsequent Research Update on August 9, 2018 (in which S&P announced that it had downgraded SCANA and SCE&G and that the ratings remained on credit watch with negative implications), S&P again uses the word "uncertainty" but the text explicitly states that further reduction in revenues and cash flows could result in a further downgrade of the credit rating.

> The CreditWatch with negative implications on SCANA and its subsidiaries reflects our view of ongoing uncertainty regarding cost recovery of the abandoned V.C. Summer nuclear construction Project. We could lower ratings again if credit metrics weaken further beyond those in our base-case scenario, which assumes the temporary rate cut is made permanent. This could occur following the pending Summer abandonment proceeding if the PSC orders a permanent rate reduction or rate credits that lead to incrementally weaker financial measures than those resulting from the temporary 15% rate cut.[26]

Ms. Lapson also reviewed the different rating criteria and financial ratio guidelines of the three major credit rating agencies to determine a reasonable outline of the credit rating actions that would result from the imposition of the Optimal Benefits Plan. For S&P, Ms. Lapson testified that S&P likely would lower the SCE&G's issuer credit rating to BB+ or possibly BB, both of which are in the speculative or sub-investment grade. Tr. at 1762-22:11-13. Similarly, Ms. Lapson estimated that Moody's would be inclined to downgrade the issuer

[25] Hearing Exhibit 72 at 21.

[26] Hearing Exhibit 73 at 66.

rating to a speculative grade of Ba1, a rating decision that would be further supported if Moody's deems that the Commission's decision to impose such a severe rate reduction indicates an inequitable regulatory and political environment. Tr. at 1762-24:6-10. Fitch also would be likely to downgrade SCE&G to the speculative grade of BB+. Tr. at 1762-27:5-6.

The Commission also recognizes that SCE&G's current credit ratings and the outlooks of the credit rating agencies have had a significant and direct impact on SCE&G's ability to issue long-term debt. Based upon SCE&G's issued 10-year maturity bonds in August 2018, the Company incurred a yield spread that was 50 to 70 basis points higher than that for 10-year bonds issued by electric utilities whose credit was not similarly burdened. Tr. at 1762-36:1-4. If SCE&G experiences further downgrades by S&P or Moody's below investment grade into speculative grade ratings in the BB and Ba categories and if the Company is subjected to a revenue reduction of 20% as proposed in the Optimal Benefits Plan, Ms. Lapson testified that the differential spread for SCE&G long-term interest costs is likely to widen to an aggregate of 75 to 90 basis points or more. Tr. at 1762-36:4-10. Furthermore, SCE&G has already experienced constrained access to the commercial paper market to fund short-term needs and Ms. Lapson stated that access to this market could be completely eliminated if SCE&G's credit ratings were further reduced. Tr. at 1752-42:20 – 1752-43:1; 1762-14:20-22 – 1762-15:1. With credit ratings materially below the norm for the sector, such as those that would occur under the Optimal Benefits Plan, SCE&G's access to capital and sources of liquidity would also be seriously constrained during any future period of capital market or credit market distress. Tr. at 1762-15:12-16.

Implementing the ORS-recommended reductions in SCE&G's ongoing operating cash flow without giving adequate consideration to the resulting adverse impacts on the Company's

financial condition and ability to serve customers' future needs would not satisfy the requirements of *Hope*, *Bluefield*, and *Southern Bell*. While customers have an interest in lower rates, customers nevertheless depend upon and expect their electric utility to maintain and provide reliable and safe service today and tomorrow. A financially weak electric utility with diminished access to capital markets at reasonable rates cannot assure customers that the reliable, modern, and high quality service, which SCE&G's customers have enjoyed and come to expect, can continue to be provided without rates sufficient to calm investor perception that investing in SCE&G comes with heightened risk. The Optimal Benefits Plan will not calm those fears, but will exacerbate them. The Optimal Benefits Plan likely drives SCE&G's issuer credit into the sub-investment, or speculative, grade and puts the Company at substantial risk of losing access to future capital. In short, SCE&G delivers vital services to its customers and putting it in a financially distressed condition will not serve the future needs of customers and is not in the public interest.

Based on this evidence, the Commission concludes that the Optimal Benefits Plan fails to meet the Comparable Risk, Capital Attraction, and Financial Integrity standards established by *Hope* and *Bluefield.* The *pro forma* return that would result under the Optimal Benefits Plan would be neither just nor reasonable and is likely to be confiscatory. Thus, the Commission finds that the Optimal Benefits Plan must be rejected as constitutionally unsound and could result in an unconstitutional taking.

Plan-B Levelized and the Business Combination

Under Plan–B Levelized, NND capital costs would be recovered at a 9.9% ROE, a 5.56% cost of debt, and a capital structure comprised of 52.81% equity and 47.19% debt. Tr. at 4217-4. These changes produce a significant bill reduction of approximately 15% relative

to May 2017 bill levels and would result in bills less than the typical residential bill under the Experimental Rates currently in effect, inclusive of NND amortization and the impacts of the TCJA. Tr. at 4217-5.

Importantly, if the Customer Benefits Plan or a similar plan such as Plan-B Levelized is approved, Ms. Lapson testified that the financial outcome would be consistent with credit ratings within the investment grade category and would stabilize SCE&G's financial condition and better position the company to serve its customers' future needs. Tr. at 1752-32:10 – 1753-33:11. Specifically, Ms. Lapson stated that such an outcome would result in the restoration or retention of low investment grade ratings by all three agencies thus providing SCE&G with strong access to debt funding. Tr. at 1752-33:1-3. By comparison, and as mentioned above, a plan equivalent to the Optimal Benefits Plan would lead to sub-investment grade ratings. Tr. at 1762-28:7-12. Thus, in Ms. Lapson's expert opinion, and based upon her over 40-year career in credit markets for the utility sector, the credit rating impacts each plan would have are shown in Table 4 below.

Table 4: Predicted Credit Rating Impacts

	Current Issuer Credit Rating	Current Outlook	Outcome Equivalent to Optimal Benefits Plan	Approval of Business Combination
Fitch	BB+	Evolving	BB	BBB-
Moody's	Baa3	Negative	Ba1	Baa3
S&P	BBB-	CreditWatch, Negative	BB+ or BB	BBB

Tr. at 1762-28:13-15.

In addition, the business combination between SCANA and Dominion Energy will have a number of other tangible benefits. Specifically, SCE&G's customers will benefit from Dominion Energy's size and strength as the new ultimate parent of SCE&G. Dominion Energy is a large and financially stable company with relevant experience as the owner of sound utilities and infrastructure. Tr. at 1752-32:15-19. As shown in Table 5 below, the substantially greater size and scale of Dominion Energy is evident from Dominion Energy's greater equity valuation of $46.8 billion, which is over eight times SCANA's equity capitalization. The total enterprise value of Dominion Energy is approximately 6.6 times greater than that of SCANA. Also, Dominion Energy has lower debt leverage in relation to the total enterprise value of the corporations, with debt equal to 45% of total market capitalization versus 56% for SCANA.

Table 5: Dominion and SCANA: Market Capitalization

	Dominion Energy	SCANA	Relative Scale
Price per Share (a)	$71.71	$39.99	
Shares Outstanding (b)	654,000,000	143,000,000	
Market Capitalization			
Equity (a)	$46,898,340,000	$ 5,718,570,000	8.2x
Total Debt (Book Value) (b)	$37,810,000,000	$7,183,000,000	
Total Enterprise Value (a)	$84,708,340,000	$12,901,570,000	6.6x
Debt to Total Enterprise Value	45%	56%	

(a) At July 31, 2018. (b) June 30, 2018.

See Tr. at 1752-34:4-10.

Due to its greater scale and diversification, Dominion Energy has excellent access to the equity capital market, meaning that SCE&G would regain a source of equity capital. Tr. at 1752-32:20-22. This improved access to both debt and equity funding and stable investment grade credit ratings would provide SCE&G with strong financial capability to fund expansion

of its electric systems as needed to meet customer demands and to restore service after natural catastrophes. Tr. at 1752-33:4-8. Finally, SCE&G's customers would receive the benefit of having a more financially stable utility with greater access to capital markets at reasonable rates than exist currently. Tr. at 1752-33:9-11.

A further source of Dominion Energy's strength is the diversity of Dominion Energy's business portfolio, as indicated in the distribution of segment profit contributions shown in Table 6 below.

Table 6: Diversity of Dominion Energy Business Segments

Dominion Energy Business Segment Financial Results, 2016-2017

$ Millions	2016 EBITDA	% of Total	2016 EBIT	% of Total	2017 EBITDA	% of Total	2017 EBIT	% of Total
Power Delivery	1,573	27%	1,036	24%	1,723	26%	1,130	24%
Power Generation	2,673	46%	2,011	47%	2,670	41%	1,923	41%
Gas Infrastructure	1,569	27%	1,239	29%	2,111	32%	1,589	34%
Segment EBITDA	5,815	100%			6,504	100%		
Segment EBIT			4,286	100%			4,642	100%
Corp Eliminations			(409)				(347)	
Total EBIT			3,877				4,295	
Consolidated Interest			(1,010)				(1,205)	
Consolidated Income Tax			(655)				30	
Minority Interests			(89)				(121)	
Total Income			2,123				2,999	

EBITDA: Earnings before interest, income taxes, and depreciation.
EBIT: Earnings before interest and income taxes; i.e., EBITDA plus depreciation.
Source: Dominion Energy Investor Materials

See Tr. at 1752-34:11 – 1752-35:4.

In stark contrast to the Optimal Benefits Plan, approval of the proposed business combination, along with the Plan–B Levelized, allows SCE&G to recover the capital costs

associated with the NND Project over a period of 20-years based upon a reduced ROE of 9.9% and a reduced cost of debt of 5.56%. Further, the approval of the business combination between SCANA and Dominion Energy provides a number of additional benefits including the elimination of any constitutional or other appellate challenges by SCE&G and Dominion Energy. This plan also ensures that debt and equity capital will be available to the Company on reasonable terms and ends the erosion of financial stability currently facing SCE&G.

The Commission also is mindful of the requirement that "[u]nder the … standard of 'just and reasonable' it is the result reached not the method employed that is controlling" and "the fixing of 'just and reasonable' rates, involves the balancing of the investor and the consumer interests." *Southern Bell*, 270 S.C. at 596, 244 S.E.2d at 281 (*quoting Hope*, 320 U.S. at 602-603). With this balancing of interest in mind, the Commission finds that approval of the proposed business combination together with the Plan–B Levelized strikes the appropriate balance between reasonably minimizing bills for customers, retaining the merger economics for Dominion Energy, and preserving the financial health of SCE&G.

Appropriate Return on Equity

One of the principal issues to be decided in any ratemaking determination is the proper return to be allowed on the common equity invested in the regulated utility. While the cost of debt and preferred stock can be directly observed, the cost of equity is market-based and, therefore, must be estimated based on observable market information and by applying recognized financial models to market-based data. By their nature, those models produce a range of results, from which the market-required ROE must be determined. The key consideration in determining the ROE is to ensure the overall analysis reasonably reflects

investors' view of the financial markets in general, and the subject company (in the context of the proxy companies) in particular.

Pursuant to S.C. Code Ann. § 58-33-280(K), the Company is authorized to recover and earn a return[27] on the capital costs of the abandoned Project so long as the abandonment decision is prudent. In this proceeding, several witnesses presented detailed explanations of a number of methodological approaches to the determination of the cost of equity for the Company and offered testimony relating to a fair and reasonable ROE to be applied to the NND capital costs under various proposals.

In support of the Joint Applicants' proposals, Dr. Hubbard testified that, in determining an appropriate rate of return on common equity capital for a regulated public utility, the interests of both the customer and the Company need to be considered. Tr. at 3472-20:5-7. He stated that the interests of the Company and customers are aligned in important ways, noting that the long-term viability of the Company is in the best interest of both the Company's customers and investors, with the customers having access to stable and reliable services while investors will receive a market-based return on the capital they invested. Tr. at 3472-20:7-11.

Dr. Hubbard further noted that, from an economic perspective, *Bluefield* and *Hope* established principles for balancing the interest of investors and customers in setting an

[27] In its original Order regarding this Project, the Commission approved a return on equity ("ROE") of 11.0% related to the base load plant construction, finding that it would "provide sufficient cash flow to support financing of the Units, and will meet investors' reasonable expectations of a return given the risks involved in base load construction." Order No. 2009-104(A), dated March 2, 2009, Docket No. 2008-196-E. As part of the Settlement Agreement approved by the Commission in Order No. 2015-661, dated September 10, 2015, Docket No. 2015-103-E, the Company agreed to reduce the approved ROE used in calculating revised rates requests using a 10.5% ROE rather than the 11.0% ROE authorized in Order No. 2009-104(A). As part of the settlement reached in Docket No. 2016-223-E, the Company agreed to further reduce the ROE to 10.25% used for revised rates filings made on or after January 1, 2017. *See* Order No. 2016-794, dated November 28, 2016, at 12.

appropriate rate of return. Tr. at 3472-22:19-22. A primary principle derived from these decisions is that a utility and its investors should be allowed to earn a rate of return that is commensurate with returns on investments in other firms that have comparable risks. Tr. at 3472-22:22-25. If the rate of return is set at the opportunity cost of capital, it will ensure that the firm is able to attract capital at reasonable rates in order to make needed investments, as well as maintain its creditworthiness and financial integrity. Tr. at 3472-22:26 – 3472-23:3.

Dr. Hubbard testified that, in order to "maintain and attract capital," the expected returns available to investors must provide adequate compensation for the risks borne relative to other investment options. Tr. at 3472-25:1-3. In the case of public utilities, they must face the standard financial and business risks faced by all companies, but they and their investors should not have to bear the risk of the legal framework being changed retroactively by political action after a Project has been commenced. Tr. at 3472-25:3-6. Dr. Hubbard further stated that higher levels of regulatory or political risk assigned by investors to the securities of a utility also will increase investors' required return on equity. Tr. at 3472-33:15-16.

Mr. Hevert estimated SCE&G's cost of equity by conducting several analyses. First, Mr. Hevert applied the Constant Growth Discounted Cash Flow ("DCF") model to a proxy group of 22 integrated electric utility companies to calculate the proxy group median, mean low, and mean high DCF results. Tr. at 1778-15:12 – 1778-16:1. However, Mr. Hevert determined that the model's mean and mean low results are well below a reasonable estimate of the Company's cost of equity and, therefore, are not reliable measures of electric utilities' cost of equity. Tr. at 1778-27:3-8. To address these considerations, Mr. Hevert also considered the Multi-Stage DCF Model, which, among other things, provides the ability to specify near, intermediate, and long-term growth rates, avoiding the sometimes-limiting assumption that the

subject company will grow at the same, constant rate in perpetuity. Tr. at 1778-27:18 – 1778-29:14. Additionally, Mr. Hevert conducted a traditional and empirical Capital Asset Pricing Model ("CAPM") analysis, which is a risk premium approach that estimates the cost of equity for a given security as a function of a risk-free return plus a risk premium. Tr. at 1778-33:10-12. Finally, he estimated SCE&G's ROE using a Bond Yield Plus Risk Premium approach that estimates the cost of equity as the sum of the equity risk premium and the yield on a particular class of bonds. Tr. at 1778-40:13-14. The results of Mr. Hevert's analyses are shown in Tables 7 and 8 below.

Table 7: Summary of DCF Results

Discounted Cash Flow	***Mean Low***	***Mean***	***Mean High***
Constant Growth DCF			
30-Day Constant Growth DCF	8.45%	9.24%	10.12%
90-Day Constant Growth DCF	8.49%	9.29%	10.16%
180-Day Constant Growth DCF	8.37%	9.16%	10.03%
Multi-Stage DCF (Gordon Method)			
30-Day Multi-Stage DCF	9.05%	9.23%	9.45%
90-Day Multi-Stage DCF	9.09%	9.28%	9.50%
180-Day Multi-Stage DCF	8.96%	9.14%	9.36%
Multi-Stage DCF (Terminal P/E)			
30-Day Multi-Stage DCF	9.40%	9.89%	10.42%
90-Day Multi-Stage DCF	9.53%	10.02%	10.55%
180-Day Multi-Stage DCF	9.19%	9.67%	10.21%

Table 8: Summary of Risk Premium Results

Risk Premium			
CAPM Results		***Bloomberg Derived Market Risk Premium***	***Value Line Derived Market Risk Premium***
Average Bloomberg Beta Coefficient			
Current 30-Year Treasury (3.11%)		10.13%	10.34%
Near Term Projected 30-Year Treasury (3.48%)		10.50%	10.71%
Average Value Line Beta Coefficient			
Current 30-Year Treasury (3.11%)		11.66%	11.91%
Near Term Projected 30-Year Treasury (3.48%)		12.03%	12.28%
ECAPM Results		***Bloomberg Derived Market Risk Premium***	***Value Line Derived Market Risk Premium***
Average Bloomberg Beta Coefficient			
Current 30-Year Treasury (3.11%)		11.53%	11.78%
Near Term Projected 30-Year Treasury (3.48%)		11.90%	12.15%
Average Value Line Beta Coefficient			
Current 30-Year Treasury (3.11%)		12.68%	12.95%
Near Term Projected 30-Year Treasury (3.48%)		13.05%	13.33%
	Low	***Mid***	***High***
Bond Yield Risk Premium	9.96%	10.03%	10.28%

Mr. Hevert also testified that it is important to assess the reasonableness of any financial model's results in the context of observable market data because the models are meant to reflect, and are influenced by, current and expected capital market conditions. Tr. at 1778-44:5-8. Based on his analyses of the current capital market environment, Mr. Hevert

determined that there is no reason to conclude that investors see utilities as less risky relative to either historical levels or to their corporate counterparts. Tr. at 1778-52:15-19. In addition, because not all models used to estimate the cost of equity adequately reflect changing market dynamics, Mr. Hevert stated that it is important to give appropriate weight to the methods and to their results and testified that somewhat more weight should be afforded the Risk Premium based methods. Tr. at 1778-53:6-8. He further testified that the TCJA has increased cash flow-related risks for utilities, which supports looking to the upper end of the range of results when setting the Company's ROE. Tr. at 1778-58:21-26.

Mr. Hevert testified that, since 2012, the annual median earned Return on Average Common Equity among the operating companies within his proxy group was in the range of 9.17% to 9.79%; the median return over the entire period was 9.54%. Tr. at 1778-61:7-10. SCE&G's December 2017 earned ROE, assuming a capital structure comprised of 52.89% equity, 47.11% debt, and a 5.86% cost of debt, was 8.30%. This earned ROE falls below the median earned return by 124 basis points and falls within the bottom 27th percentile of earned returns since 2012. Tr. at 1778-61:10-12.

Mr. Hevert also testified that any operating utility's credit rating and outlook depend substantially on whether or not rating agencies view the regulatory environment as credit supportive. Tr. at 1778-69:4-6. For example, he testified that Moody's finds the regulatory environment to be so important that 50% of the factors that weigh in its ratings determination are determined by the nature of regulation. Tr. at 1778-69:6-8. Given the capital-intensive nature of utility operations, the corresponding need to access external capital, and the weight rating agencies place on the nature of the regulatory environment, it is important to consider the extent to which the jurisdictions that recently have authorized ROEs for electric utilities

are viewed as having constructive regulatory environments. Tr. at 1778-69:8-12. Authorized ROEs for vertically integrated electric utilities in jurisdictions that RRA, a widely referenced source of rate case data, rates as Average/2 range from 9.10% to 10.10%; among those ranked Average/1 and higher (that is South Carolina's ranking until October 2017) it ranged from 9.5% to 10.55%. Tr. at 1778-70:12-15.

Based on the full range of DCF and Risk Premium-based estimates and considering other model results and data available to investors, the recent performance of electric utility stocks relative to the broad market, the recent actions by Moody's, and the potential effect of the TCJA, Mr. Hevert opined that the Company's Cost of Equity falls in the range of 10.25% to 11.00%, with 10.75% as a reasonable estimate of SCE&G's ROE if the merger is approved. Tr. at 1778-60:4-8.

In contrast, Mr. Baudino recommended that an ROE of 9.1% be applied to the allowed NND costs to be collected through a new Capital Cost Recovery Rider. In arriving at his recommended ROE, Mr. Baudino applied the DCF model to the same proxy group used by Mr. Hevert and also performed CAPM analyses using projected and historical data. As Mr. Hevert pointed out, however, Mr. Baudino did not directly incorporate the results of his CAPM analysis and therefore his recommended ROE is based solely upon a single analytical method, which is inconsistent with decisions reached by regulatory commissions over the past several years and departs from the normal practice of estimating the Cost of Equity for utilities. Furthermore, while Mr. Baudino criticized various components of the standard methodologies employed by Mr. Hevert, he offered no analysis of these same methodologies.

In short, the Commission finds 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. The Commission further finds that it is appropriate and reasonable to consider a range of estimates under various methodologies in order to more accurately estimate SCE&G's cost of equity. Accordingly, the Commission rejects Mr. Baudino's analysis as flawed and incomplete,concludes that the Company's current cost of equity most likely ranges between 10.25% and 11% as determined by Mr. Hevert, and that the most likely point estimate of the cost of equity is 10.75%, assuming the merger is approved.

Notwithstanding this finding, the Commission recognizes that, as part of Plan–B Levelized, the Joint Applicants propose a 9.9% ROE to be applied to the capital costs associated with the unrecovered balance in the Project regulatory asset account. Although a 9.9% ROE is below the recommended range of Mr. Hevert and below the Company's actual cost of equity, the Joint Applicants' have agreed to reduce the ROE in furtherance of resolving the issues presented in this case. The Commission observes that this reduced ROE is only achievable because of the infusion of capital to be provided by Dominion Energy's balance sheet if the proposed business combination is approved. Without the merger, SCE&G standing alone would require a premium to the market-based ROE estimated by Mr. Hevert in order to attract equity capital in the future. Thus, the merger provides the immediate and additional benefit of lowering SCE&G's cost of equity to market-based levels.

The Commission therefore finds that, in conjunction with the business combination with Dominion Energy and under the unique circumstances of this case, the 9.9% ROE proposed by the Joint Applicants as part of Plan–B Levelized represents a reasonable level of earnings on the allowed NND investment and meets the requirements of *Bluefield*, *Hope*, and *Southern Bell*. Such a return on equity for the purposes of recovering the allowed capital costs of the Project over a 20-year period also is reasonable and appropriate, is in the public interest,

and will support the interest of all parties by allowing SCE&G continued access to capital at reasonable rates as a subsidiary of Dominion Energy. In sum, the Commission finds that the 9.9% ROE offered as part of Plan-B Levelized strikes a reasonable balance between the interests of customers and SCE&G when considered in light of the proposed merger with Dominion Energy.

Cost of Debt, Preferred Stock, and Capital Structure

Unlike the cost of equity, the cost of debt and preferred stock is contractual in nature and more easily ascertainable in that they can be directly observed. Specifically, debt holders are promised a series of specified interest payments and have a contractual right to receive the bond's par value upon maturity. Moreover, in order to provide the Company with an opportunity to earn a fair and reasonable return on its investment, the Commission must determine what capital structure is appropriate for ratemaking purposes.

As discussed previously, the Joint Applicants proposed that, as part of the Customer Benefits Plan, the Joint Merger Plan, and the Base Plan, the unrecovered balance in the NND regulatory asset account should be subject to SCE&G's cost of capital devoted to retail electric operations based on a weighted average cost of debt of 5.85%, and a capital structure consisting of 52.81% equity and 47.19% debt. As part of this capital structure, SCE&G effectively proposed an embedded cost of preferred stock of 0.00%. These proposals reflect the Company's capital structure as of September 30, 2017, and do not reflect the actual impairments written off in September 2017. Thus, on a *pro forma* basis, the common equity is restored to pre-impairment levels, resulting in a ratio of debt to equity that reflects a more normalized capital structure for ratemaking purposes.

Through the testimony of Mr. Baudino, ORS agreed with the Joint Applicants' proposed capital structure. However, he disagreed with the proposed cost of debt. Specifically, Mr. Baudino testified that, on August 16, 2018, SCE&G issued two new debt issuances and recommended that these issuances be included in the Company's cost of long-term debt for purposes of calculating the return on the allowed NND costs.

The Commission notes that, through the Plan B-L, the Joint Applicants have agreed to adjust the proposed cost of long-term debt to include the two new debt issuances and that, as a result, the Company's cost of debt for purposes of calculating the overall return on the allowed NND costs is 5.56%. Based upon the evidence of record, the Commission therefore finds that a weighted average cost of debt of 5.56% and a capital structure consisting of 52.81% equity and 47.19% debt is reasonable and appropriate. Accordingly, the Commission adopts this cost of debt and capital structure for use in this proceeding.

Conclusion

Based upon the above findings, Table 9 reflects for Plan B-Levelized the overall returns authorized to be earned by SCE&G on the allowed capital costs invested in the now abandoned Project, using, as determined above, the Company's capital structure, cost of debt, and cost of common equity as the components in calculating the overall rate of return:

Table 9: Summary of Overall Rate of Return (Plan–B-L)

Type of Capital	Ratios	Embedded Cost Rate	Overall Cost/Rate
Long-Term Debt	47.19%	5.56%	2.62%
Preferred Stock	0.00%	0.00%	0.00%
Common Equity	52.81%	9.90%	5.23%
Total	100.00%		7.85%

MISCELLANEOUS FINANCIAL CONSIDERATIONS

Securitization

This Commission finds that securitization of the NND investments is not an available remedy in this case. There is no enabling legislation giving this Commission the authority to approve or order securitization of any NND costs approved for recovery in this docket. 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.

MERGER APPROVAL

Summary of Approval

As stated, based on the evidence in the record, the Commission finds that a merger between SCE&G and Dominion Energy is the best solution to the NND cost recovery issues currently facing SCE&G's customers. This proposed combination offers the most reasonable alternative to move past the costly and acrimonious history of the NND Project, meaningfully benefit SCE&G ratepayers, and ensure a stable energy future for South Carolina. The testimony and evidence of the November 2018 evidentiary hearing before this Commission has reinforced and underscored the importance of proceeding in a manner that will facilitate closing of the proposed Merger.

In light of the pre-filed testimony and the evidence presented at the hearing in this matter, the Commission finds that adoption of Dominion Energy's Plan–B Levelized is in the public interest and hereby approves it as stated in the testimony and exhibits of Dominion Energy's witnesses. Further, the Commission notes the unique circumstances of this Merger, necessitating that a prescribed set of financial assumptions and conditions must be approved by the Commission to enable Dominion Energy to close the Merger. For Plan–B Levelized,

the financial assumptions and conditions supported by the evidence in the record are summarized in Hearing Exhibit 169 at pages 22-28, which contains the Joint Applicants' Proposed Merger Conditions, and they are incorporated by reference and adopted, with additions as set out below. Those terms for Plan–B Levelized include: 1) NND rate base of $2.768 billion, offset by the NOLC amount of $1.5 billion that results in a NOLC-related DTA of $574 million, 2) an NND amortization and recovery period of 20 years, 3) a capitalization of 52.81% equity and 47.19 debt, 4) a Return of Equity of 9.9%, 5) a debt cost of 5.56%, 6) an up-front cash refund of $0, 7) $2.039 billion of refunds to customers from prior years' revenues comprised of $1.032 billion to be credited to customer bills by fixed schedule over 20 years and $1.007 billion credited to customer bills over approximately 11 years. These terms provide both the merger economics necessary to finance the merger and associated benefits while reducing customer bills 15% from the May 2017 level of $147.53 per month to $125.26 per month for the typical residential customer. The Commission believes that, taken as a whole, this set of conditions is in the public interest and results in rates that are just and reasonable and is hereby approved.

Qualifications of Dominion Energy, Inc.

Dominion Energy, Inc. is well equipped to acquire SCE&G and provide efficient and effective operations in its service territory. Dominion Energy is one of the largest and most experienced energy companies in the United States and has provided utility services for more than a century. Farrell Direct at 10:5-6; Tr. at 3001:21-23. The Dominion Energy footprint and customer base is large. The Company serves nearly six million utility and retail energy customers and employs approximately 16,200 full-time employees in six states. Farrell Direct at 10:11-15; Tr. at 3002:3-6. Dominion Energy's extensive energy infrastructure provides

further evidence of its ability to meet the needs of SCE&G customers and the state of South Carolina. With approximately 26,000 megawatts of electric generating capacity and 66,000 miles of natural gas transmission, gathering, distribution, and storage pipelines, Dominion Energy is an experienced industry participant. Farrell Direct at 10:6-10; Tr. at 3001:23-3002:2.

On top of the experience and resources Dominion Energy provides, the Company will bring considerable financial stability to SCE&G. That economic certainty carries a wealth of benefits for the utility and its customers. Dominion Energy owns assets totaling over $79 billion, and the Company maintains a revolving credit capacity of $6 billion. Tr. at 2798:25-2799:3. SCE&G's credit ratings are currently below investment grade, which will dramatically increase its cost of capital if SCE&G must go to market on its own. Tr. at 823:18-825:2. Conversely, Dominion Energy has strong credit ratings with all of the major credit-rating agencies, and Dominion Energy has represented that SCE&G would be incorporated into the Dominion Energy family of companies in a way that ensures access to its credit facilities and remedies its current liquidity challenges. Dominion Energy is publicly-traded on the New York Stock Exchange with an equity market capitalization of over $46 billion, and is a member of prominent general and industry-specific equity market indices. Chapman Direct at 5:13-18. The Commission believes that investors look favorably on Dominion Energy's operational model, which produces stable earnings and cash flows as a result of being heavily weighted towards state and federally regulated energy infrastructure.

The evidence in this matter suggests that Dominion Energy will operate SCE&G in accordance with its core values, which Dominion Energy Chairman and CEO Thomas Farrell addressed at length in his pre-filed and live testimony before the Commission. Farrell Direct

at 11:18-12:21; Tr. at 3043:10-3044:15. The Commission expects that these values – safety, excellence, ethics, teamwork, and embracing change – will shape the way Dominion Energy operates SCE&G, how it manages the transition, and how it operates for the benefit of SCE&G's customers in the years to come.

Dominion Energy has been recognized as one of *Fortune's* "Most Admired" electric and gas utilities and its inclusion on *Forbes'* "Just 100" list is a testament to Dominion Energy's commitment to operational excellence, treating customers well, minimizing environmental impact, supporting the communities it serves, and valuing its employees. Farrell Direct at 13:7-11. As Mr. Farrell testified to the Commission, the Company has always prioritized community engagement and the Commission looks forward to it continuing that commitment in South Carolina. By granting its employees time to give back to their community, through grants from its Dominion Energy Charitable Foundation, and through its own commitment to hiring veterans, the Commission expects to see Dominion Energy be a strong and generous corporate citizen in South Carolina. Farrell Direct at 13:11-17; Tr. at 3215:11-12; 3216:22-3217:11.

Of all of the witnesses who testified before the Commission in this matter, none challenged Dominion Energy's qualifications to successfully operate SCE&G and provide cost-effective, quality service to its customers. Witness Kollen conceded that the Dominion merger will lead to lower rates and better service for SCE&G's customers. Kollen Direct at 62:13; Tr. at 1131:2-9. The parties have offered different approaches for how SCE&G might move forward, but Dominion Energy's ability to provide reliable, cost-effective electric service to the customers of South Carolina has never been questioned.

Merger Conditions

In addition to approval of the Dominion Energy combination and Customer Benefits Plan–B Levelized, the Commission must determine what merger-related conditions or commitments it shall impose in connection with this transaction. In response to a request from ORS, Dominion Energy compiled a comprehensive list of merger conditions it agrees to and under which it can close the merger. Some of these voluntary commitments were contained in the Joint Application and associated pre-filed direct testimony, and others are the result of exchanges during the evidentiary hearing with the Commission and parties.

There is substantial overlap between many of ORS's proposed merger conditions and those of the Joint Applicants. ORS and the Joint Applicants agree, for example, that Dominion Energy will freeze retail electric base rates until January 1, 2021. They also agree that the Joint Applicants will not seek acquisition, transaction, or transition costs associated with this merger from customers. The proposed merger conditions presented by both ORS and the Joint Applicants exclude from recovery the acquisition costs associated with the Columbia Energy Center, which amounts to roughly $180 million. Although there is disagreement regarding some aspects of affiliate transactions, the parties agree on many of the fundamental tenets. With respect to business operations, ORS and the Joint Applicants also find areas of agreement, including keeping SCE&G's headquarters in Cayce, South Carolina, maintaining compensation levels for employees through at least January 1, 2020 (and for non-executive employees through July 1, 2020), and general agreement regarding various types of quality metric reporting.

While the ORS and the Joint Applicants' proposed Merger Conditions agreed in many respects, the Commission has carefully weighed the places where they differ, and has in a

number of cases adopted the ORS's position. We find that the list of merger conditions discussed below presents a reasonable and appropriately comprehensive compilation of commitments. Modifications required by this Commission are all designed to more explicitly set out appropriate protections for ratepayers. Order Exhibit 1, attached to this order, sets out the Merger Conditions approved by this Commission.

Merger Conditions for Adoption

A. *Future Base Rate Cases*

Except for rate adjustments for fuel and environmental costs, demand side management costs, and other rates routinely adjusted on an annual or biannual basis, SCE&G will freeze retail electric base rates at current levels until January 1, 2021, with its first post-merger rate case to be filed in 2020.

B. *NND Cost Recovery Exclusions*

SCE&G will exclude from rate base and cost of service those costs that are associated with funds in the "Rabbi Trust" for senior management payments; senior management bonus payments charged to the NND Project; costs associated with the Bechtel report; and consulting payments made to former SCANA CEO William Timmerman. SCE&G will also exclude from rate base and cost of service all litigation expenses associated with the NND Project. These expenses include the NND and abandonment costs and all related claims, state court lawsuits related to the BLRA and the collection of revised rates, administrative and law enforcement investigations and proceedings related in any way to the Project that includes all of the Consolidated Dockets (Docket Nos. 2017-370-E, 2017-207-E, and 2017-305-E), and the federal court actions filed by or against SCANA/SCE&G or any of its officers or directors, as well as any appeals. These costs shall be incurred and expensed at the respective Dominion

Energy and SCANA corporate (Holding Company) level, except to the extent such expenses are required to be recorded on the books of SCE&G under Generally Accepted Accounting Principles, in which case any such expenses be reflected on SCE&G's books below-the-line in the appropriate FERC account to ensure the amounts are excluded from rate recovery. SCE&G shall not seek recovery of these legal or consulting expenses, that either have been or may incurred in the future, from ratepayers.

C. *Merger Acquisition Premium, Goodwill, Transaction, and Transition Costs*

ORS and the Joint Applicants are in agreement regarding this Merger Condition. SCE&G will not seek recovery of any acquisition premium costs, transition costs, or transaction costs associated with the combination. Dominion Energy will not record any portion of the purchase price allocation adjustments associated with the merger on SCANA or SCE&G's books. These costs will be recorded at the respective Dominion Energy, Inc. and SCANA holding company level and will not be pushed down or charged to SCE&G or any other SCANA or Dominion Energy, Inc. subsidiary company. When Generally Accepted Accounting Principles require such costs to be recorded on SCE&G books, they will be reflected below-the-line to ensure they are excluded from rate recovery.

D. *Cost of New Generating Capacity*

ORS and the Joint Applicants are in agreement regarding this Merger Condition. The approximately $180 million initial capital investment in the Columbia Energy Center, a 540-MW combined-cycle natural gas-fired power plant located in Gaston, South Carolina, will be excluded from rate base and rate recovery. Only fuel costs, operations and maintenance expense, and maintenance or improvement capital investments will be recovered in future base and fuel rates, with Commission approval.

E. *Affiliate Transactions*

SCE&G shall make a filing with the Commission to seek approval for any proposed structural reorganization and shall not implement such reorganization until the Commission issues an Order approving, rejecting, or modifying the planned reorganization.

Dominion Energy, Inc., SCE&G, and its affiliates shall abide by the following standards regarding affiliate transactions as depicted in the NARUC's Guidelines for Cost Allocations and Affiliate Transactions unless as otherwise directed by the Commission:

1. Generally, the price for services, products and the use of assets provided by a regulated entity to its non-regulated affiliates should be at the higher of fully allocated costs or prevailing market prices. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.

2. Generally, the price for services, products and the use of assets provided by a non-regulated affiliate to a regulated affiliate should be at the lower of fully allocated cost or prevailing market prices. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms as determined by the regulator.

3. Generally, transfer of a capital asset from the utility to its non-regulated affiliate should be at the greater of prevailing market price or net book value, except as otherwise required by law or regulation. Generally, transfer of assets from an affiliate to the utility should be at the lower of prevailing market price or net book value, except as otherwise required by law or regulation. To determine prevailing market value, an appraisal should be required at certain value thresholds as determined by regulators.

4. Entities should maintain all information underlying affiliate transactions with the affiliated utility for a minimum of three years, or as required by law or regulation. SCE&G shall not

engage in improper self-dealing with other Dominion affiliates where there are competitive alternatives, such as the sourcing of natural gas supplies and transportation and storage services; in such circumstances, SCE&G shall competitively source its services or products using a "reasonable and prudent" standard, recognizing that purchases that have the "least cost" are not always the most reasonable and prudent for the company or its customers because it must take into account total delivered cost, reliability, availability, and diversity of supply. However, the Commission's expectation is that, absent such a showing, the Company will seek out the "least cost" option. SCE&G shall be required to maintain records, and shall have the burden to prove that transactions with a competitive affiliate were sourced competitively.

Furthermore, prudence will be considered in affiliate transactions for SCANA and its subsidiaries and will continue to be governed by the Commission's Order No. 92-931 and S.C. Code Ann. § 58-27-2090, which include transfer pricing protections for the benefit of customers. Existing provisions in South Carolina law ensure that affiliate transactions are tied to market rates and standard contract conditions for similar goods and services.

F. *Business Operations*

The Commission orders the following conditions regarding operation of SCE&G's business activities: (1) absent Commission approval, Dominion Energy shall maintain SCE&G's headquarters in Cayce, South Carolina; (2) The President of SCE&G will continue to be a South Carolina resident with his/her primary office in Cayce, South Carolina. That position will report to the CEO of the Dominion Energy Southeast Energy Group; (3) Dominion Energy's board of directors shall take all necessary action, as soon as practical after the effective time of the merger, to appoint a mutually agreeable current member of the SCANA Board or SCANA's executive management team as a director on Dominion Energy's

board of directors; (4) Dominion Energy will manage SCE&G from an operations standpoint as a separate regional business under Dominion Energy, and SCE&G will retain local responsibility for making decisions to achieve company objectives; (5) Dominion Energy will not change the legal structure of SCE&G without prior authorization from the Commission, and SCE&G will continue to exist as a separate legal entity after the merger; (6) the Public Service Commission of South Carolina will continue to exercise its regulatory authority over SCE&G in the same way it currently does, and Dominion Energy will ensure local access to books and records of the Company as well as its officers and employees; and (7) Dominion Energy and SCE&G commit to communicate all material information within a reasonable period of time with ORS and the Commission and to be transparent with regard to all non-privileged information, and subject to appropriate protections for confidential and proprietary information. Further in this regard, we require that within three months of the merger, Dominion and SCE&G shall adopt and agree to adhere to a Code of Conduct developed in collaboration with the ORS and approved by the Commission. Such Code of Conduct shall be developed to assure that the utility and its officers, employees and agents act to assure that they adhere to their duty to avoid the concealment, omission, misrepresentation, or nondisclosure of any material fact or information in any proceeding or filing before the Commission or ORS.

G. *Employee Matters*

Dominion Energy will maintain compensation levels for employees of SCANA and its subsidiaries, including SCE&G, until at least January 1, 2020. However, for non-executive employees, Dominion Energy will extend this compensation commitment along with a pledge to provide severance or base pay continuation until at least July 1, 2020. Dominion Energy will give SCANA and SCE&G employees fair consideration for other employment and

promotion opportunities within the larger Dominion Energy organization, both inside and outside South Carolina, to the extent any such employment positions are re-aligned, reduced, or eliminated in the future as a result of the merger. Finally, Dominion Energy will seek to minimize reductions in local employment by allowing some Dominion Energy Services, Inc. employees supporting shared and common services functions and activities to be located in Cayce where it makes economic and practical sense to do so, and the Joint Applicants shall report on their progress in this regard on a twice-a-year basis for the next three years.

H. *Service Quality*

Dominion Energy shall maintain SCE&G's customer service at no less than current levels. It will not diminish SCE&G's focus on installing, upgrading, and maintaining facilities necessary for safe and reliable operations. Dominion Energy will also implement conditions to monitor service and performance following the closing of the merger to ensure levels do not degrade for reasons attributable to the merger. This will include providing quarterly SAIDI ("System Average Interruption Duration Index") and SAIFI ("System Average Interruption Frequency Index") reporting, as well as quarterly Call Center Performance Metrics, all to begin no later than six months after the close of the merger. For SCE&G's gas operations, SCE&G will file quarterly service quality reports. All the foregoing service quality reports will be reviewed twice a year in a Commission docket, with the first review taking place two years after merger close, and any degradation in service levels will be accompanied by a SCE&G plan for addressing it. Dominion Energy will also maintain SCE&G's environmental monitoring and maintenance programs at or above current levels.

I. *Financial*

Dominion Energy commits to provide equity financing, as needed, to SCE&G with the intent of maintaining SCE&G's capital structure and to maintaining credit metrics that are supportive of strong investment-grade credit ratings for SCE&G. Except for the return on equity and cost of debt approved by the Commission for NND cost recovery for the twenty-year recovery period, the ROE for SCE&G's base electric business should be determined based on past practice and precedent to determine a fair and reasonable return. To the extent any long-term debt issued by SCE&G following merger close is more expensive as a result of the merger than similar average long-term debt, the cost of such issuances shall be reduced to that average for purposes of calculating overall cost of debt in the first base rate proceeding following merger closing. This constitutes reasonable and adequate protection for SCE&G customers against any adverse impacts of the merger.

J. *Community*

Dominion Energy will increase SCANA's historical level of corporate contributions to charities identified by SCANA's leadership by $1,000,000 per year for at least five years after the closing of the merger and will maintain historical levels of community involvement in SCANA's current operation areas. ORS included further recommendations in an attachment to its proposed order regarding a low income customer benefit fund, but nowhere addressed these proposals in its proposed order or in the hearing. However, as shown in the record, Dominion has an Energy Share Program in Virginia that is somewhat similar to a voluntary Round-Up program several rural cooperative utilities have in South Carolina. The co-ops' program allows ratepayers to choose to round their utility bills up to the next whole dollar. These amounts can be used to alleviate financial pressure on low-income members of the

residential ratepayer class caused by electric bills. This Commission strongly encourages Dominion to consider implementing a similar program to its Energy Share Program and other low-income programs such as the co-op's Round-Up programs for its South Carolina ratepayers.

K. *Merger Savings and Rate Case Stay-out / Comeback*

Upon closing of the merger, SCE&G will create a regulatory liability of $2.45 million representing a refund to natural gas customers of 2017 revenues and will subsequently provide such a refund to its natural gas customers as bill credits in 2019, 2020, and 2021. In order to ensure actual merger savings are reflected in electric rates on a timely basis, SCE&G will file an electric general rate case no earlier than May 1, 2020, based on a test year ended December 31, 2019, updated for known and measurable merger savings as of September 30, 2020, for rates effective January 1, 2021. We reject as premature the ORS recommendation to quantify estimated merger savings now, because such savings are not known and measurable at this time.

ORS also argues that SCE&G customers should receive equivalent or greater merger benefits as compared to those offered or ordered by the North Carolina Utilities Commission – a so-called "most favored nation" provision. While the total merger packages in North Carolina and South Carolina look different in several respects, that fact does not make them unbalanced. The nature of SCANA's business and the regulatory constructs are simply different in each state, which warranted different merger conditions in each jurisdiction.

North Carolina has now issued its order and the benefits are known, so a "most favored nation" provision for South Carolina would now be moot. This Commission has reviewed the terms of the Stipulation approved in that order, and is satisfied that, to the extent that they may

be fairly compared, the benefits are comparable or superior. This Commission is capable of fashioning a fair and beneficial final order without merely copying the terms of another state's order, and we have done so here.

L. *SCE&G Commitment to RFP Process Regarding Natural Gas Transmission Capacity*

The Joint Applicants entered into a settlement with Transco that provides that following the closing of the Merger, SCE&G will not contract with an interstate pipeline for natural gas transmission capacity of 100,000 dekatherms per day or more unless or until it has issued a request for proposals to obtain such capacity and considers the proposals in good faith. SCE&G will file confidential reports with the Commission within thirty days of the conclusion of this process. Moreover, such an arrangement must be with the least cost provider of such capacity, unless the Commission has otherwise approved the contract.

M. *Department of Defense*

SCE&G agrees that, to the extent any cash refund is distributed to customers as part of the merger, the Department of Defense and all other Federal Executive Agencies will have an option to select whether they receive the refund of rates as a check or as a credit on their billing invoice.

N. *Customer Education Plan*

Within 30 days of closing of the Merger, and in consultation with ORS, Dominion Energy and SCE&G will develop a program to educate SCE&G customers about the benefits and implementation of any Merger Benefits Plan approved by the Commission, and any such program shall be filed with the Commission prior to its implementation.

Outstanding Dispositive Motions

In each of the three dockets, SCE&G filed dispositive motions. The Commission issued an Order on October 25, 2018, holding all three dispositive motions in abeyance. The Commission will now address and rule upon each of these motions, as discussed below.

A. Docket No. 2017-207-E

On October 8, 2018, SCE&G filed a Motion to Dismiss in Docket No. 2017-207-E alleging that Petitioners themselves admitted that they had already been granted the crux of the relief sought in their Complaint.[28]

On July 2, 2018, the Commission issued Order No. 2018-459 in Docket No. 2018-217-E, which temporarily reduced rates to SCE&G's customers by approximately 15% starting on April 1, 2018, as required by Act 258.

At the September 4, 2018, hearing on Transcontinental Gas Pipe Line Company's Petition to Intervene Out of Time, Robert Guild, Petitioners' attorney, stated that the majority of issues raised by his Petition had been largely resolved by Order No. 2018-459. Specifically, he stated:

> My clients filed a proceeding in Docket -207 that raised three substantial issues, two of which have largely been resolved in the sense that the Project that we have been critical of for the last ten years has indeed been canceled, been abandoned.
>
> Tr. at 40 (Sept. 4, 2018).

[28] SCE&G had previously filed a Motion to Dismiss on additional grounds, which was denied in Order No. 2017-770, dated December 20, 2017.

Since that time, an extensive record has been developed over a three-week hearing, resulting in the findings and issuance of the present Order. As a result of the determinations set out above, this Commission finds that all issues raised by Petitioners in Docket No. 2017-207-E have been addressed by this ruling. Adoption of the rates proposed in Dominion Energy's Plan–B Levelized results in the full measure of rate relief that is warranted in these circumstances. For these reasons, the Commission orders that the Complaint/Petition in Docket No. 2017-207-E be dismissed as moot.

B. Docket No. 2017-305-E

ORS commenced its action in Docket No. 2017-305-E by filing a Request asking the Commission to suspend SCE&G from collecting approximately $445 million in annual revenue based upon S.C. Code Ann. § 58-27-920.

Under the explicit language of that statute, two requirements must be met: (1) there must be evidence that ORS made "a preliminary investigation" into the proposed schedule of rates; and (2) there must be evidence presented for the Commission to determine that the proposed rates are "fair and reasonable." In Docket No. 2017-305-E, SCE&G filed a Motion for Summary Judgment and in the Alternative Motion to Strike on September 19, 2018, points out that ORS had failed to present any evidence proving that it had satisfied the requirements of S.C. Code Ann. § 58-27-920. It is ORS's burden to ensure that these requirements were met before filing its Request, and SCE&G argued that given ORS's pre-filed direct testimony, it was evident that ORS failed to meet this burden.

However, given the rate relief granted in this Order pursuant to the evidence in Docket No. 2017-370-E, we believe that the ORS Request must be dismissed as moot. The Request is dismissed accordingly.

C. Docket No. 2017-370-E

On October 19, 2018, Joint Applicants filed in all three dockets a Motion for Declaratory Rulings and Motion *in Limine*, seeking a number of rulings from the Commission. However, the approval of the Merger, the associated customer benefits contemplated by the Merger, and other relief granted in Docket No. 2017-370-E moot these issues. The Motion is therefore denied.

CONCLUSION

For the reasons set forth above, the Commission finds that, pursuant to S.C. Code Ann. § 58-33-280(K), SCE&G's decision to abandon the Project on July 31, 2017, was prudent and in customers' best interest. Indeed, no party has challenged the prudency of the decision to abandon the Project or to seek to reduce costs to customers by obtaining abandonment tax deductions to reduce the impact of the decision on customers. The Commission finds that these decisions were prudent.

Further, the Commission finds that SCE&G's customers will be best served by adopting Plan–B Levelized and approving SCANA's proposed merger with Dominion Energy. As explained above, Plan–B Levelized provides immediate and sustained bill reductions to customers coupled with strong assurances that SCE&G will continue to operate as a financially sound, reliable, and responsible utility going forward. SCE&G's electric bills will be brought into alignment with neighboring utilities and will be well below national averages. This result will be achieved without material risk to SCE&G's solvency, creditworthiness, or ability to conduct its future utility operations safely, reliably, and efficiently. No other option before the Commission provides this combination of benefits. The Commission believes it has enormous value for all SCE&G ratepayers, stakeholders, and the State as a whole.

The Commission also finds that adjustments to costs as set out in Hearing Exhibit 141 are properly reflected in these amounts and are properly recoverable as costs of the Project, subject to the voluntary exclusions and other electric bill mitigation measures adopted herein. The Joint Applicants are directed to file a revised schedule within thirty (30) days of the issuance of this Order reflecting these changes. The Commission finds this updated schedule to be the appropriate schedule of capital costs for the Project in abandonment under S.C. Code Ann. § 58-33-270(E) and S.C. Code Ann. § 58-33-280 (K).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Customer Benefits Plan–B Levelized is the appropriate resolution to the matters at issue in these dockets and creates bills for SCE&G which are just and reasonable. This Plan (1) provides maximum customer benefits, (2) brings finality and certainty, and (3) is in the public interest of South Carolina ratepayers.

2. The rate moratorium provided for Customer Benefits Plan–B Levelized is hereby adopted.

3. The merger between SCANA Corporation and Dominion Energy, Inc. is hereby approved under S.C. Code Ann. § 58-27-1300 and is found to be in the public interest.

4. The merger conditions set out by the Commission and attached herein are hereby adopted.

5. As part of the project, SCE&G undertook a major expansion and strengthening of the backbone of SCE&G's transmission system. The total amount invested was approximately $322 million and the Company has testified that all aspects of the project will be in service as of January 31, 2019. Only the financing cost associated with $275 million in capital is in rates today which is equivalent to approximately $32 million in revenue

requirement. The return of capital of the entire amount invested and the financing cost of the remaining approximately $47 million are not in rates today. A determination of total capital costs and remaining financing costs will be determined in the next rate case.

6. The Unit 2 and 3 Switchyard and other assets constructed or acquired as a part of the Project to construct V.C. Summer Units 2 and 3 in the amount of approximately $85 million constitute prudently constructed assets that are used and useful for providing retail electric service to customers and are properly reflected in SCE&G retail electric plant in service, provided however that SCE&G has voluntarily agreed to write off this amount as set forth in the Customer Benefits Plan–B Levelized.

7. The acquisition cost of the 540 MW nameplate capacity Columbia Energy Center combined cycle natural gas generation unit in the amount of $180 million constitutes a reasonable and prudent investment in utility assets used and useful for providing retail electric service to customers and is properly reflected in SCE&G retail electric plant in service, provided however that SCE&G has voluntarily agreed to write off this amount as set forth in the Customer Benefits Plan–B Levelized.

8. The petition filed by Friends of the Earth and Sierra Club in Docket No. 2017-207-E is hereby dismissed as moot because of our findings related to the issues in Docket No. 2017-370-E.

9. The request sought by ORS in Docket No. 2017-305-E is hereby dismissed as moot because of our findings related to the issues in Docket No. 2017-370-E.

10. The rates adopted in the Order shall take effect for bills rendered on or after the first billing cycle of February 2019. This will allow SCE&G to implement its new retail electric rates in an orderly manner. Current rates shall remain in effect until that time.

11. Any outstanding Motions not addressed herein are deemed denied, and any outstanding objections are deemed overruled.

Now, therefore,

ORDERING CLAUSES

IT IS HEREBY ORDERED:

1. SCE&G is directed to record as a regulatory asset the operating and maintenance expenses, property taxes, and depreciation associated with the transmission assets referenced above for consideration of recovery in a future rate proceeding with carrying costs recorded at SCE&G incremental cost of long-term debt.

2. SCE&G is ordered to file with the Commission within thirty (30) days hereof a letter explaining the mechanism and timing for refunding to customers savings under the Tax Cuts and Jobs Act of 2017 from January 1, 2018, to the effective date of the rates imposed under this Order.

3. SCE&G shall file revised tariffs implementing rates under the Customer Benefits Plan–B Levelized within ten (10) days of this order, consistent with the Commission's Rules and Regulations. The tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (https://dms.psc.sc.gov). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (http://etariff.psc.sc.gov.) Future revisions should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and agreements with the other parties to this case. SCE&G shall provide a reconciliation of each tariff rate change approved as a result of this order to each tariff rate revision filed in the ETariff System. Such

reconciliation shall include an explanation of any differences and be submitted separately from the Company's ETariff System filing.

4. SCE&G shall file revised tariffs implementing the rate reduction offered for SCE&G retail natural gas distribution customers under the Customer Benefits Plan–B Levelized within ten (10) days of this Order, consistent with the Commission's Rules and Regulations. The tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (https://dms.psc.sc.gov). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (http://etariff.psc.sc.gov.) Future revisions should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and agreements with the other parties to this case. SCE&G shall provide a reconciliation of each tariff rate change approved as a result of this order to each tariff rate revision filed in the ETariff System. Such reconciliation shall include an explanation of any differences and be submitted separately from the Company's ETariff System filing.

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

BY ORDER OF THE COMMISSION:

Comer H. "Randy" Randall, Chairman

ATTEST:

Elliott F. Elam, Jr., Vice Chairman

December 21, 2018

COMMISSIONER ERVIN'S CONCURRING OPINION IN DOCKET NOS. 2017-270-E, 2017-305-E AND 2017-370-E

ABANDONMENT OF THE PROJECT BY SCE&G

I agree with the Majority of the Commissioners that abandonment of the nuclear construction at Units 2 and 3 by SCE&G was prudent due to the bankruptcy of the general contractor Westinghouse and the subsequent withdrawal of Santee Cooper from the project on July 31, 2017.

I agree with the Majority that all project costs incurred after March 12, 2015, should be disallowed but I would specifically find by the greater weight of the evidence that those costs were "imprudently incurred" by SCE&G. I would make the following findings:

SPECIFIC FINDINGS ON SCE&G'S IMPRUDENCE

(1) SCE&G failed to disclose material facts to the ORS and the PSC when SCE&G represented the Consortium schedule was an accurate schedule for the Project while knowing it was unattainable and inaccurate. (Hearing Ex. 15 at GGCJ-2.37) If the ORS had known about the Bechtel Reports, it would have likely recommended the SCE&G Petition be held in abeyance until the results of the assessment were analyzed. (Tr. P. 288-12)

(2) SCE&G failed to disclose to the ORS and the PSC its complete lack of trust in the Consortium construction schedule provided to the ORS and the Commission. The projected completion dates in the Bechtel Reports materially impacted SCE&G's

ability to secure Federal Production Tax Credits upon which the feasibility of the Project relied. (Tr. P.288-18)

(3) SCE&G withheld material and relevant information from the ORS and the Commission in its March 12, 2015 Petition by failing to disclose that SCE&G's own internal cost estimates would require spending an additional $1.2 billion to complete the project. (Tr. P. 270-3, 11.5-7 and Hearing Ex. 8 at p. 672)

I believe these findings would emphasize the need for all regulated utilities to be transparent in their dealings with ORS and with the South Carolina Public Service Commission.

RATE OF RETURN

I would find the greater weight of the evidence supports the conclusions of ORS expert witness Mr. Baudino whose extensive analysis concluded a ROE of 9.1% was sufficient to insure SCE&G remained financially healthy in the current financial market. The Majority adopted a 9.9% rate of return which Mr. Baudino testified is higher than the national average of 9.6% authorized by state utility regulators in the United States for investor owned utilities. (Tr. P. 820-5)

ATLANTIC COAST PIPELINE

Dominion is building a 600 mile-long interstate natural gas pipeline from Pennsylvania through West Virginia, Virginia, and North Carolina which stops a few miles north of the South Carolina state line. While Dominion says it has no immediate plans to extend the natural gas pipeline through South Carolina, it is likely Dominion eventually will, especially now that

they are acquiring SCE&G. The South Carolina Public Service Commission should have reasonable oversight of any pipeline expansion by Dominion prior to any FERC permitting.

The ORS, the South Carolina Coastal Conservation League, the Southern Alliance for Clean Energy and the Speaker of the House of Representatives James H. Lucas (See Speaker's Brief date December 7, 2018 at P. 13) all supported a merger condition requiring Dominion to hold a public proceeding before the South Carolina Public Service Commission before contracting for the purchase of natural gas or for transportation capacity using any interstate natural gas pipeline where such capacity does not already have a certificate from FERC.

Under such a merger condition, Dominion would have been required to show to ORS and the Commission that it has: (i) identified and determined the amount of new fuel delivery resources needed to meet future demand, (ii) that it has objectively studied all available alternate fuel delivery resource options to meet the identified and determined need, and (iii) that it determined such contracts were the lowest cost option available taking into consideration fixed and variable costs and reasonable projections of utilization. (Tr. P. 2291, 11.5-11, Nov. 13 Hearing)

This merger condition could have provided the ORS, the Commission, the public and other interested parties an opportunity to have a reasonable level of oversight and input before Dominion expands the Atlantic Coast Pipeline into South Carolina. As it stands, captive natural gas customers in our state may find themselves paying for Dominion's expensive interstate pipeline with no oversight by this Commission.

While the Transcontinental Gas Pipe Line Company, LLC's settlement with SCE&G and the merger conditions regarding affiliate transactions provide some limited checks on SCE&G's ability to enter into contracts with an interstate pipeline for natural gas transmission,

they do not go far enough in protecting South Carolina's natural gas customers. I would have included a merger condition that would have allowed all affected parties to participate in a public proceeding before the South Carolina Public Service Commission prior to the issuance of a FERC permit for the Atlantic Coast Pipeline to extend into South Carolina.

CONCLUSION

The Joint Applicants offered several plans before finally proposing the Alternative Levelized Customer Benefit Plan (Plan B-L). Dominion's merger terms improved considerably over the course of the proceedings. Considering all available options, Plan B-L provides the maximum Customer benefits to the ratepayers and meets the necessary Constitutional balancing test required by applicable law.

Plan B-L provides $2,039 billion in refunds over the recovery period requested by ORS. It excludes from the Rate Base all litigation expenses associated with the merger. It excludes the irrevocable trust fund created by SC&G for its senior executives (in other words, the exclusion of "golden parachutes"). The adopted plan also excludes the costs related to the Bechtel Reports as well as the sums paid to former CEO William Timmerman under his employment contract with SCE&G.

Plan B-L also excludes the cost of additional electrical generation at the Columbia Energy Center which is worth approximately $180 million to the ratepayers. Plan B-L will ultimately reduce the customer's typical residential bill to approximately $125.26 per month using the ORS rate levelized recommendation. SCE&G has agreed not to seek recovery for any acquisition premium costs, transition costs, or transaction costs associated with the merger with Dominion. Dominion will maintain SCE&G's headquarters in Cayce, South Carolina. Dominion committed to maintain customer service at no less than current levels and agreed to

focus on installing, upgrading, and maintaining facilities necessary for safe and reliable operations.

Customers will recover the majority of the approximately $2 billion paid to date for the failed project by ratepayers. SCE&G and Dominion have also committed to provide a $2.45 million refund to natural gas customers as bill credits in 2019, 2020, and 2021.

This merger plan maximizes the financial recovery while minimizing the long-term costs associated with the failed project. While not perfect, Plan B-L provides finality and certainty by removing the potential risk of an SCE&G bankruptcy which might have occurred without the merger with Dominion.

For these reasons, I agree with the Majority of the Commissioners that merger Plan B-L is the better of the available options before the Commission and I find that it is in the best interest of the public.

Thomas J. Ervin, Commissioner