STATE OF SOUTH CAROLINA

South Carolina Minerals, Inc. v. Aiken Electric Cooperative, Inc. v. South Carolina Electric & Gas Company

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET NUMBER: 2008 - 420 -E

(Please type or print)

Submitted by: K. Chad Burgess
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

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

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☒ Electric	☐ Affidavit	☒ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☒ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☐ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☐ Proposed Order	☐ Other:
☐ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

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Senior Counsel

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February 4, 2009

VIA ELECTRONIC FILING

The Honorable Charles Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive (29210)
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: South Carolina Minerals, Inc. v. Aiken Electric Cooperative, Inc. v. South Carolina Electric & Gas Company
Docket No. 2008-420-E

Dear Mr. Terreni:

Enclosed for filing is the Answer of South Carolina Electric & Gas Company to the Third Party Complaint of Aiken Electric Cooperative, Inc. ("Answer") in the above-captioned matter.

By copy of this letter we are serving a copy of the Answer upon counsel for the other parties of record and enclose a certificate of service to that effect.

If you have any questions, please advise.

Very truly yours,

K. Chad Burgess

KCB/kms
Enclosure

cc: Shannon Bowyer Hudson, Esquire
Marcus A. Manos, Esquire
J. David Black, Esquire
Robert E. Tyson, Jr., Esquire
(all via U.S. First Class Mail w/enclosures)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2008-420-E

IN RE:

South Carolina Minerals, Inc. Complainant, v. Aiken Electric Cooperative, Inc. Defendant and Third-Party Plaintiff v. South Carolina Electric & Gas Company Third-Party Defendant	)	**CERTIFICATE OF SERVICE**

This is the certify that I have caused to be served this day one (1) copy of South Carolina Electric & Gas Company's **Answer to Third Party Complaint** via First Class U.S. Mail to the persons named below at the addresses set forth:

Shannon Bowyer Hudson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Marcus A. Manos, Esquire
Nexsen Pruet Adams Kleemeier, LLC
Post Office Drawer 2426
Columbia, SC 29202

J. David Black, Esquire
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Robert E. Tyson, Jr., Esquire
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211

Karen M. Scruggs

Karen M. Scruggs

Columbia, South Carolina

This 4th day of February 2009

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2008-420-E

IN RE: South Carolina Minerals, Inc. Complainant, v. Aiken Electric Cooperative, Inc. Defendant and Third-Party Plaintiff, v. South Carolina Electric & Gas Company Third-Party Defendant.	)	**ANSWER OF SOUTH CAROLINA ELECTRIC & GAS COMPANY TO THIRD PARTY COMPLAINT**

Pursuant to 26 S.C. Code Ann. Regs. 103-826 and 103-830 (1976, as amended), the South Carolina Rules of Civil Procedure, and in compliance with the Notice issued by the Chief Clerk & Administrator of the Public Service Commission of South Carolina ("Commission") dated January 5, 2009, South Carolina Electric & Gas Company ("SCE&G" or "Company") hereby answers the Third Party Complaint of Aiken Electric Cooperative, Inc. ("Aiken Electric") as follows:

FOR A FIRST DEFENSE

1. SCE&G denies each and every allegation of the Third Party Complaint except as hereinafter admitted.

FOR A SECOND DEFENSE

2. SCE&G is without information sufficient to form a belief as to the truth or falsity of the statements and allegations made in Paragraph 30 of the Third Party Complaint and therefore denies same and demands strict proof thereof.

3. Upon information and belief, SCE&G admits the allegations contained in Paragraph 31 of the Third Party Complaint.

4. Upon information and belief, SCE&G admits so much of Paragraph 32 of the Third Party Complaint as alleges that South Carolina Minerals, Inc. ("SC Minerals") has requested that the Commission allow SC Minerals to obtain electric service from SCE&G for SC Minerals' premises and equipment. As to the remaining allegations of Paragraph 32 of the Third Party Complaint, SCE&G is without information sufficient to form a belief as to the truth or falsity of the statements and allegations and therefore denies same and demands strict proof thereof.

5. SCE&G denies the allegations contained in Paragraph 33 of the Third Party Complaint and demands strict proof thereof.

6. SCE&G admits the allegations contained in Paragraph 34 of the Third Party Complaint.

7. SCE&G denies the allegations contained in Paragraph 35 of the Third Party Complaint and demands strict proof thereof.

8. SCE&G denies the allegations contained in Paragraph 36 of the Third Party Complaint and demands strict proof thereof.

9. SCE&G denies the allegations contained in Paragraph 37 of the Third Party Complaint and demands strict proof thereof.

10. SCE&G denies the allegations contained in Paragraph 38 of the Third Party Complaint and demands strict proof thereof.

11. As for the "WHEREFORE" clause of the Third Party Complaint, no response is required; however, to the extent that a response is required SCE&G denies same and demands strict proof thereof.

FOR A THIRD DEFENSE

12. The Third Party Complaint fails to state a claim for which the Commission has jurisdiction and authority, and thus the Third Party Complaint should be dismissed. *See* Rule 12(b), SCRCP.

FOR A FOURTH DEFENSE

13. The Third Party Complaint fails to state facts sufficient to constitute a cause of action, and thus the Third Party Complaint should be dismissed. *See* Rule 12(b), SCRCP.

FOR A FIFTH DEFENSE

14. The Third Party Complaint fails to satisfy the legal requirements of pleading a third party complaint and fails to allege any theory of derivative liability against SCE&G as required for a third party complaint under the applicable rules of procedure. *See* Rule 14, SCRCP; James F. Flanagan, South Carolina Civil Procedure 114 (2d ed. 1996). Therefore, the Third Party Complaint should be dismissed.

WHEREFORE, having fully set forth its Answer to the Third Party Complaint, SCE&G respectfully requests that the Commission issue an order (i) dismissing the Third Party Complaint with prejudice and (ii) granting such other and further relief as is just and proper.

Respectfully submitted,

Catherine D. Taylor, Esquire
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Columbia, South Carolina 29201
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Attorneys for Third-Party Defendant
South Carolina Electric & Gas Company

Columbia, South Carolina
February 4, 2008