Dominion Energy, Inc.

presentation to the

SC State Senate

January 16, 2018

Forward-looking statements

This presentation contains statements that constitute forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. The statements relate to, among other things, expectations, estimates and projections. We have used the words "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "outlook," "predict," "project," "should," "strategy," "target," "will," "would," "potential" and similar terms and phrases to identify forward-looking statements in this release. Factors that could cause actual results to differ include, but are not limited to: the expected timing and likelihood of completion of the proposed combination of SCANA with Dominion Energy, including the ability to obtain the requisite approval of SCANA's shareholders; the risk that Dominion Energy or SCANA may be unable to obtain necessary regulatory approvals for the transaction or required regulatory approvals may delay the transaction or cause the parties to abandon the transaction; the risk that conditions to the closing of the transaction may not be satisfied; or the risk that an unsolicited offer for the assets or capital stock of SCANA may interfere with the transaction. Other risk factors for Dominion Energy's and SCANA's businesses are detailed from time to time in Dominion Energy's and SCANA's quarterly reports on Form 10-Q or most recent annual report on Form 10-K filed with the Securities and Exchange Commission (SEC).

Additional Information

In connection with the proposed transaction, Dominion Energy will file a registration statement on Form S-4, which will include a document that serves as a prospectus of Dominion Energy and a proxy statement of SCANA (the "proxy statement/prospectus"), and each party will file other documents regarding the proposed transaction with the SEC. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT/PROSPECTUS AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC, WHEN THEY BECOME AVAILABLE, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. A definitive proxy statement/prospectus will be sent to SCANA's shareholders. Investors and security holders will be able to obtain the registration statement and the proxy statement/prospectus free of charge from the SEC's website (http://www.sec.gov) or from Dominion Energy or SCANA. The documents filed by Dominion Energy with the SEC may be obtained free of charge by directing a request to Dominion Energy, Inc., 120 Tredegar Street, Richmond, Virginia 23219, Attention: Corporate Secretary, Corporate.Secretary@dominionenergy.com, and the documents filed by SCANA with the SEC may be obtained free of charge to SCANA Corporation, 220 Operation Way, Mail Code D133, Cayce, South Carolina 29033, Attention: Office of the Corporate Secretary, BoardInformation@scana.com.

Participants in the Solicitation

Dominion Energy and SCANA and their respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information about Dominion Energy's directors and executive officers is available in Dominion Energy's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, in its proxy statement dated March 20, 2017, for its 2017 Annual Meeting of Shareholders, and certain of its Current Reports on Form 8-K. Information about SCANA's directors and executive officers is available in SCANA's Annual Report on Form 10-K for the fiscal year ended December 31, 2016, in its proxy statement dated March 24, 2017, for its 2017 Annual Meeting of Shareholders and certain of its Current Reports on Form 8-K. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials to be filed with the SEC regarding the transaction when they become available. Investors should read the proxy statement/prospectus carefully when it becomes available before making any voting or investment decisions. You may obtain free copies of these documents from Dominion Energy or SCANA as indicated above.

Dominion Energy & SCANA

Dominion's proposal provides the best outcome for SCANA customers

A Dominion's proposal

- ✓ $1.3B cash to customers at close
  - $1,000/residential customer on average
- ✓ 5% immediate reduction in bills[2]
- ✓ NND removed from bills in 20 years
- ✓ $1.7B assets funded by shareholders never put in rates
- ✓ Replacement gas fired power plant with no capital cost to customers ($180M)

B Judiciary upholds BLRA[1]

- ✗ Would permit full amount ($5.0B) of prudently spent capital recovered in rates
  - Bills increase by ~3.0%[2] from current levels
- ✗ No upfront cash to ratepayers
- ✗ NND allowed in rates for 60 years
- ✗ Cost of replacement gas fired power plant recovered in rates
- ✗ Total 12.2B more paid by customers compared to Option A

C Judiciary affirms repeal

- ✓ NND portion removed from customer bills
- ✗ SCE&G credit downgraded to junk
- ✗ Will require public/private equity at high cost or bankruptcy filing
- ✗ Increased cost of capital increases revenue requirement
  - Bills could increase from current levels (even after adjusting for disallowed NND revenue)

[1] Parties agree that BLRA is constitutional
[2] Based on 1,000 kWh usage. Inclusive of preliminary tax reform estimate

Dominion Energy & SCANA

C Repeal of BLRA will negatively impact South Carolina citizens

Repeal BLRA retroactively

- Bill reduces by NND portion, $25/average monthly bill
- Disproportionate impact to SCE&G investors versus state owned Santee Cooper
- Undermines investor confidence for future investment in the state
- Results in years of uncertainty for South Carolina, SCANA and its customers

Financially challenged utility

- Credit downgrade of utility to junk[1]:
  - 20%+ increase in cost of debt[2]
  - Immediate loss of access to short term borrowing
- Requires high cost public/private equity funding to fix balance sheet, increasing cost of equity substantially
- Could result in auction of company to a private/non-strategic buyer

Detrimental impact to citizens and community

- Higher cost of capital could impact reliability due to reduced investments in electric and gas systems
  - Long-term increase in bills from current levels given higher cost of capital
- Significant reduction in employment, community benefits and charitable contributions
- Substantial loss in value for retirees and employees

Dominion's proposal removes uncertainty for South Carolina, SCANA and its customers

Dominion Energy · SCANA Power For Living

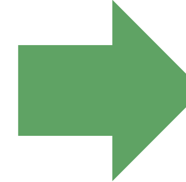
[1] SCE&G currently under negative outlook from Moody's and S&P
[2] Spread between BBB and BB 10-year US Corporate Bond yields

Dominion Energy & SCANA

Dominion's proposal benefits all stakeholders

Cash Up-front

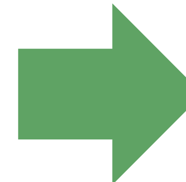
- ✓ $1.3B cash to customers within 90 days of close
- ✓ Spread among all customer classes according to 2016 revised peak allocator
- ✓ $1,000/average residential customer



Offset amounts paid by customers for NND to date

Lower Rates

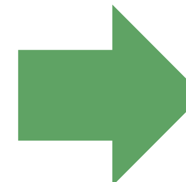
- ✓ Reduction in typical monthly bill by at least 5% (or $7/month) within 90 days of close[1]
- ✓ Write-off $1.7B of capital that would have otherwise increased rates
- ✓ Replacement power to customers free of any capital cost ($180M)
- ✓ $12.2B total benefit vs. 100% capital recovery with 60 year amortization



Reduces ongoing customer electric bills

Community Benefits

- ✓ Protects employees until 2020
- ✓ Increases charitable contributions by $1M a year for at least 5 years
- ✓ Dominion's offer price provides investor reassurance on health of utility



Increased community benefits and charitable contributions

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[1] 1,000 kWh/month usage. Includes tax reform savings estimate of 1.5%. Actual savings may be higher and will be provided to reduce bills further

Dominion Energy & SCANA

Immediate cash payments by customer class

Residential

- ✓ Total: $628M
- ✓ $1,000 per average residential customer

Industrials

- ✓ Total: $299M
- ✓ As much as $22.2M for certain customers

State agencies[1]

- ✓ Total: $36.6M
- ✓ As much as $9.8M for certain agencies

Municipalities[1]

- ✓ Total: ~$22.6M

Churches[1]

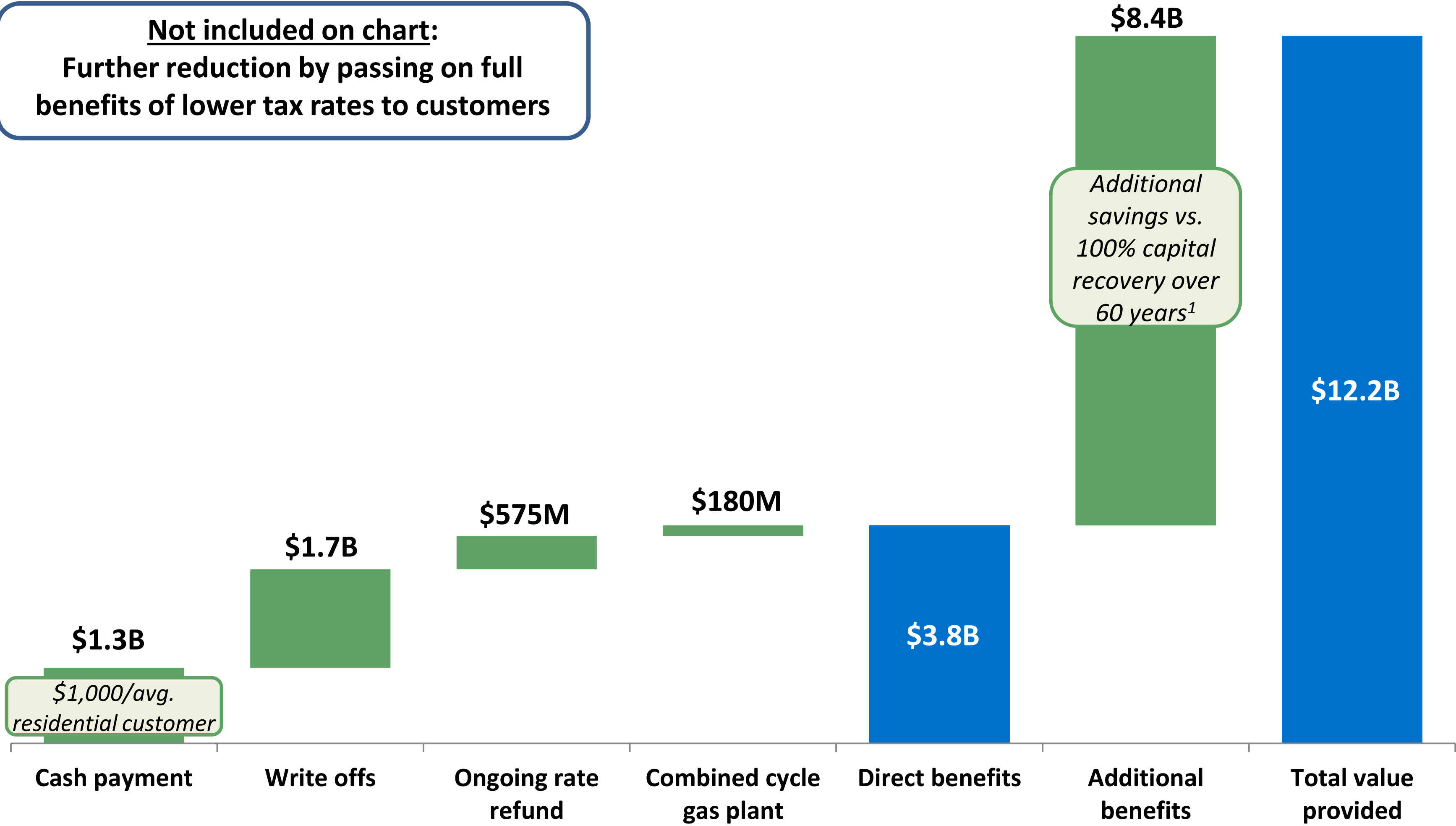
- ✓ Total: $2.6M
- ✓ As much as $197,000 for certain churches

[1]Preliminary estimates

Dominion Energy & SCANA

Benefits to customers immediately and over time

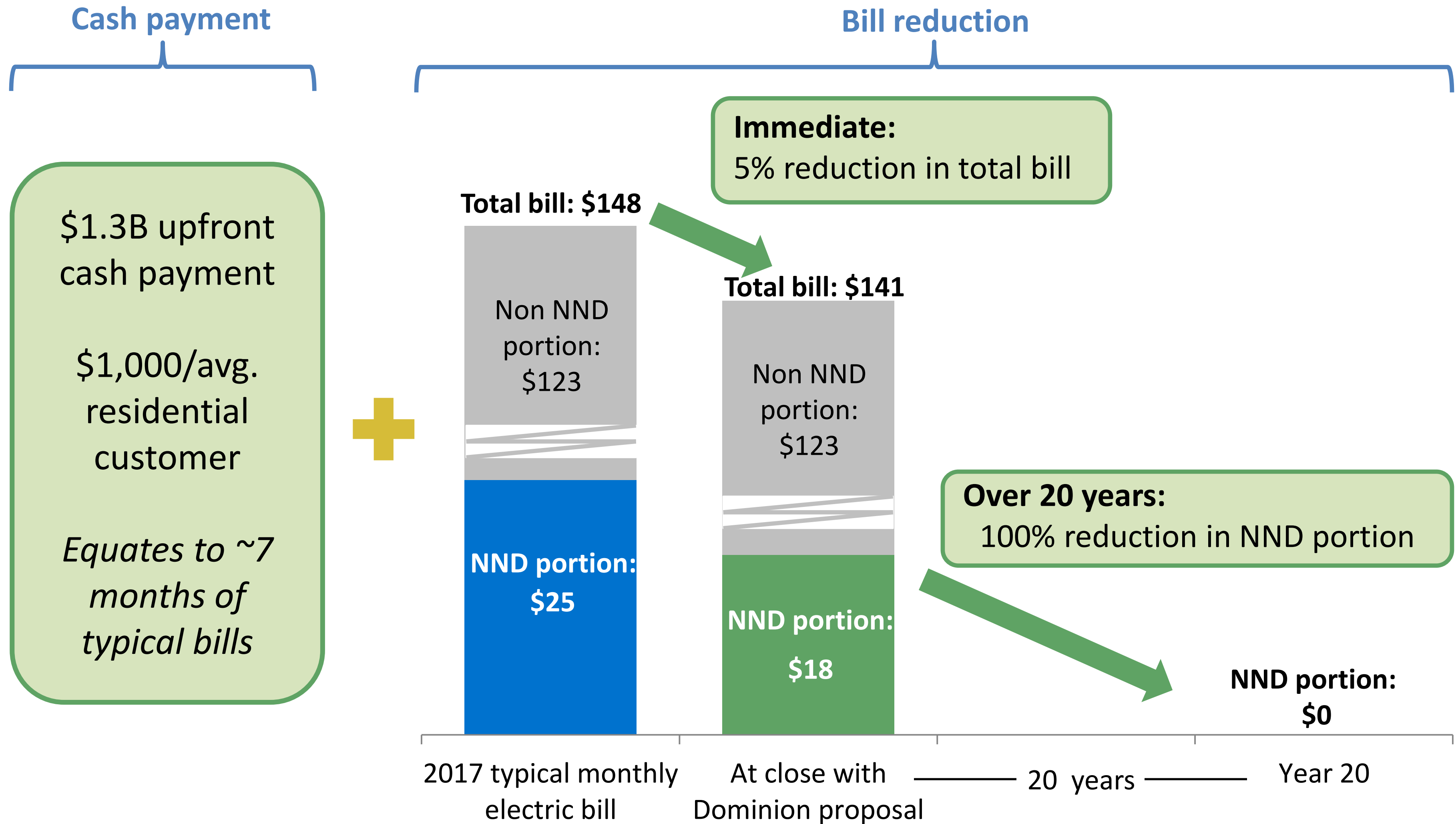
Customer benefits from Dominion Energy proposal total $12.2B



[1] Difference in cumulative revenue requirements net of 1.7B write off

Dominion Energy & SCANA

Reduction in customer bills ($/month)



Note: bill estimates based on $1,000kWh monthly usage. Includes estimated tax reform benefits

Dominion Energy

Dominion Energy
Our core values

Safety

Ethics

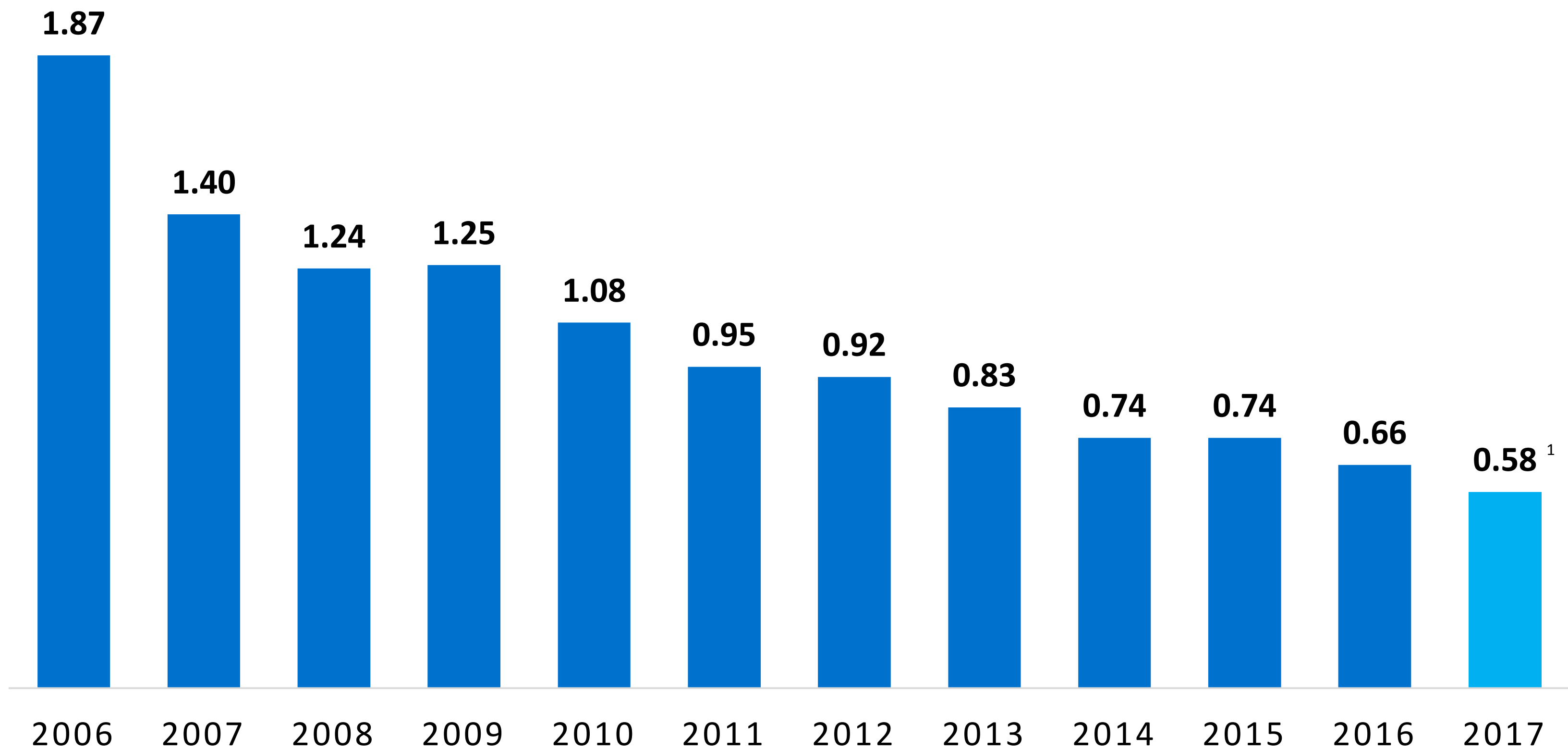
Excellence

One Dominion Energy

Dominion Energy

Our history of safety

Number of OSHA recordable incidents per 100 employees each work year



[1]As of November 2017

Dominion Energy
Who we are

Dominion Energy (NYSE:D), headquartered in Richmond, VA, is one of the **nation's largest producers and transporters of energy.**

Our company is built on a proud legacy of public service, innovation and community involvement. In addition to our core energy production, transportation and storage businesses, we invest in the communities where we live and work and by practicing responsible environmental stewardship wherever we operate.

Our mission

- Serve our customers safely, efficiently & reliably
- Strengthen our communities
- Minimize environmental impacts
- Reward our shareholders
- Live our values

Dominion Energy
Who we are

Environmental Highlights

- ✓ **$3.7 Billion** - Environmental spending to safeguard public health and reduce emissions since 2000
- ✓ **43%** - Reductions in carbon emission intensities for Dominion Energy generating stations since 2000
- ✓ **4.4 Billion Cubic Feet** - Methane saved through voluntary reduction programs
- ✓ **Doubled** production of electricity from **renewable energy** from 2010-2016, with **2,700MW of solar** currently in operation or under development nationally
- ✓ **262** - projects in **10 states** which employees participated to clean up riverfronts, improve trails, and fix parks in 2016

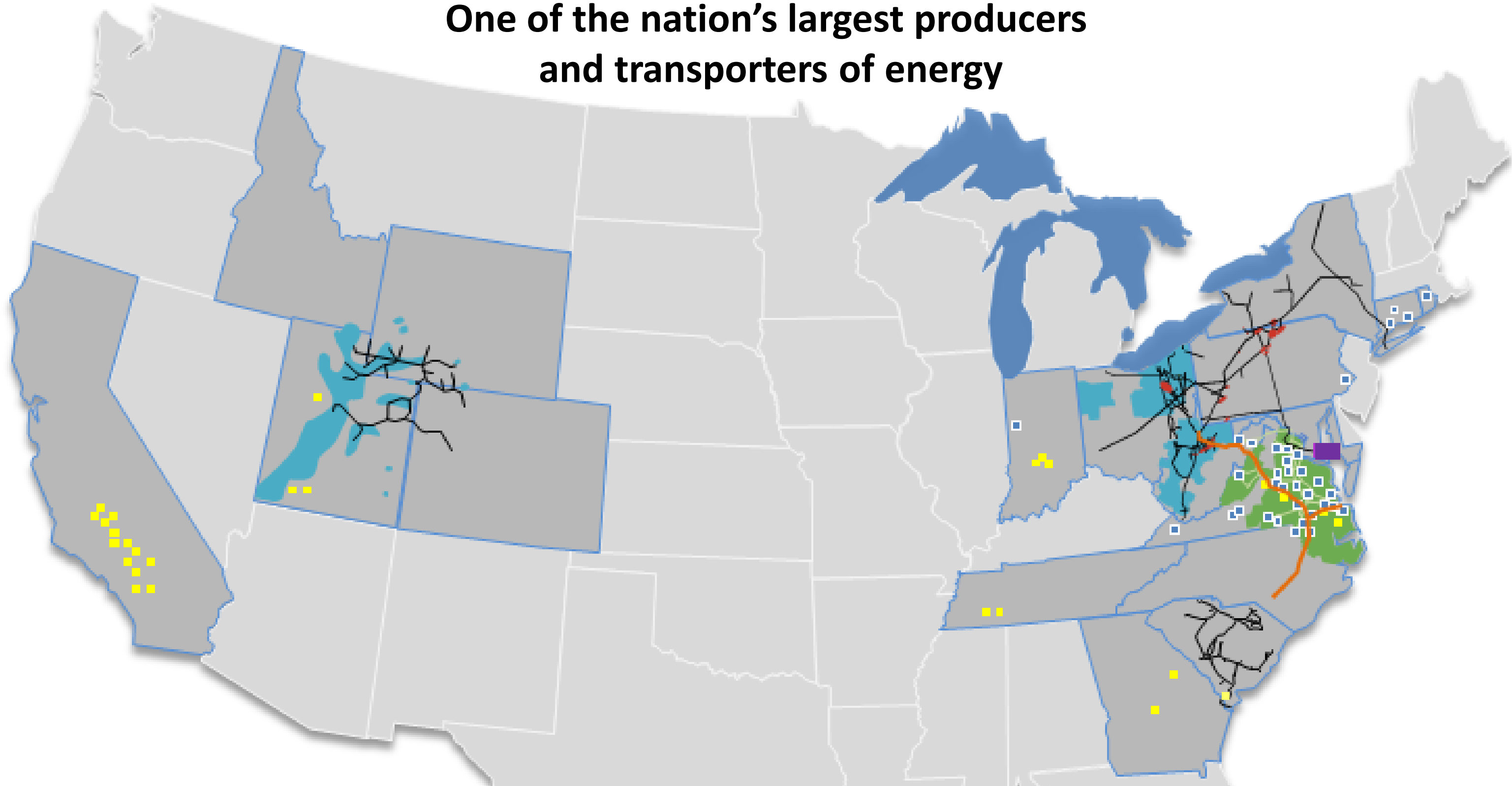
Social Highlights

- ✓ **#1 - "Best for Vets" Award**, Energy Sector, MILITARY TIMES Magazine
- ✓ **#2 – "Most Admired Companies"**, Utilities Sector, FORTUNE Magazine
- ✓ **"Just 100" list** - America's Best Corporate Citizens in 2016, FORBES Magazine
- ✓ **$27 million** in charitable giving in 2016
- ✓ **$13 million** - Low-income fuel assistance in 2016
- ✓ **101,000 hours** - Employee volunteer community service in 2016

20% of new hires are military veterans[1]

[1] Based on data from 2010-2016

Dominion Energy
Power and Natural Gas Infrastructure



- 26,200 MW of electric generation
  - (includes ~765 MW of solar generation in-service)
- 6,600 miles of electric transmission lines
- 2.6 million electric customers in VA and NC
- 2.3 million natural gas customers in 5 states
- Atlantic Coast Pipeline (subject to regulatory approval)
- 15,000 miles of natural gas transmission, gathering and storage pipeline
- 1 trillion cubic feet of natural gas storage operated
- Dominion Energy Cove Point LNG Facility

1.4 million non-regulated retail customers in 17 states (not shown)

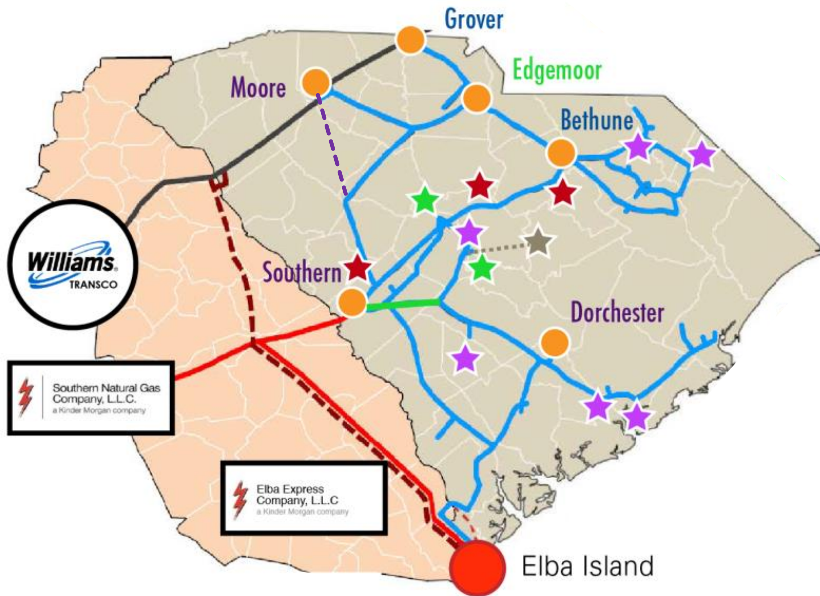
Dominion Energy
SCANA Power For Living

Note: Data as of May 2017

Dominion Energy
Existing South Carolina operations

Dominion Energy Carolina Gas Transmission (DECGT)

1500 MILES OF pipeline with facilities in **32 counties**



DECGT invests in significant growth projects to improve regional service each year:

Solar footprint in South Carolina

71 MW in Jasper County

Solvay purchased renewable energy credits (RECs)

10 MW in Ridgeland

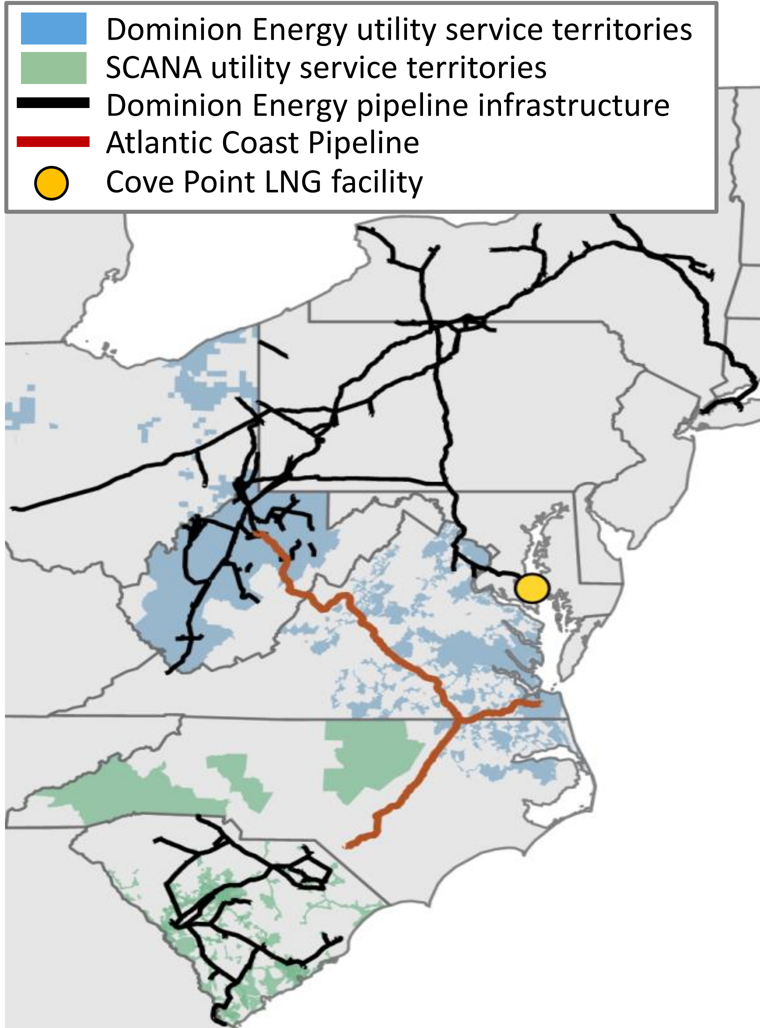
SCE&G contracted for power & retained RECs

Dominion has invested $750M+ in South Carolina through DECGT and renewable projects

Dominion Energy & SCANA

Access to greater resources through larger combined company

Combined southeastern territory



Key statistics

			Pro-Forma
Regulated electric customers (M)	2.6	0.7	3.3
Regulated gas customers (M)	2.3	0.9	3.2
Generation capacity (GW)[1]	26	6	32
Market cap ($B)[2]	$52	$8	$60
Enterprise value ($B)[2]	$91	$15	$105

Combination will leverage Dominion's financial strength for the benefit of South Carolina customers

[1] Inclusive of announced acquisition of 540 MW CCGT supplementing NND abandonment
[2] Inclusive of offer premium, as of last close prior to announcement (1/2/2018)

Dominion Energy & SCANA
Key approvals and estimated filing dates

- **SCANA shareholder vote:** *May 2018*
- ***Does not require Dominion shareholder vote***
- **North Carolina Utilities Commission (PSNC):** *Jan 24, 2018*
- **Georgia Public Service Commission (SCANA Energy):** *Jan 17, 2018*
- **Federal Energy Regulatory Commission:** *Feb 23, 2018*
- **Nuclear Regulatory Commission:** *Jan 29, 2018*
- **Hart-Scott-Rodino anti-trust clearance:** *Jan 17, 2018*
- **Public Service Commission of South Carolina (SCE&G):** *Jan 12, 2018*
  - Approval of petition and merger or determination that merger is in public interest or causes no harm

V.C. Summer Nuclear Project Ratepayer Litigation

SCANA Corporation and South Carolina Electric & Gas Company

- History of V.C. Summer Nuclear Project Units 2 & 3
  - History and success of V.C. Summer Unit 1
  - SCE&G's need as of 2005 for new "base load" generating plants
  - SCE&G selects Westinghouse's AP1000 Nuclear Reactor for base load needs.
  - The EPC Contract
  - Construction begins on the Project
  - SCE&G actively manages the project
  - The EPC Amendment
  - The decision to abandon the project

- The Constitutional, Statutory, and Regulatory Regime for Utilities in South Carolina

- Takings Clause
- “No person shall be . . . deprived of . . . property, without due process of law, nor shall private property be taken ***for public use***, without just compensation.”
- U.S. Const. amend. V (emphasis added).

- *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (emphasis added).
  - "The rate-making process under the [Natural Gas Act of 1938], i.e., the fixing of 'just and reasonable' rates, ***involves a balancing of the investor and the consumer interests***.
  - From the investor or company point of view
    - There must 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***.
    - ***The return to the equity owner should be*** commensurate with returns on investments in other enterprises having corresponding risks [and] ***sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital***."

- ***Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va***., 262 U.S. 679, 692–93 (1923) (citations omitted)
  - "The return [to the utility from rates] 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."

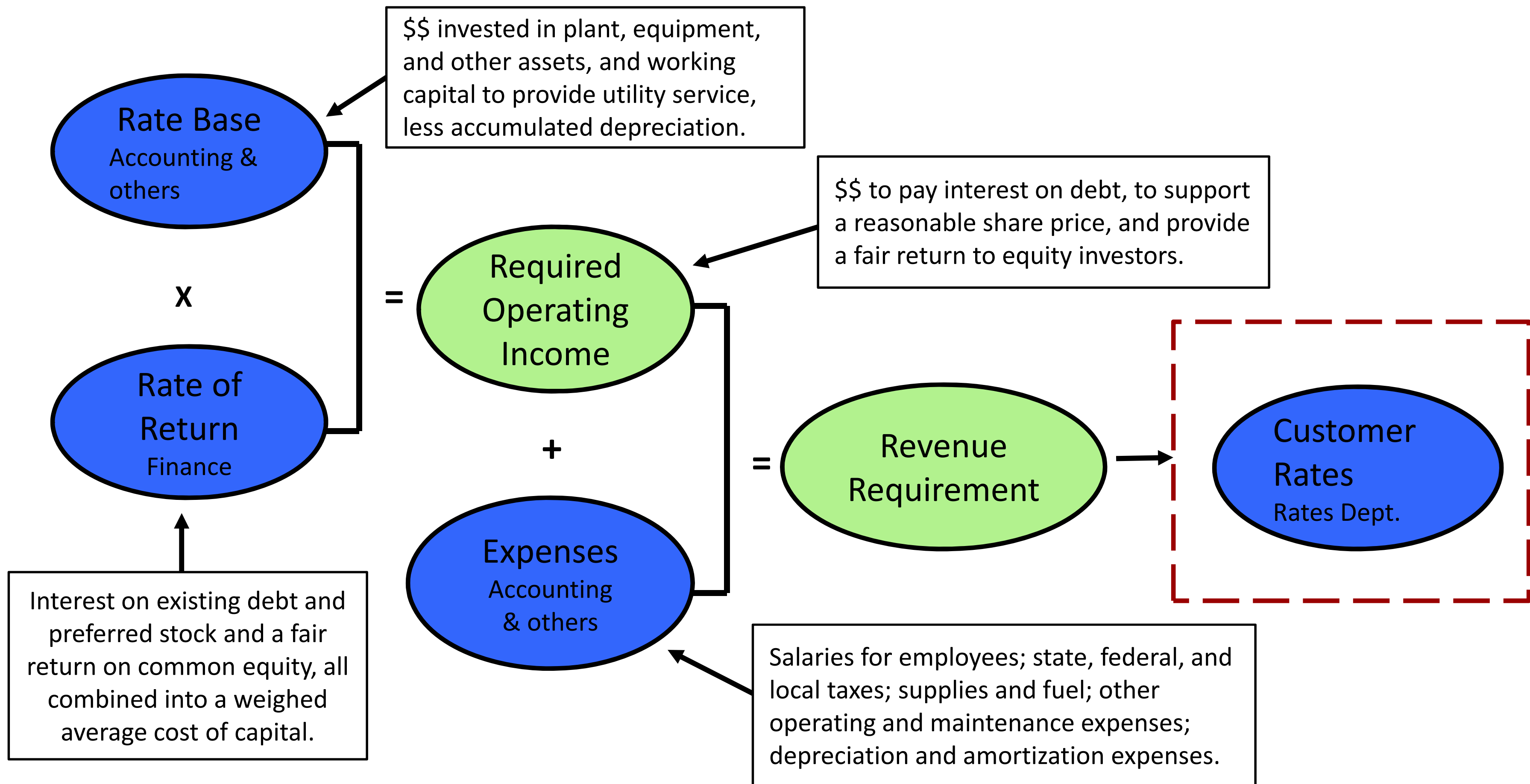
- Together, the *Hope* and *Bluefield* cases provide “the basic principles of utility rate regulation” in South Carolina.
- *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm’n*, 270 S.C. 590, 595, 244 S.E.2d 278, 281 (1978), holding modified by *Parker v. S.C. Pub. Serv. Comm’n*, 280 S.C. 310, 313 S.E.2d 290 (1984); *Patton v. S.C. Pub. Serv. Comm’n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984).

- “[T]he reasonableness of rates should be determined by an evaluation of the utility’s holdings and obligations and the return which the utility realizes from the rates. *The focus is upon the financial condition of the utility*, ***particularly whether the return realized from the rates is so low as to be confiscatory to the utility or so high as to be unduly burdensome to the utility’s customers***.”
- *Mims v. Edgefield Cnty. Water & Sewer Authority*, 278 S.C. 554, 555-56, 299 S.E.2d 484, 485-86 (1983) (emphasis added).

- “[R]atefixing power operates exclusively within a range of reasonableness, bounded on the one hand by ***the utility’s <u>constitutional</u> right to a fair and reasonable return***, and on the other hand by its ***customers’ <u>statutory</u> right to rates that are not unreasonable or exorbitant***.”
- *Gulf States Util. Co. v. Pub. Util Comm’n*, 784 S.W.2d 519, 520 n.2 (Tex. App. 1990) aff’d 809 S.W.2d 201 (Tex. 1991) (emphasis added).

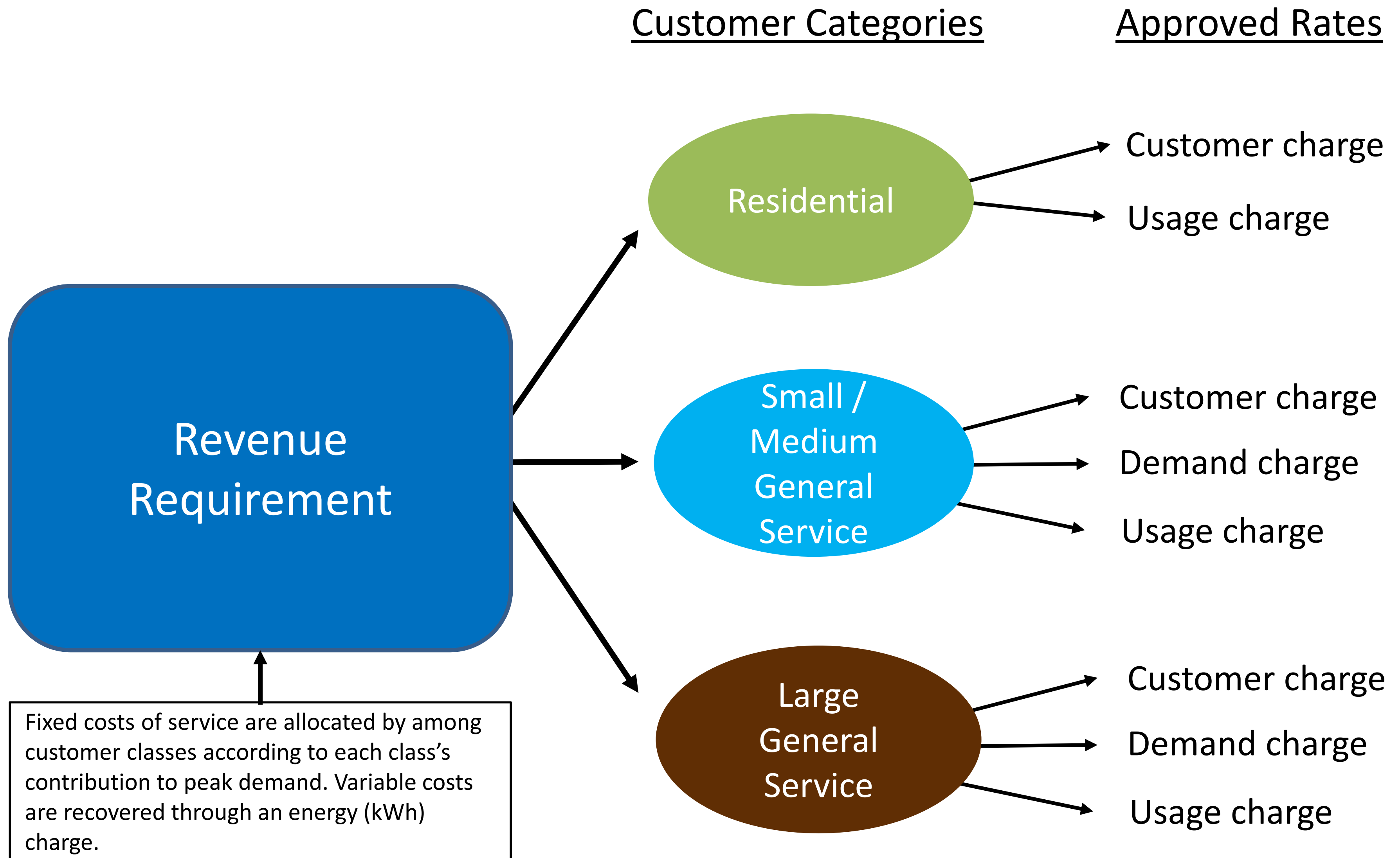
- The “Used and Useful” principle is no longer a constitutional mandate.
  - For almost seventy years, courts have repeatedly recognized that “the constitutional basis for ‘used and useful’” has been swept away.” *Wash. Gas Light Co. v. Baker*, 188 F.2d 11, 19 (D.C. Cir. 1950) (allowing recovery of prudent expenditures for an abandoned plant that was not used and useful).
  - “‘[U]sed and useful’ has ceased to have any constitutional significance.” *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1175 (D.C. Cir. 1987) (en banc).
  - *S. Bell Tel. & Tel. Co. v. PSC*, 270 S.C. 590, 601, 244 S.E.2d 278, 283–84 (1978) (holding that the property a utility holds for future use can be included in the rate base, though it is not used and useful in serving current ratepayers).

Rate Setting Process



After the revenue required by the utility is identified, the next step is determining how that revenue will be collected from the utility's various types of customers, that is, developing customer rates.

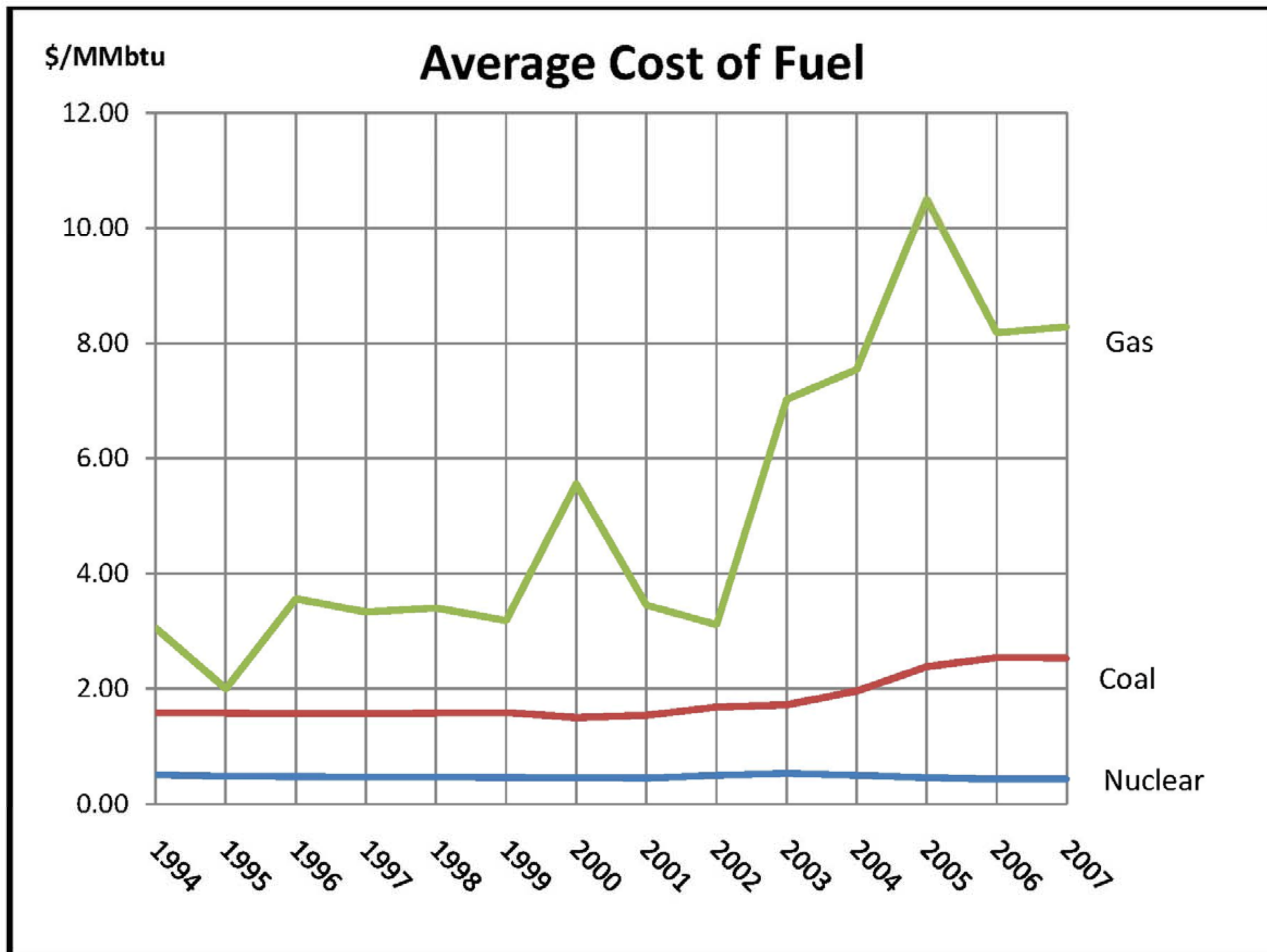
Revenue Allocation Process



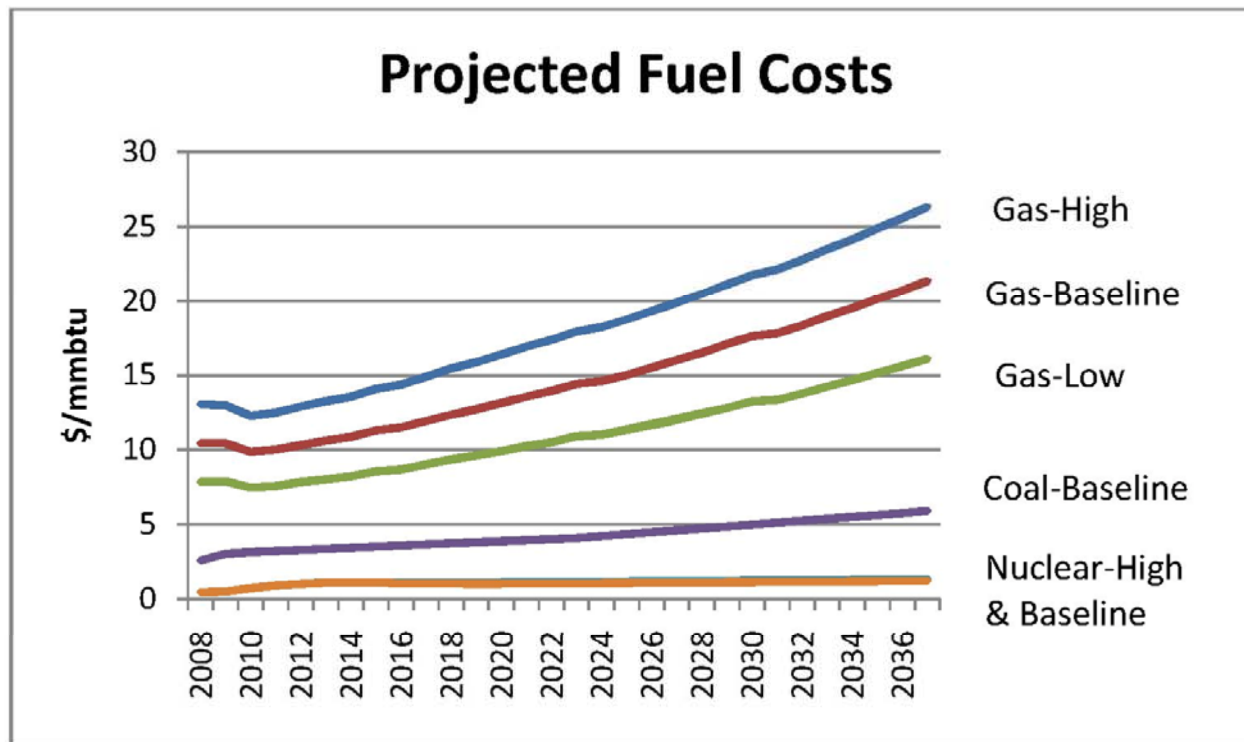
- “Revised rates” means a revised schedule of electric rates and charges reflecting a change to the utility’s then current nonfuel rates and charges to add incremental revenue requirements related to a base load plant.
  - For a nuclear plant under construction, until it enters commercial operation the rate adjustments related to the plant shall include recovery of the [utility’s] weighted average cost of capital applied to the outstanding balance of capital costs of that plant only
  - and shall not include depreciation or other items constituting a return of capital to the utility.

S.C. Code Ann. § 58-33-220(17) (emphasis added).

- S.C. Code § 58-33-280(K) – Abandonment
  - Where a plant is abandoned after a base load review order approving rate recovery has been issued,
    - The utility must prove by a preponderance of the evidence that the decision to abandon construction of the plant was prudent, and
    - Recovery of capital costs [for the abandoned plant] 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.



Sources: Annual 10-K reports sent to Securities and Exchange Commission (nuclear, coal, gas:2001-2007)and FERC Form 1 annual reports (gas:1994-2000).



The high and baseline nuclear price forecasts are almost indistinguishable in the graph because of the scale required to include the higher gas prices even though the high nuclear price is almost 10% greater than the baseline price.

SCE&G's Requested Rate Increases

Docket No.	Order No.	Requested Revenue Increase	Requested Retail Increase	Requested Residential Bill Increase
2008-196-E	2009-104(A)	$8,986,000	0.49%	$0.54
2009-211-E	2009-696	$22,533,000	1.10%	$1.31
2010-157-E	2010-625	$54,561,000	2.73%	$3.33
2011-207-E	2011-738	$58,537,000	2.70%	$3.58
2012-186-E	2012-761	$56,747,000	2.53%	$3.57
2013-150-E	2013-680(A)	$69,671,000	2.97%	$4.32
2014-187-E	2014-785	$70,038,000	2.99%	$4.34
2015-160-E	2015-712	$69,648,000	2.78%	$4.01
2016-224-E	2016-758	$74,161,000	3.06%	$4.44
TOTAL		$484,882,000		$29.44

Approved Rate Increases

ORS Reduction	Approved Increase	Approved Retail Increase	Approved Residential Increase
($1,183,509)	$7,802,491	0.43%	$0.48
$0	$22,533,000	1.10%	$1.31
($7,260,000)	$47,301,000	2.31%	$2.87
($5,753,658)	$52,783,342	2.43%	$3.23
($4,598,087)	$52,148,913	2.33%	$3.28
($2,430,768)	$67,240,232	2.87%	$4.18
($3,800,000)	$66,238,000	2.82%	$4.11
($5,122,000)	$64,526,000	2.57%	$3.71
($9,733,000)	$64,428,000	2.66%	$3.86
($39,881,022)	$445,000,978		$27.03

SCE&G's Requested Rate Increases						Approved Rate Increases			
Docket No.	Order No.	Order Date	Effective Date	Incremental CWIP	Requested Revenue Increase	ORS Reduction	Approved Increase	Approved Retail Increase	Approved Residential Increase
2008-196-E	2009-104(A)	03/02/09	04/01/09	$65,960,797	$8,986,000	($1,183,509)	$7,802,491	0.43%	$0.48
2009-211-E	2009-696	09/30/09	10/30/09	$207,140,000	$22,533,000	$0	$22,533,000	1.10%	$1.31
2010-157-E	2010-625	09/30/10	10/30/10	$399,146,000	$54,561,000	($7,260,000)	$47,301,000	2.31%	$2.87
2011-207-E	2011-738	09/30/11	10/30/11	$436,725,000	$58,537,000	($5,753,658)	$52,783,342	2.43%	$3.23
2012-186-E	2012-761	09/28/12	10/30/12	$436,229,000	$56,747,000	($4,598,087)	$52,148,913	2.33%	$3.28
2013-150-E	2013-680(A)	10/02/13	10/30/13	$569,356,000	$69,671,000	($2,430,768)	$67,240,232	2.87%	$4.18
2014-187-E	2014-785	09/30/14	10/30/14	$561,062,000	$70,038,000	($3,800,000)	$66,238,000	2.82%	$4.11
2015-160-E	2015-712	09/30/15	10/30/15	$547,224,000	$69,648,000	($5,122,000)	$64,526,000	2.57%	$3.71
2016-224-E	2016-758	10/26/16	11/27/16	$574,150,000	$74,161,000	($9,733,000)	$64,428,000	2.66%	$3.86
Total				$3,796,992,797	$484,882,000	($39,881,022)	$445,000,978		$27.03

- **[N]o court of this State shall have jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the [South Carolina Public Service Commission] under this chapter** or to stop or delay the construction, operation, or maintenance of a major utility facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder, **and any such action shall be brought only by the Office of Regulatory Staff**. Provided, however, nothing herein contained shall be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action which he might otherwise have been entitled.

S.C. Code Ann. § 58-33-320 (emphasis added).

- **Where a plant is abandoned after a base load review order approving rate recovery has been issued**, the capital costs and [allowance for funds used during construction] related to the plant shall nonetheless be recoverable under this article . . . [under stated conditions]. **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 (emphasis added).

- The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. **The provisions of this section do not limit the right of a purchaser or lessee or a vacation time sharing association to bring a private action to enforce the provisions of this chapter.**
- S.C. Code Ann. § 27-32-130

- **[N]o court of this State shall have jurisdiction** to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the [South Carolina Public Service Commission] under this chapter or to stop or delay the construction, operation, or maintenance of a major utility facility, **except to enforce compliance with this chapter or the provisions of a certificate issued hereunder**, and any such action shall be brought only by the Office of Regulatory Staff. **Provided, however, nothing herein contained shall be construed to abrogate or suspend the right of any individual or corporation not a party to maintain any action <u>which he might otherwise have been entitled</u>**.
- S.C. Code Ann. § 58-33-320 (emphasis added).

- *Edge v. State Farm Mutual Insurance Co*., 366 S.C. 511, 623 S.E.2d 387 (2005), prohibits judicial challenges to filed rates:
  - The filed rate doctrine was originally a federal preemption rule which provided that ***rates duly adopted by a regulatory agency are not subject to collateral attack in court***. The filed rate doctrine stands for the proposition that ***because an administrative agency is vested with the authority to determine what rate is just and reasonable, courts should not adjudicate what a reasonable rate might be in a collateral lawsuit***.
  - Id. at 511, 517, 623 S.E.2d at 391 (2005) (citations & quotations omitted) (emphasis added).

- The reasons for the doctrine are:
  - to preserve "the ***agency's authority*** to determine the reasonableness of rates;"
  - to recognize "the ***agency's expertise*** with regard to that industry;"
  - "allowing an action would ***undermine the regulatory scheme*** because the statute allows for enforcement by the appropriate state officers;" and
  - "allowing an action may result in different prices being paid by victorious plaintiffs than non-suing ratepayers, which ***violates the statutory scheme of uniform rates***."
- *Edge*, 366 S.C. at 518, 623 S.E.2d at 391-92 (emphasis added).

- Application of the filed rate doctrine in any particular case ***is not determined by the culpability of the defendant's conduct or the possibility of inequitable results. Nor does the doctrine's application depend on the nature of the cause of action the plaintiff seeks to bring***. Rather, ***the doctrine is applied strictly to prevent a plaintiff from bringing a cause of action*** even in the face of apparent inequities whenever [the principles] underlying the doctrine [are] implicated by the cause of action the plaintiff seeks to pursue.
- *Marcus v. AT&T Corp*., 138 F.3d 46, 58-59 (2d Cir. 1998) (emphasis added).

- The plaintiffs respond [to defendant's invocation of the filed rate doctrine] that courts would not be required to determine a 'reasonable' rate, but rather would only have to decide what damages arose from the fraud, a task courts routinely undertake. ***However, the two are hopelessly intertwined***: "The fact that the remedy sought can be characterized as damages for fraud does not negate the fact that the court would be determining the reasonableness of rates," and that any "attempt to determine what part of the rate previously deemed reasonable was a result of the fraudulent acts would require determining what rate would have been deemed reasonable absent the fraudulent acts, and then finding the difference between the two."
- *Wegoland Ltd. v. NYNEX Corp*., 27 F.3d 17, 21 (2d Cir. 1994) (quoting Wegoland Ltd. v. NYNEX Corp., 806 F. Supp. 1112, 1119 (S.D.N.Y. 1992)) (emphasis added)

- Plaintiff's argument [that the Court can determine damages], however, incorrectly assumes that the Court does not need rate-making expertise to determine whether or not (1) defendants' fraud was so pervasive that it was the sole basis for the rate increases and (2) absent defendants' fraud, the rates pre-existing the approved increases were reasonable . . . . ***These assumptions are nonsensical because the Court cannot ascertain either the pervasiveness of the fraud or the reasonableness of the rates existing prior to the increases <u>without a thorough understanding of the factors involved in ascertaining a reasonable rate</u>***.
- *Fersco v. Empire Blue Cross/Blue Shield of N.Y.*, 1994 WL 445730, *3 (S.D.N.Y. Aug. 17, 1994) (emphasis added)

- When a petition has been filed with the [PSC] concerning any rate or charge for any electric current furnished or service performed by any electrical utility and the [PSC] has found after hearing that the electrical utility has charged an ***unreasonable, excessive, or discriminatory amount for electric current or service***, ***the [PSC] may order the electrical utility to make due reparation to the petitioner, with interest from the date of collection***; however, no unreasonable discrimination must result from the reparation. ***But no order for the payment of reparation upon the ground of unreasonableness must be made by the commission in any instance wherein the rate or charge in question has been authorized by law***.
- S.C. Code Ann. § 58-27-960 (entitled "Reparation orders; suits to enforce").

- “Primary jurisdiction,” on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of ***the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body***; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views.
- *United States v. W. Pac. R. Co*., 352 U.S. 59, 63-64 (1956)

- Intended v. incidental beneficiary of a contract
  - “[I]f a contract is made for the benefit of a third person, that person may enforce the contract ***if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person***.”
    - *Windsor Green Owners Ass’n v. Allied Signal, Inc*., 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004) (emphasis added).
  - Third party beneficiaries potentially eligible to bring a breach of contract claim are a “***narrow class***,” and are often ***confined to beneficiaries of wills or other estate planning documents or other specific entities or individuals identified as such by name or category in the contract***.
    - See *Fabian v. Lindsay*, 410 S.C. 475, 491, 765 S.E.2d 132, 141 (2014).

- General customers of public utilities are not part of this narrow class, and are, at most, incidental beneficiaries of a utility’s contracts.
  - “When [the utility] entered its numerous supply and construction contracts, its primary intent was to benefit its shareholders, and any advantages ultimately realized by [utility’s] customers were incidental. For this Court to hold otherwise would not only expose contracting parties to countless unforeseeable lawsuits, but would also impair the notion of privity of contract.” Suffolk County, 728 F.2d at 63see also Bodine v. Osage County Rural Water Dist. No. 7, 949 P.2d 1104, 1114 (Kan. 1997) (“We do not believe a patron of a utility is a third-party beneficiary of a contract that helps provide a service to the patron.”).

- “It is a general principle of corporate law deeply ‘ingrained in our economic and legal systems’ that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries.”
- *United States. v. Bestfoods*, 524 U.S. 51, 61 (1998) (internal quotation omitted).

- “[Courts have] ***a very limited scope of review*** in cases involving a constitutional challenge to a statute. ***All statutes are presumed constitutional and will, if possible, be construed so as to render them valid***. *Davis v. County of Greenville*, 322 S.C. 73, 470 S.E.2d 94 (1996).
- A legislative act will not be declared unconstitutional ***unless its repugnance to the constitution is clear and beyond a reasonable doubt***. *Westvaco Corp. v. South Carolina Dep’t of Revenue*, 321 S.C. 59, 467 S.E.2d 739 (1995).
- ***A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates a provision of the constitution.*** *Id*.”

- *Joytime Distributors & Amusement Co., Inc. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999) (emphasis added).

- The U.S. Supreme Court has repeatedly held that a ratepayer has no constitutionally protected property right in paying any particular rate or the funds paid for service
  - "[T]o have the service, the customers must pay for it," and "[t]he revenue paid by the customers for service belongs to the [utility]." *Bd. of Pub. Util. Comm'rs v. N.Y. Tel. Co*., 271 U.S. 23, 31 (1926).
  - "No one has a legal right to the maintenance of an existing rate or duty." *Norwegian Nitrogen Prods. Co. v. United States*, 288 U.S. 294, 318 (1933);
  - Wright v. Cent. Ky. Natural Gas Co., 297 U.S. 537, 542 (1936) (per curiam) (holding that ratepayers had no vested property right in impounded funds they had paid to the utility).

- The takings clause of the South Carolina Constitution is implicated "where private property is ***taken for public use by the State*** or by any of its agencies . . . or by a municipal corporation." Smith v. City of Greenville, 229 S.C. 252, 260, 93 S.E.2d 639, 643 (1956) (emphasis added) (internal citations or quotations omitted).

- What the [ratepayers] seek would require that this court analogize an increase in utility rates without a prior hearing to a termination of utility services without a prior hearing and, thus, hold that such increase constitutes a deprivation of property within the concept of the . . . [due process clause]. To so hold would necessitate that this court extend [prior cases regarding due process] to an uncharted point not supported by any cited authority. We refuse to sanction such an extension.
- *Holt v. Yonce*, 370 F. Supp. 374, 377 (D.S.C. 1973) (three-judge court) (per curiam), summarily aff'd, 415 U.S. 969 (1974).

- ***Update proceedings are likely to be a routine part of administering BLRA projects going forward*** (including future projects proposed by other electric utilities), such that under the Sierra Club's argument, the prudence of the decision to build the plant ***will be open to repeated relitigation during the construction period*** if a utility seeks to preserve the benefits of the BLRA for its project. ***Reopening the initial prudency determinations each time a utility is required to make an update filing would create an outcome that the BLRA was intended to prevent and would defeat the principal legislative purpose in adopting the statute***.
- *S.C. Energy Users Comm'n v. S.C. Elec. & Gas*, 410 S.C. 348, 360, 764 S.E.2d 913, 919 (2014) (quoting PSC Order No. 2012 884 at 17-18) (emphasis added).

- When a statute is found unconstitutional, we have recognized the general rule that an adjudication of [the] unconstitutionality of a statute ordinarily reaches back to the date of the act itself.... However, we also have recognized the necessity of upholding the validity of transactions or events that occurred before a statute was declared unconstitutional.... A close reading of the few South Carolina cases discussing the general rule indicates it is followed except in special or unusual circumstances, such as when doing so would create widespread havoc involving a great number of people or transactions, spawn unnecessary litigation, or result in flagrant injustice.
- *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 400, 596 S.E.2d 42, 48 (2004) (emphasis added); see also *White v. J.M. Brown Amusement Co*., 360 S.C. 366, 374, 601 S.E.2d 342, 346 (2004) (applying the exception).

- “Approximately 100 state regulatory agencies in some 33 jurisdictions have faced the question of how to allocate the burden of costs associated with abandonment of power plant projects. . . . A substantial majority of the public utility regulatory agencies that have considered the question have permitted a utility to recover all or some portion of the prudently incurred costs of a nuclear power plant reasonably abandoned before completion.”
- *People’s Org. for Wash. Energy Res. v. Wash. Util. & Transp. Comm’n*, 711 P.2d 319, 331 (Wash. 1985) quoting *Attorney Gen. v. Department of Pub. Util.*, 390 Mass. 208, 455 N.E.2d 414, 422 (1983); accord, State ex rel. Util. Comm’n v. Thornburg, 385 S.E.2d 451, 458 (N.C. 1989).

Daniel A. Weekley
Vice President and General Manager – Southern Pipeline Operations
Gas Infrastructure Group

121 Moore Hopkins Lane, Columbia, SC 29210
DominionEnergy.com

February 26, 2018

Honorable Shane Massey, Co-Chairman
Honorable Nikki Setzler, Co-Chairman
Senate V.C. Summer Nuclear Project Review Committee
Post Office Box 142
Columbia, SC 29202

Re: Hearing 2/14/18 Follow-up

Mr. Chairmen,

During the February 14, 2018 Senate V.C. Summer Nuclear Project Review Committee meeting, Dominion Energy's CEO and Chairman, Mr. Tom Farrell, committed to providing detailed follow-up responses on the following topics:

- A comparison of Dominion Energy's rates in Virginia and SCE&G's current rates
- Marketing and advertising spend in South Carolina by Dominion Energy since the merger announcement
- V. C. Summer 2 & 3 equipment summary, plan and estimated salvage value
- Status and timeline of the "mechanics liens"

Please find responses to the committee's questions in the attached document. At your convenience, I am happy to discuss this further or answer any additional questions.

Sincerely,

Daniel A. Weekley

CC: Senator Luke Rankin
Senator C. Bradley Hutto
Senator John L. Scott, Jr.
Senator Sean Bennett
Senator Mike Fanning
Heather Anderson, Staff Attorney
Kate Wink, Finance Committee
Senator Thomas Alexander
Senator Paul Campbell
Senator Greg Gregory
Senator Ronnie A. Sabb
Senator Stephen Goldfinch
Sara Parrish, Counsel to the Clerk

QUESTIONS FOR DOMINION ENERGY

1. Please provide a comparison of Dominion Energy's rates in Virginia and SCE&G's current rates.

The typical weighted average bill for 2017 for a SCE&G residential electric customer in South Carolina was ~$148/month for 1,000 kWh/month usage. The typical weighted average bill for 2017 for a Dominion Energy Virginia residential electric customer in Virginia was ~$115/month for 1,000 kWh/month usage. Please note that the customer rates and bills are dependent on a number of factors including (but not limited to) fuel mix, access to fuel supply, fuel transportation costs, shape of load, and customer mix. Given these various factors, direct bill comparisons may not be applicable.

2. Please provide amount of marketing and advertising spend in South Carolina by Dominion Energy since the merger was announced.

Dominion Energy believes it is important for SCE&G customers and other stakeholders to be fully informed about the proposed combination between SCANA and Dominion Energy. As such, we believe a robust outreach program designed to raise public awareness and engagement is warranted. However, no such outreach costs would be pushed down or otherwise allocated or charged to SCE&G from affiliated companies and therefore would not be sought for recovery from SCE&G customers. As of February 14, 2018, Dominion Energy purchased approximately $3.4 million of media in South Carolina related to the proposed combination of SCANA and Dominion Energy in the months of January and February. All advertising was cancelled on February 14, 2018 and stopped running as soon as existing logs expired. Minus penalties, Dominion Energy will receive a refund for the remainder of February media purchased. In addition, as of February 14, 2018, Dominion Energy spent approximately $276 thousand on production of advertising related to the proposed combination of SCANA and Dominion Energy in the months of January and February.

QUESTIONS FOR SCE&G

3. Please provide a summary of equipment at VC Summer 2&3 site. What is your view/plan on salvage value of the equipment how does it impact the abandonment analysis.

We have been informed by SCANA that the best estimate they and SCE&G have is that Westinghouse spent around ~$1.3 billion, including delivery charges, for the heavy equipment currently at the site. SCANA reports that it has been difficult to determine the exact value of the heavy equipment because the equipment was purchased by Westinghouse per the fixed price contract in the EPC Agreement. Typically EPC contractors provide information on full inventory at the end of the project, but given Westinghouse's bankruptcy and SCANA's subsequent abandonment of the project, obtaining this information has been challenging. Finally, Westinghouse has not yet provided purchase orders for all of the equipment at the site to SCE&G. Given the structure of the EPC contract, Westinghouse claims that it would also have a small ownership of the equipment at the site; however SCE&G has disputed that claim. SCE&G has analyzed several avenues to estimate the salvage value of the equipment at the site which are summarized below:

Potential value	Considerations	Challenges
Preservation value	• Assumes resumption of construction will become economically feasible in the future • Market value will be net of preservation costs	• Preservation costs are estimated to be ~$12 million a year, with no certainty over when, if ever, economic circumstances will change
Salvage for other AP1000 use	• Market value of heavy equipment will be net of de-installation, transportation, and other ancillary costs	• Only one other company building AP1000s in the U.S. and the equipment for that has largely been procured • SCE&G is negotiating to sell a small portion of equipment – between about $2 million and about $35 million - to Southern Company for its AP1000 • Future AP1000 plants in Asia and Europe will require significant transportation charges
Salvage for non-AP1000 use	• Safety related material could be salvaged • Market value of non-AP1000 materials will be net of de-installation, transportation, and other ancillary costs	• Current market for nuclear equipment is small • Significant decline in value when equipment is applied to non-nuclear use
Scrap / donation value	• Recycle or rebuild value	• *De minimis* value

Based on the above analysis, SCE&G estimates the easily salvageable value to be minor and is currently in negotiation with Southern Company to salvage it. SCE&G and Dominion Energy intend to discuss with the Internal Revenue Service whether incurring future preservation costs would have an adverse impact on the abandonment tax deduction.

4. Please provide a summary of the status and timeline of paying the "Mechanics Liens".

We understand that SCE&G and Santee Cooper contracted with a consortium that included Westinghouse Electric Company, LLC and Stone & Webster, Inc. (later known as "WECTEC Global Project Services, Inc.", a wholly owned subsidiary of Westinghouse Electric Company, LLC) to construct the V.C. Summer 2&3 (the "Project."). The consortium is hereafter collectively called "WEC."

On March 29, 2017, WEC filed bankruptcy. WEC failed to pay many of its subcontractors on the Project. Some of these subcontractors also did not pay their lower level sub-subcontractors (collectively, "WEC Subcontractors.") Many of the WEC Subcontractors have filed mechanics liens on the real property on which the Project was located.

Since the WEC bankruptcy, SCE&G filed a lien consolidation lawsuit and WEC Subcontractors have filed nearly 50 other lawsuits against SCE&G and Santee Cooper asserting mechanics liens, statutory and common law claims against both entities arising out of the alleged non-payment by WEC. All such lawsuits have been filed in the Fairfield County, South Carolina Court of Common Pleas.

On September 29, 2017, SCE&G obtained a court order consolidating all current and future lawsuits among SCE&G, Santee Cooper, and the WEC Subcontractors arising out of allegations of non-payment of the WEC Subcontractors by WEC. A second court order designated all such lawsuits as complex and assigned them to one judge. The consolidated case is captioned "In re: V.C. Summer Units 2 & 3 Payment Claims," Civil Action No. 2017-CP-20-378 and is pending in the Fairfield County, South Carolina Court of Common Pleas. SCE&G, Santee Cooper and the WEC Subcontractors agreed to another court order that has stayed any party's otherwise required response to any lawsuit, claim, cross-claim, counterclaim, or third party claim in the WEC Subcontractor's lawsuits and the consolidated lawsuit. Thus, all parties' responses are stayed until the parties can work out case management issues and present a plan for case management to the assigned judge. The court has also entered orders regarding discovery, which is in the very early stages.

Currently, there are approximately $283 million in pending liens filed by WEC Subcontractors alleged to be for labor or materials provided on the Project. The mechanics liens and claims filed by WEC Subcontractors are for materials and labor alleged to have been provided to WEC on the Project for periods of time that can be divided into two groups: (1) pre-petition claims (prior to the WEC March 29, 2017 bankruptcy) and (2) post-petition claims, which include the time period after March 29, 2017 and SCE&G's abandonment of the Project announced July 31, 2017. SCE&G cannot provide an accurate breakdown between pre-petition liens and post-petition liens as the WEC Subcontractors do not make such a distinction in their liens.

The WEC Subcontractors who have filed pre-petition liens are believed to have all made claims against WEC in the WEC bankruptcy seeking payment in full from WEC for pre-petition claim amounts that include the same amounts they have claimed against SCE&G and Santee Cooper. The amounts claimed by the WEC Subcontractors against SCE&G and Santee Cooper would be reduced to the extent the WEC Subcontractor claims are paid in the WEC bankruptcy. However, SCE&G cannot predict what may occur in the WEC bankruptcy with respect to payment of WEC Subcontractor claims.

The vast majority of the post-petition WEC Subcontractor claims are being paid by WEC directly to the WEC Subcontractors through a process set up through the WEC bankruptcy court. SCE&G cannot at this time identify which post-petition WEC Subcontractor lien claims have already been paid directly by WEC, as that process is ongoing. When all such post-petition WEC Subcontractor claims have been paid by WEC, SCE&G anticipates that the current total stated lien amount will be reduced to the extent such liens are paid off by WEC directly.

SCE&G has denied and continues to deny liability for the claims of the WEC Subcontractors arising from materials or labor supplied by those WEC Subcontractors to WEC on the Project. In any event, SCE&G's portion of the settlement amount is limited under the Citibank agreement to $35 million ($60M total including Santee Cooper's portion) for claims paid from the WEC bankruptcy estate. In order to provide up to $35 million reimbursement for claims paid from the WEC estate and any additional claims outside of the WEC bankruptcy, SCE&G may need to issue to debt using the credit capacity created by debt pay down from the Toshiba guarantee monetization payment.

K. Chad Burgess
Director & Deputy General Counsel

chad.burgess@scana.com

February 15, 2018

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Friends of the Earth and Sierra Club v. South Carolina Electric & Gas Company
Docket No. 2017-207-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
Docket No. 2017-305-E

Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, 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 Plans
Docket No. 2017-370-E

Dear Ms. Boyd:

On February 7, 2018, South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc ("Dominion Energy") (together, the "Joint Petitioners") filed a Petition for Review, Reconsideration, and Rehearing of Order No. 2018-80 issued in the above-referenced dockets ("Petition for Rehearing"). Since that time, S.954, which has a direct impact upon the timing of the consummation of the merger between SCANA Corporation and Dominion Energy, was amended on February 14, 2018, in such a manner to establish December 21, 2018, as the deadline for the Public Service Commission of South Carolina ("Commission") to issue a final order in the above-referenced dockets. Joint Petitioners are encouraged by the recent amendment to S.954, and assuming it passes the House and is signed by the Governor, it will allow the Commission to establish a procedural schedule ensuring that a final order will issued in the above-referenced dockets in December 2018.

Under South Carolina law, Joint Petitioners "[m]ay withdraw its petition . . . one time as a matter of right, and without prejudice . . . ." *See* S.C. Code Ann. 58-3-225(E)(2015). In light of the current status of S.954, and pursuant to S.C. Code Ann. § 58-3-225(E), the Joint Petitioners hereby voluntarily withdraw their Petition for Rehearing.

(Continued . . .)

By copy of this letter, we are informing the other parties of record, including those who have filed a Petition to Intervene which has not yet been ruled upon, of the Joint Petitioners' decision to withdraw their Petition for Rehearing.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

K. Chad Burgess
On behalf of SCE&G

J. David Black
On behalf of Dominion Energy

KCB/kms

cc:

Shannon Bowyer Hudson, Esquire
Jeffrey M. Nelson, Esquire
Robert Guild, Esquire
Frank R. Ellerbe, III, Esquire
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Elizabeth Jones, Esquire
J. Emory Smith, Jr.
Richard L. Whitt, Esquire
James R. Davis, Esquire
John B. Coffman, Esquire

(all via electronic mail and U.S. First Class Mail)

William W. Wilkins
Member
Admitted in SC

January 25, 2018

Mr. Mark O. Webb
Senior V.P. and Chief Legal Officer
Dominion Energy, Inc.
120 Tredegar Street
Richmond, Virginia 23219

Opinion Letter re: Constitutionality of BLRA and Proposed Legislation

Dear Mr. Webb:

As you know, I have recently been asked by representatives of Dominion Energy, Inc. ("Dominion") to address several legal issues that have great bearing on Dominion's proposed merger with SCANA Corporation ("SCANA"). On July 31, 2017, the South Carolina Electric & Gas Company ("SCE&G") – a wholly owned subsidiary of SCANA – announced its intention to abandon construction of two nuclear power generating units in Fairfield County (the "V.C. Summer Project" or "Project"). I understand that the South Carolina General Assembly, in reaction to SCE&G's abandonment of the V.C. Summer Project, is considering legislation that would repeal or significantly amend the Base Load Review Act ("BLRA"). I understand that passage of such laws could materially affect Dominion's decision whether to merge with SCANA pursuant to the terms of the parties' current arrangement.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

In light of these circumstances, Dominion seeks my opinion as to the answers to the following four questions:[1]

> **<u>Question #1</u>:** Is the BLRA, including its abandonment provision,[2] constitutional?

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[1] I want to acknowledge that two of my law partners, Kirsten Small and Andrew Mathias, provided valuable assistance to me in researching the pertinent case and statutory law.

[2] The BLRA provides, "[w]here a plant is abandoned after a base load review order approving rate recovery has been issued, the [costs] related to the plant shall nonetheless be recoverable under this article provided that the utility shall bear the burden of proving by a preponderance

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QUESTION #2: Would a repeal of the BLRA, in which SCE&G is required to refund past revenues collected for the V.C. Summer Project and/or prohibited from future recovery of its $5 billion investment in the Project, survive constitutional challenge?

QUESTION #3: Could the General Assembly constitutionally amend the BLRA in a prospective manner, *i.e.*, not affecting the previously approved V.C. Summer Project and associated rates, but doing away with the BLRA's funding mechanism going forward?

QUESTION #4: If the BLRA is retroactively amended or repealed, who would have standing to bring a legal challenge, and against whom would a claim be brought? Would such a suit be filed in state or federal court? Approximately how long would the litigation last? How would the litigation affect SCANA and SCE&G's customers?

EXECUTIVE SUMMARY

I have reached these conclusions, which are explained in detail in the following pages of this Opinion Letter:

ANSWER TO QUESTION #1: Yes. The BLRA, including its abandonment provision, is constitutional.

ANSWER TO QUESTION #2: No. A repeal of the BLRA in which SCE&G is required to refund past revenues collected for the V.C. Summer Project and/or prohibited from future recovery of its $5 billion investment in the Project would not survive legal challenges.

ANSWER TO QUESTION #3: Yes. The General Assembly could constitutionally amend the BLRA in a prospective manner, *i.e.*, not affecting the previously approved V.C. Summer Project and associated rates, but doing away with the BLRA's funding mechanism going forward.

ANSWER TO QUESTION #4: If the BLRA is amended or repealed in a retroactive manner SCE&G would have standing to bring a legal claim in state court. This litigation would be hard-fought and expensive,

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of the evidence that the decision to abandon construction of the plant was prudent." S.C. Code Ann. § 58-33-280(K).

and would have a negative impact on economic development in South Carolina.[3]

RELEVANT BACKGROUND

The South Carolina Constitution establishes that "[t]he General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, ***and privately owned utilities serving the public as and to the extent required by the public interest***." Article IX, § 1 (emphasis added). The Committee to Make a Study of the South Carolina Constitution of 1895 (the "West Committee"), which proposed revisions to the South Carolina Constitution in the 1960s, completely rewrote Article IX and proposed the aforementioned language which was later duly ratified. *See* Memo No. 11, Tr. of the West Committee, Feb. 1, 1968. With respect to Article IX, the West Committee explained that it had "fully discussed the need for regulation of corporations and utilities in the Constitution," and that it "believe[d] that the regulation of common carriers, public utilities and corporations ***is a matter for statute not the Constitution.***" (Final Report of the Comm. to Make a Study of the S.C. Const. of 1895 at 106-07 (1969) (emphasis added)).

Prior to 2007, ***statutes*** in South Carolina established that utility rate-making was governed by the "used and useful" standard, which restricts rate-making to "'the total investment in, or the fair value of, the used and useful property which it necessarily devotes to rendering the regulated services.'" *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 311 n.1, 313 S.E.2d 290, 291 n.1 (1984) (quoting *Southern Bell v. Pub. Serv. Comm'n*, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978)). That is, under the "used and useful" standard, an electric utility could ***not*** include in its rates money for construction of new electricity generation plants until those plants were actually in service and providing electricity.

The General Assembly Passes the BLRA

In 2007, in light of growing demand for increased generation of nuclear electricity, the South Carolina General Assembly passed the BLRA and Governor Mark Sanford allowed it to become law without his signature. As noted in the September 26, 2017 Attorney General's Advisory Opinion, "Enactment of the [BLRA] in South Carolina was part of a much larger effort throughout the nation to incentivize construction of new nuclear power plants by utilities as a means of establishing energy independence." Att'y Gen. Adv. Op. at 2. As you are undoubtedly aware, passage of

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[3] While I have not made an independent economic impact study, I am informed and believe that retroactive repeal or amendment of the BLRA would have a very significant negative impact on SCE&G's solvency. Further, such an action would send a signal to any company that is considering investment in South Carolina that the General Assembly is willing to disrupt settled economic expectations if – as is apt to occur in business – circumstances change.

the BLRA was driven by real and practical concerns, and as the Attorney General noted:

> The legacy of the last significant build-out of baseload generation is billions of dollars of cost disallowances when plants were cancelled before going into service (*i.e.*, before becoming "used and useful") or when [state utility] commissions otherwise found imprudence. After this experience, utilities were understandably reticent to undertake the types of capital-intensive projects that are necessary to provide new, cleaner, and more efficient baseload power. Consequently, a number of states passed statutes and implemented accompanying regulations to mitigate the risks utilities assume for such projects.

Id. (quoting Galloway and Cousineau, *Cost Recovery for Pre-Approved Projects*, 151 NO. 6 PUBL. UTIL. FORT. 54, 55 (June 1, 2013)). South Carolina joined the ranks of other states seeking to encourage development of new nuclear power generation by enacting the BLRA, which coupled a fully litigated pre-construction prudency review with statutory safeguards against the results of that pre-construction review being second-guessed. It was well within the General Assembly's constitutional authority to establish a method of ratemaking in South Carolina that differed from the "used and useful" standard.

The South Carolina General Assembly apparently believed (as did the legislatures of many other states) that the BLRA's funding mechanism was necessary to encourage construction of nuclear baseload plants. South Carolina's electrical utilities are duty-bound to "furnish adequate, efficient and reasonable service" to their customers, S.C. Code Ann. § 58-27-1510 (2015), and must keep pace with growing energy demand. But despite the many advantages of nuclear power generation, the construction of such plants is risky due to their cost and the amount of time it takes to build them. In passing the BLRA, the General Assembly determined–in accordance with Article IX, Section 1 of the South Carolina Constitution—that it was in the public interest for utilities to build nuclear plants and that investors and ratepayers should share the risks in funding these projects. *See* S.C. Bill History, 2007 Reg. Sess. S.B. 431 ("An act to protect South Carolina ratepayers by enhancing the certainty of investments in the infrastructure of electric utilities serving consumers in this State.").

As the Public Service Commission ("PSC") remarked years after the General Assembly passed the BLRA:

> [T]he principal benefit of nuclear construction, in addition to lower forecasted costs, is the fact that it helps insulate customers from the price volatility and supply risk that are increasingly associated with fossil fuel fired generation. Nuclear generation also insulates customers from future CO2 and other environmental compliance costs associated with fossil fuels, which are likely to be significant.

PSC Order No. 2009-104(A) (Mar. 9, 2009), at 56. In passing the BLRA, the General Assembly promoted the availability of nuclear power and in so doing, exercised what the Attorney General's Advisory Opinion recognizes as its "considerable latitude to determine what the 'public interest' is in a given instance." Br. of Att'y Gen. in Opp. To Mot. to Dismiss at 26, *In re: Request of S.C. Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920*, PSC Docket No. 2017-305-E (filed Nov. 21, 2017).

As noted by the South Carolina Supreme Court, the unreviewability of the PSC's initial prudence determination is a critical aspect of the BLRA:

> [T]he BLRA was intended to cure a specific problem under the prior statutory and regulatory structure. Before adoption of the BLRA, a utility's decision to build a base load generating plant was subject to relitigation if parties brought prudency challenges after the utility had committed to major construction work on the plant. The possibility of prudency challenges while construction was underway increased the risks of these projects as well as costs and difficulty financing them. In response, the General Assembly sought to mitigate such uncertainty by providing for a comprehensive, fully litigated and binding prudency review ***before*** major construction of a base load generating facility begins.

S.C. Energy Users Comm. v. SCE&G, 410 S.C. 348, 359, 764 S.E.2d 913, 918 (2014) (emphasis added).

SCE&G Applies for and Receives a Base Load Review Order

After the passage of the BLRA, on May 30, 2008, SCE&G submitted a Combined Application ("the Application") for a Base Load Review Order ("BLRO") related to the construction and operation of V.C. Summer Units 2 and 3 ("the Units"). SCE&G was a 55% partner in the endeavor, with the South Carolina Public Service Authority ("Santee Cooper") having a 45% stake. Notice of the proceedings was published in papers of general circulation in SCE&G's service area, and SCE&G customers received written notice via an insert in their bills. Before issuing the BLRO ten months later, the PSC considered, *inter alia*, written comments from some 87 members of the public, briefs from 12 individuals or groups who formally intervened in the proceedings. Additionally, the Office of Regulatory Staff ("ORS") "conducted an extensive audit and examination of SCE&G's decision to construct the Units and the contracts, designs, and permits under which they will be constructed," aided by "outside consultants with extensive experience in power plant construction, construction contracting, resource planning, transmission planning, load modeling, economics, and environmental and nuclear permitting." BLRO at 9. Eight of these experts testified during a multi-day hearing the PSC conducted in December 2008,

which also included the testimony SCE&G's senior leadership and 26 public witnesses. BLRO at 5-6, 9. The transcript of the hearing was more than 2,500 pages long.

On March 2, 2009, the PSC issued the BLRO. PSC Order No. 2009-104(A). In the 126-page order, the PSC analyzed multiple aspects of the prudence and reasonableness of the proposed Project, including:

- The accuracy of SCE&G's forecasts of future demand;
- The potential impact of the Project on the environment;
- The selection of the location and the reactor design;
- The selection of Westinghouse and Stone & Webster as the principal contractors for the construction;
- The terms of the engineering, procurement, and construction contract ("EPC Contract") for the construction;
- The reasonableness and practicality of SCE&G's financing plan;
- Internal and external oversight of the Project; and
- Schedule and cost forecasts.

As required by the BLRA, *see* S.C. Code Ann. § 58-33-250(8) (2015), the PSC also considered various risks posed by the Project, including risks that might result in cost overruns or construction delays and "the risks of constructing these units compared to the risks of meeting the energy needs of SCE&G's customers by other means." BLRO at 90-91.

Ultimately, the PSC concluded,

> There is no risk-free means to meet the future energy needs of SCE&G's customers or of the state of South Carolina. Based on the evidence of record, ***the [PSC] finds that it is reasonable and prudent to proceed*** with the construction of Units 2 and 3 in light of the information available at this time and the risks of the alternatives.
>
> . . .
>
> [Our] approval of the reasonableness and prudency of [SCE&G's] decision to proceed with construction of the Units rests on a thorough record and detailed investigation of the information known to the [SCANA] and the parties at this time. Once an order is issued . . . the statute does not allow the [PSC] to shift risks back to [SCE&G] . . . . In addition, ***risk shifting could jeopardize investors' willingness to provide capital for the project*** on reasonable terms which, in turn, could ***result in higher costs to customers***.

PSC Order No. 2009-104(A), p. 92 (emphasis added). The South Carolina Supreme Court affirmed the BLRO, describing it as "very thorough and reasoned" and noted that "the [PSC] addressed each and every concern" presented to it. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 372, 692 S.E.2d 910, 916 (2010).

Base Load Review Order and SCE&G's Oversight Reviewed on Multiple Occasions

Even after issuance of the BLRO, the V.C. Summer Project continued to be the subject of intense scrutiny by the PSC, the ORS, and members of the public. In addition to scrutiny by the courts, the PSC has examined SCE&G's prudence in management of the Project on a regular basis since issuance of the BLRO on March 2, 2009:

- **July 21, 2010**: PSC issues order updating construction schedules;
- **May 16, 2011**: PSC issues order removing $438 million in contingency and adding $174 million;
- **November 15, 2012**: PSC issues order revising construction schedule and approving $283 million in additional capital costs;
- **September 10, 2015**: PSC issues order further revising construction schedule and approving $698 million in additional capital costs;
- **November 28, 2016**: PSC issues order further revising construction schedule.

The PSC issued these orders only after examining all the evidence presented at a public hearing and finding that the requested changes were ***not*** the result of imprudence on the part of SCE&G. This process is required by S.C. Code Ann. § 58-33-270(E), a critical provision of the BLRA intended to protect the ratepayer.[4]

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[4] That provision reads:

> (E) As circumstances warrant, the utility may petition the [PSC], with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued under this section. The commission shall grant the relief requested if, after a hearing, the commission finds:
>
> (1) as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that ***the changes are not the result of imprudence on the part of the utility***; and
>
> (2) as to the changes in the class allocation factors or rate designs, that the evidence of record indicates the proposed class allocation factors or rate designs are just and reasonable.

Significant Change in Circumstances

On March 29, 2017, the project's prime contractor, Westinghouse, and certain of its affiliates petitioned for Chapter 11 bankruptcy protection and informed SCE&G and Santee Cooper that it was rejecting its obligations under the parties' contract pursuant to provisions of the Bankruptcy Code. *See* Pet'n of SCE&G at 4, *In re: Pet'n of SCE&G for Prudency Determination Regarding Abandonment*, PSC Docket No. 2017-244-E (filed Aug. 1, 2017) ("Abandonment Petition"). On July 27, 2017, Westinghouse's parent company, Toshiba Corporation ("Toshiba"), agreed to pay SCE&G approximately $1.2 billion to satisfy all claims for damages arising out of Westinghouse's bankruptcy and rejection of the parties' contract. *Id.* at 5. In light of the significant change in circumstances, SCE&G and Santee Cooper began to create amended cost and completion schedules. But, on July 31, 2017, Santee Cooper announced that it was abandoning the project. *Id.* at 9.

SCANA Abandons V.C. Summer Project

Soon after Santee Cooper abandoned the Project, SCANA announced that SCE&G "will cease construction of the [V.C. Summer Project] and will promptly file a petition with the [PSC] seeking approval of its abandonment plan." Press Release, SCANA Corp., *South Carolina Electric & Gas Company to Cease Construction and Will File Plan of Abandonment of the New Nuclear Project* (July 31, 2017), *available at* http://bit.ly/2uTpF2h (last visited Jan. 24, 2018). SCE&G made the decision to abandon the Project after "conclud[ing] that it would not be in the best interest of its customers and other stakeholders to continue construction," specifically citing:

> . . . additional costs to complete the Units, the uncertainty regarding the availability of production tax credits for the [P]roject, the amount of anticipated guaranty settlement payments from Toshiba . . . and other matters associated with continuing construction, including the decision of the co-owner of the project, [Santee Cooper], to suspend construction of the project.

Id. Kevin Marsh, then the Chairman and CEO of SCANA ("Chairman Marsh"),[5] went on to say:

> We arrived at this very difficult but necessary decision following months of evaluating the project from all perspectives to determine the

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S.C. Code Ann. § 58-33-270(E) (emphasis added).

[5] On October 31, 2017, SCANA announced leadership changes, including the retirement of Chairman Marsh and the appointment of Maybank Haygood to Non-Executive Chairman of the Board of Directors and Jimmy Addison to CEO. *See* Press Release, SCANA Corp., *SCANA Corporation and South Carolina Electric & Gas Company Announce Leadership Changes* (Oct. 31, 2017), *available at* http://bit.ly/2Dw7OCg (last visited Jan. 24, 2018).

> most prudent path forward. Many factors outside our control have changed since inception of this project. Chief among them, the bankruptcy of our primary construction contractor, Westinghouse, eliminated the benefits of the fixed-price contract to our customers, investors, and other stakeholders. Ultimately, our project co-owner Santee Cooper's decision to suspend construction made clear that proceeding on our own would not be economically feasible. Ceasing work on the project was our least desired option, but this is the right thing to do at this time.

Id.

Given the risky nature of nuclear construction projects, the General Assembly anticipated the possibility of abandonment in 2007, and included in the BLRA a provision expressly permitting a utility to abandon a project and still recover some of its costs:

> Where a plant is abandoned after a base load review order approving rate recovery has been issued, the capital costs and AFUDC[6] related to the plant ***shall nonetheless be recoverable*** . . . provided that the utility shall bear the burden of providing by a preponderance of the evidence that the decision to abandon construction of the plant was prudent. . . . The [PSC] ***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) (emphasis added). This type of recovery was necessary to induce utility companies to undertake such risky projects and undoubtedly contained in the BLRA to protect utilities from the inherent risks associated with such construction. Notwithstanding that these projects are financially precarious, the General Assembly determined that they were in the public interest, and that in the event of prudent abandonment a utility should recover its investment.

On August 1, 2017, SCE&G filed the Abandonment Petition with the PSC. On August 15, 2017, however, SCE&G voluntarily withdrew its Abandonment Petition in order to "accommodate the legislative review process." Press Release, SCANA Corp., *South Carolina Electric & Gas Company to Voluntarily Withdraw its New Nuclear Abandonment Petition to Accommodate the Legislative Review Process* (Aug. 15, 2017), *available at* http://bit.ly/2vZFkAl (last visited Jan. 24, 2018). In announcing the withdrawal, SCANA noted that "SCE&G management has met with various stakeholders and members of the South Carolina General Assembly, including legislative leaders, to discuss the abandonment of the new nuclear project and to hear

[6] "'AFUDC' means the allowance for funds used during construction of a plant calculated according to regulatory accounting principles." S.C. Code Ann. §58-33-220(1).

their concerns. SCE&G's withdrawal decision was in response to those concerns, and to allow for adequate time for governmental officials to conduct their reviews." *Id.* Chairman Marsh, at an August 16, 2017 press conference, indicated that the Abandonment Petition would be refiled at "an appropriate time." *SCE&G withdraws petition to scrap Summer project*, World Nuclear News (Aug. 16, 2017), *available at* http://bit.ly/2E1TUsA (last visited Jan. 24, 2018).

Attorney General's Advisory Opinion Regarding Constitutionality of the BLRA

On September 26, 2017, the Attorney General published an advisory opinion addressing the constitutionality of the BLRA "in light of the recent problems that have occurred with [the] V.C. Summer Nuclear Plant." Att'y Gen. Adv. Op. at 1. Notwithstanding his acknowledgment that legislation is presumed constitutional, the Attorney General opined that "as applied, portions of the [BLRA] are constitutionally suspect" because "[the BLRA] fails to strike the constitutionally required balance between investors and ratepayers." *Id.* At its core, the basis for this opinion is that the Attorney General reads Article IX, Section 1 of the South Carolina Constitution to require the "used and useful" standard in utility rate-making, and "[t]hus, [the Attorney General] believe[s] that Art. IX, § 1 renders the abandonment provision . . . constitutionally suspect."[7] Att'y Gen. Adv. Op. at 57.

Proposed Legislation

Prior to the 2018 Legislative Session, several members of the General Assembly pre-filed legislation proposing significant revisions to the BLRA, including its abandonment procedures:

- **H. 4375**: Proposing a *de facto* repeal of the BLRA by requiring that rates be set using the "used and useful" standard and expressly prohibiting a utility from charging as part of its rate an amount associated with construction costs until the PSC determines that the generation facilities are then "used and useful."

- **H. 4380**: Establishing procedures for the PSC to "order a refund to ratepayers of all amounts collected for costs attributed to a project construction under the provisions of the [BLRA]."

[7] The Attorney General does not opine that the BLRA is unconstitutional, only that it is "constitutionally suspect."

Proposed Merger of Dominion and SCANA and Request for a Prudency Determination Regarding Abandonment of the V.C. Summer Project

As you are well aware, on January 3, 2018, Dominion and SCANA issued a joint press release in which they announced:

> . . . an agreement for the companies to combine in a stock-for-stock merger in which SCANA shareholders would receive 0.6690 shares of Dominion . . . common stock for each share of SCANA common stock, the equivalent of $55.35 per share, or about $7.9 billion based on Dominion['s] . . . volume-weighted average stock price of the last 30 trading days ended Jan. 2, 2018. Including assumption of debt, the value of the transaction is approximately $14.6 billion.

Press Release, SCANA Corp. and Dominion, *Dominion Energy, SCANA Announce All-Stock Merger With $1,000 Immediate Cash Payment To Average South Carolina Electric & Gas Residential Electric Customer After Closing* (Jan. 3, 2018), *available at* http://bit.ly/2E4abx6 (last visited Jan. 24, 2018).

On January 12, 2018 SCANA and Dominion filed a "Joint Application and Petition . . . 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 merger benefits and cost recovery plans." Docket No. 2017-370-E. This petition describes critical terms of the merger, namely: (1) a one-time credit to SCE&G's customers totaling $1.3 billion, (2) post-merger, SCE&G would write-off $1.4 billion in project costs and approximately $320 million in regulatory assets, removing any future customer obligation for these costs, (3) Dominion would "underwrite a $575 million refund pool for refunding amounts previously collected that, along with the benefit of recent federal income tax reform, will allow SCE&G to provide an immediate reduction in customer bills of at least 5% on a customer class basis, and will keep the portion of the bill reduction that is not attributable to federal tax reform in place for approximately eight years" (Petition at 4-5), and (4) other material benefits to ratepayers and South Carolina. These proposed benefits would be material to SCE&G's ratepayers and are only available to them if the previously described transaction – worth $14.6 billion – is effectuated.

SCANA and Dominion state that without the PSC's approval of the proposed merger and its terms, "the Merger will not occur" (Petition at 3). In that event, SCANA requests approval of one of two proposed alternatives: (1) "the [PSC] adopt a rate mitigation plan that can be funded by SCE&G alone, but as a matter of financial necessity cannot provide customers with all the benefits associated with the Merger (the 'No Merger Benefits Plan'), or (2) the [PSC] issue an order providing for the recovery of all costs and investments associated with the . . . project allowable by law without any present rate increase (the 'Base Request')" (Petition at 6). If the merger is

not approved and neither of the alternative proposals is implemented, but rather the PSC implements the course of action proposed by the Office of Regulatory Staff, "it would be unlikely that SCANA could recapitalize SCE&G to restore its creditworthiness and SCE&G's ability to continue to finance its utility operations outside of bankruptcy." Petition, at 50. Additionally, SCANA has repeatedly and publicly stated that if the proposed legislation currently before the General Assembly is passed it will be impossible for SCE&G's ratepayers to receive any relief.

It is with this background in mind that I analyze the following issues that are of such importance to South Carolina.

ANALYSIS

QUESTION #1: Is the BLRA, including its abandonment provision, constitutional?

ANSWER: Yes.

Historically, in South Carolina as elsewhere in the nation, utility rates have been based only on property that is "used and useful" in the production of electricity. Under the "used and useful" standard, a public utility cannot begin to recover the cost of constructing a new power plant until it is fully built and operational. This creates an economic barrier to the construction of new nuclear power plants, which are expensive[8] and require long construction periods. Few (if any) public utilities have the financial ability to carry the cost of a new nuclear plant during the years it takes to build one.

In the mid-2000s, numerous states responded to this dilemma, and sought to encourage new nuclear construction, by enacting laws allowing utilities to begin recovering costs associated with construction of nuclear power plants that are not "used and useful" (and, in the case of abandoned projects, will never become used and useful). The BLRA is South Carolina's answer to the question of how to encourage the construction of new nuclear power plants.

Under the BLRA, utilities may include in their rates the prudently incurred costs of new nuclear power plants, even if the utility eventually abandons construction. *See* S.C. Code Ann. § 58-33-280(K). The BLRA also provides that the PSC's initial prudency determination is "final," preventing reevaluation of a project's prudence in any subsequent proceeding. *Id.* § 58-33-275(A)-(B). During construction, however, the PSC may increase rates to account for higher-than-expected costs, so long as those

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[8] "Capital costs (construction and financing) account for 71.4% of overall nuclear generation costs[.]" Robert C. Volpe, *The Role of Advanced Cost Recovery in Nuclear Energy Policy*, 15 Sustainable Dev. L. & Pol'y 28, 29 (Winter 2015).

costs did not result from the utility's imprudence and the new rates are "just and reasonable." *Id.* § 58-33-270(E).

In the wake of SCE&G's decision to abandon the V.C. Summer Project, significant attention has been paid to the BLRA, both as to the wisdom of the General Assembly's enactment of it in 2007, and as to its constitutionality. The latter category includes the Attorney General's Advisory Opinion from September 2017, which stated that the BLRA's prudency review process and its abandonment provisions raise "constitutional concerns." Att'y Gen. Adv. Op. at 12-13.

The Takings Clause

The United States Constitution's primary restriction on government regulation of utility rates is the Fifth Amendment's Takings Clause, which provides that "private property [shall not] be taken for public use, without just compensation." The Fourteenth Amendment makes this restriction applicable to the States. *See Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 239 (1897). The South Carolina Constitution likewise provides that "private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property." S.C. Const. Art. I, § 13.

Under the Federal Takings Clause, "[a] public utility is entitled to such rates as will permit it to earn a return on 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." *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93 (1923). In other words, the United States Constitution requires "just and reasonable" utility rates that strike a balance between the interests of investors and the interests of ratepayers. *Permian Basin Area Rate Cases*, 390 U.S. 747, 770 (1968); *see also FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). Rates set too low or too high are equally unconstitutional. "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." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989). "In addition to prohibiting rates so low as to be confiscatory," the Supreme Court's cases also "make[] clear that exploitative rates are illegal as well." *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1177-1180 (D.C. Cir. 1987) (en banc). When it comes to utility regulation, South Carolina's legal requirements appear to overlap with the Fifth Amendment. Rates cannot be set "so low as to be confiscatory to the utility or so high as to be unduly burdensome to the utility's customers." *Mims v. Edgefield Cty. Water & Sewer Auth.*, 278 S.C. 554, 556, 299 S.E.2d 484, 486 (1983).

"In reviewing a rate order courts must determine whether or not the end result of that order constitutes a reasonable balancing . . . of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates." *Jersey Central*, 810 F.2d at 1177-78. So long as the "total effect" of a rate is reasonable, the method employed to set the rate largely does not matter. *Duquesne*, 488 U.S. at 310. Challengers face a "heavy burden" to establish that a rate is constitutionally unreasonable. *Hope Natural Gas*, 320 U.S. at 602. Any rate falling with the "broad zone of reasonableness . . . cannot properly be attacked as confiscatory." *Permian Basin*, 390 U.S. at 770.

Importantly, the United States Supreme Court has made clear that the "used and useful" test is ***not*** the only measure of what is "just and reasonable." The "used and useful" test was first articulated in *Smyth v. Ames*, 169 U.S. 466, 546 (1898), where the United States Supreme Court held that "the basis of all calculations as to the reasonableness of rates . . . must be the fair value of the property being used by it for the convenience of the public." Subsequently, however, that Court held "that the 'fair value' rule is not the only constitutionally acceptable method of fixing utility rates." *Duquesne*, 488 U.S. at 310 (citing *Hope Natural Gas*, 320 U.S. at 602).

After *Hope Natural Gas*, the "used and useful" test "ceased to have any constitutional significance[.] . . . It is now simply one of several permissible tools of ratemaking, one that need not be, and is not, employed in every instance." *Jersey Central*, 810 F.2d at 1175. Consequently, "the inclusion of property not currently used and useful in the rate base" does not "automatically constitute[] exploitation of consumers[.]" *Id.* at 1180. "[I]ncluding prudent investments in the rate base is not in and of itself exploitative[.] . . . Indeed, when the regulated company is permitted to earn a return not on the market value of the property used by the public, . . . but rather on the original cost of the investment, placing prudent investments in the rate base would seem a more sensible policy than a strict application of 'used and useful,' for under this approach it is the investment, and not the property used, which is viewed as having been taken by the public." *Id.* at 1181. The United States Constitution thus permits the BLRA's reasonable choice of a "prudent investment" rule over a "used and useful" standard.

Furthermore, although South Carolina courts have traditionally applied the "used and useful" test in ratemaking outside the context of the BLRA, state judicial opinions do not appear to treat that standard as a constitutional requirement. To be sure, the South Carolina Supreme Court cited *Smyth* approvingly in *Mims*, but only for the general proposition that a utility's rates must be reasonable, neither too high nor too low. *See* 278 S.C. at 556, 299 S.E.2d at 486. *Mims* ***does not once*** mention the "used and useful" standard.

In view of the fact that the Constitution mandates only the end result—a rate that reasonably balances the interests of investors and the interests of customers—and

not the method used to reach that result, I conclude that the choice of ratemaking principles is the prerogative of the General Assembly as the state's legislative body. It was well within the General Assembly's purview to decide, as it did in enacting the BLRA, that encouraging investment in new power plants would benefit the public over the long term, and therefore it was well within its authority "to include prudent but cancelled investments" in utility rates. *Jersey Central*, 810 F.2d at 1177; *see also State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 687 S.W.2d 162, 166 (Mo. 1985) ("Electric utilities will be reluctant to embark on new construction projects, or with long-range plans, if the prospect of forfeiture looms. Investors will hesitate to stake their money in [a] venture with a controlled return and substantial risk of loss."). The BLRA thus appears to achieve a constitutionally reasonable balance between investor and consumer interests. This is also the view of a "substantial majority" of courts and utility regulators that have addressed this question. *People's Org. for Wash. Energy Res. v. Wash. Utilities & Transp. Comm'n*, 711 P.2d 319, 332 (Wash. 1985); *see also Att'y Gen. v. Dep't of Pub. Utils.*, 455 N.E.2d 414, 422 (Mass. 1983).

Substantive Due Process and Equal Protection

Two other potential challenges to the BLRA are based on the view that the BLRA unfairly favors investors at the expense of customers. One theory posits that the imbalance is a substantive due process violation, while another posits that the imbalance is a denial of equal protection *See* Att'y Gen. Adv. Op. at 36.

In my view, both challenges are without merit. Legislatures have "considerable leeway to fashion economic legislation, including the power to affect contractual commitments between private parties." *Eastern Enters. v. Apfel*, 524 U.S. 498, 528 (1998) (plurality). Laws "adjusting the burdens and benefits of economic life" carry a strong "presumption of constitutionality," and only offend substantive due process if they are "arbitrary and irrational." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976); *see also Permian Basin*, 390 U.S. at 769-70 (explaining that price regulation is unconstitutional "if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt"). Likewise, to satisfy equal protection, the PSC's ratemaking need only have a rational basis; the PSC's rates do not receive heightened judicial scrutiny. *See Friends of the Earth*, 387 S.C. at 365-66, 692 S.E.2d at 913. The BLRA is rationally related to the State's legitimate interest in encouraging investment in new power plants.

Procedural Due Process

Another potential challenge to the BLRA would be an assertion that the BLRA violates utility customers' procedural due process rights because (1) § 58-33-275 allegedly denies customers subsequent hearings on prudency by establishing "an irrefutable presumption" of prudence and preventing relitigation of the issue after the PSC's initial determination, and (2) § 58-33-270(E) allegedly "shifts the burden from the utility being required to prove prudency to one of a challenger required to

demonstrate imprudence." Att'y Gen. Adv. Op. at 31. Neither of these arguments has merit.

While utility customers undoubtedly have a procedural due process right to notice and an opportunity to be heard at rate-adjustment hearings, *see Porter v. PSC*, 338 S.C. 164, 170, 525 S.E.2d 866, 869 (2000), the BLRA does not deny that right—and thus creates no "irrefutable presumption" of prudence—because the Act only deems the PSC's prudency determination final ***after*** notice and a hearing. Indeed, the BLRO approving the V.C. Summer nuclear plant came after "weeks of hearings" featuring testimony from "over 20 witnesses" creating "a transcript that is more than a thousand pages long." *Energy Users II*, 410 S.C. at 359, 764 S.E.2d at 918. The PSC carefully "addressed each and every concern" raised during the hearings and issued its decision "in a very thorough and reasoned order" upheld by the South Carolina Supreme Court. *Friends of the Earth*, 387 S.C. at 372, 692 S.E.2d at 916. This comprehensive process satisfies due process, in part, because it gave everyone a full opportunity to testify and offer evidence.

In light of the thoroughness of the initial proceedings that resulted in the PSC's prudency determination, due process does not entitle customers to relitigate that question. Due process "does not require an endless number of opportunities for one to assert or reassert his or her rights." 16B Am. Jur. 2d *Constitutional Law* § 1023. "At some point the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just, may be outweighed by the cost." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). Once a party "has had its day in court," further review "is not a requirement of due process." *Nat'l Union of Marine Cooks & Stewards v. Arnold*, 348 U.S. 37, 42-43 (1954). The BLRA thus hardly denies customers a hearing—indeed, numerous members of the public appeared at the prudency hearings or submitted written comments—nor does it create an irrebuttable presumption of prudence. It simply does not allow the PSC's prudence determination to be reopened once made.

Moreover, statutes creating irrebuttable presumptions do not automatically violate due process so long as "the legislation in question bears a rational relation to a legitimate legislative objective," and the presumption is "based upon 'an objective criterion' which bears 'a sufficiently close nexus with underlying policy objectives.'" *Lazerson v. Hilton Head Hosp., Inc.*, 312 S.C. 211, 213, 439 S.E.2d 836, 838 (1994) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 771 (1975)). A presumption of prudence after the PSC's initial determination meets that test because it is reasonably based upon the findings and reliability of the initial process. The presumption is also rationally related to the BLRA's goal of encouraging investment in new power plants. "Before adoption of the BLRA, a utility's decision to build a base load generating plant was subject to relitigation if parties brought prudency challenges after the utility had committed to major construction work on the plant. The possibility of prudency challenges while construction was underway increased the risks of these projects as

well as the costs and difficulty of financing them. In response, the General Assembly sought to mitigate such uncertainty by providing for a comprehensive, fully litigated and binding prudency review before major construction of a base load generating facility begins." *Energy Users II*, 410 S.C. at 359, 764 S.E.2d at 918.

The second possible procedural due process challenge – that the BLRA shifts the burden to the challenger to demonstrate imprudence – is also without merit. This argument rests on a misreading of the statutory text because the BLRA provides for no such shift. Aside from that, "it is normally within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion, and its decision in this regard is not subject to proscription under the Due Process Clause unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson v. New York*, 432 U.S. 197, 201-02 (1977) (internal citations and quotations omitted). No such deeply rooted principle of justice says that utilities must shoulder the burden of proving the prudence of new costs before regulators may approve a rate increase.

In conclusion, by enacting the BLRA in 2007, the General Assembly joined a host of other states in seeking to encourage the construction of new nuclear power plants by mitigating the enormous carrying costs of construction. Further, the General Assembly recognized, and provided for, the risk that such projects might not come to fruition. The BLRA as a whole, and each of its individual provisions, stand on solid constitutional ground. Accordingly, I am of the opinion that any constitutional challenge to the BLRA would fail.

QUESTION #2: Would a repeal of the BLRA, in which SCE&G is required to refund past revenues collected for the V.C. Summer Project and/or prohibited from future recovery of its $5 billion investment in the Project, survive constitutional challenge?

ANSWER: No.

Prior to the opening of the 2018 Legislative Session, various bills were pre-filed in the House and Senate that would repeal the BLRA, in whole or in part. One of the bills (H. 4375) would prohibit future collections under the 2008 BLRO, while another (H. 4380) would require the PSC to "order a refund to ratepayers of all amounts collected" pursuant to the 2008 BLRO. It is my opinion that these two provisions, if enacted, would not survive a legal challenge for at least two reasons.

First, a statutorily mandated rate that excludes project-related costs, if its effect would be to jeopardize SCE&G's financial integrity, could be deemed confiscatory and in violation of the Takings Clause. Given that project-related costs amount to 18% of SCE&G's rates, a court could very well find that the loss of this revenue would jeopardize SCE&G's financial integrity.

Second, under the Due Process Clause, SCE&G has a right to avoid "arbitrary and irrational" laws. This is a high standard, and it means that in most cases, even those involving statutes that are explicitly retroactive in application, the Constitution is not violated even if settled economic expectations are destroyed. But this is not "most" cases. The BLRA explicitly anticipates and provides for the possibility of a project being abandoned prior to completion, and in doing so gave SCE&G the assurances it needed to undertake the project. For the General Assembly to retroactively deprive SCE&G of the BLRA's protections at the very moment they are needed could very well be viewed by a court as grossly unfair and arbitrary.

Substantive Due Process

"Congress may, consistent with the Due Process Clause, alter rights and responsibilities retroactively so long as it has a rational basis for doing so." *Mondragon v. Holder,* 706 F.3d 535, 541 (4th Cir. 2013). However, there are limits to this principle.

The foundational case for due process and retroactivity is *Usery v. Turner Elkhorn*, 428 U.S. 1 (1976). In that case, the United States Supreme Court upheld new federal laws that required coal mine operators to pay benefits to disabled former employees, even though the employees had stopped mining before the law existed. Thus, the operators presumably did not envision such liability when they employed the miners. Regardless, the Court held that "our cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations." *Usery,* 428 U.S. at 16. The Court upheld the laws on the basis that it was rational to reallocate the burdens of paying for miners' disabilities to the coal companies and consumers who had profited from their labor.

Eastern Enterprises, however, establishes that a retroactive law may violate due process rights. *See generally Eastern Enters.*, 524 U.S. 498. In that case, a 1992 law required a company—which had left the coal industry in 1965, long before any labor agreements began to call for lifetime health benefits for miners—to pay at least $50 million into a miners' benefits fund. Five members of the United States Supreme Court concluded that the law was unconstitutional, but did not agree as to why this was so. Four justices believed the law effected a taking of the company's property. Justice Kennedy, apparently alone, believed that the law violated due process.

Several factors lead me to believe that a court faithfully applying the foregoing principles would invalidate H. 4375 and H. 4380 as violating SCE&G's substantive due process rights. *First*, the clear purpose of the BLRA was to encourage SCE&G to expand its nuclear power-generating capacity. SCE&G embarked on the Project with the General Assembly's assurance that it would be able to recoup its costs over time, ***even*** if the Project was abandoned before completion. In *Duquesne*, the United States Supreme Court specifically addressed the possibility of a legislative "bait and switch":

> [A] State's decision to arbitrarily switch back and forth between methodologies in a way which require[s] investors to bear the risk of bad investments at some times while denying them the benefit of good investments at other times ***would raise serious constitutional questions***.

Duquesne, 488 U.S. at 315 (emphasis added). This warning reflects the broader principle that due process prohibits a state from "reconfigur[ing] its scheme, unfairly, in *midcourse*" by holding out a remedy and then yanking it away just when it is needed. *Reich v. Collins*, 513 U.S. 106, 111 (1994) (emphasis in original).

In *Reich*, a veteran sought a refund of taxes paid on federal retirement benefits, after taxation of such benefits was held unconstitutional by the United States Supreme Court. The refund claim was based on a Georgia law that entitled taxpayers to refunds of all taxes "erroneously or illegally assessed and collected." *Id.* at 109 (internal quotations omitted). Ultimately, the Georgia Supreme Court ruled that the veteran was not entitled to a refund (a postdeprivation remedy) because Georgia provided "ample" ***pre***deprivation remedies. *Id.* at 110 (emphasis added). The United States Supreme Court reversed, holding that Georgia had improperly "held out what plainly appeared to be a 'clear and certain' postdeprivation remedy, its refund statute, and then declared, only after Reich and others had paid the disputed taxes, that no such remedy exists." *Id.* at 111.

H. 4375, if enacted, would result in the same constitutional violation condemned by the *Reich* Court. SCE&G embarked on the Project under the auspices of the BLRA, which explicitly assured SCE&G that it would be able to recoup its prudently incurred costs even if construction were abandoned. *See* S.C. Code Ann. § 58-33-225(G); *see also* S.C. Code Ann. § 58-33-280(K) ("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.") Now that the Project has been abandoned and SCE&G seeks to recoup its prudently incurred costs, the General Assembly is considering declaring "that no such remedy exists." Thus, I believe a court would be constrained to hold that due process forbids retroactive application of H. 4375.

Second, the United States Supreme Court's decision in *United States v. Carlton*, 512 U.S. 26 (1994), and a South Carolina Supreme Court decision construing *Carlton*, demonstrate that the Due Process Clause imposes limits on retroactive application of economic legislation. In *Carlton*, the executor of an estate took advantage of a recently enacted tax deduction for the proceeds of sales of stock to employee stock-ownership plans (ESOPs) by using estate funds to purchase stock and reselling it to an ESOP. After the transaction was complete and the executor had filed a tax return that reflected

the deduction, Congress retroactively amended the law to permit the deduction only for sales of stock owned by the decedent immediately prior to death.

The United States Supreme Court held there was no due process violation, pointing to three factors in support of its conclusion. First, Congress's purpose in adopting the amendment was to correct a flaw in the original legislation, which was never intended to permit transactions like the executor's. *See id.* at 32. Second and third, "Congress acted promptly" to correct the error "and established only a modest period of retroactivity." *Id.* In a concurring opinion, Justice O'Connor wrote that "[a] period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise, in my view, serious constitutional questions." *Id.* at 38.

The South Carolina Supreme Court quoted Justice O'Connor's concurrence when it ruled, in *Rivers v. State*, 327 S.C. 271, 490 S.E.2d 261 (S.C. 1997), that a retroactivity period of "at least two years and possibly as long as three years" violated both the federal and state constitutions. *Id.* at 279, 490 S.E.2d at 265. In *Rivers*, a 1988 law retroactively decreased capital gains taxes for capital gains realized from January 1987 through January 1988. An amendment, passed in 1989, shortened the eligibility period and provided that refunds would be made in two equal installments for the 1990 and 1991 tax years. In 1991, after the first installment of the refund had been paid, the General Assembly amended the act again, this time to reduce by half the amount of each taxpayer's refund.

The South Carolina Supreme Court held that the 1991 amendment did not violate the Takings Clause because the taxpayers did not have a vested property right in the second half of their refunds. *See id.* at 275-76, 490 S.E.2d at 263. Nevertheless, after a lengthy discussion of *Carlton*, the Court held that the 1991 amendment violated taxpayers' rights under the federal and state constitutions. The Court reasoned that taxpayers "had an ***expectation*** of the full tax refund" that arose no later than the adoption of the 1989 amendment. *Id.* at 278 n.3, 490 S.E.2d at 265 n.3 (emphasis added). Consequently, the 1991 amendment had the effect of eliminating taxpayers' expectations at least two years after the fact (or three years, if the expectation arose when the act was initially adopted in 1988). The Court held that such an extended retroactivity period was not supported by the state's legitimate interest in achieving its revenue goals. Consequently, the Court ruled that the 1991 amendment violated taxpayers' substantive due process rights.

In my opinion, *Carlton* and *Rivers* make clear that retroactive repeal of the BLRA would violate SCE&G's due process rights. In this case, unlike in *Carlton*, the General Assembly would not be acting to correct an unintended omission from the text of the BLRA. To the contrary, the BLRA plainly provides that once a utility carries its burden of proving that the decision to abandon construction was prudent, it is entitled to recover prudently incurred costs through revised rates under the BLRA. *See* S.C.

Code Ann. §§ 58-33-225(G), -280(K). Indeed, the ability to recover costs of abandoned nuclear construction projects is a critical aspect of laws like the BLRA, because it encourages investment by mitigating the potential financial impact of a failed project. Additionally, the period of retroactivity here is more than ten years, ***five times*** the length of the period the South Carolina Supreme Court in *Rivers* found to be a clear violation of the federal and state constitutions.

Substantive due process challenges to retroactive legislation face high hurdles and are rarely successful. Nevertheless, I believe that the enactment of H. 4375, H. 4380, or any other legislation that retroactively reduces or eliminates SCE&G's ability to recover its prudently incurred costs for the Project would give rise to a substantial claim for violation of SCE&G's substantive due process rights.

The Takings Clause

As discussed in my analysis of Question 1, a utility rate is confiscatory—and constitutionally prohibited—if it is "not sufficient to yield a reasonable rate of return on the value of the property used . . . to render the service." *Bluefield Waterworks*, 262 U.S. at 690; *see also Duquesne*, 488 U.S. at 307 ("[T]he Constitution protects utilities from being limited to a charge for their property serving the public interest which is so 'unjust' as to be confiscatory.").

In *Duquesne*, the United States Supreme Court applied this rule in the context of an abandoned nuclear construction project. Pennsylvania utilities began a venture in 1967 to build nuclear power plants. *Id.* at 302. In 1980, they cancelled those plans, having spent roughly $40 million (roughly $125 million in 2017 dollars). Both the decisions to begin and to cancel were found to be prudent. *See id.* at 303. In 1980 and 1981, the utilities were permitted to amortize their expenditures and recover fractions of them in rates. In 1982, however, Pennsylvania passed a law prohibiting recovery of costs until a plant is "used and useful in service to the public." *Id.* at 304. Applying this statute, the Pennsylvania Supreme Court declined to permit further cost recovery.

Before the United States Supreme Court, the Pennsylvania utilities argued that this violated the Takings Clause. The Court disagreed, reaffirming the rule that a taking occurs only when rates are set so low as to be "confiscatory." *Id.* at 307-08. Put differently, "'[i]f the total effect of the rate order . . . [is reasonable], judicial inquiry . . . is at an end.'" *Id.* at 310 (quoting *Hope Natural Gas*, 320 U.S. at 602). The Court had little difficulty concluding that the post-1982 rates were not confiscatory, given that the loss amounted to roughly 0.5% of the utilities' annual revenues. *Id.* at 312 ("No argument has been made that these slightly reduced rates jeopardize the financial integrity of the companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital.").

Duquesne leaves open the real possibility that a significant rate reduction, under similar circumstances, would result in a rate so low as to be confiscatory. Several other

courts have mentioned or applied the same "confiscatory" standard in addressing takings issues based on abandoned nuclear projects. For example, in *Dayton Power & Light Co. v. Pub. Utils. Comm'n of Ohio,* 447 N.E.2d 733, 741 (Ohio 1983), the Ohio Supreme Court upheld a statute that effectively barred recovery of costs for an abandoned nuclear project. Dayton Power & Light argued that denying recovery would violate the takings clause. The court ruled, however, that to prevail on its takings claim, the utility "must prove not only the unreasonableness of the . . . exclusion but also the confiscatory effect this exclusion had on the rates established by the commission, viewing the rate order 'in its entirety.'" *Id.* at 745 (quoting *Hope Natural Gas*, 320 U.S. at 602). The court found that Dayton Power & Light had not made this showing.

Like all public utilities, SCE&G is constitutionally entitled to a rate that is "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital." *Hope Natural Gas*, 320 U.S. at 603. My understanding is that Project-related costs represent 18% of SCE&G's rates. At the very least, SCE&G would have a claim that a rate that does not include these amounts is confiscatory.

QUESTION #3: Could the General Assembly constitutionally amend the BLRA in a prospective manner, *i.e.*, not affecting the previously approved V.C. Summer Project and associated rates, but doing away with the BLRA's funding mechanism going forward?

ANSWER: Yes.

As discussed previously, Article IX, Section 1 of the South Carolina Constitution provides that "[t]he General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, ***and privately owned utilities serving the public as and to the extent required by the public interest.***" With respect to Article IX, the West Committee explained that it had "fully discussed the need for regulation of corporations and utilities in the Constitution," and that it "believe[d] that the regulation of common carriers, public utilities and corporations ***is a matter for statute not the Constitution.***" Final Report of the Comm. to Make a Study of the S.C. Const. of 1895 at 106-07 (1969) (emphasis added). Thus, just as it did in 2007 when it passed the BLRA, the General Assembly has great constitutional latitude to change – once again – the manner in which utility rates will be made in South Carolina. It can certainly repeal the BLRA and establish a different rate-making structure that the PSC will apply going forward if it determines doing so is "required by the public interest."

QUESTION #4: If the BLRA is retroactively amended or repealed, who would have standing to bring a legal challenge, and against whom would a claim be brought? Would such a suit be filed in state or federal court? Approximately how long would the litigation last? How would the litigation affect SCANA and SCE&G's customers?

ANSWER: A legal challenge would be brought by SCE&G against the PSC, and could be brought either in a declaratory judgment action filed in the original jurisdiction

of the South Carolina Supreme Court, or in the context of ratemaking proceedings before the PSC. In either case, SCANA, as well as SCE&G's customers, would suffer the expense and uncertainty of such litigation.

Parties and Nature of Action

Any challenge to a retroactive amendment or repeal of the BLRA would be brought by SCE&G, the entity most directly impacted by such legislation, against the PSC, the agency responsible for implementing the legislation. SCE&G would have two possible avenues by which to bring a constitutional challenge to legislation retroactively amending or repealing the BLRA. First, SCE&G could file an action in the original jurisdiction of the South Carolina Supreme Court, seeking to enjoin implementation of the legislation. Second, SCE&G could wait until the PSC issued a rate order under the new legislation, and then appeal that order to the South Carolina Supreme Court. In either event, the losing party could seek *certiorari* review from the United States Supreme Court.

In my opinion, it would not be possible for SCE&G to pursue relief in federal court. Ordinarily, federal courts have subject matter jurisdiction over cases involving federal questions, such as whether a state legislative act violates the U.S. Constitution. *See* 28 U.S.C. § 1331. Congress, however, has restricted federal jurisdiction over challenges to public utility rates through the Johnson Act, which prohibits federal district courts from enjoining, suspending, or restraining "the operation of, or compliance with, any order affecting rates chargeable by a public utility" when all of the following conditions exist:

> (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,
>
> (2) The order does not interfere with interstate commerce; and,
>
> (3) The order has been made after reasonable notice and hearing; and,
>
> (4) A plain, speedy and efficient remedy may be had in the courts of such State.

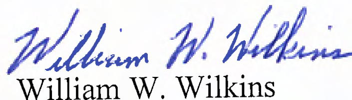
28 U.S.C. § 1342. Here, SCE&G's claim would be that the retroactive amendment or repeal of the BLRA violated the Due Process or Takings Clauses of the United States Constitution. In similar circumstances, federal courts have ruled that the Johnson Act requires such claims to be brought in state court. *See, e.g.*, *Hill v. Kansas Gas Serv. Co.*, 323 F.3d 858, 167 (10th Cir. 2003); *Pub. Serv. Co. of N.H. v. Patch*, 167 F.3d 15, 25 (1st Cir. 1998).

Impact of Action

As discussed in the previous sections of this letter, I believe that there are strong constitutional challenges to a retroactive repeal or amendment of the BLRA and that a court adhering to precedent would rule in favor of SCE&G. But regardless of whether SCE&G wins or loses, any final decision will be preceded by hard-fought, expensive litigation.[9] The cost of SCE&G's pursuit of the litigation—including attorneys' fees, discovery, expert witnesses, trial expenses, and the like—could, ultimately, be reflected in SCE&G's rates, and thus would be borne by SCE&G's customers.

In conclusion, my view is that the answers to your questions rest on long-settled principles of constitutional law and that a court faithfully applying those rules would reach the same conclusions. The abandonment of the V.C. Summer Project is, unquestionably, a hard blow to SCE&G's ratepayers. But the Constitution forbids the General Assembly from enacting legislation that would require SCE&G either to refund or cease collecting the revised rates authorized pursuant to the General Assembly's enactment of the BLRA.

Very truly yours,



William W. Wilkins

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[9] In the case of an action filed in its original jurisdiction, the South Carolina Supreme Court would have the authority to refer issues of fact to a master or referee. *See* S.C. Code Ann. § 14-3-340 (2017).

February 5, 2018

$ in Millions

	2009	2010	2011	2012	2013	2014	2015	2016	2017
Total SCANA Dividends Declared	$ 230.0	$ 239.0	$ 250.0	$ 260.0	$ 284.0	$ 298.0	$ 312.0	$ 329.0	$ 350.0
BLRA Dividend Estimate	$ 3.0	$ 11.5	$ 26.6	$ 41.0	$ 55.2	$ 73.3	$ 91.4	$ 106.8	$ 120.4

K. Chad Burgess
Director & Deputy General Counsel

chad.burgess@scana.com

February 15, 2018

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Friends of the Earth and Sierra Club v. South Carolina Electric & Gas Company
Docket No. 2017-207-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
Docket No. 2017-305-E

Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, 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 Plans
Docket No. 2017-370-E

Dear Ms. Boyd:

On February 7, 2018, South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc ("Dominion Energy") (together, the "Joint Petitioners") filed a Petition for Review, Reconsideration, and Rehearing of Order No. 2018-80 issued in the above-referenced dockets ("Petition for Rehearing"). Since that time, S.954, which has a direct impact upon the timing of the consummation of the merger between SCANA Corporation and Dominion Energy, was amended on February 14, 2018, in such a manner to establish December 21, 2018, as the deadline for the Public Service Commission of South Carolina ("Commission") to issue a final order in the above-referenced dockets. Joint Petitioners are encouraged by the recent amendment to S.954, and assuming it passes the House and is signed by the Governor, it will allow the Commission to establish a procedural schedule ensuring that a final order will issued in the above-referenced dockets in December 2018.

Under South Carolina law, Joint Petitioners "[m]ay withdraw its petition . . . one time as a matter of right, and without prejudice . . . ." *See* S.C. Code Ann. 58-3-225(E)(2015). In light of the current status of S.954, and pursuant to S.C. Code Ann. § 58-3-225(E), the Joint Petitioners hereby voluntarily withdraw their Petition for Rehearing.

(Continued . . .)

By copy of this letter, we are informing the other parties of record, including those who have filed a Petition to Intervene which has not yet been ruled upon, of the Joint Petitioners' decision to withdraw their Petition for Rehearing.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

K. Chad Burgess
On behalf of SCE&G

J. David Black
On behalf of Dominion Energy

KCB/kms

cc: Shannon Bowyer Hudson, Esquire
Jeffrey M. Nelson, Esquire
Robert Guild, Esquire
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Damon E. Xenopoulos, Esquire
Derrick P. Williamson Esquire
Dino Teppara, Esquire
Elizabeth Jones, Esquire
J. Emory Smith, Jr.
Richard L. Whitt, Esquire
James R. Davis, Esquire
John B. Coffman, Esquire

(all via electronic mail and U.S. First Class Mail)

Dominion Energy®

NEWS RELEASE

SCANA® POWER FOR LIVING

January 3, 2018

Dominion Energy, SCANA Announce All-Stock Merger With $1,000 Immediate Cash Payment To Average South Carolina Electric & Gas Residential Electric Customer After Closing

- *Dominion Energy to fund $1.3 billion of cash payments to all SCE&G electric customers within 90 days after closing*
- *Estimated additional 5 percent rate reduction from current levels for SCE&G electric customers*
- *More than $1.7 billion of nuclear capital and regulatory assets never to be collected from customers*
- *SCANA shareholders to receive 0.6690 shares of Dominion Energy common stock for each SCANA share*
- *Transaction immediately earnings accretive, enhances EPS growth*
- *Transaction contingent upon South Carolina approval of proposed nuclear solution*
- *Combined company to serve 6.5 million electric and natural gas distribution customers in eight states*

RICHMOND, Va., and CAYCE, S.C. – Dominion Energy, Inc. (NYSE: D) and SCANA Corporation (NYSE: SCG) today announced an agreement for the companies to combine in a stock-for-stock merger in which SCANA shareholders would receive 0.6690 shares of Dominion Energy common stock for each share of SCANA common stock, the equivalent of $55.35 per share, or about $7.9 billion based on Dominion Energy's volume-weighted average stock price of the last 30 trading days ended Jan. 2, 2018. Including assumption of debt, the value of the transaction is approximately $14.6 billion.

The agreement also calls for significant benefits to SCANA's South Carolina Electric & Gas Company subsidiary (SCE&G) electric customers to offset previous and future costs related to the withdrawn V.C. Summer Units 2 and 3 project. After the closing of the merger and subject to regulatory approvals, this includes:

- A $1.3 billion cash payment within 90 days upon completion of the merger to all customers, worth $1,000 for the average residential electric customer. Payments would vary based on the amount of electricity used in the 12 months prior to the merger closing.
- An estimated additional 5 percent rate reduction from current levels, equal to more than $7 a month for a typical SCE&G residential customer, resulting from a $575 million refund of amounts previously collected from customers and savings of lower federal corporate taxes under recently enacted federal tax reform.
- A more than $1.7 billion write-off of existing V.C. Summer 2 and 3 capital and regulatory assets, which would never be collected from customers. This allows for the elimination of all related customer costs over 20 years instead of over the previously proposed 50-60 years.
- Completion of the $180 million purchase of natural-gas fired power station (Columbia Energy Center) at no cost to customers to fulfill generation needs.

In addition, Dominion Energy would provide funding for $1 million a year in increased charitable contributions in SCANA's communities for at least five years, and SCANA employees would have employment protections until 2020.

SCANA would operate as a wholly owned subsidiary of Dominion Energy. It would maintain its significant community presence, local management structure and the headquarters of its SCE&G utility in South Carolina.

The transaction would be accretive to Dominion Energy's earnings upon closing, which is expected in 2018 upon receipt of regulatory and shareholder approvals. The merger also would increase Dominion Energy's compounded annual earnings-per-share target growth rate through 2020 to 8 percent or higher.

Thomas F. Farrell, II, chairman, president and chief executive officer of Dominion Energy, said: "We believe this merger will provide significant benefits to SCE&G's customers, SCANA's shareholders and the communities SCANA serves. It would lock in significant and immediate savings for SCE&G customers – including what we believe is the largest utility customer cash refund in history – and guarantee a rapidly declining impact from the V.C. Summer project. There also are potential benefits to natural gas customers in South Carolina, North Carolina and Georgia and to their communities. And, this agreement protects employees and treats fairly SCANA shareholders, many of whom are working families and retirees in SCANA's communities. The combined resources of our two companies make all this possible."

"Dominion Energy is a strong, well-regarded company in the utility industry and its commitment to customers and communities aligns well with our values," said Jimmy Addison, chief executive officer of SCANA. "Joining with Dominion Energy strengthens our company and provides resources that will enable us to once again focus on our core operations and best serve our customers."

Strategic combination

The combination with SCANA would solidify Dominion Energy's position among the nation's largest and fastest-growing energy utility companies by adding significantly to its presence in the expanding Southeast markets. SCANA's operations include service to approximately 1.6 million electric and natural gas residential and business accounts in South Carolina and North Carolina and 5,800 megawatts of electric generation capacity. SCANA continues to experience strong growth in both customer count (more than 2 percent on average annually at SCE&G and PSNC Energy) and weather-normalized energy sales.

"SCANA is a natural fit for Dominion Energy," Farrell said. "Our current operations in the Carolinas – the Dominion Energy Carolina Gas Transmission, Dominion Energy North Carolina and the Atlantic Coast Pipeline – complement SCANA's, SCE&G's and PSNC Energy's operations. This combination can open new expansion opportunities as we seek to meet the energy needs of people and industry in the Southeast."

Once the merger is completed, the combined company would operate in 18 states from Connecticut to California. The company would deliver energy to approximately 6.5 million regulated customer accounts in eight states and have an electric generating portfolio of 31,400 megawatts and 93,600 miles of electric transmission and distribution lines. It also would have a natural gas pipeline network totaling 106,400 miles and operate one of the nation's largest natural gas storage systems with 1 trillion cubic feet of capacity.

Regulatory, shareholder approvals and conditions

The merger is contingent upon approval of SCANA's shareholders, clearance from the U.S. Federal Trade Commission (FTC)/the U.S. Department of Justice (DOJ) under the Hart-Scott-Rodino Act, and authorization of the Nuclear Regulatory Commission (NRC) and Federal Energy Regulatory Commission (FERC).

SCANA and Dominion Energy also will file for review and approval from the public service commissions of South Carolina, North Carolina, and Georgia.

"We will seek the approval of the Public Service Commission of South Carolina for the immediate customer payments, rate refunds over time and other conditions related to resolution of the V.C. Summer Units 2 and 3 situation," said Dominion Energy's Farrell. "We believe it is in the best interests of all parties to reach an agreement on this critical issue. Having certainty on this issue can act as a catalyst for economic development and it is essential for the Dominion Energy-SCANA merger to move forward. The availability, reliability and cost of energy are often the deciding factors when businesses consider investing – and we want businesses to have every reason to continue investing in SCANA's communities."

For SCANA shareholders
Under the terms of the merger agreement, SCANA common shareholders are to receive 0.6690 shares of Dominion Energy common stock for each share of SCANA common stock held. Based on Dominion Energy's volume-weighted average stock price of the last 30 trading days ended Jan. 2, 2018, this equates to a value of approximately $55.35 per SCANA share. This represents an approximate 30.6 percent premium to the volume-weighted average stock price of SCANA's last 30 trading days ended Jan. 2, 2018. Upon closing of the merger, SCANA shareholders would own an estimated 13 percent of the combined company.

The transaction structure contemplates that the receipt of Dominion Energy shares will be tax-deferred for SCANA shareholders.

Customer refunds and other benefits
Cash payments proposed to SCE&G electric customers are to be paid via check or equivalent payment mechanism within 90 days after the closing of the merger, subject to approval of the Public Service Commission of South Carolina. Further details of the program will be announced later.

It is anticipated that the rate reductions – including refunds of $575 million over time – would also be effective within 90 days of the merger closing, again subject to approval of the Public Service Commission of South Carolina.

A special website has been established for SCANA customers and communities at brighterenergyfuture.com. Information also is available on Facebook at Dominion Energy South and Twitter at @DominionEnergy.

Legal and financial advisers
McGuireWoods LLP served as legal counsel and Morgan, Lewis & Bockius LLP as tax counsel to Dominion Energy. Credit Suisse Securities (USA) LLC acted as the company's financial adviser for the transaction.

Mayer Brown LLP acted as legal counsel to SCANA. Morgan Stanley & Co. LLC acted as lead financial adviser and RBC Capital Markets, LLC acted as financial adviser to SCANA.

Conference call today
Dominion Energy leadership will discuss the announced combination during a conference call for investors at 9:00 a.m. ET today. Domestic callers should dial (877) 410-5657. The passcode for the call is "Dominion." International callers should dial (334) 323-9872. Participants should dial in 10 to 15 minutes prior to the scheduled start time.

A live webcast of the conference call also will be available on the company's investor information page at investors.dominionenergy.com.

A replay of the conference call will be available beginning about 12 p.m. ET Jan. 3 and lasting until 11 p.m. ET Jan. 10. Domestic callers may access the recording by dialing (877) 919-4059. International callers should dial (334) 323-0140. The PIN for the replay is 69688467. Additionally, a replay of the webcast will be available on the investor information pages by the end of the day Jan. 3.

About Dominion Energy
Dominion Energy is one of the largest energy utility companies in the United States, with 16,200 employees and operations in 18 states. It delivers electricity and natural gas to nearly 5 million homes and businesses, and its operations include 25,600 megawatts of electric generating capacity, 66,300 miles of natural gas gathering, transmission, distribution and storage pipelines, 64,200 miles of electric transmission and distribution lines, and one of the nation's largest natural gas storage systems. It is the only company to be included on the *Fortune* magazine list of most-admired gas and electric utilities for 12

consecutive years, including being ranked among the top two for the past six years. The company is a national leader in reducing carbon emissions and has been recognized regularly for its support of military veterans and others in need. More information is available at www.dominionenergy.com.

About SCANA
SCANA Corporation, headquartered in Cayce, S.C., is an energy-based holding company principally engaged, through subsidiaries, in electric and natural gas utility operations and other energy-related businesses. Information about SCANA and its businesses is available on the company's website at www.scana.com.

Forward-looking statements
This release contains statements that constitute forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. The statements relate to, among other things, expectations, estimates and projections. We have used the words "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "outlook," "predict," "project," "should," "strategy," "target," "will," "would," "potential" and similar terms and phrases to identify forward-looking statements in this presentation. Factors that could cause actual results to differ include, but are not limited to: the expected timing and likelihood of completion of the proposed acquisition of SCANA, including the ability to obtain the requisite approval of SCANA's shareholders; the risk that Dominion Energy or SCANA may be unable to obtain necessary regulatory approvals for the transaction or required regulatory approvals may delay the transaction or cause the parties to abandon the transaction; the risk that conditions to the closing of the transaction may not be satisfied; or the risk that an unsolicited offer for the assets or capital stock of SCANA may interfere with the transaction. Other risk factors for Dominion Energy's and SCANA's businesses are detailed from time to time in Dominion Energy's and SCANA's quarterly reports on Form 10-Q or most recent annual report on Form 10-K filed with the Securities and Exchange Commission (SEC).

Important additional information
In connection with the proposed transaction between Dominion Energy, Inc., and SCANA Corporation, Dominion Energy will file with the SEC a Registration Statement on Form S-4 that will include a combined Proxy Statement of SCANA and Prospectus of Dominion Energy, as well as other relevant documents concerning the proposed transaction. The proposed transaction involving Dominion Energy and SCANA will be submitted to SCANA's shareholders for their consideration. This communication shall not constitute an offer to sell or the solicitation of an offer to buy any securities nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction. **Shareholders of SCANA are urged to read the registration statement and the proxy statement/prospectus regarding the transaction when they become available and any other relevant documents filed with the SEC, as well as any amendments or supplements to those documents, because they will contain important information.**

Shareholders will be able to obtain a free copy of the definitive proxy statement/prospectus, as well as other filings containing information about Dominion Energy and SCANA, without charge, at the SEC's website (http://www.sec.gov). Copies of the proxy statement/prospectus and the filings with the SEC that will be incorporated by reference in the proxy statement/prospectus can also be obtained, without charge, by directing a request to Dominion Energy, Inc., 120 Tredegar Street, Richmond, Virginia 23219, Attention: Corporate Secretary, Corporate.Secretary@dominionenergy.com, or to SCANA Corporation, 220 Operation Way, Mail Code D133, Cayce, South Carolina 29033, Attention: Office of the Corporate Secretary, BoardInformation@scana.com.

Participants in the solicitation
Dominion Energy, SCANA and certain of their respective directors, executive officers and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed transaction. Information regarding Dominion Energy's directors and executive officers is available in its definitive proxy statement, which was filed with the SEC on March 20, 2017, Dominion Energy's Annual Report on

Form 10-K, which was filed with the SEC on February 28, 2017 and certain of its Current Reports on Form 8-K. Information regarding SCANA's directors and executive officers is available in its definitive proxy statement, which was filed with the SEC on March 24, 2017, SCANA's Annual Report on Form 10-K, which was filed with the SEC on February 24, 2017 and certain of its Current Reports on Form 8-K. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement/prospectus and other relevant materials filed with the SEC. Free copies of these documents may be obtained as described in the preceding paragraph.

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Steven Ridge, (804) 929-6865 or Steven.D.Ridge@dominionenergy.com

SCANA CONTACTS:
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Daniel A. Weekley
Vice President and General Manager – Southern Pipeline Operations
Gas Infrastructure Group

121 Moore Hopkins Lane, Columbia, SC 29210
DominionEnergy.com

February 26, 2018

Honorable Shane Massey, Co-Chairman
Honorable Nikki Setzler, Co-Chairman
Senate V.C. Summer Nuclear Project Review Committee
Post Office Box 142
Columbia, SC 29202

Re: Hearing 2/14/18 Follow-up

Mr. Chairmen,

During the February 14, 2018 Senate V.C. Summer Nuclear Project Review Committee meeting, Dominion Energy's CEO and Chairman, Mr. Tom Farrell, committed to providing detailed follow-up responses on the following topics:

- A comparison of Dominion Energy's rates in Virginia and SCE&G's current rates
- Marketing and advertising spend in South Carolina by Dominion Energy since the merger announcement
- V. C. Summer 2 & 3 equipment summary, plan and estimated salvage value
- Status and timeline of the "mechanics liens"

Please find responses to the committee's questions in the attached document. At your convenience, I am happy to discuss this further or answer any additional questions.

Sincerely,

Daniel A. Weekley

CC: Senator Luke Rankin
Senator C. Bradley Hutto
Senator John L. Scott, Jr.
Senator Sean Bennett
Senator Mike Fanning
Heather Anderson, Staff Attorney
Kate Wink, Finance Committee
Senator Thomas Alexander
Senator Paul Campbell
Senator Greg Gregory
Senator Ronnie A. Sabb
Senator Stephen Goldfinch
Sara Parrish, Counsel to the Clerk

QUESTIONS FOR DOMINION ENERGY

1. Please provide a comparison of Dominion Energy's rates in Virginia and SCE&G's current rates.

The typical weighted average bill for 2017 for a SCE&G residential electric customer in South Carolina was ~$148/month for 1,000 kWh/month usage. The typical weighted average bill for 2017 for a Dominion Energy Virginia residential electric customer in Virginia was ~$115/month for 1,000 kWh/month usage. Please note that the customer rates and bills are dependent on a number of factors including (but not limited to) fuel mix, access to fuel supply, fuel transportation costs, shape of load, and customer mix. Given these various factors, direct bill comparisons may not be applicable.

2. Please provide amount of marketing and advertising spend in South Carolina by Dominion Energy since the merger was announced.

Dominion Energy believes it is important for SCE&G customers and other stakeholders to be fully informed about the proposed combination between SCANA and Dominion Energy. As such, we believe a robust outreach program designed to raise public awareness and engagement is warranted. However, no such outreach costs would be pushed down or otherwise allocated or charged to SCE&G from affiliated companies and therefore would not be sought for recovery from SCE&G customers. As of February 14, 2018, Dominion Energy purchased approximately $3.4 million of media in South Carolina related to the proposed combination of SCANA and Dominion Energy in the months of January and February. All advertising was cancelled on February 14, 2018 and stopped running as soon as existing logs expired. Minus penalties, Dominion Energy will receive a refund for the remainder of February media purchased. In addition, as of February 14, 2018, Dominion Energy spent approximately $276 thousand on production of advertising related to the proposed combination of SCANA and Dominion Energy in the months of January and February.

QUESTIONS FOR SCE&G

3. Please provide a summary of equipment at VC Summer 2&3 site. What is your view/plan on salvage value of the equipment how does it impact the abandonment analysis.

We have been informed by SCANA that the best estimate they and SCE&G have is that Westinghouse spent around ~$1.3 billion, including delivery charges, for the heavy equipment currently at the site. SCANA reports that it has been difficult to determine the exact value of the heavy equipment because the equipment was purchased by Westinghouse per the fixed price contract in the EPC Agreement. Typically EPC contractors provide information on full inventory at the end of the project, but given Westinghouse's bankruptcy and SCANA's subsequent abandonment of the project, obtaining this information has been challenging. Finally, Westinghouse has not yet provided purchase orders for all of the equipment at the site to SCE&G. Given the structure of the EPC contract, Westinghouse claims that it would also have a small ownership of the equipment at the site; however SCE&G has disputed that claim. SCE&G has analyzed several avenues to estimate the salvage value of the equipment at the site which are summarized below:

Potential value	Considerations	Challenges
Preservation value	• Assumes resumption of construction will become economically feasible in the future • Market value will be net of preservation costs	• Preservation costs are estimated to be ~$12 million a year, with no certainty over when, if ever, economic circumstances will change
Salvage for other AP1000 use	• Market value of heavy equipment will be net of de-installation, transportation, and other ancillary costs	• Only one other company building AP1000s in the U.S. and the equipment for that has largely been procured • SCE&G is negotiating to sell a small portion of equipment – between about $2 million and about $35 million - to Southern Company for its AP1000 • Future AP1000 plants in Asia and Europe will require significant transportation charges
Salvage for non-AP1000 use	• Safety related material could be salvaged • Market value of non-AP1000 materials will be net of de-installation, transportation, and other ancillary costs	• Current market for nuclear equipment is small • Significant decline in value when equipment is applied to non-nuclear use
Scrap / donation value	• Recycle or rebuild value	• *De minimis* value

Based on the above analysis, SCE&G estimates the easily salvageable value to be minor and is currently in negotiation with Southern Company to salvage it. SCE&G and Dominion Energy intend to discuss with the Internal Revenue Service whether incurring future preservation costs would have an adverse impact on the abandonment tax deduction.

4. Please provide a summary of the status and timeline of paying the "Mechanics Liens".

We understand that SCE&G and Santee Cooper contracted with a consortium that included Westinghouse Electric Company, LLC and Stone & Webster, Inc. (later known as "WECTEC Global Project Services, Inc.", a wholly owned subsidiary of Westinghouse Electric Company, LLC) to construct the V.C. Summer 2&3 (the "Project."). The consortium is hereafter collectively called "WEC."

On March 29, 2017, WEC filed bankruptcy. WEC failed to pay many of its subcontractors on the Project. Some of these subcontractors also did not pay their lower level sub-subcontractors (collectively, "WEC Subcontractors.") Many of the WEC Subcontractors have filed mechanics liens on the real property on which the Project was located.

Since the WEC bankruptcy, SCE&G filed a lien consolidation lawsuit and WEC Subcontractors have filed nearly 50 other lawsuits against SCE&G and Santee Cooper asserting mechanics liens, statutory and common law claims against both entities arising out of the alleged non-payment by WEC. All such lawsuits have been filed in the Fairfield County, South Carolina Court of Common Pleas.

On September 29, 2017, SCE&G obtained a court order consolidating all current and future lawsuits among SCE&G, Santee Cooper, and the WEC Subcontractors arising out of allegations of non-payment of the WEC Subcontractors by WEC. A second court order designated all such lawsuits as complex and assigned them to one judge. The consolidated case is captioned "In re: V.C. Summer Units 2 & 3 Payment Claims," Civil Action No. 2017-CP-20-378 and is pending in the Fairfield County, South Carolina Court of Common Pleas. SCE&G, Santee Cooper and the WEC Subcontractors agreed to another court order that has stayed any party's otherwise required response to any lawsuit, claim, cross-claim, counterclaim, or third party claim in the WEC Subcontractor's lawsuits and the consolidated lawsuit. Thus, all parties' responses are stayed until the parties can work out case management issues and present a plan for case management to the assigned judge. The court has also entered orders regarding discovery, which is in the very early stages.

Currently, there are approximately $283 million in pending liens filed by WEC Subcontractors alleged to be for labor or materials provided on the Project. The mechanics liens and claims filed by WEC Subcontractors are for materials and labor alleged to have been provided to WEC on the Project for periods of time that can be divided into two groups: (1) pre-petition claims (prior to the WEC March 29, 2017 bankruptcy) and (2) post-petition claims, which include the time period after March 29, 2017 and SCE&G's abandonment of the Project announced July 31, 2017. SCE&G cannot provide an accurate breakdown between pre-petition liens and post-petition liens as the WEC Subcontractors do not make such a distinction in their liens.

The WEC Subcontractors who have filed pre-petition liens are believed to have all made claims against WEC in the WEC bankruptcy seeking payment in full from WEC for pre-petition claim amounts that include the same amounts they have claimed against SCE&G and Santee Cooper. The amounts claimed by the WEC Subcontractors against SCE&G and Santee Cooper would be reduced to the extent the WEC Subcontractor claims are paid in the WEC bankruptcy. However, SCE&G cannot predict what may occur in the WEC bankruptcy with respect to payment of WEC Subcontractor claims.

The vast majority of the post-petition WEC Subcontractor claims are being paid by WEC directly to the WEC Subcontractors through a process set up through the WEC bankruptcy court. SCE&G cannot at this time identify which post-petition WEC Subcontractor lien claims have already been paid directly by WEC, as that process is ongoing. When all such post-petition WEC Subcontractor claims have been paid by WEC, SCE&G anticipates that the current total stated lien amount will be reduced to the extent such liens are paid off by WEC directly.

SCE&G has denied and continues to deny liability for the claims of the WEC Subcontractors arising from materials or labor supplied by those WEC Subcontractors to WEC on the Project. In any event, SCE&G's portion of the settlement amount is limited under the Citibank agreement to $35 million ($60M total including Santee Cooper's portion) for claims paid from the WEC bankruptcy estate. In order to provide up to $35 million reimbursement for claims paid from the WEC estate and any additional claims outside of the WEC bankruptcy, SCE&G may need to issue to debt using the credit capacity created by debt pay down from the Toshiba guarantee monetization payment.

January 12, 2018

McGuireWoods Consulting LLC
1301 Gervais Street, Ste. 1050
Columbia, SC 29201
JHodges@McGuireWoods.com

RE: Memorandum re: Potential Consequences of a SCANA/SCE&G Bankruptcy Filing if Future Collections under the Base Load Review Act Are Suspended or if the Base Load Review Act is Repealed or Deemed Unconstitutional

I have been a bankruptcy and restructuring attorney in South Carolina for over 33 years. My qualifications and credentials are attached hereto as Exhibit A.

DISCLAIMER: This memorandum is intended to explain some of the potential consequences for SCANA Corp. and its subsidiaries in the event they are forced to file bankruptcy because the request for rate relief to SCE&G's rates pursuant to S.C. Code Ann. § 58-27-920 (the "Request") by the South Carolina Office of Regulatory Staff ("ORS") is granted or because the Base Load Review Act is repealed or deemed unconstitutional. SCANA and its representatives have stated publicly on numerous occasions that a material change to the Base Load Review Act could force it into bankruptcy. The drafter makes no representations or warranties that any of the events described in this memorandum will actually occur; this memorandum discusses potential issues which could arise if SCANA is forced to file bankruptcy because of the issues related to the Base Load Review Act. The drafter of this memorandum has not reviewed or relied upon any of SCANA's financial records, operating documents, loan documents, retirement or pension plans, tax returns or any other documents in preparing this memorandum. The drafter did review and rely upon the Affidavit of Ellen Lapson, submitted to the Public Service Commission of South Carolina in December 2017. This memorandum is based entirely on public information and my own experience, and it is intended for public disclosure.

1. What would be the effect on SCANA's financial condition if the Request by ORS is granted?

The financial effect on SCANA[1] if the Request is granted could be devastating. Ellen Lapson, an expert on capital markets and financing matters for utility companies, previously submitted an affidavit with the Public Service Commission of South Carolina on behalf of SCE&G describing the likely effects of the Request (the "Lapson Affidavit"). A copy of the Lapson Affidavit is attached to this memorandum as Exhibit B. Based on my experience as a bankruptcy and restructuring attorney, I believe the conclusions reached in the Lapson Affidavit regarding the likely adverse consequences if the Request is granted are reasonable and justified.

According to the Lapson Affidavit, if the Request is granted, the following will occur: (1) SCE&G's Annual Funds from Operations will be reduced by 35-40%; (2) SCE&G will be required to write off assets of $4.8 billion without reducing any of SCE&G's long term debt; (3) SCE&G's credit rating will be downgraded below investment grade; and (4) SCE&G's ability to draw upon its existing revolving credit line, to issue or refinance new long-term debt, or to attract new common equity will be severely inhibited. See Lapson Affidavit, pp. 3-5.

As noted in the Lapson Affidavit, the Request could immediately create cascading defaults throughout SCE&G's capital structure, including the termination and acceleration of SCE&G's revolving loan facilities. Absent waiver by all of SCE&G's lenders (which might not be granted) or an emergency injection of capital from another source, SCE&G could be deprived of the liquidity it needs to continue day-to-day operations, pay employees and vendors, and service outstanding debt, which could ultimately result in a Chapter 11 bankruptcy filing by SCANA and its subsidiaries.[2]

Lapson's conclusions are premised upon the suspension of future Base Load Review Act collections by SCANA in the amount of $445 million per year. She further concludes that, if SCANA is forced to rebate the $1.8 billion in previously collected revenue, the financial consequences to SCANA would be "materially worsened."

2. If SCANA filed Chapter 11, who would control SCANA after it filed bankruptcy, and what role would other parties have in the bankruptcy case?

Upon the commencement of Chapter 11 bankruptcy proceedings, the company's management remains in control as "debtor in possession." Although the debtor in possession generally retains the right to make all of the business and legal decisions regarding the company's operations and

[1] The terms SCANA and SCE&G are used interchangeably throughout this memorandum.

[2] This memorandum assumes that SCANA Corp. and its affected subsidiaries would all commence Chapter 11 bankruptcy proceedings due to material changes to the Base Load Review Act, based on an assumption that SCANA's relevant financing documents include cross-default provisions and covenant provisions, which are standard in commercial loan documents. However, it is possible that the relevant financing documents do not include such provisions and only SCE&G or some other subset of SCANA-related entities would ultimately be forced to file.

restructuring, all material actions of the debtor in possession must be approved by the bankruptcy court after notice is given to other parties in interest.

Because of the multi-party nature of bankruptcy cases and the differing financial incentives of the parties involved, large Chapter 11 bankruptcy practice can be enormously complex and litigious. At the outset of the case, an Unsecured Creditors Committee will be appointed to represent the interests of unsecured creditors, but other parties in interest—including lenders, indenture trustees, bondholders, and governmental entities, among others—are entitled to object and participate in the proceedings. Given the involvement of numerous well-funded, self-interested stakeholders and the scarcity of resources to satisfy all parties, reaching consensus on a restructuring strategy can be very challenging.

Upon filing a bankruptcy case, SCANA would be unable to access its pre-bankruptcy revolving credit facility. To provide liquidity for ongoing expenses, SCANA would likely be required to obtain debtor-in-possession financing (DIP financing). DIP financing is typically available only on a senior secured basis and often at a cost greater than traditional credit to reflect the additional risks associated with bankruptcy. DIP lenders typically have significant controls in connection with the bankruptcy case, including over the plan and any sale process, which brings yet another interested party to most negotiations (which may have different economic incentives from other stakeholders). Thus, while DIP financing provides critical liquidity and favorable optics regarding the viability of the company in bankruptcy, it further increases the expense and complexity of Chapter 11 bankruptcy.

The debtor in possession must generally operate in accordance with state law and thus remains subject to oversight by state regulators, even while in bankruptcy. However, utility company bankruptcy cases raise complex issues involving the conflict between federal bankruptcy policies and the state regulatory framework. For that reason, significant litigation in the bankruptcy court between the debtor in possession (or other stakeholders in the case) and state regulators is a common occurrence in utility bankruptcy cases.

3. Could the changes to the Base Load Review Act be challenged if SCANA commences bankruptcy proceedings?

If SCANA were to file Chapter 11, it would have a fiduciary obligation (and a strong financial incentive) to pursue potential sources of value that could be used to satisfy claims of creditors. All of SCANA's assets, including any potential cause of action relating to the Base Load Review Act, would be vested in SCANA's bankruptcy estate, and the debtor in possession (and possibly other stakeholders such as the Unsecured Creditors' Committee) would likely vigorously pursue the cause of action. Accordingly, a bankruptcy filing by SCANA would not eliminate or reduce the prospect of litigation regarding the Base Load Review Act; in fact, it would give SCANA the necessary time to pursue the litigation.

Subject to inevitable procedural wrangling given the broad jurisdiction of federal courts on bankruptcy-related questions, the propriety of any repeal or material change to the Base Load Review Act would likely be decided by the South Carolina Supreme Court (or possibly another court with jurisdiction), with a potential appeal ultimately to the U.S. Supreme Court for a final

resolution of the issue. Final resolution of this question could thus take a number of years. Given the importance of this issue to the valuation of SCANA, a sale or reorganization of SCANA may be impractical prior to resolution of the litigation. As such, the resolution of the Base Load Review Act litigation could materially increase the duration and expense of a SCANA bankruptcy case.

4. How would the bankruptcy filing affect SCANA's suppliers, employees, bondholders, and shareholders in South Carolina?

As a threshold matter, it should be noted that this memorandum does not explore the impact that a SCANA bankruptcy filing could have on Santee Cooper or on the balancing of obligations and liabilities between SCANA and Santee Cooper.

Immediately upon commencement of a bankruptcy case, the debtor in possession is prohibited from paying any debts that arose prior to the bankruptcy filing, except for certain narrow exceptions approved by the court. Creditors are entitled to submit proofs of claim prior to a deadline established by the court, and those claims—if valid—would be entitled to receive a distribution upon confirmation of a Chapter 11 plan in an amount established by the plan.

The Bankruptcy Code establishes the priority of payment under a plan, which is critical if the debtor lacks sufficient funds to pay all creditors in full. In general, the DIP lender and any other secured lenders are typically first in line for repayment, with legal fees and other professional expenses paid next (together with any other post-petition costs incurred in operating the debtor). After payment of professional fees, priority creditors including taxing authorities and employees are entitled to payment in full before any dollars make their way down to general unsecured creditors, such as trade suppliers.

Thus, most vendors that supplied goods and services to SCANA on credit could be left waiting years for a distribution from the bankruptcy estate; and that distribution could prove to be only pennies on the dollar after SCANA pays its lenders, professional fees, and priority creditors in full. For many local businesses that are dependent upon SCANA, that delay, or discounted payment could be ruinous. While employees of the debtor continue to receive wages while employed, bankruptcy filings often involve significant headcount reductions and can create substantial uncertainties for employees given questions about the long-term viability of a company operating in bankruptcy. The best and most experienced employees are often cherry-picked by competitors as a result of the uncertainty. Thus, employees and independent contractors that work with SCANA, and SCANA itself, would be adversely affected.

Many retirees and public funds invest in bonds as they are viewed, generally, as a safe long-term investment. I assume that many South Carolina residents hold SCANA bonds. These bonds, to the extent that they are not secured by collateral, also fall into this category and these bondholders could lose some of their investment as a result of a SCANA bankruptcy. Finally, unless creditors are paid in full under the plan, shareholder value is usually wiped out. Extinguishing SCANA's

common stock (or substantially diluting it) will cause hardship to shareholders, many of whom are South Carolinians.

Finally, SCANA's retirement and pension obligations could be affected by a bankruptcy filing. A bankruptcy could reduce the amounts to which current payees under these programs are entitled. Further, it could eliminate or substantially reduce future contributions on behalf of current employees.

5. **How long would a SCANA bankruptcy case take? How much would it cost and where would it proceed?**

Although many aspects of the bankruptcy process move faster than traditional litigation, complex Chapter 11 bankruptcy cases can be lengthy. Generally, absent a restructuring agreement among lenders and other stakeholders reached prior to the commencement of a case, larger companies take substantial time to reorganize because of the complexity of the issues, amounts in question, and number of creditors and other parties in interest. Given SCANA's capital structure and the complex regulatory framework governing its operating subsidiaries, if SCANA commenced bankruptcy without a restructuring agreement in place[3], I expect SCANA's bankruptcy case would likely take two to three years to fully resolve. As noted above, however, the bankruptcy case could take longer if the Base Load Review Act litigation remains unresolved.

As for the expense of the bankruptcy process, SCANA's bankruptcy estate will be responsible for paying fees of law firms, financial advisors, accounting firms, investment bankers, and other professionals retained by SCANA and the Unsecured Creditors' Committee (which will have its own team of advisors). SCANA would also be responsible for the professional fees of the DIP lender and potentially certain other parties. In large, complex Chapter 11 bankruptcy cases, lawyers with national practices are often involved and charge $500 to $1,500 per hour, and fees often total millions of dollars each month. Given the multiple stakeholders and the likely complexity of a SCANA bankruptcy case, based on cases of similar size and scope, I would estimate that the professional fees would be at least $10 million per month, and, in some months, will substantially exceed $10 million. If the case is pending for two to three years, the professional fees could easily exceed $250 million.

While SCANA's bankruptcy proceeding could be filed in the U.S. Bankruptcy Court for the District of South Carolina, other venues may also be available given the flexible venue statutes that apply for bankruptcy cases. Under the federal venue statute, a corporation may file bankruptcy in any jurisdiction in which it, or in which any of its affiliated debtors, is incorporated or has its principal place of business or principal assets. Many large corporate groups, including SCANA, have affiliates organized under Delaware law or that maintain cash or investment assets in New York financial institutions. Large corporate organizations often use these relationships to commence bankruptcy proceedings in Delaware or the Southern District of New York, which are established jurisdictions for overseeing large, complex Chapter 11 bankruptcy cases. If the

[3] It is unlikely that SCANA would file such a "pre-packaged" bankruptcy case because that would require resolution of the Base Load Review Act litigation.

bankruptcy case is filed in a foreign jurisdiction, any decision on a motion to transfer venue to South Carolina would be decided by the bankruptcy judge in the foreign jurisdiction.

6. How does a bankruptcy affect a possible sale process?

If SCANA seeks to sell itself or its assets through a Chapter 11 bankruptcy process, it will need to prove to the Court that it obtained the highest and best price and did so by exposing the company to the market for an appropriate amount of time. SCANA will market itself for sale to competitors and industry participants (i.e., "strategic buyers") and to private equity funds and other investment vehicles (i.e., "financial buyers"). Because the court must approve the transaction, the court approved purchaser may end up being someone other than the purchaser supported by the debtor or other stakeholders (e.g., a private equity financial buyer rather than a strategic buyer).

Private equity buyers are usually not long-term operators; they often purchase distressed companies with the intent to hold them for several years, maximize their profit margins, and then sell them for a substantial profit. This investment strategy may present greater potential for conflict with a public utility's obligations toward ratepayers. For example, a financial buyer may not invest in the business and infrastructure like a strategic buyer would, as the strategic buyer likely would have a longer-term investment strategy.

Finally, if SCANA prevails in the litigation regarding the Base Load Review Act and the Act remains intact, SCANA would probably have sufficient cash flow to pay its creditors and could emerge from bankruptcy as a standalone entity with existing management.[4]

7. Is there a history of utility companies filing in other jurisdictions? How did those cases turn out?

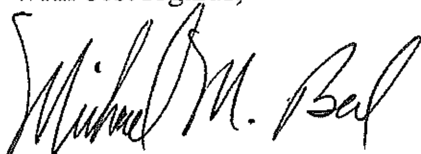
Utility company bankruptcy filings are rare, but one example is the 2001 filing in California by Pacific Gas and Electric Co. (PG&E). PG&E filed Chapter 11 bankruptcy after regulators and legislators refused to approve rate increases to allow PG&E to address $9+ billion in liabilities incurred in connection with wholesale energy purchases in the California energy crisis. During three years in bankruptcy, PG&E paid out more than $400 million in professional fees, including through litigation in the bankruptcy court with state regulators regarding how to resolve conflicts between state law and the bankruptcy code. Ultimately, PG&E reached a settlement with regulators that involved approval of above-market rates for nearly a decade to recover up to $8 billion to enable PG&E to satisfy its obligations under its bankruptcy plan. A news article describing the proceedings is attached hereto as Exhibit C. The ultimate result of the PG&E bankruptcy is that PG&E was forced to spend three years in a Chapter 11 and spend $400 million in professional fees only to obtain rate relief similar to what it originally requested from regulators three years earlier.

---

[4] There is approximately $1.3 billion in expenditures for which SCANA has not yet sought reimbursement under the Act. If the Base Load Review Act remains in place, SCANA will have the right to apply to the PSC for reimbursement of this amount, which could further increase the rates currently being charged.

Other utility company bankruptcy cases (e.g., Public Service Company of New Hampshire) reflect similar outcomes, typically requiring state regulators to approve previously rejected rate increases in connection with settlements that enabled the utility company to emerge from bankruptcy.

With best regards,



Michael M. Beal
mbeal@bealLLC.com
MMB/ajf

Enclosure(s)

EXHIBIT A

BEAL, LLC

Michael M. Beal

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1301 Gervais Street
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Carol Cooper
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PRACTICES

- Commercial Litigation
- Bankruptcy
- Loan Workouts
- Restructuring
- Mediation

EDUCATION

- University of South Carolina, J.D., 1984
- College of Charleston, B.S., 1981

Overview

Michael works primarily with distressed companies, committees and creditors in out-of-court restructurings, Chapter 11 bankruptcy cases, and related litigation and transactional matters. Michael is certified by the South Carolina Supreme Court as a specialist in bankruptcy and debtor-creditor law. He also enjoys mediating complex commercial and bankruptcy matters and is a certified circuit court mediator.

Representative Experience

Debtor Engagements

- Debtor's counsel in the South Carolina Chapter 11 case of a 325 employee, $200 million national paint sundries distributor

- Debtor's counsel in the South Carolina Chapter 11 case of a 500 employee, $225 million steel mill
- Debtor's counsel in the Georgia Chapter 11 case of a 900 employee, $150 million paper mill
- Debtor's counsel in the Delaware Chapter 11 case of a regional textile manufacturer with approximately 5,000 employees
- Co-counsel for the debtor in the Chapter 11 case of a restaurant holding company in which over $1 billion in debt was restructured
- Co-counsel for the debtors in the Chapter 11 case of a golf course resort community developer with liabilities of approximately $1 billion and communities in multiple states

Official Committee and Trustee Engagements

- Trustee's Counsel in a Chapter 11 case of a 115 employee freight payment and audit company
- Counsel to the unsecured creditors' committee in the Chapter 11 case of a 500 employee government contractor
- Co-counsel to the unsecured creditors' committee in the Chapter 11 case of an international manufacturer of non-woven fabric which restructured over $600 million in debt

Creditor Engagements

- Co-counsel to the indenture trustee in the Chapter 9 bankruptcy case and restructuring of a toll road
- Co-counsel to the ad hoc committee of term lenders in the Chapter 11 case of a regional grocery chain
- Co-counsel to the major creditor in the Chapter 11 case of a resort hotel in which many significant reported decisions were issued regarding Chapter 11 confirmation requirements and lease rejection issues
- Lead counsel of a syndicate of lenders ($60 million) in the South Carolina Chapter 11 restructuring case of a PET recycling company

Professional and Community Involvement

- Member-at-Large, Global Board of Trustees (Executive Board), Turnaround Management Association (2015-2016)
- President, Carolinas Chapter, Turnaround Management Association (2014-2015)
- Chairman, Columbia Advisory Board, Salvation Army (2007-2009)
- Past President and Chairman, The Palmetto Club (2004-2005)
- President, South Carolina Bankruptcy Law Association (2000)

Awards and Recognition

- Recipient, Mega Company Turnaround of the Year Award, Turnaround Management Association, Atlanta Chapter (2013/2014)
- Named, Benchmark Litigation® (2011-2015)
  - "Local Litigation Star" (2013-2015)
- Named, *The Best Lawyers in America*© (2003-2017)
  - Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law

- Bet-the-Company Litigation
- Litigation - Bankruptcy
- "Lawyer of the Year," Litigation: Bankruptcy – Columbia (2012)
- "Lawyer of the Year," Bankruptcy and Creditor-Debtor Rights – Columbia (2010)

- Named, Legal Elite of the Midlands, *Columbia Business Monthly* (2015)
- Awarded, Martindale-Hubbell AV Preeminent® Peer Review Rating*
- Listed, *South Carolina Super Lawyers®*, Bankruptcy-Business (2008-2017)
    - "Top 25" (2008)
- Recipient, William E. S. Robinson Award for Meritorious Advancement for the Practice of Bankruptcy Law, South Carolina Bankruptcy Law Association (1997)

Reported Cases

- *In re Judd*, 471 B.R. 830 (D.S.C. 2012)
- *In re Tubular Technologies, LLC*, 362 B.R. 243 (Bankr. D.S.C. 2006)
- *In re Georgetown Steel Co.*, 318 B.R. 336 (Bankr. D.S.C. 2004)
- *In re S. Textile Knitters*, 65 Fed. Appx. 426 (4th Cir. 2003)
- *In re Mayfair Mills, Inc.*, 295 B.R. 827 (Bankr. D.S.C. 2002)
- *Gilchrist v. General Elec. Capital Corp.*, 262 F.3d 295 (4th Cir. 2001)
- *In re Landmark Land Co., of Oklahoma, Inc.,* 134 B.R. 557 (D.S.C. 1991)

Court Admissions

- South Carolina State Courts
- U.S. Court of Appeals, Fourth Circuit
- U.S. District Court, District of South Carolina
- U.S. Bankruptcy Court, District of South Carolina

For Immediate Release
September 6, 2016

Beal, LLC to Serve Companies in Financial Distress

Columbia, SC (September 6, 2016) – Michael M. Beal has founded boutique law firm Beal, LLC to represent middle market businesses in financial distress through restructuring, litigation and mediation. In addition to corporate clients, Beal, LLC represents creditors' committees, bankruptcy trustees, secured lenders, landlords, and asset purchasers in bankruptcy cases, as well as federal and state court receivers.

After 30 years at one of South Carolina's most respected regional firms, Beal saw a need in the market for a specialty firm solely dedicated to serving businesses with financial problems. In building his own firm, he is able to serve clients without the conflicts that come with large firms and multiple practices areas.

Beal has led debtor restructuring engagements in manufacturing, distribution, and commercial real estate; creditor engagements or creditors' committee engagements in hospitality, commercial real estate, health care and manufacturing. He also has served as counsel to state and federal court receivers and bankruptcy trustees in numerous matters, including fraud cases.

He is approved to serve as a Circuit Court Mediator by the South Carolina Board of Arbitration and Mediator Certification and has completed the American Bankruptcy Institute and St. John's University School of Law 40-hour Bankruptcy Mediation Training. His court admissions include the South Carolina State Courts; U.S. Court of Appeals, Fourth Circuit; U.S. District Court, District of South Carolina; and U.S. Bankruptcy Court, District of South Carolina.

Prior to founding Beal, LLC, Michael led the bankruptcy practice at McNair Law Firm, and served as a law clerk to the Honorable J. Bratton Davis, Chief United States Bankruptcy Judge, District of South Carolina.

He has served as the president of the Carolinas Chapter of the Turnaround Management Association; a member-at-large of the Global Board of Trustees of the Turnaround Management

Association; and president of the South Carolina Bankruptcy Law Association. Beal has been listed in *South Carolina Super Lawyers* ® and *The Best Lawyers in America* ©, and he has received a Martindale-Hubbell AV Preeminent® Peer Review Rating.

Beal, LLC is located in downtown Columbia and serves clients throughout the region. For more information, visit www.BealLLC.com.

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EXHIBIT B

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 1 of 52

Exhibit 3
Affidavit of Ellen Lapson

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 2 of 52

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-305-E

IN RE: Request of South Carolina Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920	)))))))	**AFFIDAVIT OF ELLEN LAPSON**

Personally appeared before me Ellen Lapson who, having first been duly sworn, deposes and states as follows:

1. My name is Ellen Lapson and I am over eighteen years of age. I am qualified and competent to make this affidavit.

2. I make this affidavit based upon my personal knowledge, except as to those matters stated upon information belief, and, as to those matters, I believe them to be true.

3. I am a Principal with Lapson Advisory. In this position, I provide financial consulting services to utilities and developers of infrastructure projects.

4. South Carolina Electric & Gas Company engaged me to assist in its evaluation of the request filed by the South Carolina Office of Regulatory Staff in the above-captioned matter.

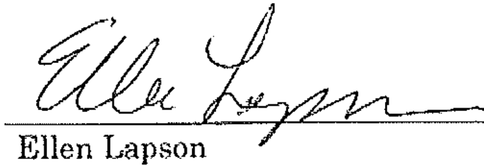
ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 3 of 52

5. In this regard, I have prepared Attachment A, my sworn statement, which I incorporate into this affidavit by this specific reference as if repeated verbatim herein.

6. For my sworn statement, I use the question and answer format that is customarily used in proceedings before the Public Service Commission of South Carolina.

7. The answers set forth in Attachment A are based upon my personal knowledge, except as to those matters stated upon information belief, and, as to those matters, I believe them to be true. Each opinion stated in Attachment A is accurate, true, and correct.

FURTHER AFFIANT SAYETH NOT.



Ellen Lapson

Sworn and subscribed to before me
this 7th day of December, 2017

Notary Public for New York

MARK B. LINDE
Notary Public, State of New York
No. 01LI6121090
Qualified in Westchester County
Certificate filed in New York County
Commission Expires Jan. 10, 2021

My commission expires: ____________

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 4 of 52

ATTACHMENT A
to
Affidavit of Ellen Lapson

(which consists of the sworn statement of Ellen Lapson consisting of 23 pages and Exhibit No. ____EL-1 through Exhibit No. __EL-6)

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 5 of 52

SWORN STATEMENT OF

ELLEN LAPSON

ON BEHALF OF

SOUTH CAROLINA ELECTRIC & GAS COMPANY

DOCKET NO. 2017-305-E

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Ellen Lapson and my business address is 370 Riverside Drive, New
3 York, New York 10025.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am the founder and Principal with Lapson Advisory.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**
7 **QUALIFICATIONS.**

8 A. After graduating from Barnard College of Columbia University in 1969 with a
9 Bachelor of Arts degree in English, I earned a Masters degree in Business Administration
10 from New York University's Stern School of Business with a concentration in Accounting
11 and minor concentration in Finance. In 1978, I qualified as a Chartered Financial Analyst
12 ("CFA"), and I am a member of the CFA Institute.

13 I began my career in the financial markets as an equity analyst for five years at
14 Argus Research Corporation analyzing utility company equity securities. For the next 20
15 years, I held several posts at Chemical Bank and Chemical Securities (now J.P. Morgan)
16 as a corporate banker and an investment banker structuring and executing financial
17 transactions for utility and infrastructure companies. Thereafter, I spent 17 years first as a

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 6 of 52

1 senior director and then as a managing director at Fitch Ratings, a major credit rating
2 agency. At Fitch Ratings, I managed analysts who rated credits in the sectors of electricity
3 and natural gas and project finance, and I maintained liaison with bankers and investors in
4 utility securities. During my 37 years as a utility banker and at Fitch Ratings, I gained a
5 depth of experience in dealing with utilities in various degrees of financial distress and I
6 had to confront serious issues involving utilities' solvency, bankruptcy, and restructuring.
7 Six years ago, I left Fitch and founded Lapson Advisory where I provide services
8 on matters that involve utility finance including: credit rating advisory to utilities and
9 infrastructure projects; providing advanced training to mid-career professionals in utility
10 finance; and expert testimony.

11 Q. **HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT WITNESS BEFORE A**
12 **REGULATORY COMMISSION?**

13 A. Yes. A list of the proceedings in which I have testified is included in Exhibit No.
14 ___ (EL-1), along with information about my professional credentials and experience in
15 the investment communities.

16 Q. **WHAT IS THE PURPOSE OF YOUR SWORN STATEMENT IN THIS**
17 **PROCEEDING?**

18 A. The purpose of my sworn statement is to provide expert opinions on the urgency of
19 safeguarding the financial strength of South Carolina Electric & Gas Company ("SCE&G"
20 or the "Company") at this time and on how the financial markets are likely to react if the
21 Request for Rate Relief to SCE&G's Rates Pursuant to S.C. Code Ann. § 58-27-920 (the
22 "Request") by the South Carolina Office of Regulatory Staff ("ORS") is granted.

23 Q. **PLEASE SUMMARIZE THE KEY POINTS OF YOUR SWORN STATEMENT.**

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 7 of 52

1 A. The Request, if granted, will undermine the financial stability and viability of
2 SCE&G. Before reaching a decision on the Request, it therefore is critical that the
3 Commission be fully aware of the potential consequences of its decisions in this matter.

4 The ORS Request seeks the immediate suspension of the collection of revised rates
5 amounting to $445 million per annum[1] that SCE&G collects pursuant to the 2007 Base
6 Load Review Act ("BLRA"). Those revenues represent the financing cost relating to $3.8
7 billion of investment by SCE&G in the new nuclear project and related transmission, or
8 $3.4 billion excluding transmission investment. SCE&G has invested an additional $1.3
9 billion in the project that has not yet been approved for revised rates, for a total asset
10 exposure of approximately $4.8 billion, excluding transmission.

11 If the Commission grants ORS's Request, this action would most assuredly have
12 immediate and cascading effects on SCE&G's financial liquidity and viability. Among the
13 unfavorable consequences that can be expected are:

14 Cash flow effect: 1) Annual Funds from Operations for SCE&G will be reduced
15 by 35-40%; 2) Along with reduced operating cash flow, the Company will have
16 greater dependence on funds from external financial markets, and it is unlikely
17 these funds will be available on reasonable terms.

18 Balance sheet effects: 1) A determination that the full amount invested of at least
19 $4.8 billion is not an earning asset and, thus, must be written off; 2) While the asset
20 will be written off, the amount of SCE&G's long-term debt will not be diminished;
21 therefore, the ratio of long-term debt to total capital as measured for regulatory
22 reporting would automatically increase from approximately 48% at September 30

[1] That number would be $413 million per annum if the collection of a portion relating to the cost of new transmission assets continues. *See* Second Affidavit Jimmy E. Addison, October 31, 2017.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 8 of 52

1 2017[2] to 61.6% of capital post-impairment net of the proceeds of the monetization
2 of the Toshiba Corporation payment to SCE&G (the "Toshiba Guarantee"). If the
3 Company also is required to segregate or rebate to customers the Toshiba Guarantee
4 proceeds, the ratio of debt to total capital would rise to 67.5%. However, debt
5 leverage will be even greater as calculated by credit analysts, bond investors, and
6 bankers in that they will include short-term debt and current maturities of long-term
7 debt in their calculation of total debt. Using the method commonly used in the
8 financial markets, the actual September 30, 2017 total debt ratio is 53.2% and the
9 pro forma debt ratio post-impairment with offset of the Toshiba Guarantee is
10 62.7%. If the Company also must segregate or refund to customers the Toshiba
11 Guarantee amount, total debt would be 72% of capital. (For the pro forma
12 adjustments, *see* Exhibit No. __(EL-6).) Either scenario will be viewed negatively
13 by financial market participants, as signals of a company in dire financial stress
14 and, therefore, unlikely to repay investors for capital lent to the Company.
15 Credit Agreement impact: 1) The reduction in revenues indicated above and the
16 impairment of the asset and increase in debt leverage would undoubtedly be events
17 with "Material Adverse Effect" (a defined term in the bank credit agreements).
18 Thus the banks in the two revolving credit agreements that provide $900 million of
19 credit to SCE&G would no longer be committed to lend; 2) SCE&G could no
20 longer draw under the agreements and could not issue short-term notes (commercial
21 paper) for short-term borrowings; 3) If the ratio of total debt to total capital as
22 defined in the two credit agreements exceeds 70%, as may occur under certain

[2] SCE&G's Quarterly Report of Earnings to the Commission as of September 30, 2017. For pro forma adjustments, see Exhibit No. ___ (EL-6).

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 9 of 52

1 scenarios, that would constitute an Event of Default, and any credit outstanding
2 under those agreements would become immediately due and payable and no further
3 credit would be available under the agreements.
4 Credit rating effect: Due to all the factors mentioned above, rating agencies would
5 further reduce the long-term credit ratings of SCE&G, and most likely all of the
6 three ratings will be below investment grade.
7 Common equity effect: New common equity, which would be needed to
8 recapitalize SCE&G and bring its ratio of debt to total capital back into line with
9 industry norms, would be more difficult to secure because the price of SCANA's
10 common shares would most likely fall further. With a diminished ability to issue
11 new common shares and rebalance its capital structure, SCANA's ability to issue
12 new bonds would be constrained and access to borrow under SCANA's revolving
13 credit agreement would be eliminated altogether.
14
15 Finally, the adverse financial consequences listed above would be materially
16 worsened if the Company is also required to rebate to customers over a short time frame
17 the approximately $1.8 billion in revenues previously collected pursuant to the BLRA (or
18 to segregate or rebate to customers the Toshiba Guarantee). This cash flow stress,
19 combined with the maturing $721 million of bonds in 2018 could well exceed the
20 Company's access to funding in 2018.
21 Such a cascade of financial problems would financially devastate the Company. It
22 should also be noted that this financial devastation would not just impact the Company and
23 its investors. These adverse financial consequences may also be detrimental for SCE&G's

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 10 of 52

1 electric customers, because the utility would not have the financial strength and resilience
2 that it needs to meet customers' demands for safe and reliable electric service. The
3 Company's ability to deal with the rapid restoration of service after events such as major
4 hurricanes, tornadoes, floods, or fires, or to maintain and upgrade its system also would be
5 compromised. While the Commission and government leaders may be motivated by strong
6 public sentiment to exact immediate retribution against SCE&G and its management, the
7 more radical and punitive those exactions are, the smaller will be the Company's capacity
8 to fund mandated reimbursements and maintain solvency. Furthermore, a financially
9 distressed SCE&G will be at a severe disadvantage when it comes to serving customers
10 with reliable and resilient service. In sum, the situation is severe, and efforts designed to
11 punish the Company that cripple it financially are likely to have an adverse impact on
12 service quality and reliability.

13 Q. **WHY SHOULD THE COMMISSION BE URGENTLY CONCERNED ABOUT**
14 **THE ONGOING FINANCIAL STRENGTH OF SCE&G AT THIS TIME?**

15 A. As I summarized above, the Request has the potential to undermine the financial
16 strength and viability of SCE&G. Financial strength is a critical resource that underlies
17 SCE&G's ability to fulfill its obligation to meet the needs of electricity consumers, and it
18 should always be a matter of utmost importance to the Commission. Sound financial
19 condition enables a company to cover its operating expenses, to deal with catastrophic
20 events that affect customer service, and to attract capital on favorable terms during all
21 phases of the capital market cycle, in good times and bad. If the ongoing financial strength
22 of SCE&G is compromised, the Company's ability to provide safe and reliable electric
23 service to its customers will be compromised.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 11 of 52

1 **Q. ARE ELECTRIC UTILITIES CONFRONTED WITH SPECIFIC CONCERNS**
2 **THAT MAKE FINANCIAL STRENGTH ESPECIALLY IMPORTANT?**
3 A. Yes. The electricity delivery and transmission business is capital intensive. The
4 Company is obligated to invest continuously in long-lived fixed assets to serve growth in
5 connections, comply with changing governmental mandates and safety regulations, replace
6 infrastructure at the end of its useful life, and enhance the resilience and reliability of its
7 systems. Catastrophic events and emergencies such as floods, tornadoes, and hurricanes
8 can disrupt customer service and demand that the utility dedicate financial resources for
9 immediate disaster recovery. In addition, during normal times, the Company is investing
10 approximately $500 million each year to upgrade, extend, and replace its facilities, all for
11 the purpose of providing safe and reliable electric service. In order to meet these ongoing
12 financial needs, SCE&G requires continuous access to bank credit facilities and the bond
13 market for funding at reasonable rates.
14 **Q. DOES SCE&G NEED TO MAINTAIN ACCESS TO CAPITAL MARKETS TO**
15 **CARRY OUT ITS OBLIGATION TO SERVE ITS CUSTOMERS?**
16 A. Yes. SCE&G depends upon short-term and long-term external debt issuance in the
17 capital market. Issuance of long-term debt from time to time enables the Company to
18 refund maturities of long-term debt and to pay down its short-term borrowings. The
19 Company relies on access to bank credit facilities in the form of multi-year revolving
20 credits either as a direct source of funding or as a back-up support for borrowing through
21 short-term notes (commercial paper). Like many utilities, the Company borrows using
22 commercial paper to fund seasonal working capital shortfalls and other funding needs on
23 an interim basis until the outstanding debt balance reaches a level that justifies the issuance

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 12 of 52

1 of a new long-term bond series. Access to short-term borrowing of this sort is a basic tool
2 of day-to-day working capital funding that reduces a utility's interest costs and revenue
3 requirements. The ability to issue long-term bonds, such as SCE&G's first mortgage
4 bonds, provides an efficient source of funding to support the long-term fixed assets of the
5 utility at relatively low costs to customers.

6 Q. **WHAT OBJECTIVE MEASURES OF CORPORATE FINANCIAL STRENGTH**
7 **ARE RECOGNIZED BY BANKERS, CREDIT COUNTERPARTIES, AND**
8 **INVESTORS?**

9 A. Long-term credit ratings by recognized credit rating agencies evaluate the business
10 and financial characteristics and risks of companies against transparent criteria, taking into
11 consideration key factors such as the adequacy and predictability of operating cash flow
12 relative to the amount of debt and other financial commitments. Long-term credit ratings
13 are a measure of the estimated risk of default on payments, and are widely accepted as
14 indicators of a company's financial soundness and liquidity.

15 Q. **WHAT ARE SCE&G'S LONG-TERM CREDIT RATINGS ACCORDING TO**
16 **STANDARD & POOR'S ("S&P"), MOODY'S, AND FITCH AND HOW HAS THE**
17 **FILING OF THE REQUEST BY ORS AFFECTED THOSE RATINGS?**

18 A. The current issuer credit ratings for the Company are listed in Table 1 below.
19 S&P's BBB and Moody's Baa2 rating are effectively the same rating, indicating the next
20 to lowest investment grade rating of those agencies. Fitch's rating of BBB- is one notch
21 lower than the ratings by S&P and Moody's and is the lowest rating within the investment
22 grade category. Exhibit No. __ (EL-2) compares the long-term credit rating designations
23 of the three agencies and shows their equivalences. Both S&P and Fitch downgraded

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 13 of 52

1 SCE&G's long-term ratings on the dates indicated at the bottom of the table. Moody's
2 maintained its rating of the Company's credit on the indicated date, but it changed its credit
3 outlook status from a Negative Outlook to "On Review for Possible Downgrade" (the
4 equivalent to Watch Negative).
5
6 **Table 1**
7 Long-Term Issuer Credit Ratings of SCE&G

	S&P	Moody's	Fitch
Long-term Issuer Credit Rating*	BBB	Baa2	BBB-,
Outlook or Watch	Watch Negative	On review for Downgrade	Watch Negative
Date of action	Sept. 29, 2017	Nov. 1, 2017	Sept. 27, 2017

8
9 In their published explanations of the rationale for their rating actions, included
10 as Exhibit Nos. ___(EL-3), ___ (EL-4), and ___ (EL-5), all three of the agencies cited the
11 Request by ORS and commented that further downgrades are likely if major customer
12 refunds are ordered by the Commission, if the BLRA is determined to be unconstitutional,
13 or if revenues previously collected pursuant to the BLRA must be returned to customers
14 over a short period of time.

15 Q. **HOW DOES CREDIT QUALITY AFFECT INVESTORS' INVESTMENT**
16 **DECISIONS?**

17 A. Instruments with higher credit ratings can appeal to a broader market of investors,
18 because they are eligible investments under the regulations or the internal investment
19 policies and guidelines of the greatest number of institutional investors. When bonds carry
20 low credit ratings, some investment accounts are forbidden to hold them, and many other

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 14 of 52

1 accounts have internal investment guidelines that restrict the percentage of the portfolio
2 that may be comprised of investments of lower credit ratings. Even when investment
3 managers are not constrained by law or policy to investments of specific credit ratings, they
4 use ratings from credit rating agencies and their own evaluations of credit quality to shape
5 their investment decisions. In particular, when credit ratings are below investment grade or
6 at the borderline between investment grade and sub-investment grade ratings, the access to
7 short-term credit and to issuing long-term bonds becomes more difficult and more costly.

8 **Q. WHAT IS THE BOUNDARY BETWEEN INVESTMENT GRADE AND SUB-**
9 **INVESTMENT GRADE RATINGS?**

10 A. As shown in Exhibit No. ___ (EL-2), for S&P and Fitch, BBB- is the lowest rating
11 within the investment grade, and BB+ is the upper boundary of the sub-investment grade
12 category (also called "speculative grade"). In the case of Moody's, Baa3 is the lowest
13 investment grade rating and Ba1 is the upper boundary of the speculative category. Risk
14 of default is relatively low within the mid- and high-investment grade categories, but
15 default risk widens out materially at the boundary of investment grade and at successively
16 lower ratings.

17 **Q. WHAT IS THE RELATIONSHIP BETWEEN CREDIT RATINGS AND THE**
18 **COST OF DEBT FINANCING?**

19 A. In general, investors expect to be paid more to hold investments of lower credit
20 quality. During periods of uncertainty or financial market distress, the pricing disparity
21 between credit rating categories widens materially relative to more normal periods. But it
22 is not just a matter of the cost; lower credit ratings also reduce *access* to funding. At sub-
23 investment grade ratings, companies are no longer eligible for funding in the commercial

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 15 of 52

1 paper market, so they lose access to a low-cost source of funding. Also, sub-investment
2 grade credits may not be able to issue any material amount of fixed rate debt for periods
3 longer than five to ten years at the longest—quite a difference from the access that
4 investment grade companies have to longer term bond issuance out to maturities of 50
5 years.

6 **Q. WHEN CONSIDERING WHETHER A COMPANY IS OF INVESTMENT GRADE**
7 **OR SUB-INVESTMENT GRADE STATUS, WHICH RATINGS ARE RELEVANT?**

8 A. The long-term unsecured issuer credit rating or the unsecured debt rating is the
9 relevant rating for that purpose.

10 **Q. ARE SCE&G'S UNSECURED LONG-TERM CREDIT RATINGS IN THE**
11 **INVESTMENT GRADE CATEGORY?**

12 A. Currently, yes. However, as I have already mentioned, all three of the credit rating
13 agencies that rate the Company have indicated that their ratings are on a Watch status for
14 a possible downgrade. Fitch's rating of BBB- is already at the very bottom rung of the
15 investment grade category, and any downgrade would place the rating in the BB category,
16 which is below investment grade. S&P has already indicated that its next possible near-
17 term downgrade may be a two-notch downgrade (that is, to BB+). Moody's has not given
18 any indication of the potential magnitude of a downgrade, but, if the company loses access
19 to its revolving credit facilities, Moody's criteria would require lowering the rating into the
20 sub-investment grade category, probably to no higher than Ba2, a three-notch downgrade.
21 Investors assume that any punitive legislative or regulatory outcome would bring all three
22 rating agencies' ratings into the sub-investment grade realm.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 16 of 52

1 **Q. DOES SCE&G CURRENTLY HAVE ADEQUATE ACCESS TO THE LONG-**
2 **TERM AND SHORT-TERM CREDIT MARKETS?**

3 A. Yes. However, the Company's current issuer credit ratings are at or near the bottom
4 of the investment grade category. In addition, they are among the lowest 10% of ratings
5 in the universe of regulated U.S. utility operating companies. As such, the ratings currently
6 are minimally adequate to give the Company access to long-term and short-term credit and
7 trade credit from its counterparties.

8 **Q. WOULD GRANTING THE RELIEF REQUESTED BY ORS RESULT IN**
9 **FURTHER CREDIT DOWNGRADES FROM THE CURRENT LEVELS AT THE**
10 **THREE AGENCIES?**

11 A. Yes. This outcome is clearly indicated in the explanations given by the three
12 agencies at the time of their most recent rating actions. For example, Moody's stated on
13 November 1, 2017 when it placed SCE&G's Baa2 rating on review for downgrade:

> 14 Specifically, if the ORS recommendations were to be adopted, there would be a
> 15 significant reduction in cash flow and a meaningful impact on credit metrics. For
> 16 example, we estimate the companies' ratios of cash flow from operations excluding
> 17 changes in working capital (CFO pre-WC) to debt, which are currently in the
> 18 high-teens to twenty percent range, could move to the mid-to-low teens range. In
> 19 addition, implementation of the ORS recommendation could lead to a substantial
> 20 asset impairment, which in some downside scenarios, could result in a covenant
> 21 violation under the companies' credit facilities, restricting their access to liquidity.
> 22 In light of the increased regulatory and political uncertainty, the resulting metrics
> 23 would likely no longer be appropriate for the companies' current ratings.[3]

24 The reduction in operating cash flow operations to debt that Moody's cites would indicate
25 a potential rating for SCE&G either one notch lower at Baa3—the lowest investment grade
26 rating—or two notches lower at Ba1—a speculative rating. Importantly, however, the debt

[3] Moody's Investors Service, "Rating Action: Moody's Places SCANA and SCE&G on Review for Downgrade", November 1, 2017 (Exhibit No. ___ (EL-3) at 1).

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 17 of 52

1 to capital ratio resulting from the related asset impairment would rise to 62.7% if SCE&G
2 retains the offset of the Toshiba Guarantee, or to 72% if there is no offset from the Toshiba
3 Guarantee. These capital ratios are indicative of a Moody's rating in the Ba or low Ba
4 category. Assuming that at the same time SCE&G lost access to borrowing under its
5 revolving credit agreement, the resultant loss of liquidity would predict a change in
6 Moody's rating to Ba2 or lower—a three-notch downgrade.[4]

7 S&P's most recent commentary on its September 29, 2017 rating action (which
8 lowered SCE&G's rating and placed the rating on a Negative Watch) stated:

9 We could lower the ratings on SCANA and its subsidiaries if Summer-
10 related rates are rescinded. We could further lower ratings if legal
11 challenges to a rate decrease are unsuccessful, if the SCPSC orders cash
12 refunds or rate credits for Summer-related costs, if the BLRA is repealed or
13 changed by the legislature, or if the BLRA is deemed unconstitutional.[5]
14

15 In short, SCE&G's issuer credit rating will be downgraded by at least one notch or more,
16 and below investment grade, if the $445 million of revenue collection is interrupted.
17 Ratings would be further downgraded if the Commission also orders rate credits or rate
18 refunds for prior revenue collections.

19 When Fitch lowered the rating of SCE&G and placed the new rating on Watch
20 Negative on September 27, 2017, Fitch provided an explanation of what circumstances
21 would lead to a further reduction of the rating to below investment grade:

22 Negative Rating Action: Future developments that may, individually or
23 collectively, lead to a negative rating action include:
24 --Availability under committed liquidity facilities and anticipated internally
25 generated cash flows falling short of expected obligations due in the next 12-18
26 months.

[4] The outcome would be at least a three-notch downgrade if Moody's rating committee decides at its review of the Company to assess SCE&G's financial metrics based on its table of Standard Volatility credit benchmarks, rather than the Low Volatility benchmarks used for most rate-regulated utilities in supportive regulatory environments.

[5] Standard & Poor's, "Research Update: SCANA Corp. And Subsidiaries Downgraded To 'BBB' On Adverse Regulatory Developments And Placed On Watch Negative," September 29, 2017 (Exhibit No. ___ (EL-4) at 4).

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 18 of 52

1 --Unfavorable terms for the recovery of stranded costs, and/or material
2 unrecoverable costs;
3 --Continued deterioration in the regulatory and legislative environment in South
4 Carolina;
5 --Adjusted debt/EBITDAR consistently and materially exceeding 5.0x.[6]

6 The reduction in operating cash flow resulting from the removal of revenues as sought in
7 the Request would cause the ratio of Debt to Earnings before Interest, Taxes, Depreciation,
8 Amortization, and Restructuring ("EBITDAR") to rise to 6 times or greater, fulfilling one
9 of Fitch's conditions for downgrade. A second condition for downgrade would be triggered
10 if SCE&G lost access to drawings under the revolving credit agreements.

11 In summary, it is my opinion that granting ORS's initial Request to suspend all
12 revised rates collection from customers, even without refunds, would trigger downgrades
13 by all three rating agencies in the magnitude of one or more notches. This would result in
14 a downgrade to sub-investment grade by one or more agencies.

15 **Q. WHAT IMPACT WOULD DOWNGRADING SCE&G'S UNSECURED LONG-**
16 **TERM AND SHORT-TERM CREDIT RATINGS HAVE ON THE COMPANY?**

17 A. Having investment grade ratings in the BBB range (S&P and Fitch) or Baa range
18 (Moody's) is a minimum requirement for sustainable management of a public utility. If
19 SCE&G's credit ratings are downgraded further, the Company would face higher costs of
20 long-term debt, and funding or refunding large amounts of long-term debt would become
21 difficult. It would no longer be advantageous for SCE&G to sell long-term bonds, and the
22 Company probably could issue only intermediate term bonds (such as three to seven years),
23 setting up a greater dependence on external debt issuance in the succeeding years. With

[6] Fitch Ratings, "Press Release: Fitch Downgrades SCANA to 'BB+' / SCE&G to 'BBB-'; Negative Watch Maintained," September 27, 2017 (Exhibit No. ___ (EL-5) at 2-3).

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 19 of 52

1 sub-investment grade long-term credit ratings, SCE&G's short-term ratings would also be
2 in the sub-investment grade category, and that would eliminate the possibility of accessing
3 the commercial paper market. Access to the commercial paper market is also dependent on
4 having access to full back-up for the commercial paper issued in the form of an undrawn
5 committed credit facility, and that condition would no longer be present if ORS's Request
6 is granted.

7 **Q. IN ADDITION TO ITS CREDIT RATINGS, WHAT ELSE IS NECESSARY FOR**
8 **THE COMPANY'S CONTINUING LIQUIDITY AND FINANCIAL STABILITY?**

9 A. A vital factor affecting SCE&G's liquidity and access to short-term capital is the
10 ability to draw under its Revolving Credit Facilities. Currently, SCE&G has access to two
11 revolving credit agreements, a $200 million facility that extends until December 2018 and
12 another $700 million facility that extends until December 2020. These two facilities
13 totaling $900 million provide the Company with the essential liquidity and flexibility to
14 operate and carry out its business. However, continued access to bank credit and short-
15 term funding is significantly threatened by ORS's Request and by various punitive
16 measures under discussion in the Legislature.

17 **Q. WHAT IMPACTS WOULD THE RELIEF SOUGHT BY ORS HAVE UPON THE**
18 **COMPANY'S ACCESS TO ITS BANK CREDIT AGREEMENTS?**

19 A. The two credit agreements share similar conditions to borrowing, covenants, and
20 events of default. The agreements both require SCE&G as borrower to disclose to the
21 lenders any occurrences having Material Adverse Effect ("MAE") relative to the base
22 conditions that prevailed at the initiation of the credit agreement. For example, whenever
23 a loan is drawn under the facility, an officer of the borrower must warrant that there has

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 20 of 52

1 been no event having MAE, or disclose such MAE to the lenders.[7] An occurrence having
2 MAE would eliminate the lenders' commitments to fund drawings under the agreement.
3 If SCE&G had outstanding commercial paper at the time of an occurrence having MAE,
4 the Company would not be able to issue new commercial paper at the maturity of the
5 outstanding notes, and would not be able to draw any loans under the revolving credit.

6 Furthermore, if the full amount of the nuclear project asset is impaired and must be
7 written off and the Company is not able to retain the offset of the Toshiba Guarantee as a
8 reduction in debt, SCE&G would likely violate one of the financial covenants of the two
9 revolving credit agreements because the amount of the Company's debt as defined would
10 likely exceed 70% of total capital as defined. When this covenant is breached, no further
11 drawing would be permitted under the revolving credit agreements and any amounts due
12 under the revolving credit would become immediately due and payable. Consequently,
13 other agreements and credit arrangements with vendors may also experience defaults and
14 require immediate repayment as a result of an Event of Default under the bank credit
15 agreements.

16 **Q. IS A COMPANY'S CAPITAL STRUCTURE A MAJOR DETERMINANT OF THE**
17 **COMPANY'S FINANCIAL RISK AND ITS FINANCIAL STRENGTH?**

[7] "Material Adverse Effect" is defined in the $200,000,000 Amended and Restated Three-Year Credit Agreement dated as of December 17, 2015 and in the $700,000,000 Second Amended and Restated Five-Year Credit Agreement dated as of December 17, 2015 to mean "a material adverse effect on (a) **the properties, business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) of the Borrower on a consolidated basis and its Subsidiaries, taken as a whole,** (b) the ability of the Borrower to perform its obligations under this Agreement or any of the other Loan Documents to which the Borrower is a party or (c) the validity or enforceability against the Borrower of this Agreement, any of the other Loan Documents to which the Borrower is a party, or the rights and remedies of the Agent, the Issuing Banks and the Lenders hereunder or thereunder." (Emphasis added.) A regulatory order removing revenues that previously made up more than a third of the Company's Funds from Operations, or the invalidation of the BLRA, or the write-off of several billions of dollars of assets, or the resulting change in the balance of debt and equity on the balance sheet would each individually or all taken together match the conditions described in part (a) of the definition.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 21 of 52

1 A. It most certainly is. Regarding the concept of financial risk, Roger Morin explains:

2 Financial risk stems from the method used by the company to finance its
3 investments and is reflected in its capital structure. It refers to the additional
4 volatility imparted to income available to common shareholders by the
5 employment of fixed cost financing, that is, debt and preferred cost capital.
6 Although the use of fixed-cost capital can offer financial advantages
7 through the possibility of leverage of earnings (financial leverage), it creates
8 additional risk due to the fixed contractual obligations associated with such
9 capital. Debt and preferred stock carry fixed charge burdens that must be
10 supported by the company's earnings before any return can be made
11 available to the common shareholder. The greater the proportion of fixed
12 charges to the total income of the company, the greater the financial risk.[8]
13
14 To state this in another way, the greater the proportion of equity capital in the capital
15 structure, the greater the company's financial strength.

16 **Q. DOES THE FINANCIAL RISK STEMMING FROM A GREATER PROPORTION**
17 **OF DEBT FINANCING IN THE CAPITAL STRUCTURE AFFECT ONLY THE**
18 **RISKS BORNE BY SHAREHOLDERS?**

19 A. No. A greater proportion of debt (and correspondingly lower proportion of equity)
20 in the capital structure increases not only shareholders' financial risk due to the increased
21 volatility of earnings, but it also raises the financial risk of all debt holders and trade
22 creditors through the increased risk of default. Morin expresses the situation as follows:
23 "More generally, a financial risk premium is required by both bondholders and common
24 shareholders."[9] Moreover, in the case of a public utility, increased financial leverage and
25 rising default risk typically weaken the utility's ability to fund investments in its network
26 and lead to lower levels of reliability and customer service. In summary, funding the utility
27 with a greater proportion of debt capital and a lower proportion of equity capital increases
28 financial risk for shareholders, bondholders, lenders, trade creditors, and utility consumers.

[8] Morin, Roger A., Ph. D., New Regulatory Finance, Public Utility Reports, Inc., 2006, 45-46.

[9] *Id.*

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 22 of 52

1 **Q. WHAT EFFECT WILL THE REQUEST HAVE ON THE CAPITAL STRUCTURE**
2 **OF SCE&G?**
3 A. Eliminating the collection from customers of the debt and equity carrying costs of
4 the assets SCE&G invested in the new nuclear project likely will result in the impairment
5 of the associated assets and their removal from the balance sheet. The likely effect of this
6 impairment on the capital structure is shown by means of pro forma adjustments to the
7 Company's September 30, 2017 capital in Exhibit No. ___ (EL-6). The impairment would
8 increase SCE&G's ratio of debt to total capitalization as measured by bond analysts and
9 credit rating agencies from approximately 53% at September 30, 2017 to 62.7% post-
10 impairment assuming that the proceeds of the Toshiba Guarantee are an offset. This debt
11 leverage ratio would further rise to around 72% post-impairment if the Commission orders
12 the Company to turn over the proceeds of the Toshiba Guarantee, either for customer bill
13 credits or into some form of segregated or escrow account.
14 **Q. IS THE DEGREE OF DEBT LEVERAGE UNDER THE RESULTING POST-**
15 **IMPAIRMENT CAPITAL STRUCTURE NORMAL OR DESIRABLE FOR AN**
16 **ELECTRIC UTILITY?**
17 A. No. In my professional experience over the past several decades, regulatory capital
18 structures for U.S. investor-owned utilities are typically closer to 50% equity and 50% debt.
19 In fact, in regulatory decisions for investor-owned electric utilities over the past two to
20 three years, a debt component in excess of 60% of total capital is an outlier, and I am not
21 aware of cases in which a 70% ratio was authorized.
22 **Q. HOW OR WHEN DO UTILITIES AND CONSUMERS BENEFIT FROM THE**
23 **UTILITY'S STRONGER FINANCIAL CAPABILITY?**

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 23 of 52

1 A. Financial strength, access to liquidity, and investment grade ratings are essential
2 for a utility to have the financial flexibility to respond to emergencies and extreme events
3 such as hurricanes, tornadoes, and floods. During those types of events, SCE&G needs
4 strong access to the commercial paper and capital markets and the confidence of the
5 investment community in order to fund its recovery efforts immediately. If the Company
6 is of sub-investment grade or lacks access to bank credit and short-term borrowings, this
7 purpose is frustrated. When I think of past climate events that have affected South
8 Carolina, it should be quite obvious that a utility cannot mount a rapid and effective storm
9 restoration plan without the confidence of its counterparties, suppliers, vendors, and the
10 ability to immediately borrow the funds needed to mobilize work crews, order new
11 equipment, and pay for other restoration costs prior to rate recovery of those cash outflows.
12 Recent problems at the financially distressed Puerto Rican Electric Power Authority
13 ("PREPA") in restoring power to its customers in the wake of hurricanes Irma and Maria
14 illustrate this point.

15 **Q. ARE THERE OTHER BENEFITS OF SOUND CREDIT QUALITY TO SCE&G**
16 **AND ITS CUSTOMERS?**

17 A. Yes. Trade creditors and energy market counterparties impose limits on the amount
18 of unsecured credit they will provide based on the credit quality of their counterparty. By
19 maintaining sound credit ratings, SCE&G is able to maximize the amount of unsecured
20 credit available from vendors and energy providers and pass the resulting cost benefits on
21 to its customers. Credit ratings also affect the cost and availability of bank credit facilities.
22 Banks are required by their regulators to maintain capital against their loan assets and
23 undrawn commitments based on the riskiness of the borrower. Consequently, banks

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 24 of 52

1 provide larger amounts of credit more readily and on more favorable terms to borrowers of
2 stronger credit quality. Banks charge progressively higher fees on undrawn credit and
3 higher interest spreads on notes or letters of credit outstanding for progressively lower rated
4 borrowers.

5 **Q. CAN YOU PROVIDE ANY OTHER EXAMPLES OF BENEFITS TO SCE&G'S**
6 **CUSTOMERS FROM STRONG CREDIT QUALITY AND MARKET ACCESS?**

7 A. Utilities' access to long-term and short-term debt funding varies depending upon
8 capital market cycles. During normal or robust periods in the financial markets, such as is
9 currently the case, rate-regulated utilities with investment grade credit ratings typically are
10 able to issue new debt instruments in large amounts at any level of ratings, while sub-
11 investment grade credits have less assured access to new funding. But times are not always
12 as favorable in the capital market as the present market phase. During periods of financial
13 market distress, access to the long-term and short-term debt markets becomes constrained
14 not only for sub-investment grade credits but also for those in the lower tier of the
15 investment grade category, i.e., those with ratings of BBB (from S&P or Fitch, or the
16 equivalent Moody's rating of Baa) and BBB- (or Baa3).

17 At past times of market transition or distress, issuers with unsecured credit ratings
18 in the range of low A (A- or A3) to high A (A+ or A1) were able to sell bonds in the long-
19 term market when companies with lesser credit ratings were not able to fund in the quantity
20 needed to refund maturing debt or carry out their capital expenditures as planned. Those
21 companies that are forced to draw heavily on bank lines during the period of market stress
22 are exposed to higher costs of funding and the scarcity of new bank credit commitments
23 and face a greater risk of illiquidity. Typically, bank capital is constrained at the very time

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 25 of 52

1 of financial market stress. If SCE&G has no access to its revolving credit facilities, it would
2 be solely dependent on long-term bond issuance for needed operational funding. Capital
3 markets may be constrained for sub-investment grade or BBB- and Baa3 credits at the very
4 time when SCE&G faces a large financing need. At such times, having a more sound equity
5 position and lower financial leverage becomes particularly important. In summary, sound
6 financial condition and access to credit lines provides greater financial flexibility and
7 access to funds at all times in the market cycle, even in distressed markets.

8 Q. **ARE YOU FAMILIAR WITH BANKRUPTCIES AND RESTRUCTURINGS OF**
9 **REGULATED U.S. UTILITIES?**

10 A. Yes. My financial career specializing in the utility sector as a banker and then as a
11 credit analyst and leader in rating utility credits has exposed me to a depth of practical
12 experience of utility bankruptcies.

13 Q. **IF ORS'S REQUEST IS GRANTED, COULD SCE&G BE PUT AT RISK OF**
14 **HAVING TO FILE FOR BANKRUPTCY PROTECTION?**

15 A. Yes. Granting ORS's Request could be the first step in a quick cascade that would
16 result in SCE&G's illiquidity and financial distress and could lead to a bankruptcy petition.
17 While a petition for bankruptcy protection is a possible outcome, it is not an inevitable
18 outcome at this point. Paths are available for resolution that would spare the extreme waste
19 and burden of a bankruptcy proceeding, and they are largely in the hands of this
20 Commission and other public officials and legislators. By granting the ORS Request, the
21 Commission would take a first step in hastening that cascade of financial calamity. In
22 summary, granting the relief requested by the ORS could set off forces that would sweep

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 26 of 52

1 the situation beyond the Commission's control and into the jurisdiction of the federal
2 bankruptcy court.

3 **Q. WHAT IMPACT WOULD A BANKRUPTCY PROCEEDING HAVE ON**
4 **SCE&G'S CUSTOMERS AND ON THE COMMISSION?**

5 A. In my experience, a utility bankruptcy proceeding is a time-consuming and wasteful
6 process. Thousands of hours of the utility's management and of the time of the
7 Commissioners and ORS would be consumed, and this is a distraction from the necessary
8 work of normal operations, planning, and oversight. The median length of a utility
9 bankruptcy proceeding in the modern era is approximately three years, and some cases
10 have gone on for more than four years.[10] During such proceedings, hundreds of millions
11 of dollars are spent on bankruptcy counsel, specialized accounting services, and other
12 bankruptcy professionals, and these are dollars that would otherwise be available to satisfy
13 the utility's customers, but instead are consumed in a process that is outside of the control
14 of the Commission. The best interest of customers would be served by a resolution that
15 keeps SCE&G personnel, ORS, and the Commission focused on SCE&G continuing to
16 deliver safe and reliable electric service, and not on serving the bankruptcy court process.

17 Customers have a pressing need to have a reliable and financially sound utility, and
18 the bankruptcy procedure can delay reaching that objective and drain resources from
19 SCE&G that could otherwise be used to reduce customer rates or provide other types of
20 restoration.

21 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.**

[10] This is longer than the median duration of corporate bankruptcies outside the utility sector, often because of the complicated interplay between the federal bankruptcy court and state regulatory procedures to reach necessary utility regulatory settlement or tariff provisions.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 27 of 52

1 A. Granting ORS's Request could place SCE&G on a path to extreme financial
2 distress, due to a cascade of factors. As I have already explained, these may result in taking
3 a substantial impairment of the assets on SCE&G's balance sheet, substantially higher
4 financial debt leverage, downgrades of SCE&G's credit ratings below investment grade,
5 and the loss of access to borrowing under committed revolving credits. Even more severe
6 liquidity stress would result if SCE&G is also ordered to refund to customers or segregate
7 the proceeds of the Toshiba Guarantee or the approximately $1.8 billion in revenues
8 previously collected pursuant to the BLRA. If the combined financial stress of these events
9 along with the impending maturities of long–term debt in 2018 exceed SCE&G's ability to
10 meet all pending claims, that chain of events would likely be the trigger for default or
11 bankruptcy actions.

12 It is of vital interest to utility customers and to the Commission to assure that the
13 utility that provides electric service to consumers is financially sound and stable. The
14 Commission can and should avoid setting off a cascade of financial crisis by rejecting the
15 relief sought by the ORS and issuing a decision that adheres to the legal principles that the
16 Commission, ORS, other parties, and most assuredly investors relied upon when investing
17 millions of dollars into the V.C. Summer project. While certainly the abandonment of the
18 project is disappointing and frustrating to all involved, disappointment and frustration
19 should not be used as a reason to now jeopardize the financial integrity of the Company
20 and force its bankruptcy, resulting in great harm to everyone, including customers, and the
21 state of South Carolina.

22 Q. **DOES THIS CONCLUDE YOUR SWORN STATEMENT?**

23 A. Yes, it does.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 28 of 52

EXPERIENCE AND QUALIFICATIONS
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Financial Training

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SUMMARY OF QUALIFICATIONS

Industry expert on financing utilities and similar types of infrastructure. Over 40 years of professional experience in commercial and investment banking, securities analysis, and credit ratings. Focus on utilities, power generation and alternative energy sources, natural gas and fuels, corporate and project finance.

Provide executive training in utility financial analysis and credit analysis.

Consult and provide expert witness testimony in matters involving capital access for infrastructure, energy and utilities. (See pages 3-5.)

MBA in accounting and finance; Chartered Financial Analyst (CFA).

EMPLOYMENT

Lapson Advisory
Principal
Dec. 2011 - present

Financial consulting services to utilities and developers of infrastructure projects. Financial strategy and credit advisory for power, energy, infrastructure companies, and utilities. Expert witness testimony on financial and regulatory topics relating to utilities and infrastructure finance. Design and conduct financial and credit training.

Fitch Ratings
Utilities, Power & Gas
Managing Director
1999-2011
Senior Director
1994-1999

Chair of Fitch's global Corporate Finance Criteria Committee overseeing criteria for rating corporations, financial institutions, insurers, REITs, and project finance transactions (2010-2011).

Manager or primary analyst on credit ratings of over 200 utility, pipeline, power generation companies. Utility tariff monetization. Senior member of rating committees for utilities and energy and power-related projects.

Liaison with utility sector fixed income investors, focusing on 50 largest institutional investors holding utility and power bonds, buy-side and sell-side analysts, and utility bankers.

JP Morgan Chase (formerly Chemical NY Corp.) Vice President 1975-94 Asst. Vice President 1974-1975	Managed financial advisory transactions, structured debt private placements, syndicated credit facilities for utilities, mining and metals, project finance. Structured financing for utility regulatory assets (first of its kind "stranded cost" securitization transaction) for Puget Energy, 1992-94. Led financing for bankrupt utility as debtor-in-possession; prepared financing plans for distressed utilities; structured exit financing for reorganization of two utilities emerging from Chapter 11. Divisional Controller - 1981-1986
Argus Research Corp. Equity Security Analyst – Utilities 1969-1974	Equity analysis of U.S. electric and gas utilities, natural gas pipelines, and telecommunications companies. Modeling and projecting corporate financial statements. Research coverage and reports.

EDUCATION & CHARTER

Stern School of Business, New York University, MBA, 1975
Major concentration: Accounting
Master's Thesis: Cash Flow vs. Accrual Accounting Data in Utility Equity Valuation
Chartered Financial Analyst (CFA) since 1978
Barnard College, Columbia University, BA, 1969

PROFESSIONAL ASSOCIATIONS

Institute of Chartered Financial Analysts, 1978 - present
Wall Street Utility Group, 1996 - present

ADVISORY COUNCILS AND BOARD SERVICE

Rocky Mountain Institute Sustainable Finance Advisory Board member. 2016 to present.

Represented U.S. investment community in advisory panel on International Accounting Standard Board proposals for financial reporting for rate-regulated activities, sponsored by Edison Electric Institute and American Gas Association, Dec. 2014

National Academy of Sciences/ National Research Council, Resilient America Forum, July 2014.

MIT Energy Institute, External Advisory Council, The Future of Solar Energy, 2012-2014.

Electric Power Research Institute, Advisory Council, 2004-2011; Chair, 2009 and 2010.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 29 of 52

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 30 of 52

EXPERT WITNESS TESTIMONY

Jurisdiction	Proceeding	Topic
DC Public Service Commission	Formal Case No. 1142, Merger Application of AltaGas Ltd. and Washington Gas Light, Inc. (2017)	Ring-fencing for utility merger; financial strength
Public Service Commission of Maryland	Docket No. 9449, In the Matter of the Merger of AltaGas Ltd. and Washington Gas Light, Inc. (2017)	Ring-fencing for utility merger; financial strength
Public Utilities Commission Texas	Docket No. 46957, Application of Oncor Electric Delivery LLC to Change Rates, on behalf of Oncor. (2017)	Appropriate capital structure.
Public Utilities Commission Texas	Docket No. 46416, Application of Entergy Texas, Inc. for a Certificate of Convenience and Necessity, Montgomery County, on behalf of Entergy Texas (2016-2017)	Debt equivalence and capital cost associated with capacity purchase obligations (PPA)
U.S. Federal Energy Regulatory Commission	Dockets No. EL16-29 and EL16-30, NCEMC, et al. vs Duke Energy Carolinas and Duke Energy Progress, on behalf of the Respondents (2016)	Capital market environment affecting the determination of the cost of equity capital
Hawaii Public Utilities Commission	Docket No. 2015-0022, Merger Application on behalf of NextEra Energy and Hawaiian Electric Inc. (2015)	Ring-fencing and financial strength
U.S. Federal Energy Regulatory Commission	Dockets EL13-48 and EL15-27, Delaware Div. of the Public Advocate vs. Baltimore Gas and Electric Company and PEPCO Holdings et al., for Respondents (2015)	Capital market environment affecting the determination of the cost of equity capital
Arkansas Public Service Commission	Docket No. 15-015-U, Entergy Arkansas, Inc. Application for Change of Rates, on behalf of Entergy Arkansas, Inc. (2015)	Effect of ROE and other rate matters on cash flow and credit ratings.
U.S. Federal Energy Regulatory Commission	Dockets No. EL14-12 and EL15-45, ABATE, et al. vs MISO, Inc. et al., on behalf of the MISO Transmission Owners (2015)	Capital market environment; capital spending and risk
U.S. Federal Energy Regulatory Commission	Dockets No. EL12-59 and 13-78, Golden Spread Electric Coop., on behalf of South-western Public Service Co. (2015)	Capital market environment; capital spending and risk
U.S. Federal Energy Regulatory Commission	Dockets No. EL13-33 and EL14-86, ENE et al. vs. Bangor Hydro-Electric Co. et al., on behalf of New England Transmission Owners. (2015)	Capital market environment affecting the measurement of the cost of equity capital
U.S. Federal Energy Regulatory Commission	Dockets No. ER13-1508 et alia, Entergy Arkansas, Inc. and other Entergy utility subsidiaries, on behalf of Entergy Services Inc. (2014)	Capital market environment affecting the measurement of the cost of equity capital

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 31 of 52

Jurisdiction	Proceeding	Topic
Delaware Public Service Commission	DE Case 14-193, Merger of Exelon Corp. and Pepco Holdings, Inc. on behalf of the Joint Applicants (2015)	Ring-fencing for utility merger; avoidance of financial harm
Maryland Public Service Commission	Case No. 9361, Merger of Exelon Corp. and Pepco Holdings, Inc. on behalf of the Joint Applicants (2015)	Ring-fencing for utility merger; avoidance of financial harm
New Jersey Board of Public Utilities	BPU Docket No. EM 14060581, Merger of Exelon Corp. and Pepco Holdings, Inc., on behalf of the Joint Applicants (2015)	Ring-fencing for utility merger; avoidance of financial harm
U.S. Federal Energy Regulatory Commission	Docket ER15-572 Application of New York Transco, LLC, on behalf of NY Transco, LLC. (2015)	Incentive compensation for electric transmission; capital market and financial strength
U.S. Federal Energy Regulatory Commission	Docket EL 14-90-000 Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency vs. Duke Energy FL on behalf of Duke Energy (2014)	Capital market environment affecting the determination of the cost of equity capital
DC Public Service Commission	Formal Case No. 1119 Merger of Exelon Corp. and Pepco Holdings Inc., on behalf of the Joint Applicants (2014-2015)	Ring-fencing for utility merger; avoidance of financial harm
U.S. Federal Energy Regulatory Commission	Docket EL14-86-000 Attorney General of Massachusetts et. al. vs. Bangor Hydro-Electric Company, et. al on behalf of New England Transmission Owners (2014)	Return on Equity; capital market environment
Arkansas Public Service Commission	Docket No. 13-028-U. Rehearing direct testimony on behalf of Entergy Arkansas. (2014)	Investor and rating agency reactions to ROE set by Order.
Illinois Commerce Commission	Docket No. 12-0560 Rock Island Clean Line LLC, on behalf of Commonwealth Edison Company, an intervenor (2013)	Access to capital for a merchant electric transmission line; financial capability
U.S. Federal Energy Regulatory Commission	Docket EL13-48-000 Delaware Division of the Public Advocate, et. al. vs. Baltimore Gas and Electric Company and PEPCO Holdings et al., on behalf of (i)Baltimore Gas and Electric and (ii) PEPCO and subsidiaries (2013)	Return on Equity; capital market view of transmission investment
U.S. Federal Energy Regulatory Commission	Docket EL11-66-000 Martha Coakley et. al. vs. Bangor Hydro-Electric Company, et. al on behalf of a group of New England Transmission Owners (2012-13)	Return on Equity; capital market view of transmission investment

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 32 of 52

Jurisdiction	Proceeding	Topic
New York Public Service Commission	Cases 13-E-0030; 13-G-0031; and 13-S-0032 on behalf of Consolidated Edison Company of New York. (2013)	Cash flow and financial strength; regulatory mechanisms
Public Service Commission of Maryland	Case. 9214 "In The Matter Of Whether New Generating Facilities Are Needed To Meet Long-Term Demand For Standard Offer Service", on behalf of Baltimore Gas and Electric Co., Potomac Electric Power Co., and Delmarva Power & Light (2012)	Effect of certain power contracts on the credit and financial strength of MD utility counterparties

CONSULTING & ADVISORY ASSIGNMENTS

Utility (Undisclosed) 2017	Credit advisory on ratings under a specific scenario. Objective: Compare strategic alternatives
Entergy Texas, Inc. 2016	Research study on debt equivalence and capital cost associated with capacity purchase obligations. Impact of new GAAP lease accounting standard on PPAs. Objective: Economic comparison of resource options.
Utility (Undisclosed) 2014	Evaluated debt equivalence of power purchase obligations. Objective: Clarify credit impact of various contract obligations.
Bank (Undisclosed) 2014	Research study and recommendations on Loss Given Default and historical experience of default and recovery in the regulated utility sector. Objective: Efficient capital allocation for loan portfolio.
GenOn Energy Inc. 2012	White Paper on appropriate industry peers for a competitive power generation and energy company. Objective: Improve peer comparisons in shareholder communications and for compensation studies.
Transmission Utility (Undisclosed) 2012	Recommended the appropriate capital structure and debt leverage during a period of high capital spending. Objective: Make efficient use of equity during multi-year capex project; preserve existing credit ratings.
Toll Highway (Undisclosed) 2011	Advised on adding debt while minimizing risk of downgrade. Recommended strategy for added leverage and rating agency communications. Objectives: Increase leverage and free up equity for alternate growth investments, while preserving credit ratings.
District Thermal Cooling Company (Undisclosed)	Recommended a project loan structure to deal with seasonal cash flow. Optimized payment schedule, form and timing of financial covenants. Objectives: Reduce default risk; efficient borrowing structure.

PROFESSIONAL AND EXECUTIVE TRAINING

In-house Training, Southern California Edison Co., Rosemead CA	Designed and delivered in-house training program on evaluating the credit of energy market counterparties, Nov. 2016
In-house Training, Undisclosed Financial Institution, NYC	Develop corporate credit case for internal credit training program and coordinate use in training exercise, 2016
CoBank, Denver CO	Designed and delivered "Midstream Gas and MLPs: Advanced Credit Training", 2014
Empire District Electric Co., Joppa MO	Designed and delivered in-house executive training session Utility Sector Financial Evaluation, 2014
PPL Energy Corp, Allentown PA	Designed and delivered in-house Financial Training, 2014
SNL Knowledge Center Courses	"Credit Analysis for the Power & Gas Sector", 2011-2014 "Analyst Training in the Power & Gas Sectors: Financial Statement Analysis", 2013-2014
EEI Transmission and Wholesale Markets School	"Financing and Access to Capital", 2012
National Rural Utilities Coop Finance Corp.	"Credit Analysis for the Power Sector", 2012
Judicial Institute of Maryland (Private seminar for MD judges)	"Utility Regulation and the Courts: Impact of Court Decisions on Financial Markets and Credit", Annapolis MD, 2007
Edison Electric Institute	"New Analyst Training Institute: Fixed Income Analysis and Credit Ratings", 2008 and 2004

PUBLICATIONS

BOOK CHAPTERS

"Managing Credit Risk in the Electricity Market", Ellen Lapson and Denise Furey, chapter 21 in Managing Energy Price Risk, 4th Edition, Vincent Kaminski ed., Risk Publications, London, 2016.

"Standard Market Design: Credit of Some Sectors Will Be Affected by SMD", Ellen Lapson. Chapter in: Electric & Natural Gas Business: Understanding It, 2003 and Beyond, Robert E. Willett ed., Financial Communications Company, Houston, TX, 2003.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 33 of 52

Energy Modeling and the Management of Uncertainty, Robert Jameson ed., Risk Publications, London, 1999. "Managing Risks Through Contract Technology: Know Your Counterparty", Ellen Lapson, pp 154-155.

"Managing Credit Risk in the Electricity Market", Ellen Lapson (pp 281-291). Chapter in: The US Power Market: Restructuring and Risk Management, Robert Jameson ed., Risk Publications, London, 1997.

Deregulation of the Electric Utility Industry – Proceedings of the AIMR Seminar; ed. AIMR (CFA Institute), Charlottesville, VA, 1997. Speaker 3: E. Lapson.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 34 of 52

EXHIBIT NO. ___ (EL-2)
Page 1 of 1

Credit Rating Correspondences
Long-Term Ratings

Moody's	Fitch and S&P
Investment Grade	
Aaa	AAA
Aa1	AA+
Aa2	AA
Aa3	AA-
A1	A+
A2	A
A3	A-
Baa1	BBB+
Baa2	BBB
Baa3	BBB-
Not Investment Grade	
Ba1	BB+
Ba2	BB
Ba3	BB-
B1	B+
B2	B
B3	B-
Caa1	CCC+
Caa2	CCC
Caa3	CCC-

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 35 of 52

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 36 of 52

EXHIBIT NO. ___ (EL-3)
Page 1 of 3

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Rating Action: Moody's places SCANA and SCE&G on review for downgrade

Global Credit Research - 01 Nov 2017

Approximately $8.5 billion of debt and credit facilities affected

New York, November 01, 2017 -- Moody's Investors Service (Moody's) placed the ratings of South Carolina Electric & Gas Company (SCE&G, Baa2) and its parent company SCANA Corporation (SCANA, Baa3) on review for downgrade. The review is prompted by the escalating political and regulatory contentiousness that has developed following the organization's decision to cease construction of the V.C. Summer new nuclear units 2 and 3. The review will primarily focus on the impact of ongoing proceedings before the Public Service Commission of South Carolina (SCPSC).

RATINGS RATIONALE

The intensity of the political and regulatory backlash following SCE&G's and SCANA's decision to abandon construction of the V.C. Summer units and to eventually seek recovery under the state's credit supportive Base Load Review Act (BLRA) has been much greater than our initial expectations. The review for downgrade recognizes the potential deterioration in credit quality that could occur if some of the more punitive positions that have been put forth by law makers, and the South Carolina Office of Regulatory Staff (ORS), were to be implemented.

We still believe it is possible to achieve a balanced regulatory outcome that could allow SCE&G to move forward and focus on ongoing utility operations, while providing some rate relief to customers, which would be supportive of the company's current credit quality and ratings. However, in the current politically charged environment, where some law makers appear to be looking for a means to ensure rate payers bear none of the costs of the abandoned nuclear construction, this scenario seems more difficult to attain.

The review will focus on the impact of ongoing proceedings before the SCPSC regarding the ORS request for rate relief. We will also monitor pending legislative proceedings which appear to be focused on enacting new laws or amendments that would essentially undo the credit supportive elements of the BLRA and return to a more traditional rate making framework which would result in less assured cost recovery.

In September, ORS requested that the SCPSC issue an order immediately suspending all rates SCE&G is collecting in conjunction with the V.C. Summer construction project under the BLRA; and if the BLRA is found to be unconstitutional or is amended or revoked, to require the utility to provide credits or make refunds to customers. In October, ORS amended its request to add that the SCPSC also consider the most prudent manner for SCE&G to enable its customers to realize the value of the monetized Toshiba Corporation guarantee payment. SCE&G has filed a motion to dismiss the ORS request. A procedural schedule has been established and a hearing date set for December 12, 2017.

From a credit perspective, when considering that SCE&G is no longer exposed to the construction, execution and concentration risks of building a large complex nuclear project, and given previous credit supportive regulatory decisions, the companies' ratings are currently relatively well positioned. However, the political and regulatory environment has become less predictable and some of these proposals, if adopted, could meaningfully weaken future financial performance.

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.

On Review for Downgrade:

..Issuer: SCANA Corporation

.... Issuer Rating, Placed on Review for Downgrade, currently Baa3

....Senior Unsecured Bank Credit Facility, Placed on Review for Downgrade, currently Baa3

....Senior Unsecured Commercial Paper, Placed on Review for Downgrade, currently P-3

....Senior Unsecured Regular Bond/Debenture, Placed on Review for Downgrade, currently Baa3

..Issuer: South Carolina Electric & Gas Company

.... Commercial Paper, Placed on Review for Downgrade, currently P-2

.... Issuer Rating, Placed on Review for Downgrade, currently Baa2

....Senior Secured Shelf , Placed on Review for Downgrade, currently (P)A3

....Senior Secured First Mortgage Bonds, Placed on Review for Downgrade, currently A3

....Senior Unsecured Bank Credit Facility, Placed on Review for Downgrade, currently Baa2

..Issuer: South Carolina Fuel Company Inc.

.... Commercial Paper, Placed on Review for Downgrade, currently P-2

....Senior Unsecured Bank Credit Facility, Placed on Review for Downgrade, currently Baa2

Outlook Actions:

Related Issuers

SCANA Corporation

South Carolina Electric & Gas Company

South Carolina Fuel Company Inc.

Related Research

Credit Opinion: South Carolina Electric & Gas Company: Update following decision to abandon nuclear construction

Credit Opinion: SCANA Corporation: Update following decision to abandon nuclear construction

Credit Opinion: SCANA Corporation: Regulated utility holding company

Issuer Comment: South Carolina Electric & Gas Company: Political and regulatory risks increase while Toshiba guarantee monetization eliminates one key uncertainty

Issuer Comment: South Carolina Electric Utilities Terminate Nuclear Plant Construction, a Credit Positive

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 37 of 52

..Issuer: SCANA Corporation

....Outlook, Changed To Rating Under Review From Negative

..Issuer: South Carolina Electric & Gas Company

....Outlook, Changed To Rating Under Review From Negative

The principal methodology used in these ratings was Regulated Electric and Gas Utilities published in June 2017. Please see the Rating Methodologies page on www.moodys.com for a copy of this methodology.

The new V.C. Summer Units 2 and 3 are two Westinghouse AP1000 nuclear units (approximately 1,100 MWs each) that had been under construction at SCE&G's existing VC Summer plant site. SCE&G owns 55% of the new units, with the remaining 45% owned by Santee Cooper.

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ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 38 of 52

EXHIBIT NO. ___ (EL-3)
Page 3 of 3

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ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 39 of 52

S&P Global
Ratings

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Research Update:

SCANA Corp. And Subsidiaries Downgraded To 'BBB' On Adverse Regulatory Developments And Placed On Watch Negative

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Table Of Contents

Overview

Rating Action

Rationale

CreditWatch

Ratings Score Snapshot

Issue Ratings

Related Criteria

Ratings List

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 40 of 52

Research Update:

SCANA Corp. And Subsidiaries Downgraded To 'BBB' On Adverse Regulatory Developments And Placed On Watch Negative

Overview

- The current level of the customer rates of South Carolina Electric & Gas Co., SCANA Corp.'s largest operating subsidiary, are in jeopardy because of the company's abandonment of two nuclear units it was building.
- We are lowering our ratings one notch on SCANA and subsidiaries South Carolina Electric & Gas Co. (SCE&G) and Public Service Co. of North Carolina Inc. (PSNC), including the issuer credit ratings to 'BBB' from 'BBB+', due to adverse regulatory developments in South Carolina that have weakened the consolidated business risk profile.
- We are placing the ratings on CreditWatch with negative implications.
- We also revised our stand-alone credit profile (SACP) on SCE&G downward to 'bbb' from 'bbb+'.
- The negative CreditWatch listing indicates potentially lower ratings depending on the regulatory and legislative responses to the company's efforts to recover the abandoned investment.
- If rates are lowered by the South Carolina Public Service Commission (SCPSC), an additional one- or two-notch downgrade is possible in the near term.
- We could downgrade the ratings further if the SCPSC orders large rate refunds or credits, or if the South Carolina legislature retroactively changes the law that underpins our expectation of substantial recovery of the nuclear plant investment.

Rating Action

On Sept. 29, 2017, S&P Global Ratings lowered its ratings one notch on SCANA Corp. and subsidiaries South Carolina Electric & Gas Co. (SCE&G) and Public Service Co. of North Carolina Inc. (PSNC), including the issuer credit ratings (ICR) to 'BBB' from 'BBB+', and placed them on CreditWatch with negative implications.

We also revised our assessment of the consolidated business risk profile to strong from excellent. At the same time, we revised our stand-alone credit profile (SACP) on SCE&G downward to 'bbb' from 'bbb+' based on a revised business risk assessment.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 41 of 52

Rationale

The South Carolina Office of Regulatory Staff (ORS), an independent state agency that represents the public interest before the South Carolina Public Service Commission (SCPSC), the courts, and the legislature, has petitioned the commission to roll back rates authorized for SCE&G related to the construction of the now-abandoned Summer nuclear Units 3 and 4. If adopted by the SCPSC, which has already appointed a hearing officer and asked for an expedited schedule for the docket, the petition could result in a $445 million rate decrease. A rate decrease of that magnitude would weaken credit metrics to a degree that would likely lead to a further ratings downgrade of up to two notches.

The ORS, the executive director of which is appointed by the legislature, is also asking the PSC to consider ordering refunds or rate credits for all previously collected Summer-related monies if the legislature repeals or amends the Base Load Review Act (BLRA) or if a court finds it to be unconstitutional. The BLRA is the state law that provided for the collection of the financing costs during Summer construction and other important provisions that reduced the regulatory risk of the project. The total of all rates collected for Summer to date is about $1.76 billion.

The ORS cites a recent South Carolina Attorney General (AG) opinion that the BLRA is "constitutionally suspect" to support its filing. According to the ORS, the AG's opinion is likely to lead the legislature to change or revoke the law or that a court will be asked to rule on its constitutionality. The ORS is also pointing to allegations that SCE&G failed to disclose necessary information to the PSC that "would have appeared to provide a basis for challenging prior requests".

Any attempt to retroactively change the BLRA or a SCPSC refund or rate credit order could lead to further downgrades depending on the size and pace of the amounts forwarded to customers.

SCE&G and Santee Cooper have agreements with Westinghouse Electric Co. LLC's parent company, Toshiba Corp., under which Toshiba will pay the companies $2.3 billion to satisfy all claims for damages associated with Westinghouse's rejection of the Summer engineering, procurement, and construction (EPC) contract. SCE&G's portion is about $1.2 billion (55% of total). The company has monetized most of that amount through a third-party bank, which gives the company over $1 billion of liquidity as it confronts the possibility of rate decreases and refunds or credits.

SCANA abandoned construction of the two new nuclear units amid the withdrawal from the project of its partner, the South Carolina Public Service Authority (Santee Cooper), and estimates of greater construction costs and delays. The poor public and political reaction to the decision by the partners has not reflected well on SCANA management's ability to manage and contain its regulatory risk, and we have revised our assessment of management and

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 42 of 52

governance in our analysis accordingly. As permitted under the BLRA, the legal framework through which SCANA undertook construction of the new nuclear units, the company filed last month with the SCPSC to recover $4.9 billion over 60 years at its cost of capital. The BLRA framework contemplates recovery of the abandoned investment with a return, without specifying the level of the return. In late 2016, the SCPSC deemed prudent capital costs for the project up to $7.6 billion.

Liquidity

We assess SCANA's liquidity as adequate to cover its needs over the next 12 months. We expect the company's liquidity sources will exceed uses by 1.1x or more, the minimum threshold for a designation of adequate under our criteria, and that the company will also meet our other requirements for such a designation. SCANA's liquidity benefits from stable cash flow generation and availability under its revolving credit facilities.

Other support for our liquidity assessment includes the company's ability to absorb high-impact, low-probability events with limited need for refinancing; its flexibility to lower capital spending; sound bank relationships; solid standing in credit markets; and generally prudent risk management.

SCANA has a total of about $2 billion under its revolving credit facilities, the bulk of which matures in 2020, and the $1 billion of proceeds from the monetization of its Toshiba agreement, although the use of these proceeds is yet to be determined and is not factored into our assessment of liquidity below.

Principal liquidity sources:
- Cash funds from operations (FFO) of about $1.5 billion; and
- $2.0 billion in cash and available credit facilities.

Principal liquidity uses:
- Capital spending of up to $1.4 billion;
- Dividends of $365 million; and
- Debt maturities of about $885 million including amounts outstanding under the commercial paper program.

CreditWatch

The CreditWatch with negative implications on SCANA and its subsidiaries reflects our view that the political atmosphere in South Carolina following the company's decision to abandon Summer construction has worsened and could result in regulatory and legislative decisions that harm both the business and financial risk of SCANA. We could lower the ratings on SCANA and its subsidiaries if Summer-related rates are rescinded. We could further lower ratings if legal challenges to a rate decrease are unsuccessful, if the SCPSC orders cash refunds or rate credits for Summer-related costs, if the BLRA is repealed or changed by the legislature, or if the BLRA is deemed unconstitutional.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 43 of 52

Ratings Score Snapshot

Corporate Credit Rating: BBB/Watch Neg/A-2

Business risk: Strong
- Country risk: Very low
- Industry risk: Very low
- Competitive position: Satisfactory

Financial risk: Significant
- Cash flow/Leverage: Significant

Anchor: bbb

Modifiers
- Diversification/Portfolio effect: Neutral (no impact)
- Capital structure: Neutral (no impact)
- Financial policy: Neutral (no impact)
- Liquidity: Adequate (no impact)
- Management and governance: Fair (no impact)
- Comparable rating analysis: Neutral (no impact)

Stand-alone credit profile: bbb
- Group credit profile: bbb

Issue Ratings

Capital structure

SCANA's capital structure consists of about $2 billion of unsecured debt issued by SCANA and $5.8 billion of debt issued by its subsidiaries.

Analytical conclusions

- The unsecured debt at SCANA is rated one notch below the issuer credit rating because it ranks behind a significant amount of debt issued by subsidiaries in the capital structure.
- Secured debt at SCE&G benefits from a first-priority lien on substantially all of the utility's real property owned or subsequently acquired. Collateral provides coverage of more than 1.5x, supporting a recovery rating of '1+' and an issue rating two notches above the issuer credit rating.
- Unsecured debt at the utility subsidiaries is rated the same as the issuer credit rating in accordance with criteria.

Related Criteria

- Criteria - Corporates - General: Reflecting Subordination Risk In

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 44 of 52

Corporate Issue Ratings, Sept. 21, 2017
- General Criteria: Methodology For Linking Long-Term And Short-Term Ratings , April 7, 2017
- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology, Nov. 19, 2013
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- General Criteria: Group Rating Methodology, Nov. 19, 2013
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- Criteria - Corporates - Utilities: Collateral Coverage And Issue Notching Rules For '1+' And '1' Recovery Ratings On Senior Bonds Secured By Utility Real Property, Feb. 14, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009
- Criteria - Insurance - General: Hybrid Capital Handbook: September 2008 Edition, Sept. 15, 2008

Ratings List

Downgraded; CreditWatch/Outlook Action;

	To	From
SCANA Corp.		
South Carolina Electric & Gas Co.		
Public Service Co. of North Carolina Inc.		
Corporate Credit Rating	BBB/Watch Neg/A-2	BBB+/Developing/ A-2

Ratings Affirmed; CreditWatch Action

	To	From
South Carolina Fuel Co.		
Corporate Credit Rating	--/Watch Neg/A-2	A-2
Commercial Paper	A-2/Watch Neg	A-2
SCANA Corp.		
Commercial Paper	A-2/Watch Neg	A-2
Public Service Co. of North Carolina Inc.		
Commercial Paper	A-2/Watch Neg	A-2
South Carolina Electric & Gas Co.		
Commercial Paper	A-2/Watch Neg	A-2

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 45 of 52

Downgraded; CreditWatch Action

	To	From
SCANA Corp.		
Senior Unsecured	BBB-/Watch Neg	BBB
Junior Subordinated	BB+/Watch Neg	BBB-
Public Service Co. of North Carolina Inc.		
Senior Unsecured	BBB/Watch Neg	BBB+

Downgraded; CreditWatch Action; Recovery Unchanged

	To	From
South Carolina Electric & Gas Co.		
Senior Secured	A-/Watch Neg	A
Recovery Rating	1+	1+
Preferred Stock	BB+/Watch Neg	BBB-

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.globalcreditportal.com and at www.spcapitaliq.com. All ratings affected by this rating action can be found on the S&P Global Ratings' public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 46 of 52

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ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 47 of 52

FitchRatings

Fitch Downgrades SCANA to 'BB+' / SCE&G to 'BBB-'; Negative Watch Maintained

Fitch Ratings-New York-29 September 2017: Fitch Ratings has downgraded the Long-Term Issuer Default Ratings (IDRs) of South Carolina Electric and Gas Co (SCE&G) and its parent SCANA Corp. (SCANA) by one notch to 'BBB-' and 'BB+', respectively. Fitch also downgraded the ratings of Public Service Company of North Carolina (PSNC) by one notch, to 'BBB-', given the rating linkage with its parent, SCANA. Concurrently, the Short-Term IDRs of SCE&G, PSNC and South Carolina Fuel Company were downgraded to 'F3' from 'F2' while the Short-Term IDR of SCANA was downgraded to 'B' from 'F3'. The downgrade reflects the intense legislative and regulatory scrutiny of the abandoned units 2 and 3 of the V.C. Summer nuclear plant and recent comments by the South Carolina Attorney General that question the constitutionality of the Baseload Review Act (BLRA). A full list of ratings actions is listed at the end of this release.

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 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.

KEY RATING DRIVERS

Deterioration of the Regulatory and Legislative Environment: The rating downgrade primarily reflects the severe deterioration in the legislative and regulatory construct in SC in recent days. The filing by the ORS seeking immediate suspension of revenues related to the new nuclear units as approved under the BLRA and possible refund of all revenues collected to date exemplifies the challenging environment. The House and Senate-led committees are critically reviewing the path of the failed project. In addition, criminal investigation into SCANA's management of the project and SC Attorney General's adverse evaluation of the constitutionality of the BLRA renders negotiation of a settlement for the recovery of the stranded costs impossible, in Fitch's view. Legal battles are expected to establish constitutionality of the BLRA, which will lead to a protracted period of uncertainty.

Potential Suspension of BLRA-Related Revenues: The BLRA-related revenues have been crucial to SCE&G maintaining credit metrics consistent with an investment-grade rating during the nuclear construction period. They represent roughly one third of SCE&G's estimated EBITDA for 2017 and the primary source of funds to start repayment of the construction-related debt incurred in recent years. Suspension of $445 million of BLRA-related revenues would lead to approximately 200bps deterioration in adjusted debt / EBITDAR metrics, which were at 4.5x as of June 30, 2017. While not part of Fitch's base case scenario, any permanent loss of BLRA-related revenues and associated write-offs would materially impair SCE&G's financial health, leading to multi-notch rating downgrades for SCE&G and SCANA depending on the repayment mechanisms and financing options available to them. In absolutely the worst-case scenario, if SCE&G is asked to refund to customers the $1.8 billion collected to date under the BLRA and all stranded assets are disallowed, the financial viability of the companies could be threatened.

Tax Offsets and Toshiba Guarantee: Tax deductions and the guarantee payments by Toshiba Corp are the most significant source of financial relief available to SCE&G and ratepayers. Management estimates that tax deductions for stranded costs and research and development at about $2 billion while payments due under the Toshiba guarantee were set at $1.192 billion. Recent announcement of the monetization of the settlement payments from Toshiba alleviates the collection risks stemming from its weak financial condition and the extended payment terms. Allocation of $1.1 billion of proceeds to reduce short-term borrowings can improve SCE&G's liquidity position and reduce financial leverage by about 0.5x.

Financial Policy and Capital Structure: Management's financial policy, including targeted leverage and allocation of capital, will also be key rating drivers going forward. The parameters set for SCE&G's and SCANA's IDRs incorporated significant latitude for leverage metrics to exceed levels commensurate with the ratings during the peak construction period. The loss of BLRA-related revenues would significantly curtail SCE&G's and SCANA's ability to generate FCF over the medium term. A more adverse outcome, including the permanent loss of any future BLRA-related revenues and write-off of all stranded assets, could permanently impair the balance sheet and FCF generation, constrain access to capital markets and materially impact the credit profile.

DERIVATION SUMMARY

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 48 of 52

EXHIBIT NO. ___ (EL-5)
Page 2 of 5

SCE&G is a vertically integrated regulated utility company operating exclusively in South Carolina. SCE&G's credit profile is constrained by the heightened regulatory and legislative risk related to the abandonment of its nuclear expansion project. SCE&G has a smaller scale and balance sheet than Georgia Power Company (A/Negative Watch), who undertook similar new nuclear construction risk. SCE&G and Dayton Power & Light Company (DP&L) (BB+/Negative) both operate regulated assets with evolving regulatory constructs. SCE&G's IDR is one notch above that of DP&L, despite slightly weaker credit metrics, as DP&L's ratings are constrained by those of its parent DPL, Inc (B+/Negative).

SCANA is weakly positioned compared to IPALCO Enterprises, Inc.'s (BB+/Stable), given the more constructive and predictable regulatory environment of IPALCO's subsidiary, Indiana Power and Light Company (BBB-/Stable). IPALCO's greater earnings and cash flow visibility more than offset its higher proportion of parent-level debt. SCANA has a favorable business profile as compared to DPL, Inc (B+/Negative) given its predominant regulated operations. DPL is currently in the process of transitioning DP&L's generation assets to a non-regulated subsidiary and is exposed to commodity risk on those generation assets. However, Ohio's regulatory construct, while still in transition, is more constructive than what is playing out in South Carolina. In addition, Ohio regulators continue to demonstrate a willingness to take actions to protect the financial integrity of its utilities.

Fitch focuses on operational ties between SCANA, SCE&G and PSNC in assessing the rating linkage between them, in accordance with its criteria for subsidiaries with stronger credit profiles than their parents. Fitch assesses the operational ties as strong given the shared management and centralized treasury operations. In addition, SCE&G generates the majority of SCANA's earnings while PSNC relies on equity infusions from SCANA to implement its expansion program. As a result, Fitch currently rates SCE&G and PSNC one-notch above SCANA.

KEY ASSUMPTIONS

Fitch's key assumptions within our rating case for the issuer include:
-- Abandonment of V.C. Summer units 2 and 3 with net stranded costs of about $2.2 billion. No write-down of regulatory assets over the forecast period;
-- Cessation of collection of all BLRA-related revenues until the legal challenges to the BLRA are resolved (through 2019 on a conservative basis);
-- Monetization of Toshiba guaranty settlement payments for $1.016 billion in Sept. 2017 and receipt of $82.5 million in Oct. 2017;
-- A wide range of regulatory outcomes to the petition to abandon the nuclear project were considered, including significant write-downs of stranded assets and rebate of the Toshiba guaranty settlement to ratepayers in 2018-2019;
-- No base rate case filings and no material change to the 10.25% base authorized ROE.

RATING SENSITIVITIES

RATING SENSITIVITIES FOR SCANA
Positive Rating Action: The ratings could be stabilized if rate recovery mechanism authorized by the PSC for the stranded V.C. Summer expansion project and management's financial policy result in SCANA's adjusted debt/EBITDAR stabilizing at/or below 5.5x. Positive rating actions could be considered if risks related to the new nuclear construction project are resolved and adjusted debt/EBITDAR can be maintained at/or below 4.5x.

Negative Rating Action: Future developments that may, individually or collectively, lead to a negative rating action include:
--Availability under committed liquidity facilities and anticipated internally generated cash flows falling short of expected obligations due in the next 12-18 months;
--Unfavorable terms for the recovery of stranded costs and/or material unrecoverable costs;
--Adjusted debt/EBITDAR consistently and materially exceeding 5.5x;
--Shareholder-friendly initiatives, especially when combined with adverse regulatory outcome to the abandonment filing;
--Ring-fencing provisions that restrict cash inflows from SCE&G to SCANA.

RATING SENSITIVITIES FOR SCE&G

Positive Rating Action: The ratings could be affirmed if rate recovery mechanism authorized by the PSC for the stranded V.C. Summer expansion project and management's financial policy result in SCE&G's adjusted debt/EBITDAR stabilizing at or below 5.0x. Positive rating actions could be considered if risks related to the new nuclear construction project are resolved and adjusted debt/EBITDAR can be maintained at or below 4.0x. Fitch could widen the rating differential between the IDRs of SCE&G and SCANA if strong ring-fencing provisions were enacted.

Negative Rating Action: Future developments that may, individually or collectively, lead to a negative rating action include:
--Availability under committed liquidity facilities and anticipated internally generated cash flows falling short of expected obligations due in the next 12-18 months.
--Unfavorable terms for the recovery of stranded costs, and/or material unrecoverable costs;

EXHIBIT NO. ___ (EL-5)
Page 3 of 5

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 49 of 52

--Continued deterioration in the regulatory and legislative environment in South Carolina;
--Adjusted debt/EBITDAR consistently and materially exceeding 5.0x.

RATING SENSITIVITIES FOR PSNC
Positive Rating Action: PSNC's ratings could be affirmed if SCANA's IDR is stabilized at 'BB+'. Positive rating action is predicated upon a rating upgrade of SCANA given PSNC's rating linkage with its parent. Fitch could widen the rating differential between the IDRs of PSNC and SCANA if strong ring-fencing provisions were enacted.

Negative Rating Action: Given the strength of the credit metrics for the current ratings, a downgrade of parent SCANA below the current 'BB+' represents the greatest likelihood of a PSNC downgrade. While less likely given the headroom, a downgrade could also occur if adjusted debt/EBITDAR exceeds 5.5x on a sustained basis.

LIQUIDITY

SCANA has adequate financial flexibility, under Fitch's base case scenario, to meet its obligations over the next 12 months without accessing the capital markets. As of June 30, 2017, SCANA had about $350 million available under its $400 million five-year credit agreement (expiry in December 2020) while SCE&G had $320 million available under credit agreements totalling $1.4 billion (mostly expiring in December 2020) and PSNC has full availability under its $200 million line of credit. Consolidated cash balances were minimal, a frequent occurrence in the electric utility sector.

Availability under SCANA's and SCE&G's credit facilities at June 30, 2017, is roughly equal to its debt maturities through 2018. Fitch estimates that SCANA incurred a very modest cash burn since the second quarter and anticipates that SCANA will be roughly FCF neutral in the next 12 to 18 months, including the loss of BLRA-related revenues but excluding any Toshiba-related rebates. Curtailment of dividend payments could provide up to $300 million of incremental liquidity, if needed. Monetization of the Toshiba guarantee payments, and the scheduled payment on Oct. 1, 2017, will bolster liquidity by $1.1 billion provided that mandated customer rebates related to this offset, if any, are spread over a long period of time. As a conservative assumption, Fitch's base case scenario assumes that Toshiba-related payments are initially allocated to reduce short-term borrowings but customer rebates to ratepayers are mandated by the PSC over 2018-2019.

Materially adverse scenarios such as permanent suspension of BLRA revenues or, in an extreme scenario, requirement for SCE&G to refund to customers the $1.8 billion collected to date under the BLRA, could create significant liquidity concerns and constrain access to capital. The credit agreements require each entity (SCANA, SCE&G and PSNC) to maintain a debt ratio of no more than 70%. Fitch estimates that SCANA had a 57% debt ratio and SCE&G had a 53% debt ratio at June 30, 2017.

FULL LIST OF RATING ACTIONS

Fitch has downgraded the following ratings and maintained them on Rating Watch Negative.

SCANA Corporation
--Long-term IDR to 'BB+ from 'BBB-';
--Senior Unsecured debt to 'BB+' from 'BBB-';
--Short-term IDR to 'B' from 'F3'.
--Commercial Paper to 'B' from 'F3.

South Carolina Electric & Gas Co.
--Long-term IDR to 'BBB-' from 'BBB';
--First Mortgage bonds to 'BBB+' from 'A-';
--Senior Unsecured debt to 'BBB' from 'BBB+;
--Short-term IDR to 'F3' from 'F2';
--Commercial paper to 'F3' from 'F2'.

Public Service Company of North Carolina, Inc.
--Long-term IDR to 'BBB-' from 'BBB';
--Senior Unsecured debt to 'BBB' from 'BBB+;
--Short-term IDR to 'F3' from 'F2';
--Commercial paper to 'F3' from 'F2'.

South Carolina Fuel Company
--Commercial paper to 'F3' from 'F2'.

Fitch is also assigning a senior unsecured rating to several existing senior unsecured notes at PSNC that were not included in the

ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 50 of 52

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Summary of Financial Statement Adjustments - No financial statement adjustments were made that were material to the rating rationale outlined above.

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Additional information is available at www.fitchratings.com. For regulatory purposes in various jurisdictions, the supervisory analyst named above is deemed to be the primary analyst for this issuer; the principal analyst is deemed to be the secondary.

Applicable Criteria
Corporate Rating Criteria (pub. 07 Aug 2017) (https://www.fitchratings.com/site/re/901296)
Parent and Subsidiary Rating Linkage (pub. 31 Aug 2016) (https://www.fitchratings.com/site/re/886557)

Additional Disclosures
Dodd-Frank Rating Information Disclosure Form (https://www.fitchratings.com/site/dodd-frank-disclosure/1029988)
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ELECTRONICALLY FILED - 2017 December 7 6:31 PM - SCPSC - Docket # 2017-305-E - Page 51 of 52

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South Carolina Fuel Company USCP 4(2)/ 144A D	-	Short Term Rating	Unsolicited

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Exhibit No. ___ (EL-6)
Page 1 of 1

Pro Forma Effect of Asset Impairment on Capital Structure

A. SCE&G Regulatory Earnings Report to the Commission, Sept 30, 2017

	30-Sep-17	Adjustments (a)	Adjusted, with Toshiba Guarantee	Adjustments(b)	Adjusted, without Toshiba Guarantee
Long-Term Debt	4,928,770,000		4,928,770,000		4,928,770,000
Current Maturities LTD					
Short-term Notes					
Total Debt	4,928,770,000	0	4,928,770,000	0	4,928,770,000
Common Equity	5,377,832,362	(2,300,000,000)	3,077,832,362	(3,000,000,000)	2,377,832,362
Preferred Equity	100,000	0	100,000	0	100,000
Total Capitalization	10,306,702,362	(2,300,000,000)	8,006,702,362	(3,000,000,000)	7,306,702,362
Debt to Capital %	47.82%		61.56%		67.46%

B. SCE&G Report to the SEC on Form 10-Q, Sept 30, 2017

	30-Sep-17	Adjustments (a)	Adjusted, with Toshiba Guarantee	Adjustments(b)	Adjusted, without Toshiba Guarantee
Long-Term Debt	4,990,000,000		4,990,000,000		4,990,000,000
Current Maturities LTD	173,000,000		173,000,000		173,000,000
Short-term Notes	945,000,000	(945,000,000)	0		945,000,000
Total Debt	6,108,000,000	(945,000,000)	5,163,000,000		6,108,000,000
Common Equity	5,377,832,362	(2,300,000,000)	3,077,832,362	(3,000,000,000)	2,377,832,362
Preferred Equity	100,000	0	100,000	0	100,000
Total Capitalization	11,485,932,362	(3,245,000,000)	8,240,932,362	(3,000,000,000)	8,485,932,362
Debt to Capital %	53.18%		62.65%		71.98%

Notes:

a. Common Equity: Loss associated with $4.8 billion asset write-off net of $1.8 billion in taxes and after-tax recovery of $0.7 billion from Toshiba Guarantee proceeds. Short-term debt: Reduced by application of part of gross proceeds of Toshiba Guarantee.

b. Common Equity: Loss associated with $4.8 billion asset write-off net of $1.8 billion in taxes.

EXHIBIT C

← Back to Original Article

California

PG&E Ends 3 Years Under Chapter 11

The settlement with Bankruptcy Court will cost the average customer of the utility $1,300 to $1,700.

April 13, 2004 | From Associated Press

SAN FRANCISCO — Pacific Gas & Electric Co. ended three years under U.S. Bankruptcy Court protection Monday, closing an abysmal chapter in California's power crisis.

The 99-year-old utility, a unit of PG&E Corp., distributed $10.2 billion to hundreds of creditors owed since it filed for Chapter 11 on April 6, 2001, near the height of an electricity debacle marked by rolling blackouts and recurring market manipulation.

The fallout will add to power bills for years to come.

The rehabilitation is expected to cost PG&E's 4.8 million electricity customers $6.2 billion to $8.2 billion in above-market prices through 2012. That works out to about $1,300 to $1,700 per customer.

Although the utility's bankruptcy filing is over, the threat of future power problems still looms over California.

Energy experts worry that the state has neither lined up adequate electricity supplies nor adopted the proper market controls to meet rising power demands.

"I think we are more vulnerable than ever," said California Public Utilities Commissioner Loretta M. Lynch.

PG&E, based in San Francisco, began its bankruptcy odyssey with more than $12 billion in debt that piled up as the cost of wholesale electricity soared beyond the retail prices established under a state power deregulation plan introduced in 1998.

Bankruptcy triggered even more bills. PG&E's legal and professional expenses in the case totaled $412 million through December, the most recent accounting available. The utility also is responsible for $23.2 million in bills run up by the state PUC during the case.

PG&E simply was looking out for its best interests, said company spokesman Dan Richard, who added: "I don't think we had any other choice. Our company was being melted down" as its daily losses surpassed $10 million.

That trend began to reverse shortly after PG&E filed for bankruptcy protection as wholesale power prices began to plummet. Through February, the utility had earned $4.8 billion on revenue of $30.7 billion since the bankruptcy filing.

PG&E Corp. shareholders saw their stock dive from more than $33 a share in 1999 to less than $7 shortly after the bankruptcy filing. But the shares have since recovered most of their losses: The stock closed at $29.43 on the New York Stock Exchange on Monday, down 45 cents for the day.

PG&E Corp.'s stock rebound assured that the bankruptcy would benefit management. PG&E last year distributed $84 million in bonuses to 17 current and former executives for sticking through the tough times.

Chairman Robert D. Glynn Jr. was awarded $17 million, and Gordon Smith, who runs the utility unit, received $10 million.

Shareholders, meanwhile, still aren't receiving cash dividends. The Bankruptcy Court required PG&E Corp. to suspend its quarterly dividend in the first quarter of 2001. Payments won't be restored until the second half of next year.

By then, the company estimates, its shareholders will have relinquished about $1.7 billion in dividends.

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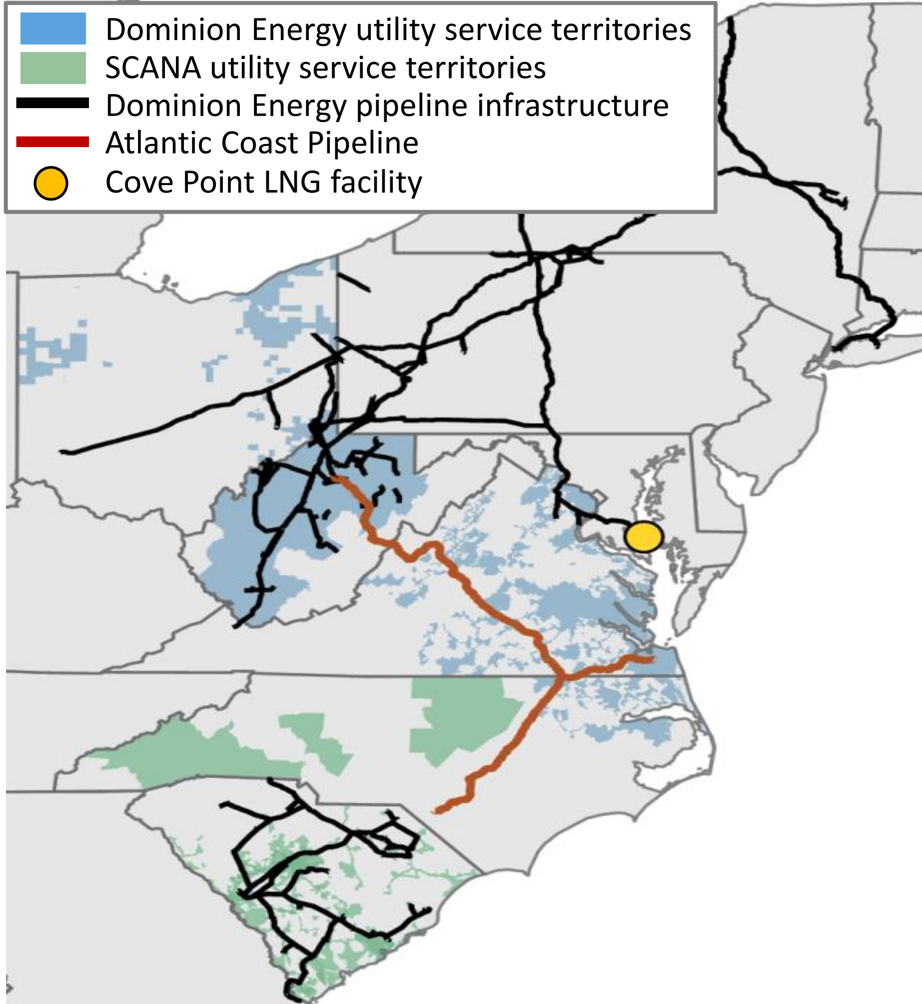
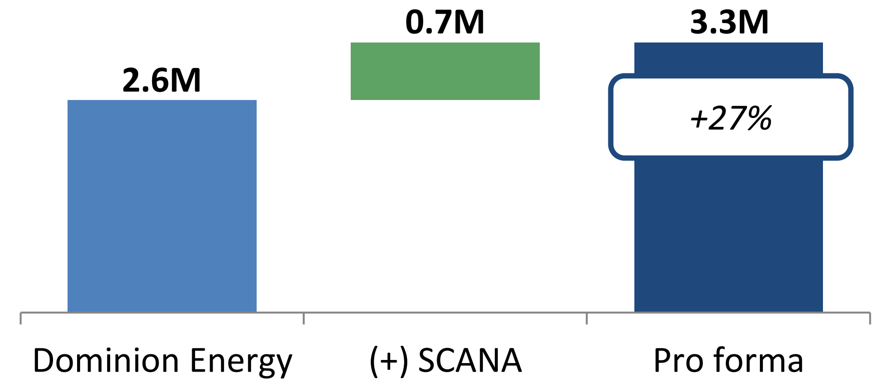
Dominion Energy/SCANA Combined

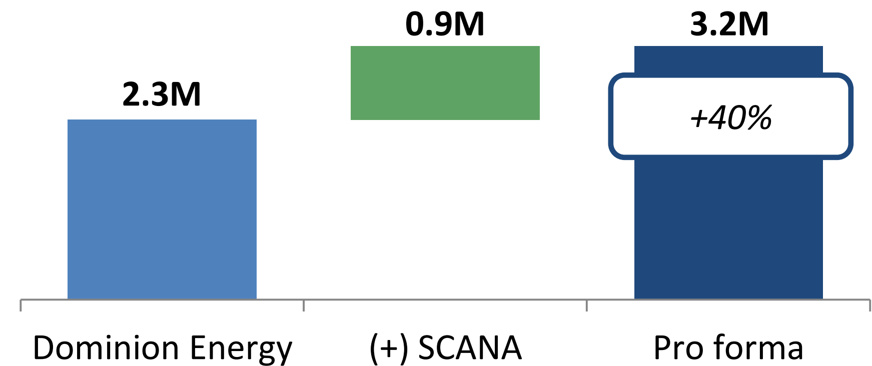
Combined southeastern service territory



Regulated electric customers



Regulated gas customers



Our energy future: bright, reliable, strong

SCANA to join Dominion Energy under $7.9 billion common stock merger. Including assumption of debt, total value of $14.6 billion*

Significant benefits for electric customers

- A **$1.3 billion cash payment** within 90 days of closing to all customers, worth $1,000 for an average residential customer.
- A **5 percent rate reduction** from current levels, equal to more than $7 a month for a typical residential customer.
- More than **$1.7 billion** write-off of existing new nuclear project capital and regulatory assets that will never be collected from customers. This allows for the elimination of all related customer costs over 20 years instead of the previously proposed 50-60 years.
- Completion of the **$180 million** purchase of natural-gas fired power station at no cost to customers to fulfill generation needs.

For more information visit
BrighterEnergyFuture.com

*Subject to regulatory and other approvals

Benefits to communities, employees, shareholders

- Maintain SCE&G headquarters in South Carolina.
- **Funding for $1 million increase** in charitable giving for five years.
- Employment protections for all employees until 2020.
- **Fair treatment for shareholders**, including many local retirees and working families.

Benefits to South Carolina, North Carolina

- Supportive of economic development.
- Financial strength to back energy infrastructure growth.
- Ending new nuclear project uncertainty.
- Known partner in Dominion Energy.
- Community and environmental steward.
- Track record of business success.
- Maintenance of “competitive” energy environment.

Dominion Energy, SCANA Corporation to combine in strategic merger JANUARY 3, 2018

- Dominion Energy, Inc. and SCANA Corporation today announced an agreement for the companies to combine in a stock-for-stock merger in which SCANA shareholders would receive 0.6690 shares of Dominion Energy common stock for each share of SCANA common stock, the equivalent of $55.35 per share, or about $7.9 billion based on Dominion Energy's share price at close of trading Jan. 2, 2018. Including assumption of debt, the value transaction is approximately $14.6 billion.
- It is important to note that this strategic combination is **very different** than other deals because the focus is on both immediate and longer term customer benefits versus a focus on shareholders.
- This merger would provide **significant benefits** to SCANA's customers and the communities it serves. It would lock in significant and immediate savings – including what we believe is the largest utility customer cash payment in history.
- **Customer benefits**
  - A $1.3 billion cash payment within 90 days upon completion of the merger to all customers, worth $1,000 for the average residential electric customer. Payments would vary based on the amount of electricity used in the 12 months prior to the merger closing.
  - An estimated additional 5 percent rate reduction from current levels, equal to more than $7 a month for a typical residential customer, resulting from a $575 million refund of amounts previously collected from customers and the full savings of lower federal corporate taxes under recently enacted federal tax reform.
  - A more than $1.7 billion write-off of existing V.C. Summer 2 and 3 capital and regulatory assets, which would never be collected from customers. This allows for the elimination of all related customer costs over 20 years instead of over the previously proposed 50-60 years.
  - Completion of the $180 million purchase of natural-gas fired power station (Columbia Energy Center) at no cost to customers to fulfill generation needs.
- **Benefits to natural gas customers**
  - Dominion Energy's current operations in the Carolinas – the Dominion Energy Carolina Gas Transmission, Dominion Energy North Carolina and the Atlantic Coast Pipeline – complement the SCANA's SCE&G and PSNC Energy operations.
  - Potential for new pipeline expansion to increase access to lower-cost natural gas supplies.
  - Joining one of the nation's largest and most-efficient natural gas transmission, distribution and storage operators.

- **Benefits to communities, employees**
  - Maintain community presence, local management and SCE&G headquarters in South Carolina.
  - $1 million increase in charitable giving for five years.
  - All employees would have employment protections until 2020.
  - Fair treatment for shareholders, including many local retirees and working families.
- **Benefits to South Carolina and North Carolina**
  - Supportive of economic development opportunities
    - Financial strength to back energy infrastructure growth.
    - End of uncertainty over nuclear issues that could impact economic development.
  - Known partner in Dominion Energy
    - Community and environmental steward.
    - Track record of business success.
    - Strategic combination will allow SCANA to move forward to serve customers and communities with greater resources.
- **BrighterEnergyFuture.com**
    - Microsite with information about the merger developed for SCANA customers and communities.

MOODY'S
INVESTORS SERVICE

Rating Action: Moody's changes Dominion Energy's rating outlook to negative from stable; continues review for downgrade of SCE&G and SCANA

Global Credit Research - 03 Jan 2018

New York, January 03, 2018 -- Moody's Investors Service, ("Moody's") changed Dominion Energy Inc.'s (Dominion) rating outlook to negative from stable and affirmed its Baa2 senior unsecured rating and P-2 short-term commercial paper rating. Moody's also continued the review for downgrade of the ratings for both South Carolina Electric & Gas Company (SCE&G, Baa2 long-term issuer rating) and its parent company SCANA Corporation (SCANA, Baa3 senior unsecured). For a complete list of all rating changes, see the debt list below. These actions follow the companies' announced plans to merge in an all-stock transaction.

"Dominion's financial credit ratios will be lower for longer." said Ryan Wobbrock, Vice President -- Senior Analyst. "The cash flow drag from tax reform, in concert with higher regulatory risks in South Carolina, will exacerbate Dominion's weak position in the Baa2 rating category."

Dominion announced plans to acquire SCANA in an all-stock transaction which values SCANA at almost $15 billion, comprised of approximately $7.9 billion in equity value and the assumption of around $7 billion of total consolidated SCANA debt.

In Moody's view, Dominion is attempting to address South Carolina political concerns through various concessions, including a write-off, as uncollectable, of around $1.7 billion in new nuclear development costs, $1.3 billion in customer cash payments at closing, and by reducing the average electric customer bill by 5% (including a $575 million refund). Dominion plans to fund these concessions with mostly equity. Moody's assumes some debt will also be issued within the SCANA family to partly finance the customer benefits.

The ratings for both SCE&G and SCANA remain on review for possible downgrade. The review will focus on the reaction of regulators and elected officials in South Carolina, given the escalated contentiousness in the state. Although it is possible today's merger announcement may ease political and regulatory tension by enabling rate relief to customers, Moody's believes it will take some time to prove the environment has permanently returned to a more normal state of long-term credit supportiveness.

Outlook Actions:

..Issuer: Dominion Energy, Inc.

....Outlook, Changed To Negative From Stable

Affirmations:

..Issuer: Dominion Energy, Inc.

.... Commercial Paper, Affirmed P-2

....Junior Subordinated Regular Bond/Debenture, Affirmed Baa3

....Senior Unsecured Regular Bond/Debenture, Affirmed Baa2

....Senior Unsecured Shelf, Affirmed (P)Baa2

..Issuer: Massachusetts Development Finance Agency

....Senior Unsecured Revenue Bonds, Affirmed Baa2

..Issuer: Peninsula Ports Authority of Virginia

....Senior Unsecured Revenue Bonds, Affirmed Baa2

RATINGS RATIONALE

Dominion's Baa2 senior unsecured rating reflects its sizeable regulated business across the corporate family, geographic footprint in the Greater Mid-Atlantic / Marcellus & Utica shale formations and the diversity of regulated revenues between multiple states and the FERC.

The rating also reflects Dominion's high level of parent holding company debt, which was approximately 50% of total consolidated debt (over $18 billion as of September 2017). For the twelve months ended September 2017, Dominion generated a ratio of cash flow to debt around 12%, which is considered weak for its rating category.

Moody's estimates that tax reform will negatively impact Dominion's ratio of cash flow to debt by up to 150 basis points over the next two to three years, based on preliminary analysis. Dominion's merger with SCANA, even with a 100% equity financing scenario, is dilutive to cash flow to debt ratios due to tax reform impacts on cash flow, the upfront cash payments to SCE&G customers, and the lower cash flow expectations at SCE&G. For Dominion, Moody's estimates pro-forma consolidated cash flow to debt metrics of around 14% over the next two years, which is lower than Moody's prior stand-alone expectations.

The review for downgrade of SCE&G and SCANA will focus on the impact of the ongoing proceeding before the SCPSC regarding the ORS request for rate relief, as well as the proceeding SCE&G will initiate next week which will include a request for rates to be established in conjunction with the proposed merger. The review will also consider any proposed modifications to SCE&G and SCANA's capitalization structures or financing plans that may result as part of the proposed merger and related rate plan. We will also continue to monitor legislative reactions, and not return to a more traditional rate making framework which would result in less assured cost recovery.

Outlook

The negative outlook for Dominion reflects the company's consolidated financial profile, which has been weak since 2012. Moody's expects Dominion to generate a ratio of cash flow to debt below 15% for the next two years, primarily reflecting a decline in cash flow triggered by tax reform, but also cash payments to South Carolina customers. In addition, the negative outlook reflects heightened regulatory risk inherent in the South Carolina political environment until a relationship track record of predictable support can be established.

Factors that Could Lead to an Upgrade

Dominion could be upgraded to Baa1 if cash flow to debt metrics consistently stay over 18% and lower regulatory risk exists across is utility business. A material improvement in the cash flow generation at SCE&G could also help Dominion to an upgrade; and reduced capital structure complexity associated with recycling capital through majority owned financing vehicles.

For SCANA, full resolution of regulatory uncertainty in South Carolina, that supports robust utility cost recovery, and cash flow to debt metrics in the high-teens percent range could result in an upgrade.

Factors that Could Lead to a Downgrade

Dominion could be downgraded if cash flow to debt remains below 15% on a standalone basis. With the merger of SCANA, Moody's sees heightened political and regulatory risks, which would also require a higher financial metric threshold in order to maintain its Baa2 rating. Therefore, Dominion could be downgraded if there is not a material improvement to its financial position in concert with its ownership of SCANA. In addition, Dominion's ratings could be pressured downward if the contentious political and regulatory environment in SC were to escalate or reduce Dominion's financial metrics beyond current expectations.

SCANA could be downgraded if there were to be an increase in the level of regulatory, political, or public contentiousness relating to the abandonment or other regulatory proceedings. Also, SCANA could be downgraded if cash flow to debt remains below 15% with ongoing regulatory uncertainty.

The principal methodology used in these ratings was Regulated Electric and Gas Utilities published in June 2017. Please see the Rating Methodologies page on www.moodys.com for a copy of this methodology.

Dominion is a large and diversified energy holding company. Its largest and most important subsidiary is the regulated electric utility, Virginia Electric and Power Company (A2 stable), but it also owns a myriad of natural gas pipeline and distribution companies throughout the Midwest and Mid-Atlantic region. Dominion also has unregulated operations consisting of midstream gas gathering, processing and marketing assets, merchant nuclear generation and a master limited partnership that is poised to grow significantly through 2020 via

acquisition of the Dominion-held Cove Point liquefied natural gas terminal ownership interests.

SCANA is a holding company for SCE&G, a vertically integrated electric utility with local gas distribution operations regulated by the SCPSC; Public Service Company of North Carolina (A3 stable), a local gas distribution company regulated by the North Carolina Utilities Commission; and SCANA Energy Marketing, Inc. (SEMI, not rated), a non-regulated gas marketing business in Georgia.

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Fitch Affirms Dominion Energy's IDR at 'BBB+' Following Proposed SCANA Merger

Fitch Ratings-New York-03 January 2018: Fitch Ratings has affirmed Dominion Energy, Inc.'s (DEI) Long-Term Issuer Default Rating at 'BBB+' with a Stable Rating Outlook, following the company's announcement it will merge with SCANA Corp (SCG) in an all-stock transaction. The ratings and Outlook of DEI's current subsidiaries are not affected by these rating actions. A complete list of affected ratings follows at the end of this release.

As proposed, DEI's merger with SCG is expected to be funded with $7.9 billion in equity, implying an enterprise value of $14.6 billion inclusive of SCG debt. While modestly growing regulated EBITDA, the merger will expand DEI's southeastern footprint, increase DEI's ratebase by 33%, and regulated electric and gas customers by 27% and 40%, respectively. SCG subsidiaries, South Carolina Electric & Gas (SCE&G) and Public Service Company of North Carolina (PSNC), will add to DEI's current portfolio of regulated entities which includes electric utility subsidiary, Virginia Electric and Power Co. (VEPCo) as well as several local gas distribution companies, including Utah-based Questar Gas Co. In addition to its regulated utilities, DEI has investments in natural gas pipelines, gathering and processing facilities, a liquefied natural gas (LNG) export terminal and a moderately sized merchant portfolio.

DEI's merger with SCG is contingent on various regulatory commitments. The merger is expected to close in third quarter 2018 after SCG shareholder vote and requisite regulatory approvals. While the transaction is structured to resolve SCG's regulatory and legal uncertainty in the aftermath of SCE&G's cancellation of its V.C. Summer Units 2&3, Fitch acknowledges that complete remediation of all risks may not be possible. As such, we expect that during the merger process, DEI will remain disciplined in its willingness to accept residual risk. Fitch's affirmation of DEI's ratings is based upon the expectation that DEI will close the transaction under the terms as proposed, including

100% equity funding. The merger with SCG is not expected to alter DEI's commitment to reduce parent level debt to 30%-40% over the next several years. In addition, DEI is expected to stay within Fitch's previously outlined FFO-adjusted leverage threshold of 5.0x on a sustained basis, inclusive of any negative effects from the recently enacted tax reform legislation.

KEY RATING DRIVERS

SCG Expands Regulated Portfolio: DEI's merger with SCG will add two utility subsidiaries with attractive growth profiles to the company's regulated footprint. SCG's two gas utility businesses benefit from favorable regulatory constructs, including weather normalization. The proposed package of regulatory modifications is expected to eventually return SCE&G to a strong utility with favorable demographics and regulation.

Diversified Asset Base: DEI owns a large portfolio of utility, power, midstream and other energy assets that provides a diversified and stable source of earnings and cash flow. DEI's financial strength is currently anchored by VEPCo, a large integrated electric utility. However, VEPCo's percentage of DEI's earnings and cash flow will decrease over time due to DEI's significantly expanding gas infrastructure business.

Large Capex Plan: Fitch expects DEI's business risk profile to be elevated for the next few years, reflecting the construction risks associated with various large-scale projects, including the Cove Point LNG export facility, which is currently in the start-up phase. Timely execution of major projects is an important driver for the expected parent-level debt reduction, given expected cash flow and in some cases, asset sale proceeds from drops to its affiliated master limited partnership (MLP), Dominion Energy Midstream Partners (DM).

Parent-Level Debt: The percentage of DEI parent-level debt is high, reflecting the prior centralized funding strategy for all subsidiaries and operations except VEPCo, Dominion Energy Gas Holdings (DEGH) and Questar. DEI-level debt currently accounts for approximately 50% of consolidated indebtedness. While there are significant cash flows generated by the DEI directly held assets, large capital projects have resulted in elevated leverage

on both a consolidated and deconsolidated basis. Fitch expects management to adhere to its stated goal of reducing DEI level debt to 30%-40% of total indebtedness by 2020.

Financial Profile: Consolidated leverage is high for the rating level but should gradually improve over the next several years as DEI realizes anticipated earnings contributions from projects currently under construction and expected sizeable asset drops to its MLP. As such, FFO lease-adjusted leverage is expected to improve to at or below 5.0x by 2020 from the recent 6.4x.

DERIVATION SUMMARY

DEI is weakly positioned in the 'BBB+' rating category, principally as a result of its high leverage and significant parent-level debt. DEI's financial strength is currently anchored by VEPCo; however, the utility subsidiary's percentage of DEI's earnings and cash flow will decrease over time due to DEI's significant expenditures in various gas infrastructure businesses. Pro forma for Cove Point, Fitch expects 60%-65% of DEI's EBITDA to come from utility businesses. This compares less favorably with Southern Company's (SO) utility EBITDA of 85% and Sempra Energy's (SRE) 80% (pro forma for recently announced utility acquisition and expected startup of Cameron LNG), and similar to NextEra Energy Inc.'s (NEE) 65%. In addition to a less favorable business mix, DEI's forecast FFO-adjusted leverage of approximately 5.0x is higher than the projected metrics for SO (4.75x-5.0x), SRE (4.1x-4.6x) and NEE (3.5x-3.75x). DEI-level debt accounts for approximately 50% of consolidated indebtedness, which is high compared with the 20%-30% of most of its peers.

KEY ASSUMPTIONS

Fitch's Key Assumptions Within Our Rating Case for the Issuer:
--Completion of the SCG merger on the proposed terms;
--Growth capex will remain elevated through 2019;
--VEPCo's base rates remain frozen through 2019;
--VEPCo annual sales growth of 1%;

--Maintenance of VEPCo, DEGH, and Questar's capital structures in line with regulatory capital structures (approximately 50%);
--Cove Point will enter commercial operations by the end of 2017, or shortly thereafter;
--Cove Point will be fully dropped into DM by 2020, with significant amount of proceeds used to reduce DEI-level debt to 30%-40% of consolidated debt.

RATING SENSITIVITIES

Developments that May, Individually or Collectively, Lead to Positive Rating Action
--Positive rating action is not expected at this time given the large capital investment plan and high consolidated leverage. However, ratings could be upgraded if adjusted debt to EBITDAR falls below 3.5x and FFO lease-adjusted leverage below 4.25x on a sustainable basis.

Developments that May, Individually or Collectively, Lead to Negative Rating Action
--Ratings could be downgraded if there are substantial cost overruns or delays in completing the Cove Point LNG export project. Additionally, ratings could be downgraded if significant proceeds from asset drops to DM are not used to reduce parent-level debt. Weaker earnings, lower dividends from VEPCo, or FFO-adjusted leverage above 5.0x on a sustained basis could also lead to negative rating action.

LIQUIDITY

Fitch considers DEI to have adequate liquidity. On Nov. 10, 2016, DEI, along with VEPCo, DEGH, and Questar, entered into a $5 billion amended and restated revolving credit agreement (core facility) and a $500 million letter of credit facility. In addition to direct borrowing, the two credit facilities support the issuance of CP, and both mature in April 2020. As of Sept. 30, 2017, DEI had $2.4 billion of unused capacity under its credit facilities.

FULL LIST OF RATING ACTIONS

Fitch has affirmed the following ratings:

Dominion Energy, Inc.

--Long-Term IDR at 'BBB+';
--Senior unsecured at 'BBB+';
--Junior subordinated at 'BBB';
--Enhanced junior subordinated at 'BBB-';
--Trust preferred at 'BBB-';
--Short-Term IDR at 'F2';
--Commercial paper at 'F2'.

The Rating Outlook is Stable.

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Summary of Financial Statement Adjustments - DEI adjusted debt: the debt is adjusted by assigning 50% equity credit to DEI's enhanced junior subordinated debentures.

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Additional information is available on www.fitchratings.com

Applicable Criteria
Corporate Rating Criteria (pub. 07 Aug 2017) (https://www.fitchratings.com/site/re/901296)

Additional Disclosures
Dodd-Frank Rating Information Disclosure Form (https://www.fitchratings.com/site/dodd-frank-disclosure/1034683)
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Research Update:

Dominion Energy Inc. And Subsidiaries Outlook Revised To Negative On Planned Merger With SCANA Corp.

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Table Of Contents

Overview

Rating Action

Rationale

Other Credit Considerations

Group Influence

Outlook

Ratings Score Snapshot

Issue Ratings

Related Criteria

Ratings List

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Research Update:

Dominion Energy Inc. And Subsidiaries Outlook Revised To Negative On Planned Merger With SCANA Corp.

Overview

- Dominion Energy Inc. (DEI) announced an all-stock merger with SCANA Corp. (BBB/Watch Neg/A-2) for about $14.6 billion, including assumed debt.
- Under the proposed merger, DEI will refund about $1,000 to the average South Carolina Electric & Gas (SCE&G) residential electric customer. Furthermore, the merger agreement is contingent upon approval of a comprehensive regulatory solution to the issues surrounding the abandoned nuclear development project.
- We are affirming the ratings on DEI and all of its subsidiaries, including our 'BBB+' issuer credit rating on DEI. We are revising the outlook to negative from stable.
- The negative outlook reflects the company's weak financial measures for the current rating and our expectation that the financial measures will remain at or below the downgrade threshold over the forecast period.

Rating Action

On Jan. 3, 2018, S&P Global Ratings revised its rating outlooks on Dominion Energy Inc. (DEI) and subsidiaries Virginia Electric & Power Co. (VEPCO), Dominion Energy Gas Holdings LLC, Questar Gas Co., and Dominion Energy Questar Pipeline LLC to negative from stable. At the same time, we affirmed our ratings, including the 'BBB+' issuer credit ratings, on DEI.

Rationale

The negative outlooks reflect DEI's weak financial measures for the current rating level and the material delay of our prior expectations for nearer term improvement as a result of this transaction. We previously expected that beginning in 2018 DEI's consolidated funds from operations (FFO) to debt would consistently exceed 15%, the downgrade threshold for the rating.

DEI's proposed acquisition of SCANA has material credit-supportive elements. These include SCANA's low-risk regulated utility assets in generally supportive regulatory jurisdictions. Furthermore, DEI is conservatively funding the transaction as an all-stock merger and the acquisition is contingent upon the approval of a comprehensive regulatory solution to the issues surrounding the abandoned nuclear development project. However, under our revised base-case forecast that includes material customer credits for

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SCE&G's residential electric customers, tax reform, and the funding of a 5% rate reduction from current levels for SCE&G residential electric customers, we expect financial measures to be consistently at or below our downgrade threshold for the current rating. Absent a revised comprehensive plan from management that consistently demonstrates financial measures at or above the downgrade threshold (FFO to debt of 15%), we would expect to lower the rating on DEI and its subsidiaries by one notch.

We assess our issuer credit rating (ICR) on DEI based on its excellent business risk profile and significant financial risk profile.

DEI's business risk profile is based on the company's high proportion of lower-risk, rate-regulated utility assets. The company's regulated assets consist of electric transmission, distribution, and generation assets that are mainly in Virginia, gas distribution assets in Ohio and West Virginia, and gas pipeline assets that are regulated by the Federal Energy Regulatory Commission (FERC). Supporting the business risk profile is the company's effective management of regulatory risk that we view as generally above average. Through the successful implementation of multiple regulatory mechanisms, the regulated utilities have generally reduced regulatory lag, and have earned close to their allowed return on equity, which has resulted in generally credit-supportive outcomes.

Based on our forward-looking view of the company's revenue, cash flow, and assets, we view DEI as consisting of about 70% regulated businesses and 30% nonregulated businesses. We expect that the proposed SCANA acquisition will increase the percentage of regulated businesses toward about 75%. The higher-risk nonregulated businesses consist of merchant power generation, gathering and processing, farm-outs, retail gas, investments in the Cove Point LNG terminal, and Blue Racer Midstream LLC. While some of the nonregulated business with long-term contracted assets, such as Cove Point, have significantly reduced risks, other nonregulated businesses, particularly merchant generation and Blue Racer Midstream, pressure the company's business risk profile and increase the company's exposure to volumetric, weather, commodity, re-contracting, and counterparty credit risks.

The company's organizational structure is more complex than most peers because it has a master limited partnership, Dominion Energy Midstream Partners L.P., which will gradually purchase many of DEI's nonregulated businesses. The enhanced complexity and sophistication requires increased management oversight, time, and expertise. Overall, because of the company's higher-risk, nonregulated businesses and the company's more complex organizational structure, we view DEI's business risk profile at the lower half of its category, compared to peers.

We assess DEI's financial measures against moderate benchmarks compared with those used for the average corporate issuer, reflecting the company's high percentage of lower-risk and effectively managed regulated utilities.

Under our revised base-case scenario that includes Cove Point asset drops to

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Dominion Energy Midstream, continued high capital spending at about $6 billion annually, rising dividends that will exceed $2 billion, SCE&G's residential electric customer credits, tax reform, and the funding of a 5% rate reduction from current levels for SCE&G residential electric customers, we expect that the company's financial measures will generally remain at the lower end of the range for its financial risk profile category. Specifically we expect FFO to debt to be at or below 15% for 2017 through 2020.

Liquidity

We assess DEI's liquidity as adequate because we believe its liquidity sources are likely to cover its uses by more than 1.1x over the next 12 months and to meet cash outflows even with a 10% decline in EBITDA. Under our stress scenario, we do not expect that DEI would require access to capital markets during that period to meet its liquidity needs. In addition, DEI has sound relationships with its banks, satisfactory standing in the credit markets, generally prudent risk management, and could absorb a high-impact, low-probability events with limited need for refinancing.

Principal liquidity sources:

- Credit facility availability of about $2.4 billion;
- FFO of about $5.5 billion; and
- Minimal cash of about $250 million.

Principal liquidity uses:

- Maintenance capital spending of less than $2.5 billion;
- Rising dividends at about $2 billion; and
- Long-term debt maturities of about $3 billion in 2018.

Other Credit Considerations

We assess the financial policy modifier as negative, reflecting our expectation that the company will continue to grow through acquisitions at a faster pace than peers. This reflects the company's master limited partnership, Dominion Energy Midstream Partners L.P., which adds a degree of sophistication and complexity to the company's organizational structure, and provides incremental opportunities and incentive for the company to complete acquisitions.

Group Influence

We view DEI as the parent of a group that includes VEPCO, Dominion Energy Gas Holdings LLC, Questar Gas Co., and Dominion Energy Midstream Partners L.P. DEI's group credit profile is 'bbb+', leading to an ICR of 'BBB+'.

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Outlook

The negative outlook reflects the company's weak financial measures for the current rating and our expectation that the financial measures will continue to remain at or below the downgrade threshold over the forecast period.

Downside scenario

We could lower the ratings on DEI and its subsidiaries over the next 9 to 18 months if the company acquires SCANA and the financial measures do not consistently reflect the middle of the range for its financial risk profile category (FFO to debt of 15%-21%). Specifically, we would lower the ratings if FFO to debt is consistently at or below 15%.

Upside scenario

We could affirm the ratings and revise the outlooks to stable over the next 9 to 18 months, if the company demonstrates a sound strategy that reasonably and consistently will reflect financial measures that are consistent with the middle of the range for its financial risk profile category (FFO to debt of 15%-21%).

Ratings Score Snapshot

Corporate Credit Rating: BBB+/Negative/A-2

Business risk: Excellent
- Country risk: Very low
- Industry risk: Very low
- Competitive position: Strong

Financial risk: Significant
- Cash flow/Leverage: Significant

Anchor: a-

Modifiers
- Diversification/Portfolio effect: Neutral (no impact)
- Capital structure: Neutral (no impact)
- Financial policy: Negative (-1 notch)
- Liquidity: Adequate (no impact)
- Management and governance: Satisfactory (no impact)
- Comparable rating analysis: Neutral (no impact)

Stand-alone credit profile: bbb+
- Group credit profile: bbb+

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Issue Ratings

- The short-term rating on DEI is 'A-2' based on our long-term ICR on the company.
- The unsecured debt issued at DEI is rated 'BBB', one notch lower than the ICR. This is due to the significant proportion of priority debt at the company's subsidiaries and the company's publicly stated strategy of decreasing the percentage of holding company debt in its capital structure to below 50% of all outstanding debt.
- DEI's junior subordinated notes are subordinated and not deferrable and we therefore rate them in line with the senior unsecured debt at 'BBB', one notch below our ICR.
- DEI's enhanced junior subordinated notes are rated 'BBB-', two notches below the ICR. We classify the enhanced junior subordinated notes as hybrid securities premised on their permanence, deferability, and subordination features.
- DEI's equity units are hybrid securities that incorporate equity risk and are therefore also rated 'BBB-', two notches below the ICR.
- The unsecured debt issues at Dominion Energy Gas Holdings LLC are rated 'BBB+', the same as the ICR, because there is no secured or priority debt that ranks ahead of these issues in its capital structure.
- The unsecured debt issues at Dominion Energy Questar Pipeline LLC are rated 'BBB', the same as the ICR, because there is no secured or priority debt that ranks ahead of these issues in its capital structure.
- The unsecured debt issues at VEPCO and Questar Gas Co. are rated 'BBB+', the same as the ICR, as these are unsecured debt issues of a qualifying investment-grade regulated utility.

Capital structure

Dominion Energy Inc.'s capital structure consists of approximately $37 billion of unsecured debt, of which about $17 billion is outstanding at its subsidiaries.

Related Criteria

- Criteria - Corporates - General: Reflecting Subordination Risk In Corporate Issue Ratings, Sept. 21, 2017
- General Criteria: Methodology For Linking Long-Term And Short-Term Ratings , April 7, 2017
- Criteria - Corporates - General: Methodology And Assumptions: Liquidity Descriptors For Global Corporate Issuers, Dec. 16, 2014
- Criteria - Corporates - Industrials: Key Credit Factors For The Midstream Energy Industry, Dec. 19, 2013
- Criteria - Corporates - General: Corporate Methodology: Ratios And Adjustments, Nov. 19, 2013
- Criteria - Corporates - General: Corporate Methodology, Nov. 19, 2013
- Criteria - Corporates - Utilities: Key Credit Factors For The Regulated

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Utilities Industry, Nov. 19, 2013
- General Criteria: Methodology: Industry Risk, Nov. 19, 2013
- General Criteria: Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- General Criteria: Group Rating Methodology, Nov. 19, 2013
- General Criteria: Methodology: Management And Governance Credit Factors For Corporate Entities And Insurers, Nov. 13, 2012
- General Criteria: Use Of CreditWatch And Outlooks, Sept. 14, 2009
- Criteria - Insurance - General: Hybrid Capital Handbook: September 2008 Edition, Sept. 15, 2008

Ratings List

Ratings Affirmed; Outlook Action

	To	From
Dominion Energy, Inc.		
Virginia Electric & Power Co.		
Questar Gas Co.		
Dominion Energy Gas Holdings, LLC		
Corporate Credit Rating	BBB+/Negative/A-2	BBB+/Stable/A-2
Dominion Energy Questar Pipeline, LLC		
Corporate Credit Rating	BBB/Negative/--	BBB/Stable/--

Ratings Affirmed

Dominion Energy, Inc.	
Senior Unsecured	BBB
Junior Subordinated	BBB
Junior Subordinated	BBB-
Commercial Paper	A-2
Dominion Energy Gas Holdings, LLC	
Senior Unsecured	BBB+
Commercial Paper	A-2
Dominion Energy Questar Pipeline, LLC	
Senior Unsecured	BBB
Questar Gas Co.	
Senior Unsecured	BBB+
Commercial Paper	A-2
Virginia Electric & Power Co.	
Senior Unsecured	BBB+
Commercial Paper	A-2

Certain terms used in this report, particularly certain adjectives used to

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express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.capitaliq.com. All ratings affected by this rating action can be found on the S&P Global Ratings' public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

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Dominion Energy, Inc.

SCG Merger: Rate Impacts of Proposal

January 5th, 2017

Dominion Energy & SCANA

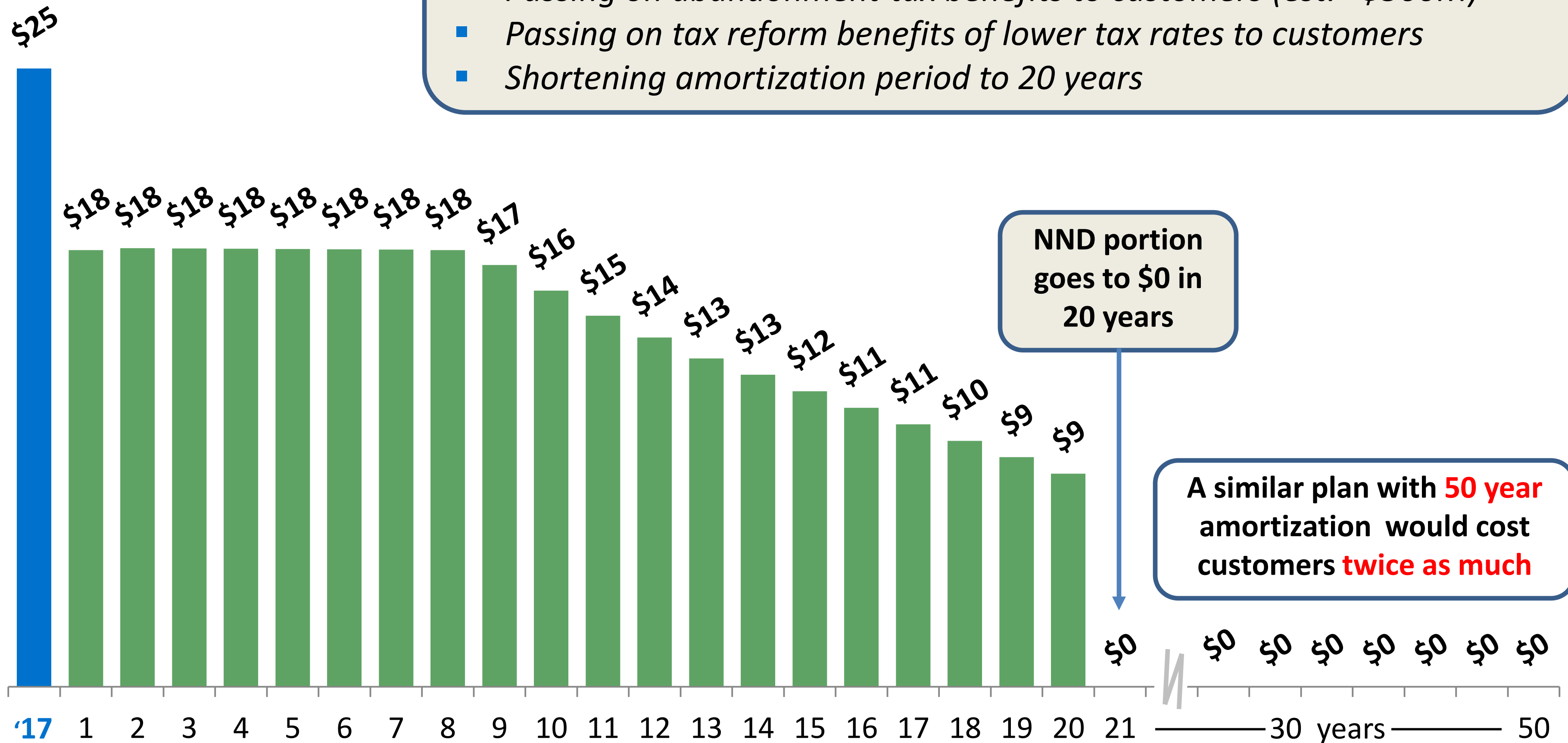
Long-term benefits to customers ($/month)

Illustrative NND rates decline under Dominion Energy proposal

NND portion of 2017 monthly electric bill:[1]

In addition to $1,000/avg. residential customer, NND rates decrease by:

- *Providing ongoing $575M rate refund funded by Dominion*
- *Passing on abandonment tax benefits to customers (est. ~$500M)*
- *Passing on tax reform benefits of lower tax rates to customers*
- *Shortening amortization period to 20 years*

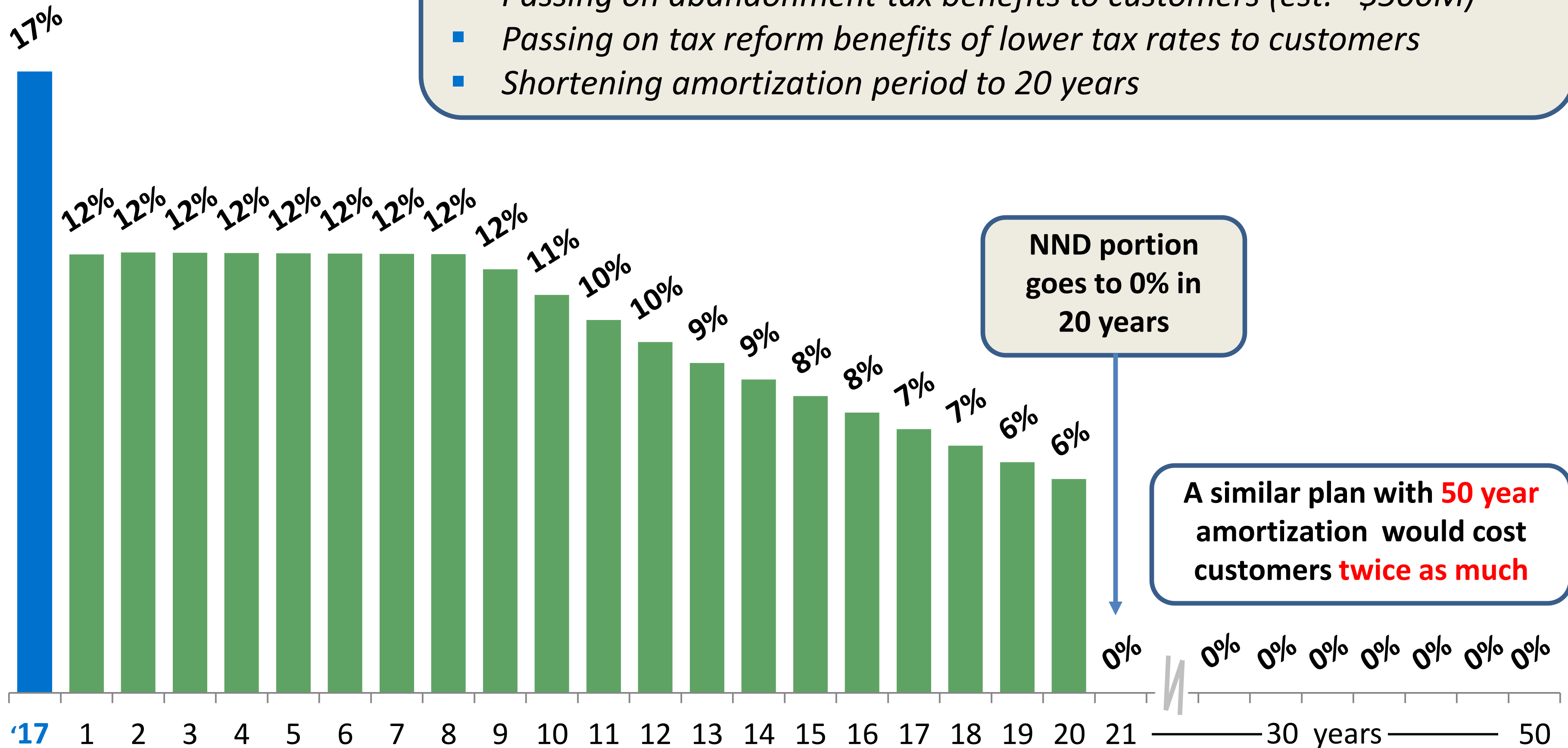


[1] Excludes NND transmission

Dominion Energy & SCANA

Long-term benefits to customers (% of total bill)

Illustrative NND rates decline under Dominion Energy proposal

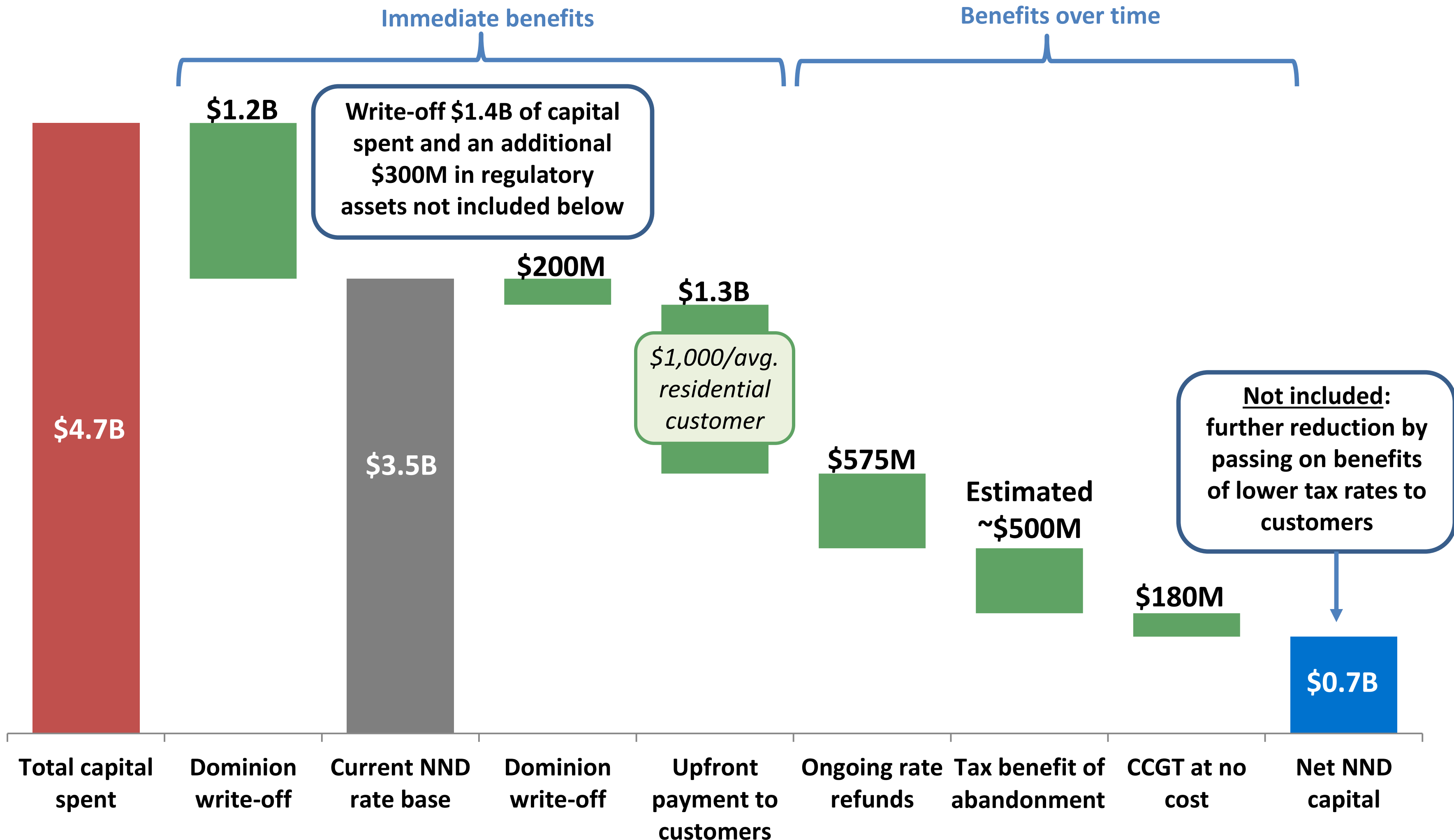


[1] Excludes NND transmission

Dominion Energy & SCANA Corp

Benefits to customers immediately and over time

Benefits from Dominion Energy proposal result in minimal return of capital from customers



Dominion Energy

Dominion Energy & SCANA Corp

FAQs

- **Why is there a sudden step down in customer bills from year 20 to 21?**
  - ✓ Our proposal amortizes the rate base in 20 years over a straight line. This means the amortization is a constant number each year and then drops to zero in the 21st year.
- **Why is NND only 17% of typical 2017 monthly bill or $25? The media is quoting $27 or 18%.**
  - ✓ There is $2 from transmission that is included in the $27 being quoted by the media. We are not abandoning the transmission as it is a used and useful part of the electric grid in SC. The NND portion is only $25 per month.
- **Why is the tax benefit of abandonment only ~$500M? The company quoted much higher numbers earlier.**
  - ✓ We estimate the remaining tax benefit of abandonment at closing will be ~$500M. This lower number is a result of various factors including tax reform, prior deductions and timing differences. If the amount at closing is higher we will pass the full benefit on to customers.
- **Why is the passing of tax reform benefits to rate payers only 1.5%?**
  - ✓ We estimate that benefit will be at least 1.5%. However, as the final rule making and its impacts are analyzed we will have much better estimate. It is our commitment to pass through 100% of the benefits of tax reform to rate payers and we hope it will be more than 1.5%.

Energy Conservation Programs

Dominion Energy is committed to helping customers meet their energy goals - that's why we're offering energy conservation programs to help them conserve energy and maximize savings. These programs provide environmental benefits which translate into very real financial savings.

Residential Programs

- Smart Cooling Rewards: Homeowner receives a $40 bill credit annually for cycling A/C on high use days
- Income and Age Qualifying Home Improvement: Energy audit and improvements for income and age qualifying homeowners

Small Business Programs

- Small Business Improvement: On-site energy assessment of your facility

Non-Residential Programs

- Lighting Systems & Controls: Promotes the installation of energy efficient lighting and controls
- Heating & Cooling Efficiency: Promotes the installation of high efficiency HVAC equipment
- Window Film: Incentives for installing solar reduction window film
- Small Business Improvement: Provides an energy assessment and recommendations for customers with monthly demand of less than 100kW
- Non-Residential Prescriptive: Provides rebates for energy efficiency improvements made in your facility. Some of the available measures include duct testing and sealing, HVAC system tune-up, and upgrades to refrigeration systems and commercial kitchen appliances.
- Distributed Generation: Provides qualifying customers with an incentive to curtail load by operating customer-owned backup generation when called upon to do so (limited to set amount of hours).

January 25, 2018

South Carolina House of Representatives
Solomon Blatt Building
1105 Pendleton Street
Columbia, South Carolina 29201

Members of the South Carolina House of Representatives,

The South Carolina Chamber of Commerce is made up of the largest users of energy in the Palmetto state. We applaud the work being done by the General Assembly on behalf of the state's ratepayers and the efforts to bring meaningful reform to the system.

The failure with the V.C. Summer nuclear project has cost state businesses billions of dollars collectively. Businesses are upset, but they recognize that we must focus on fixing the problem in a way that prevents this failure from happening again in the future. The Chamber also recognizes that there is no single silver bullet solution to this issue. We are approaching the dilemma with two main goals: do what is best for South Carolina's ratepayers long-term, and to protect the state's good economic environment which depends heavily on regulatory stability.

We recognize that there is a great deal of information being spread by interested parties with varying agendas, and we do not propose that the Chamber has all the answers. This issue is unlike any other and must be treated as such. Therefore, the business community asks that you engage outside, independent, subject matter experts to help you gather information and to provide objective advice as you make important decisions that will impact the economic climate of the state, every business, and every South Carolinian.

Attached you will find the Chamber's positions on the House bills that make up the "Ratepayer Protection Package" as well as copies of rating agency communications that we all need to be aware of as you work to deal with this difficult issue. These ratings downgrades do not draw lines of distinction between utilities or service territories, meaning that all South Carolina ratepayers could be negatively impacted if certain provisions in the bills referenced by these rating agencies are passed.

Please do not hesitate to let me know if you have any questions. Thank you for all you do for South Carolina.

Sincerely,

Ted Pitts
President & CEO
South Carolina Chamber of Commerce

Ratepayer Protection Package – SC Chamber Positions

H.4377: Support: We support the General Assembly's efforts to strengthen the Public Service Commission. The General Assembly should consider the removal current commissioners over intervals.

H.4378: Support: We support the creation of the new Utility Oversight Committee with powers to screen and nominate candidates for the PSC, nominate candidates for the Governor to consider in appointing the Executive Director of ORS, and to review candidates for appointment to Santee Cooper board as submitted by the Governor.

H.4379: Support: We support the creation of a Utilities Consumer Advocate ("UCA") but believe the UCA should be independent and not housed in the office of a constitutional officer. This would provide long-term stability and keep the UCA truly independent from potential "politics". We also feel that granting the office subpoena powers is not necessary. If a utility doesn't not provide timely, applicable and accurate information then any rate increase could be opposed.

H.4375 and H.4380: Concerns: If passed into law in their current form, both would contribute to an already unstable state regulatory environment and could ultimately increase costs for all the state's ratepayers putting consumers at an even greater disadvantage to energy consumers in other states. The perception of South Carolina's regulatory environment as a risky place in which to invest is a threat to jobs and continued growth. Financing costs associated with investments made to our state's energy infrastructure could rise and would be passed along to consumers. In fact, a ripple effect is already being felt from these bills being introduced. From the November report of S&P Global RRA Regulatory Focus:

> *"Especially negative are House Bills 4380 and 4375, which, if enacted and not subsequently stayed or overturned by the state courts, would cause Regulatory Research Associates, an offering of S&P Global Market Intelligence, to again lower its rating of the South Carolina regulatory environment."*

H.4376: Concerns: The Chamber supports protecting Santee Cooper ratepayers from the costs of the failed VC Summer project but we share concerns that if some provisions remain in the bill both ratepayers and taxpayers are at risk of losing more money in the end. As expressed at the House Judiciary Constitutional Laws Subcommittee hearing, the bill contains measures that violate covenants in existing bonds, which will result in costly litigation and an uncertain outcome, at best.

Our energy future: bright, reliable, strong

Dominion Energy and SCANA propose combination to bring stability, strength and customer benefits

Significant Benefits for Electric Customers

$1.3 billion cash payments within 90 days of closing to all customers, **worth $1,000 for an average residential customer** whose monthly electric bill is about $150 a month. Commercial customers would get payments, too. Payments would vary based on the amount of electricity used over a 12-month period.

Dominion Energy believes this is the largest utility customer cash payment in history.

At least a **5 percent rate reduction** from current levels, equal to an initial $7 a month reduction for a typical residential customer. After year 8, **rates for the new nuclear project would continue to decline.** This is funded in part by $575 million from the combined company.

More than $1.7 billion of existing V.C. Summer 2&3 debt would be assumed by Dominion Energy and **never be collected from customers.** This allows for the elimination of all related customer costs over 20 years instead of over the previously proposed 50-60 years.

No rate increases for three years.

Helpful Links

Dominion Energy 8-K filing with the SEC:
https://dominionenergy.gcs-web.com/static-files/c6eddca9-3fbf-47b9-837d-cc8ec36fc2dc

Joint SC PSC Filing:
https://dms.psc.sc.gov/Attachments/Matter/68e29c2c-81fb-48fe-91a7-70c60600ebfa

Communities, Employees and Shareholders

Maintain **SCE&G headquarters** in Cayce, South Carolina.

$1 million increase in annual charitable giving for five years.

Employment protections for all employees until 2020.

Fair treatment for shareholders, including many local retirees and working families.

Benefits to South Carolina, North Carolina

Strong energy partner bringing stability and resources for investments.

Supportive of future economic development and stable energy rates.

Maintenance of “competitive” energy environment.

LEGISLATIVE CONCERNS

- **Passage of H. 4375 and H. 4380 would upset the economics of the proposed merger and would prevent immediate relief to SCE&G customers.**
- **Constitutional issues with the legislation could prevent the laws from ever going into effect. Results would lead to higher rates than the Dominion Energy proposal.**
- **The Dominion Energy proposal would lower rates and immediately returns money to SCE&G electric customers.**

www.BrighterEnergyFuture.com

Action Item 15

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**February 21, 2018**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2017-370-E**
UTILITIES MATTER	☑	ORDER NO.	**2018-131**

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:
DOCKET NO. 2017-370-E - Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, 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 Plans - Staff Presents for Commission Consideration South Carolina Electric & Gas Company and Dominion Energy, Incorporated's Request for Review, Reconsideration, and Rehearing Regarding Order No. 2018-80.

COMMISSION ACTION:
By letter dated February 20, 2018, SCE&G and Dominion Energy, Inc., the Joint Petitioners, voluntarily withdrew their Petition for Review, Reconsideration, and Rehearing of the Commission's Order No. 2018-80, which had denied the Joint Petitioners' Motion for Expedited Hearing. Under South Carolina Code Annotated Section 58-3-225(E), a party may withdraw a petition one time as a matter of right, without prejudice.

As grounds for their voluntary withdrawal, the Joint Petitioners referred to the recent amendment of Senate Bill 954, which they state has, quote, "a direct impact on the timing of the consummation of the merger between SCANA Corporation and Dominion Energy...in such a manner as to establish December 21, 2018, as the deadline for the...Commission to issue a final order" in these consolidated dockets.

The effect of the Joint Petitioners' withdrawal is to leave Order No. 2018-80 in full force and effect. In that order, we directed the Commission Staff to develop a procedural schedule generally consistent with the schedule proposed by counsel for Friends of the Earth and the Sierra Club. By taking notice of Senate Bill 954, which provides that the Commission's hearing in these dockets not begin before November 1, 2018, and that the Commission issue its final order by December 21, 2018, assuming Senate Bill 954 becomes law, I would move that we amend our Order No. 2018-80 to direct the Staff to develop a procedural schedule which will enable the Commission to conduct this proceeding consistent with the provisions of Senate Bill 954; that is, to set a date for the hearing in this matter to be on or after November 1, 2018, and to set a date for issuance of its final order on or before December 21, 2018. Should Senate Bill 954 not become law, the Staff may set the procedural schedule similar to our directive in Order No. 2018-80.

PRESIDING: Whitfield SESSION: Regular TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BOCKMAN	☑	☑	☐	
ELAM	☐	☑	☐	
FLEMING	☐	☑	☐	
HAMILTON	☐	☑	☐	
HOWARD	☐	☑	☐	
RANDALL	☐	☑	☐	
WHITFIELD	☐	☑	☐	

(SEAL)

RECORDED BY: J. Schmieding