



K. Chad Burgess  
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May 16, 2018

**VIA ELECTRONIC MAIL AND  
U.S. FIRST CLASS MAIL**

Jenny R. Pittman, Esquire  
South Carolina Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, SC 29201  
[jpittman@regstaff.sc.gov](mailto:jpittman@regstaff.sc.gov)

RE: Friends of the Earth and Sierra Club, Complainant/Petitioner v.  
South Carolina Electric & Gas Company, Defendant/Respondent  
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 Jenny:

We received your May 9, 2018 letter regarding the responses of South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion Energy"). These responses were entirely consistent with the statutory provisions you cite, and they follow what has been years-worth of precedent in responding to similar requests.

(Continued. . .)

With each response, SCE&G and Dominion Energy made a good-faith effort to provide information and address fully the substance of each request. For those requests as to which SCE&G or Dominion Energy objected, we described the basis for the objection and provided more than sufficient information to allow the Office of Regulatory Staff ("ORS") to understand and evaluate the response. While we believe that the responses were appropriate in all respects, we nevertheless appreciate the opportunity to provide more information, through this letter and our upcoming supplemental responses.

Your letter raises three separate issues of significance: (1) allegedly insufficient or non-responsive responses; (2) concerns over the specificity of privilege objections; and (3) similar concerns regarding assertions of confidentiality. This letter addresses each issue.

#### **Allegedly Non-Responsive Information**

We have reviewed the various requests as to which you contend responses were insufficient or non-responsive. Without agreeing with your position that the prior responses were inadequate, SCE&G and Dominion Energy are supplementing response 3-8, a copy of which is enclosed with this letter, and, as appropriate, will supplement promptly the response to request 1-20. To clarify the companies' positions with respect to certain requests, SCE&G is supplementing responses 1-22; 4-27; and 4-69; and Dominion Energy is supplementing response 4-25. Copies of these responses are enclosed with this letter.

With regard to requests 1-119; 1-174; 4-82; and 4-83, which seek the production of information related to the recently enacted federal tax law, SCE&G and Dominion Energy are continuing to evaluate the effects of federal tax reform. Through our responses we informed ORS that our analysis of the new law is on-going and that we will update our responses when this scope of work is completed. As of the date of this letter, this analysis is not yet complete. By way of this letter, SCE&G and Dominion Energy affirm their prior statements that when the analysis is concluded, the companies will supplement promptly its responses as appropriate.

As to requests 3-24; 3-25; and 3-26, we maintain the position that this information is irrelevant and not a proper area of inquiry by the ORS. That there were allegedly "unlicensed engineers" working at V.C. Summer – assuming that were true – has no bearing on any issue pending before the PSC, now or in the foreseeable future. Particularly considering the complex and much more specific requirements of federal law that determine licensing and qualifications for contractors involved in the Project (and that there is no contention that these requirements were not met), we do not understand the relevance of questions related to specific state licensures.

(Continued. . .)

SCE&G also maintains its position that documents responsive to Request 5-25 are irrelevant. You may be aware that in the ratepayer cases currently pending in state court, the court recently denied a motion to compel that sought substantially the same information. In addition, and much like SCE&G informed the court in response to that motion to compel, SCE&G has and will continue to produce to the ORS material relevant to the claims at issue in proceedings involving the ORS. But documents are not made relevant to the issues pending here merely because they were produced to governmental entities in other proceedings. Thus, SCE&G will not agree to produce to the ORS material simply because that material was produced in other proceedings.

Finally, SCE&G maintains the position that its response to Request 4-76 was appropriate and complete. That request seeks "a calculation of the income tax expense included in SCE&G's present *revised* rates based on the test year used in the 2016 revised rate proceeding." (emphasis added). SCE&G provided that calculation. Your letter contends that the response was deficient in that it did not provide "the total income tax expense included in present rates". But "present rates", as mentioned in your letter, are not the same as "present revised rates", which was the subject of the original request. Revised rate proceedings are associated with new nuclear development, and in response to this Request, SCE&G provided information as to the income tax expense included in those revised rates.

#### Privilege Objections

A number of ORS's requests seek to discover information that is plainly privileged. For example, several requests seek information related to the Bechtel Report. See Request Nos. 2-5, 6-6, 6-9. In your letter, you state that "Bechtel Corporation was not hired for claims consultancy, therefore the assertion of attorney-client privilege with respect to Bechtel being hired in preparation of litigation does not appear to apply." This is not correct. Bechtel was retained at the direction of counsel to prepare materials that would assist counsel in rendering legal advice regarding the Project. Thus, information related to the Bechtel Report is, in fact, privileged and protected by the work product doctrine.

Further, to the extent the requests seek information regarding SCE&G's abandonment analysis, SCE&G has asserted privilege claims because that analysis was prepared for and at the direction of outside legal counsel. See Request No. 5-26. As such, it is protected by the attorney-client privilege and the work-product doctrine.

These are just two examples of the privileged information that the ORS's requests seek. We are working to create a privilege log that provides more information as to all of these privilege claims. Note that some of the requests seek a significant volume of privileged information, so it will take some time to complete the log, but we will provide it to you as soon as practicable.

(Continued. . .)

### Confidentiality Designations

You have also asked for additional information regarding confidentiality designations. We continue to believe that it is appropriate and warranted for the ORS to execute a simple confidentiality agreement that preserves these legitimate interests and facilitates the ORS's request for additional information related to the Project and merger. In the meantime, for many of these documents, SCE&G and Dominion Energy have agreed to make materials available to the ORS at SCE&G's corporate office or the law offices of Nexsen Pruet, LLC pending execution of a confidentiality agreement. These reasonable measures are typical in discovery, as you know, and they do not interfere with the ORS's desire to review relevant material.

In any event, we have categorized below the confidential documents that the ORS requests seek, and we have described in detail the basis for the confidentiality designations as to each category. We are evaluating the documents that fall within each category to confirm our prior confidentiality designations. We will produce any documents that we identify as to which prior confidentiality designation can be withdrawn.

#### 1. Board Materials

We have several concerns about producing board minutes and materials presented to the boards regarding the merger of SCANA and Dominion Energy, which, as you know, is still pending. See Request No. 1-22, 4-26, and 4-27. Board minutes are among SCANA's and Dominion Energy's most sensitive materials as they reflect detailed discussions about the most essential of the companies' strategic plans. The minutes are not public and their disclosure is limited internally. The same is true for materials presented during board meetings, and the sensitivity of this information is particularly existent for materials related to the pending merger. That merger has not closed, as you know. Disclosure of those materials runs the risk of interfering with the companies' ability to effectively negotiate and finalize the merger and other potential future transactions.

#### 2. Documents Reflecting Employee Compensation and Benefits

We are also concerned about producing detailed information about compensation and benefits of SCE&G employees without appropriate confidentiality protection. See Request Nos. 1-44, 1-45, 6-10, 6-11, 6-12, 6-13. The ORS has requested extensive information about how SCE&G compensates certain employees. Those requests implicate both personal and corporate confidentiality concerns as responsive documents will reveal information that SCE&G employees consider to be sensitive, as well as SCE&G's strategy in compensating these employees. Such information is not publicly disclosed and remains confidential internally.

(Continued. . .)

3. Documents Subject to Contractual Confidentiality Obligations

SCE&G has asserted confidentiality in response to three requests based on a preexisting obligation to maintain confidentiality. See Request Nos. 4-43, 4-44, 6-25. SCE&G has contractually committed to maintain the confidentiality of the documents responsive to these categories, and its designation allows SCE&G to comply with its contractual obligations.

4. Corporate Financial and Accounting Models

The ORS has also made a number of requests for various corporate financial and accounting models. See Request Nos. 1-29, 1-147, 2-3, 4-66, 4-72, 4-73, 4-74, 6-31. This is sensitive financial information that SCE&G relies on in making strategic business decisions. Disclosure would reveal non-public data and analysis, and it would impact SCE&G's competitive position.

5. Audit Reports and Materials Prepared by Consultants

Lastly, SCE&G is concerned about the disclosure of confidential audit reports and materials prepared by third-party consultants. See Request Nos. 1-23, 2-7. Reports prepared by SCANA's Audit Service Department for SCE&G and SCANA contain highly sensitive, non-public data that informs strategic decisions by SCE&G management. Any reports or other materials prepared by third-party consultant, AECOM, are similarly confidential and non-public.

\* \* \* \* \*

We will supplement our responses, as noted above, as soon as possible. Please let me know if you have questions in the meantime.

Very truly yours,



K. Chad Burgess  
On behalf of SCE&G



J. David Black  
On behalf of Dominion Energy

KCB/kms  
Enclosures

**SOUTH CAROLINA ELECTRIC & GAS COMPANY  
OFFICE OF REGULATORY STAFF'S CONTINUING  
AUDIT INFORMATION REQUEST  
DOCKET NO. 2017-207-E (2nd Continuing AIR)  
DOCKET NO. 2017-305-E (1st Continuing AIR)  
DOCKET NO. 2017-370-E (1st Continuing AIR)**

**REQUEST 1-22:**

Please provide a copy of the SCANA Minutes of the Board of Directors Meetings for each meeting held from January 1, 2015 through December 31, 2017.

**RESPONSE 1-22:**

The documents responsive to this request contain confidential and sensitive information. Therefore, SCE&G will make this information available for review and inspection by ORS Staff at the Company's corporate headquarters. Access may be coordinate by contacting Chad Burgess at 217-8141, during normal business hours.

**FIRST SUPPLEMENTAL RESPONSE 1-22:**

SCE&G objects to Request 1-22 on the basis that certain portions of the documents sought are protected by the attorney-client privilege. With respect to those portions of the documents that are non-privileged, that information is confidential and sensitive information. Due to the confidential and sensitive nature of the information requested, SCE&G will make the information responsive to this request available for review and inspection by ORS Staff at the Company's corporate headquarters after the execution of a confidentiality agreement.

Responsible persons: Chad Burgess (legal matters) and Gina Champion

**SOUTH CAROLINA ELECTRIC & GAS COMPANY  
OFFICE OF REGULATORY STAFF'S CONTINUING  
AUDIT INFORMATION REQUEST  
DOCKET NO. 2017-207-E (4th Continuing AIR)  
DOCKET NO. 2017-305-E (3rd Continuing AIR)  
DOCKET NO. 2017-370-E (3rd Continuing AIR)**

**REQUEST 3-8:**

Please provide an estimate of the type and amount of CAPEX projects planned by SCE&G for the years 2018, 2019, 2020 and 2021. Please identify how these CAPEX projects will be financed post-merger.

**RESPONSE 3-8:**

CAPEX projects will be funded in a manner as to optimize, in the most cost efficient manner, the capital structure for SCE&G. This would consist of some combination of short and long term debt and equity, including cash from operations.

**FIRST SUPPLEMENTAL RESPONSE 3-8:**

Below is an estimate of the type and amount of CAPEX projects planned by SCE&G for the years 2018, 2019, 2020 and 2021.

**Estimated Capital Expenditures  
\$(Millions)**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>SCE&amp;G:</b>				
Generation	124	145	340	223
Transmission & Dist.	229	203	226	233
Other	12	23	28	24
Gas	98	105	130	139
Common&Non-Utility	3	11	9	9
<b>Total SCE&amp;G</b>	<b>466</b>	<b>487</b>	<b>733</b>	<b>628</b>

Responsible Persons: Christina Putnam (SCANA/SCE&G) and Sarah French (Dominion Energy)

**SOUTH CAROLINA ELECTRIC & GAS COMPANY  
OFFICE OF REGULATORY STAFF'S CONTINUING  
AUDIT INFORMATION REQUEST  
DOCKET NO. 2017-207-E (5th Continuing AIR)  
DOCKET NO. 2017-305-E (4th Continuing AIR)  
DOCKET NO. 2017-370-E (4th Continuing AIR)**

**REQUEST 4-25:**

Provide a copy of all studies, analyses, or presentations made to the Dominion Board of Directors in regards to the proposed merger.

**RESPONSE 4-25:**

Dominion Energy objects to Request 4-25 on the basis that certain portions of the documents sought are protected by the attorney-client privilege. With respect to those portions of the documents that are non-privileged, that information is confidential and sensitive information. Due to the confidential and sensitive nature of the information requested, Dominion Energy will make the information responsive to this request available to ORS for review and inspection at SCE&G's administrative offices after the execution of a confidentiality agreement.

Responsible Person: Lisa Booth (legal matters) and Karen Doggett

**FIRST SUPPLEMENTAL RESPONSE 4-25**

The presentations to the Dominion Board of Directors responsive to this request have been determined to not contain privileged information. Due to the confidential and sensitive nature of the information requested, Dominion Energy will make the information responsive to this request available to ORS for review and inspection at the law offices of Nexsen Pruet, LLC after the execution of a confidentiality agreement.

Responsible Person: Lisa Booth (legal matters) and Karen Doggett



**SOUTH CAROLINA ELECTRIC & GAS COMPANY  
OFFICE OF REGULATORY STAFF'S CONTINUING  
AUDIT INFORMATION REQUEST  
DOCKET NO. 2017-207-E (5th Continuing AIR)  
DOCKET NO. 2017-305-E (4th Continuing AIR)  
DOCKET NO. 2017-370-E (4th Continuing AIR)**

**REQUEST 4-27:**

Provide a copy of all studies, analyses, or presentations made to the SCE&G Board of Directors in regards to the proposed merger.

**RESPONSE 4-27:**

SCE&G objects to Request 4-26 on the basis that certain portions of the documents sought are protected by the attorney-client privilege. With respect to those portions of the documents that are non-privileged, that information is confidential and sensitive information. Due to the confidential and sensitive nature of the information requested, SCE&G will make the information responsive to this request available to ORS for review and inspection at SCE&G's administrative offices after the execution of a confidentiality agreement.

Responsible Persons: Chad Burgess (legal matters) and Gina Champion

**FIRST SUPPLEMENTAL RESPONSE 4-27:**

See Response 4-26. There are no studies, analyses, or presentations made to the SCE&G Board of Directors in regards to the proposed merger. Any studies, analyses, or presentations made available to members of the SCE&G Board are addressed in response to Request 4-26.

Responsible Persons: Chad Burgess (legal matters) and Gina Champion

**SOUTH CAROLINA ELECTRIC & GAS COMPANY  
OFFICE OF REGULATORY STAFF'S CONTINUING  
AUDIT INFORMATION REQUEST  
DOCKET NO. 2017-207-E (5th Continuing AIR)  
DOCKET NO. 2017-305-E (4th Continuing AIR)  
DOCKET NO. 2017-370-E (4th Continuing AIR)**

**REQUEST 4-69:**

Provide a copy of all analyses performed by or for SCE&G that assessed the monetization and/or the economics of the monetization of the Toshiba payment.

**RESPONSE 4-69:**

SCE&G objects to Request 4-69 on the basis that certain information responsive to this request is protected by the attorney-client privilege. With respect to the remaining information responsive to this request, that information is confidential and sensitive information. Due to the confidential and sensitive nature of the information requested, SCE&G will make the information responsive to this request available to ORS for review and inspection at SCE&G's administrative offices after the execution of a confidentiality agreement.

Responsible Person: Chad Burgess (legal matters) and Christina Putnam

**FIRST SUPPLEMENTAL RESPONSE 4-69:**

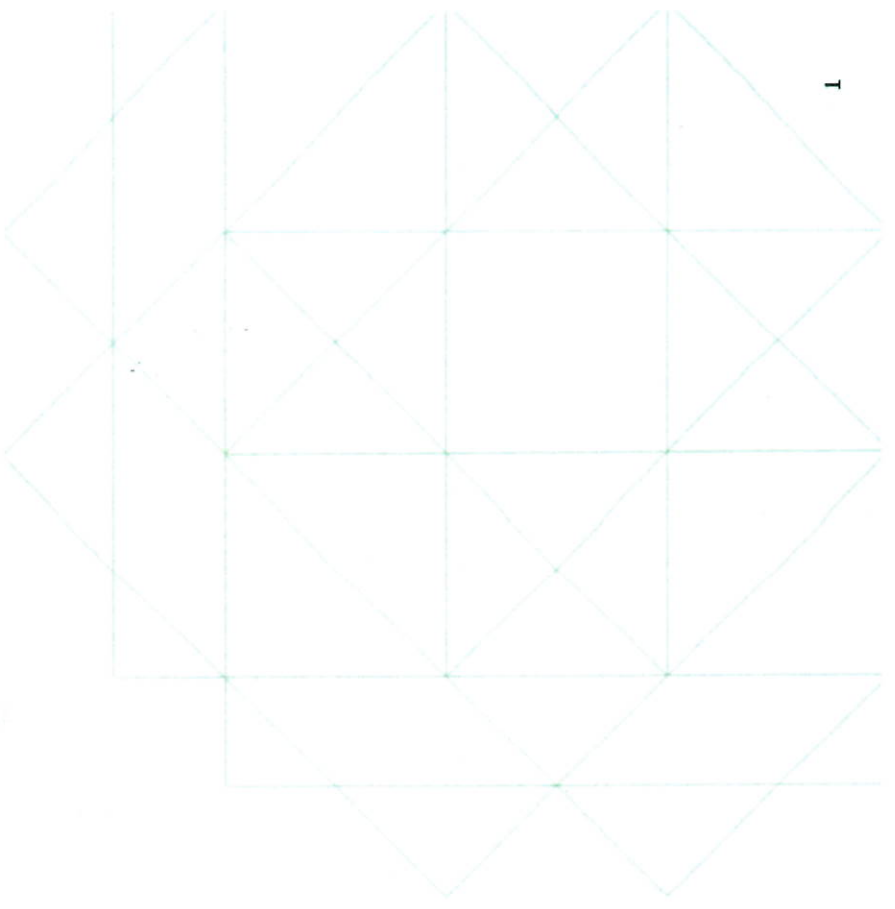
SCE&G objects to Request 4-69 on the basis that certain information responsive to this request is protected by the attorney-client privilege. With respect to the remaining information responsive to this request, please see attached.

Responsible Persons: Chad Burgess (legal matters) and Christina Putnam

**September 27, 2017**

# **Project Rubicon**

**Presentation to the  
Board of Directors**



**ReedSmith Ducera**

## Executive Summary

- The V.C. Summer Project Owners (“Owners”) launched a monetization process on Friday, September 15<sup>th</sup> to sell:
  - (i) the monetary rights to receive payments under the \$2.168 billion Toshiba Guaranty Settlement Claim (“Settlement Claim”)<sup>(1)</sup>, and (ii) claims against the Westinghouse (“WEC”) bankruptcy estate (collectively, the “Interest”)
- The Owners received thirteen initial bids on or near the bid deadline of Wednesday, September 20<sup>th</sup>
  - Six parties placed bids to acquire 100% of the Interest (“Whole Claim Bids”) (with one party also submitting a partial bid), and seven parties submitted multiple bids to acquire a portion of the Interest (“Partial Bids”)
  - The highest price of the initial Whole Claims Bids was 90.5% of the \$2,018 million net notional claim (“Net Settlement Claim”)
  - The clearing price of the initial Partial Bids was 88.75%
- The Owners and its advisors pursued discussions with a number of parties that presented actionable bids
  - Several parties submitted revised binding bids, of which Citibank’s was the highest at 91.53%
- Based on a number of key factors, including price and legal documentation, the Owners concluded that Citibank is the winning bidder – on the evening of Monday, September 25<sup>th</sup>, the Owners counter-signed Citibank’s binding commitment letter, subject to Board approval
- The Santee Cooper management team and its legal and financial advisors recommend Citibank’s offer to purchase the Net Settlement Claim for approximately \$1,847.1 million (an implied purchase price of 91.53%) – Santee Cooper’s portion of the proceeds is approximately \$831.2 million

**Note:**

(1) The Owners will retain the first \$150 million payment under the Settlement Agreement (the “First Installment”), which is expected to be received on October 2, 2017

## Process Overview

- The monetization process implemented by the Owners and its advisors was structured to be robust and designed to maximize market value
  - 105 accredited investors comprised of 15 broker-dealers and 90 investment management firms were contacted and asked to provide binding commitments to acquire a portion or all of the Interest
  - Broker-dealers were viewed as important participants as they could help streamline the process by building a partial or entire book of demand for the Interest
  - In regards to the investment management firms, the goal was to reach out to a broad but targeted universe of distressed credit investors that would likely be interested in participating
  - Furthermore, all information regarding the Settlement Claim has been public since the Settlement Agreement was announced in July 2017, reducing the time required to run a robust monetization process (i.e. NDAs were not required, and all bidders were asked to rely on public information)
- The monetization process was also designed with a focus on the Owners' dual objectives of maximizing both the value of the Interest and certainty for an expedited closing by the end of September
  - To maintain flexibility, the transaction structure put forth by the Owners accommodated multiple buyers, thus allowing for both Partial and Whole Claim Bids
  - To encourage price discovery, a modified Dutch Auction was used to determine the clearing price for selling all of the Interest
  - To expedite the process, potential investors were provided with transaction agreements including an Assignment and Purchase Agreement ("APA") in substantially final form in an effort to minimize legal discussions and documentation after bids were submitted

## Rationale For Sale at a Discount

- As outlined in this presentation, there are a number of benefits to Santee Cooper ("S.C.") of monetizing its portion of the Interest in exchange for upfront proceeds
- Citibank's offer to purchase the Interest at 91.53% of \$2.018 billion implies a discount of approximately \$77 million to Santee Cooper
- The ~8.5% discount on the portion of the Settlement Claim being sold appears to be justified when measured against several key financial benchmarks:
  - 1 **Lack of Interest Rate:** The payment stream provided for in the Settlement Agreement does not provide for any interest rate to compensate the Owners for the time value of money
  - 2 **Toshiba Credit Risk:** At the proposed sale price, the implied discount rate of the Net Settlement Claim payment stream would be materially lower than the current weighted averaged yield on Toshiba's unsecured debt. This implies that the cost to Santee Cooper of selling the Interest at a discount is lower than the Toshiba credit risk it would have to bear if it retained its portion of the Interest
  - 3 **Cost of Toshiba Credit Default Swap ("CDS"):** Santee Cooper eliminates the risk of non-payment by monetizing the Interest at a discount. If Santee Cooper were to keep its portion of the Interest, it could insure against non-payment by purchasing approximately \$908 million of Toshiba CDS. The cost of acquiring CDS over the potential lifetime of the Settlement Claim is greater than the \$ discount implied by the sale price
  - 4 **Payback Rate to Recoup Discount:** The discount can conceptually be amortized over the lifetime of the Settlement Claim payment stream. Assuming that the approximately \$831 million of gross proceeds to Santee Cooper were invested, Santee Cooper would only need to generate low to mid-single digit returns to recoup the discount over a several year period

Implied Discount to Santee Cooper from Sale		Implied Discount to S.C.		
Sale Price (% of \$2.018 bn)	Gross Proceeds to S.C. (45%)	S.C. Portion of \$2.018 Net Claim	\$ Discount (mm)	% Discount <sup>(1)</sup>
91.53%	\$831	\$908	(\$77)	(8.5%)
	A	B	A	B

Note:  
(1) Absolute discount on the Settlement Claim is approximately 7.9% when Santee Cooper's portion of the First Installment is included

## Summary Pros and Cons of Selling Interest

	Pros	Cons
<b>Sell Interest</b>	<ul style="list-style-type: none"> <li>▪ Proceeds received at transaction close vs. over a multi-year period</li> <li>▪ Allows for economic return on upfront payment</li> <li>▪ Significantly mitigates Toshiba counterparty risk</li> <li>▪ Significantly mitigates timing and process risk associated with WEC bankruptcy and sale process</li> <li>▪ Reduces management distraction related to WEC bankruptcy and sales process</li> <li>▪ May reduce overhang from ratings agencies</li> </ul>	<ul style="list-style-type: none"> <li>▪ Total proceeds represent a 7.9% discount to the face value of the \$2.168 billion Settlement Claim</li> <li>▪ Representations, warranties, and indemnities that are required of the Owners as part of the transaction</li> </ul>

## Summary of APA

APA	
<b>Owners</b>	<ul style="list-style-type: none"> <li>South Carolina Electric &amp; Gas Company</li> <li>The South Carolina Public Service Authority</li> </ul>
<b>Buyer</b>	<ul style="list-style-type: none"> <li>Citibank, N.A., a national Banking Association; immediately after the Closing, Citibank, N.A. intends to assign all rights and obligations under the Purchase Agreement to Citigroup Financial Products Inc.</li> </ul>
<b>Anticipated Closing Date</b>	<ul style="list-style-type: none"> <li>September 27, 2017</li> </ul>
<b>Price</b>	<ul style="list-style-type: none"> <li>91.53%</li> </ul>
<b>Aggregate Amount</b>	<ul style="list-style-type: none"> <li>\$1,847,075,400</li> </ul>
<b>Structure</b>	<ul style="list-style-type: none"> <li>Direct Sale to Buyer</li> </ul>
<b>Sale &amp; Purchase of the Interest</b>	<ul style="list-style-type: none"> <li>The Owners' rights to receive payment from Toshiba under the Settlement Agreement and enforcement rights to proofs of claim associated with the EPC Agreement</li> </ul>
<b>Retained Rights</b>	<ul style="list-style-type: none"> <li>Owners retained items including: certain excluded documents, the \$150,000,000 First Installment, the EPC Agreement (other than enforcement rights assigned to the Buyer), the IAA, and the Summer Facility</li> </ul>
<b>Buyer's Representations and Warranties</b>	<ul style="list-style-type: none"> <li>Summary of the Representations and Warranties that have to be accurate as of the Closing:                             <ul style="list-style-type: none"> <li>Buyer has (i) conducted adequate due diligence, (ii) is making an informed decision with regard to entering into the transaction having completed its own analysis and independently made its own decisions regarding the Agreement, and (iii) is able to bear the economic risk associated with the transaction</li> <li>Buyer acknowledges that the Interest is being sold "as-is," "where-is" and "with all faults," except as set forth in the Owner's Representations and Warranties of the Agreement</li> </ul> </li> </ul>



## **Disclaimer**

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