MEMORANDUM PROVIDING ASSESSMENT OF LIKELIHOOD OF A BANKRUPTCY BY SCANA AND/OR SCE&G IN THE EVENT THAT THE 18% CHARGE FOR COSTS OF THE FAILED NUCLEAR PROJECT IS TERMINATED

This memorandum provides this author's assessment of the likelihood that SCANA Corporation ("SCANA") and/or South Carolina Electric and Gas Company ("SCE&G" and, together with SCANA, the "Companies") would file a bankruptcy case as a result of the termination of the 18% charge (the "18% Charge") to rate payers now being collected for SCE&G's costs incurred in the failed nuclear plant project.[1] It must be noted at the outset that numerous variables may affect the decision by the Companies of whether or not to file a bankruptcy, and the author of this memorandum does not have complete information on all matters relating to the Companies. However, several key aspects of the Companies' current situation strongly indicate that it is unlikely that they would file a bankruptcy as a result of the termination of the 18% Charge. It is my assessment that there is only a 35% likelihood of a bankruptcy filing on this basis.

The primary reasons for this assessment are discussed below.

1. The Effect of Bankruptcy on the Companies' Shareholders

A bankruptcy filing by the Companies would have significant adverse consequences for their shareholders. The shareholders are "equity interest" holders and are subordinate in legal right to the payment of the Companies' creditors. The dividend payments to shareholders would stop upon the filing of the bankruptcy case, and it is very likely – almost a certainty – that the shareholders' interests would be extinguished in the bankruptcy case.

The shareholders' interests very likely would be extinguished in a Chapter 11 bankruptcy case[2] because the equity interest holders can receive or retain value for their interests only if all of the Companies' creditors are to be fully paid, or the creditors affirmatively vote to allow the shareholders to retain their stock notwithstanding less than full payment of creditors.[3] Most Chapter 11 bankruptcy cases do not result in full payment of creditors. Rare is the large Chapter 11 case in which creditors agree to accept less than full payment while allowing shareholders to retain their stock in the debtor company. Unless the Companies were to obtain confirmation of a plan that fully paid all of their debt obligations, it should be expected that the Companies' shareholders would have their stock extinguished.

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[1] The project was the construction of two new AP1000 nuclear reactors at the Virgil C. Summer Nuclear Plant (the "Project") in Jenkinsville, South Carolina.

[2] Chapter 11 is the type of bankruptcy the Companies would file for a reorganization under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* Chapter 11 is also frequently used to effect an orderly sale of businesses and assets.

[3] This provision, referred to as the "Absolute Priority Rule," is in 11 U.S.C. § 1129(b)(2)(B)(ii), pertaining to Chapter 11 plans of reorganization. However, the subordination of the ownership interest to payment of creditors is also stated in the provisions governing the distribution of assets in a liquidation. *See* 11 U.S.C. § 726(a), providing for the distribution of estate assets to the debtor (which may be read as the owners of the debtor) only after payment of all allowed creditor claims.

It also should be expected that the shareholders would receive no dividends upon the filing of the bankruptcy case. Unless and until it were established that the Companies' creditors were to be paid in full, under a court approved ("confirmed") Chapter 11 plan, the payment of dividends would not be allowed.

Moreover, if it were determined that the Companies were insolvent, it is possible that shareholders receiving dividends prior to the bankruptcy might be sued for recovery of the dividend payments, for the benefit of creditors.

These possible effects of a bankruptcy filing upon the shareholders of the Companies present strong reasons for the Companies to not file a bankruptcy case.

2. The Questionable Necessity of Bankruptcy

The 18% Charge has been generating approximately $37 million per month, or $444 million per year, in payments by rate payers to SCE&G for the failed Project. The Companies and others assert that the loss of this revenue would compel that the Companies file for bankruptcy relief. In many situations, the loss of such revenue would understandably lead to a bankruptcy to stave off creditors while restructuring and providing for the debt obligations or arranging for a sale as a going concern. However, several facts in this case raise significant questions about the asserted necessity of a bankruptcy filing if the 18% Charge were eliminated.

First, the dividend payments to the Companies' shareholders indicate that the Companies' operations would not be jeopardized by elimination of the 18% Charge. It appears that the dividends paid for the Third Quarter 2017, $85 million, if annualized, would provide for annual dividends of approximately $350,105,000, net of taxes, and that the pre-tax annualized amount could be approximately $443 million.[4] The Companies' distributed profits would seem to cover most, if not all, of the amount of the lost revenue from the 18% Charge.

Second, one could say that the shareholder dividends were paid, essentially, by the 18% Charge. The elimination of the 18% Charge might mean the suspension of dividends, but not the immediate need to file bankruptcy. As explained above, a bankruptcy filing would almost certainly have adverse consequences on shareholders. A suspension of dividends would seem preferable to complete loss.

Third, the possibility of restructuring the Companies' debt, or recasting it, might be a means of addressing the cash flow consequences of loss of the 18% Charge revenue. This possibility parallels what the Companies would likely attempt in a Chapter 11 plan of reorganization.

Finally, it appears that the Companies might be sold at a price that would cover most, if not all, debt of the Companies. The offer from Dominion Energy provides value for shareholders. As noted above, shareholders' interests are subordinate in legal right to the payment of creditors. If the value to be paid for the Companies were shifted to reflect that subordinated position, would it produce enough value to avert a bankruptcy, albeit a change in ownership or operation would

[4] The calculation requires use of a tax rate. If a 21% tax rate is used, the annualized pre-tax amount should be approximately $443 million.

occur? The answer to this question is not clear. However, the circumstances indicate that the possible re-shifting of the allocation of sale value is worth exploring prior to filing a bankruptcy. Indeed, in a bankruptcy sale, shareholders would receive no portion of the sale proceeds unless all creditors were paid in full.

3. <u>Negative Effects of Bankruptcy</u>

There are other negative effects likely to occur upon a bankruptcy filing, which would militate against the Companies filing a bankruptcy. Among the negative effects, credit would probably become tighter and more expensive, commerce with other parties might change (*e.g.*, if SCE&G needed to purchase energy during a period of special need, it might be required to pay immediately or otherwise assure payment), employees might leave out of concern for their futures, projects might be delayed or mothballed, and economic development activities for new industries might be stymied. The fees of professionals in the case would be tens of millions of dollars. It would likely be a lengthy, extended case.

4. <u>The Current Circumstances Indicate that Bankruptcy Is Not Likely</u>

The circumstances of the Companies indicate that it is unlikely they would file for bankruptcy relief if the 18% Charge were eliminated. There are times when relief under the Bankruptcy Code is necessary or will afford benefits not otherwise obtainable.[5] For the Companies, the adverse effects of a bankruptcy filing appear to be substantial and outweigh the benefits, at least at this time. The bankruptcy would stay creditor actions and consolidate most, if not all, matters into one forum, with the prospect of working out a reorganization or a sale of the assets and business for maximum value; however, is that relief really needed at this time? Is seeking that relief justified in light of the impact on shareholders and other parties? The answer would seem to be "no."

The possibility of a bankruptcy filing by the Companies exists. I believe it to be only 35% likely. I believe it is unlikely that the Companies will file bankruptcy as a result of the elimination of the 18% Charge.

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[5] The Bankruptcy Code provides many benefits and protections for debtors; however, in balance, the substantial detriments of a bankruptcy to the Companies and their shareholders exceed the benefits, at least at this time.