

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

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

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

EXPEDITED REVIEW
ORS’S REQUEST TO TAKE
TESTIMONY OF
WITNESSES BY ORAL
DEPOSITION

IN RE: 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)

INTRODUCTION

As the Commission is aware, these proceedings involve issues of significant and substantial public interest and importance for this state and particularly for the ratepayers of South Carolina Electric & Gas Company (“SCE&G”). Given the importance of these proceedings, it is vital that the evidence presented at the hearing in this matter be as complete

and developed as possible. This can only occur if the Commission permits the parties to conduct the depositions of certain witnesses who are likely to possess knowledge of facts relevant to the issues to be decided by the Commission. Obtaining these depositions will allow the parties and their attorneys to understand what material facts are in dispute and what facts are undisputed, as well as to better develop and present the evidentiary record for the hearing.

Discovery is still ongoing and the South Carolina Office of Regulatory Staff (“ORS”) cannot present a final list of witnesses it requests to depose until SCE&G completes production of the discovery that the Commission has ordered. Nevertheless, ORS is aware of certain critical witnesses that need or may need to be deposed by oral examination in this action. ORS requests that the Commission deem meritorious the request of ORS to take the testimony by oral examination of these witnesses and permit ORS to depose these witnesses:

1. Kevin Marsh, former Chief Executive Officer and President, SCANA Corp.;
2. Jimmy Addison, Chief Executive Officer and President, SCANA Corp.;
3. Stephen Byrne, former Chief Operating Officer, SCANA;
4. Carlette Walker, former Vice President of Finance for nuclear construction, SCE&G;
5. SCE&G Rule 30(b)(6) witness(es);
6. Westinghouse Electric Company (“WEC”) Rule 30(b)(6) witness(es);
7. Chicago Bridge & Iron (CB&I”) Rule 30(b)(6) witness(es);
8. Ty Troutman, General Manager, Nuclear Power, Bechtel;
9. Lonnie Carter, former President of Santee Cooper;
10. Michael Crosby, Senior Vice President, Nuclear Energy, Santee Cooper;
11. George Wenick, Attorney for SCE&G;
12. Ronald A. Jones, former Vice President for New Nuclear Operations, SCE&G;

13. Brian McIntyre, former V.C. Summer Licensing Director, WEC;
14. Dan Magnarelli, former Director Construction Integration, WEC.
15. Terry Elam, WEC Project Controls Officer.
16. Danny Roderick, Former President and CEO of WEC (2012-2016).
17. Marion Cherry, Santee Cooper VCS Site Supervisor

DISCUSSION

A. Commission Regulations Permit the Parties to Take the Testimony of Witnesses By Deposition Upon Request to the Commission.

This Commission’s regulations provide that “[a]ny party of record to a proceeding may, by written request, ask the Commission or its designee for leave to take the testimony of any witness by deposition.” 10 S.C. Ann. Regs. 103-834. The request must “be filed with the Commission at least 10 days prior to the commencement of the scheduled hearing” and must “set forth the facts the requesting party seeks to establish by the deposition.” *Id.* “If the Commission or its designee deems the request meritorious, it may issue an Order designating the individual whose deposition may be taken, specifying the subject matter of the examination, and setting forth the time and place of such deposition, and whether it shall be written or oral examination.” *Id.* This is ORS’s written request for leave to take testimony of the identified witness by oral deposition.

B. ORS’s Request to Take the Oral Deposition of Witnesses in This Action is Meritorious.

1. The Importance of these Proceedings Warrants Obtaining Deposition Testimony of Numerous Witnesses.

As the Commission is aware, these proceedings are of the utmost importance. The Joint Applicants have requested that the Commission issue an order permitting SCE&G to recover billions of dollars from ratepayers over the next 20 years for SCE&G’s costs associated with the

abandoned Project. The central issues in these proceedings will be when SCE&G should have abandoned the Project and whether SCE&G's failure to anticipate, avoid or minimize costs related to the Project "was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs." S.C. Code Ann. § 58-33-280(K). Any information about what SCE&G knew about the problems at the Project (including both projected delays in the construction schedules and projected capital cost overruns) and when it knew about such problems is clearly relevant and highly probative to these proceedings because SCE&G's knowledge has a direct bearing on the prudence of its decisions and what costs should be imposed on the ratepayers for the failed Project.

The Commission should permit ORS to take depositions of individuals who are likely to have knowledge of issues central to this matter. Some of the knowledgeable witnesses ORS wishes to depose are current or former officers, employees, representatives, agents, advisors, or consultants of SCE&G who were directly involved in the Project. ORS also wishes to take a deposition of a person most knowledgeable at SCE&G, WEC and CB&I pursuant to Rule 30(b)(6) of the South Carolina Rules of Civil Procedure. These individuals would be deposed concerning all or some of the following topics:

1. The steps that SCE&G took to ensure it became aware of likely delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the date(s) when SCE&G took such steps;
2. SCE&G's knowledge of delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the date(s) when SCE&G became aware of such facts;
3. The decisions SCE&G made about how to prevent further delays in the construction schedules and capital cost overruns at the Project; including but not limited to the bases for such decisions and the alternative courses of action considered;

4. SCE&G's disclosures to the Commission and ORS of likely delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the timing and extent of such disclosures;

5. The reasons for any delay or omission in SCE&G's disclosures to the Commission and ORS of facts known by SCE&G regarding likely delays in the construction schedules and likely capital cost overruns at the Project, including but not limited to the omission of any information provided to SCE&G by Bechtel Corporation or any other audit or review of the Project.

6. The facts and analyses known by SCE&G, and the analyses made by SCE&G, relating to any decision to cease construction and/or abandon the Project, including but not limited to the date(s) when SCE&G became aware of such facts and analyses as well as the conclusions reached in those analyses;

7. The reasons for any delay or omission in SCE&G's disclosures to the Commission and ORS of facts or analyses relating to any decision by SCE&G to cease construction and/or abandon the Project;

8. All facts and reasons that SCE&G contends support or demonstrate SCE&G's decision to cease and/or abandon construction of the Project was prudent and not imprudent;

9. The costs and delays associated with the Project that SCE&G acknowledges it failed to anticipate or avoid, or failed to minimize (if any);

10. All facts relating to the prudence of SCE&G's failure to anticipate or avoid costs related to the Project, or to minimize the magnitude of such costs, including but not limited to any facts that SCE&G contends demonstrates that such failure was not imprudent.

Witnesses from other organizations associated with the Project are also likely to have information on these same issues. SCE&G partnered with Santee Cooper in ownership of the Project, and current or former officers and employees of Santee Cooper are likely to have information regarding SCE&G's knowledge of problems in the Project's development and about steps that SCE&G took or did not take in managing the Project. Likewise, current or former officers or employees of the companies involved in construction of the Project (including Westinghouse Electric Company ("WEC"), Chicago Bridge & Iron Company, and Fluor Corporation) are also likely sources of information about these issues. Perhaps equally

important, these witnesses may also have information about problems at the Project and what SCE&G knew or at least should have known at the time. Finally, because SCE&G commissioned Bechtel Corporation to make a report regarding the Project, current or former officers or employees of Bechtel who were involved in producing and providing that report for SCE&G are also likely to have information about these issues.

2. The depositions are necessary regardless of whether the witnesses are available to testify at the hearing in this matter.

ORS's request to take depositions should be granted regardless of whether the witnesses will be available to testify at the hearing in this matter. As an initial matter, it is not certain that many of the witnesses will be available to testify at the hearing. Some of these witnesses live or work outside South Carolina, and thus may not be subject to a subpoena to testify at the hearing. The depositions should be permitted for this reason alone – to ensure that testimony of key witnesses is perpetuated for the hearing in case the witnesses are unavailable to testify in person at the hearing. Depositions also permit development of the facts and potentially narrowing of disputed issues of fact.

Due to the importance of this proceeding, depositions should be permitted even of witnesses who may be available to testify at the hearing. The public interest in this proceeding could not be any greater, and it is important that ORS's testimony and the evidence presented to the Commission in this proceeding be based on the most developed and complete factual record possible. The only way that can be achieved is if the parties are able to conduct discovery depositions in advance of the hearing in this matter, as occurs in civil litigation. The Commission's regulations permit this because the regulations do not require witness unavailability at a hearing as a prerequisite to a deposition or the use of the deposition at the

hearing—instead, “[t]he S.C. Rules of Civil Procedures govern all discovery matters not covered in Commission Regulations.” 10 S.C. Ann. Regs. 103-835.

C. ORS Has Met All Procedural Requirements For An Order Designating Oral Depositions of Witnesses.

1. ORS Has Designated the Individuals to Be Deposed and the Subject Matter of the Depositions.

Because of the unique nature of these proceedings and the fact that the Joint Applicants have not yet made full and complete responses and productions for ORS’s discovery requests, ORS is not sure how many witnesses it will ultimately need to depose or the identity of all those witnesses. Nevertheless, at this juncture, ORS has identified certain witnesses it believes must be deposed in order to obtain a full and complete record for the hearing. ORS requests that the Commission issue an order that ORS may take the deposition of the witnesses listed above.

The subject matter of the depositions for these witnesses is the same as the topics described above. As noted, in part B.1, supra, each of the deponents is likely to have knowledge pertaining to one or more of these topics based on his or her individual role in the project, and the role that his or her employer had in the Project.

2. ORS Requests that the Depositions Be Ordered to Occur Between July through September 2018 at a Location Convenient for the Witnesses and the Parties.

Due to the number of depositions that must be taken in this matter, ORS believes that, rather than setting a specific time and location for each deposition, it would be more efficient for the Commission to permit ORS to conduct the depositions during a window of time and at a location that is convenient for the parties and witnesses. This would allow the parties to communicate with each other regarding scheduling and allow ORS to conduct the depositions without the need to repeatedly contact the Commission. Thus, ORS requests that the Commission

order the foregoing depositions to occur between July through September 2018 at a convenient location that the parties and witnesses mutually agree upon.

CONCLUSION

For the forgoing reasons, ORS respectfully requests that the Commission deem this request meritorious and order the depositions by oral examination of the witnesses listed in this motion to be scheduled from July through September, 2018 at locations that the parties and witnesses either agree upon or where the depositions are noticed and jurisdiction over the witness may exist.

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Respectfully submitted,

/s/ Matthew Richardson

Matthew T. Richardson, Esquire

Wallace K. Lightsey, Esquire

Camden N. Massingill, Esquire

WYCHE, PA

801 Gervais Street, Suite B

Columbia, South Carolina 29201

Phone: (803) 254-6542

Email: mrichardson@wyche.com,

wlightsey@wyche.com,

cmassingill@wyche.com

&

Nanette Edwards, Esquire

Jeffrey M. Nelson, Esquire

Shannon Bowyer Hudson, Esquire

Jenny R. Pittman, Esquire

OFFICE OF THE REGULATORY STAFF

1401 Main Street, Suite 900

Columbia, South Carolina 29201

Phone: (803) 737-0889/0823/0794

Email: nedwards@regstaff.sc.gov,

jnelson@regstaff.sc.gov,

shudson@regstaff.sc.gov,

jpittman@regstaff.sc.gov

**Attorneys for the South Carolina Office of
Regulatory Staff**

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