

**BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA**

CM #19-02

January 14, 2019

11:00 ~ 11:22 A.M.

COMMISSION MEMBERS PRESENT: Comer H. ‘Randy’ RANDALL, *Chairman*; Elliott F. ELAM, Jr., *Vice Chairman*; and COMMISSIONERS John E. ‘Butch’ HOWARD, Swain E. WHITFIELD, Thomas J. ‘Tom’ ERVIN, Justin T. WILLIAMS, and G. O’Neal HAMILTON

COMMISSION MEMBERS ABSENT: —

ADVISOR TO COMMISSION: Joseph Melchers, Esq.
GENERAL COUNSEL

PRESENTING AGENDA: Josh Minges, Esq.
LEGAL ADVISORY STAFF

STAFF PRESENT: Jocelyn G. Boyd, Chief Clerk/Administrator; F. David Butler, Esq., Senior Counsel; B. Randall Dong, Esq., and David W. Stark, III, Esq., Legal Advisory Staff; Jerisha Dukes, Commissioners’ Staff; Douglas K. Pratt, Thomas Ellison, John Powers, and Amanda Golebiowski, Technical Advisory Staff; Janice Schmieding, Clerk’s Staff; Patricia Stephens, Project Management Staff; Randy Erskine and Jackie Thomas, Information Technology Staff; and Jo Elizabeth M. Wheat, CVR-CM/M-GNSC, Court Reporter.

**TRANSCRIPT / MINUTES
OF
COMMISSION BUSINESS MEETING**

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

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In accordance with S.C. Code § 30-4-80(E), the Public Service Commission hereby certifies that it has notified all persons, organizations, local news media, and all other news media requesting notification of the time, date, place, and agenda of this public meeting, by posting a copy of the Notice in its principal office, by e-mailing such Notice to all who request same, and by posting the Notice on the Commission's official Internet website.

P R O C E E D I N G S

CHAIRMAN RANDALL: Please be seated.

Good morning, everyone, and welcome to this morning's business meeting. I want to ask, first, for everybody to please bow your head for a moment of silent reflection, please.

[Brief pause]

Amen. Thank you.

Mr. Minges.

MR. MINGES: Good afternoon, Mr. Chairman, Commissioners. Our first item of business is to set the next Commission Meeting, which, due to the Martin Luther King holiday, is scheduled for Wednesday, January 30th, at 2 p.m.

CHAIRMAN RANDALL: Okay. Wednesday, January 30th, at 2 p.m., will be the next meeting. Thank you.

MR. MINGES: Our only matter for consideration today are Petitions for rehearing or reconsideration of Order No. 2018-804 in Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E.

VICE CHAIRMAN ELAM: Mr. Chairman?

CHAIRMAN RANDALL: Commissioner Elam.

VICE CHAIRMAN ELAM: Mr. Chairman, when this Commission reached its decision in this case back in December, we set permanent rates that are comparable to and slightly lower than the significant rate reductions for SCE&G customers as called for by the General Assembly in its Act 258. Those rates are more than 15 percent below the established rates in place prior to abandonment.

In doing so the issue of SCE&G's prudence in

1 this project after March 12, 2015, became no longer
2 legally relevant to our analysis, given the
3 company's agreement not to seek recovery of capital
4 costs after that date. However, our ruling should
5 not have been perceived as even an implicit finding
6 of prudence on our part for capital costs incurred
7 after March 12, 2015. Nothing could be further
8 from the truth.

9 Several parties have petitioned this
10 Commission to make a specific finding of imprudence
11 as to the costs incurred by SCE&G during the
12 construction of the project. In order to address
13 these concerns and to emphasize the need for all
14 regulated utilities to be transparent in their
15 dealings with ORS and this Commission, I move we
16 make a clear and unequivocal finding: The company
17 acted imprudently by not disclosing material and
18 even potentially decisive information to ORS and
19 the Commission. Due to the lack of transparency –
20 the lack of forthrightness – with the reports and
21 studies available to the company, this Commission
22 was effectively denied the opportunity to fully
23 consider the prudence of continuing to expend
24 resources on the project with all information
25 available at the time. Under any definition of the
26 term "prudence" the company was imprudent in its
27 actions in this case with regard to costs incurred
28 after March 12, 2015. We agree with ORS that it is
29 essential, to restore public trust, for this
30 Commission to acknowledge that the regulatory
31 compact between the utility and the regulators was
32 broken by SCE&G.

1 However, these actions were addressed by this
2 Commission in our Order 2018-804. The company
3 agreed to significant concessions in response to
4 its actions and offered Plan B-Levelized to
5 accomplish this. The responsibility of the company
6 created by nondisclosure, lack of transparency and
7 forthrightness, has a price. That price is roughly
8 \$3 billion to be returned to the ratepayers through
9 mechanisms in Plan B-Levelized as approved in our
10 Order. We have ordered the company to refund over
11 \$1 billion to ratepayers through lower rates, going
12 forward, and ordered the company to provide
13 approximately \$3 billion in benefits to ratepayers
14 over time. The costs for SCE&G's actions are
15 significant and have been accounted for by this
16 Commission in our Order. We believe this result
17 and finding emphasizes the need for all regulated
18 utilities to be transparent in their dealings with
19 ORS and this Commission.

20 This Commission has been charged with
21 protecting customers of investor-owned electrical
22 utilities from responsibility for imprudent
23 financial applications or cost. We have ordered
24 the payment of resources from the company for the
25 benefit of ratepayers that maximizes relief within
26 the limits of the authority of the Commission.

27 Maximizing customer benefits, Plan B-Levelized
28 offered by Dominion reflects a careful balancing of
29 accounting, tax, and credit considerations, among
30 others. Under Plan B-Levelized, the proposed
31 recovery of \$2.768 billion limits costs and the
32 associated prudence determination to investments

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made by SCE&G on or before March 12, 2015. Importantly, though, the ORS does not contest the prudence of investments made before March 12, 2015, and our Order appropriately rejected arguments by other parties seeking an earlier date for cessation of recovery. By voluntarily limiting the NND rate-base recovery to that date, the conduct of the company discussed above is made no longer legally relevant to the analysis, since the company has voluntarily removed its request for capital costs beyond that date. I find the 2006 South Carolina Supreme Court case *Sloan versus Friends of the Hundley* instructive in this regard.

While several Petitioners have raised the specter of the utility somehow later pursuing recovery for capital costs incurred after March 12, 2015, this would not be possible under the law on abandonment. The current proceeding is the only proceeding in which recovery of costs in abandonment may be pursued. Joint applicants are not seeking recovery of capital costs incurred after March 12, 2015, and are hereby expressly foreclosed from pursuing recovery of such costs in any future proceedings. No capital costs incurred after March 12, 2015, may be recovered as prudent. Indeed, at the conclusion of this case, the Legislature's Act 258 will abolish the BLRA, including the provision that allows any recovery in abandonment.

ORS, AARP, Friends of the Earth, Sierra, and Mr. Knapp assert there was error for the Commission not to require SCE&G to refund past revised-rates

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collections. ORS seeks a return of revised rates collected after March 12, 2015, or associated with amounts of project investment in excess of \$2.772 billion. Other Petitioners seek refunds going back further, in some cases back to the beginning of the project. As to the other Petitioners, I move that we find their claims for an earlier date are not supported by substantial evidence in the hearing record. These parties never specified the amounts of such claimed refunds. They've also failed to make an adequate evidentiary showing or a legal justification to set aside legal precedent regarding the filed-rate doctrine and retroactive ratemaking for capital costs prior to March 12, 2015.

Regarding ORS's arguments, Order No. 2018-804 states that Plan B-Levelized provides for write-offs, ratepayer refunds, and ratepayer restitution totaling approximately \$3 billion. Refunds are further addressed and included in the Commission's Order and the tariff subsequently filed by SCE&G relating to the Capital Cost Rider. Under the Capital Cost Rider, regulatory liabilities will be established for refunds of the Toshiba Settlement, as well as amounts previously collected under the BLRA, in the amounts of \$1.032 billion and \$1.007 billion, respectively. The total amount of \$2.039 billion in refunds and restitution under Plan B-Levelized is designed to compensate ratepayers for the time value of the delayed refund of the Toshiba proceeds, as well as provide refunds and restitution for any rate overpayments previously

1 collected under the BLRA.

2 By requesting refunds of revised-rates
3 collections, the Petitioners are asking, in effect,
4 for SCE&G and Dominion Energy to add additional
5 bill mitigation funds beyond what has already been
6 approved in our Order. The combination of
7 immediate write-offs and long-term funding from
8 Dominion Energy was sufficient to achieve bill
9 levels comparable to those temporarily imposed by
10 the General Assembly through Act 258, which has
11 passed constitutional muster. The United States
12 District Court held, in *South Carolina Electric &*
13 *Gas versus Randall*, that the rates imposed in Act
14 258 and Resolution 285 had not shown to be
15 confiscatory. As an Intervenor in this case,
16 Speaker of the House Jay Lucas has argued that
17 setting rates significantly lower than previously
18 imposed temporary rates could create uncertainty
19 for ratepayers due to constitutional challenges or
20 bankruptcy concerns. Such uncertainty would be to
21 the detriment of the rate-paying public. Further,
22 the Commission was urged to adopt a rate within the
23 constitutionally allowed zone of reasonableness
24 established by the experimental rate adopted in Act
25 258. We agree and find that deviating from those
26 rates, as advocated by the Petitioners seeking
27 reconsideration, could raise constitutional
28 difficulties which could delay the implementation
29 of rate decreases approved in this case. As such,
30 the rates approved by the Commission in Order No.
31 2018-804 represent a balancing of all interests in
32 this case, recognizing the arguments on specific

1 monetary issues and the potential legal issues
2 attached to those arguments. It further represents
3 this Commission's effort to bring finality and
4 stability for SCE&G's customers in this matter.
5 Therefore, I move that we find this issue was
6 appropriately addressed in our Order.

7 Next, several parties seek reconsideration
8 regarding merger conditions to govern potential
9 affiliate transactions that could occur between
10 SCE&G and Dominion at some point in the future,
11 should the Atlantic Coast Pipeline extend into
12 South Carolina. While I understand this concern, I
13 believe this issue was appropriately addressed in
14 our Order.

15 First, under Code Section 58-27-2090, this
16 Commission already has broad oversight authority
17 over all persons or corporations affiliated with a
18 jurisdictional electric utility. The burden of
19 proof is on the utility to establish the
20 reasonableness, fairness, and absence of injurious
21 effect upon the public interest, regarding fees or
22 charges growing out of any transactions. Unless
23 those standards are met, as determined by the
24 Commission, the fees and charges shall not be
25 allowed by the Commission for ratemaking purposes.

26 Moreover, Order No. 92-931 places additional
27 reporting requirements on SCE&G and SCANA's
28 regulated affiliated companies regarding affiliate
29 transactions, including the transfer of real
30 property, and post-merger they would apply to
31 Dominion, as well. The requirements in Order No.
32 2018-804 go even further. Some of those

1 requirements memorialize a settlement agreement
2 between Transcontinental Gas Pipe Line Company,
3 SCE&G, and Dominion Energy, where those parties
4 have voluntarily agreed to certain protections that
5 will apply if SCE&G seeks to secure more than
6 100,000 dekatherms per day of additional natural
7 gas transmission capacity from an interstate
8 pipeline. In such cases, SCE&G will be required to
9 issue a Request for Proposal. If SCE&G chooses to
10 purchase capacity that is not the least-cost
11 capacity offered, then SCE&G must request a public
12 proceeding before the Commission to justify the
13 purchase. Also, pages 100 through 101 of our Order
14 set out significant and far-reaching merger
15 conditions regarding affiliate transactions between
16 Dominion and SCE&G. Therefore, I move that we find
17 this issue was appropriately addressed in our
18 Order. I would ask, however, that, if Dominion
19 chooses to file an application with FERC regarding
20 the extension of the Atlantic Coast Pipeline into
21 South Carolina, that it copy the ORS and the
22 Commission with its federal filing.

23 Mr. Chairman, other than as I've set forth in
24 this motion, I move that the Petitions for
25 rehearing and reconsideration be denied. A full
26 written order containing the Commission's findings
27 will follow.

28 So moved.

29 **CHAIRMAN RANDALL:** Thank you.

30 You heard Commissioner Elam's motion. Are
31 there questions or comments from Commissioners?

32 **COMMISSIONER ERVIN:** Mr. Chairman?

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CHAIRMAN RANDALL: Commissioner Ervin.

COMMISSIONER ERVIN: I commend Commissioner Elam's motion that we include the finding, the specific finding, that SCE&G acted imprudently in any costs incurred – capital costs incurred after March 12, 2015. It is essential to restore public trust and this finding will go a long way in acknowledging that the regulatory compact between SCE&G and ORS and the Commission was broken by SCE&G, and it also puts all other regulated utilities on notice that we take this matter very seriously, and in any future proceedings we're going to hold them accountable and we're going to expect transparency from any filings and representations made to ORS and the Commission, going forward.

I also agree with Commissioner Elam that to try and go back and change rates, backwards, as advocated by some Petitioners seeking reconsideration, runs the risk of creating constitutional and legal issues which could delay the implementation of the rate increases that the Commission has approved in this case, which would be a terrible result. The ratepayers need immediate relief. It could take years to resolve potential appeals, and that does not serve the ratepayers, it does not serve the State well, and it would not be in the best interests of the ratepayers or the State. And for those reasons, I fully agree that we should stay with the rates that have been reviewed by the United States District Court and found to be appropriate, as the Court

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found they passed constitutional muster.

And finally, I agree that, before the Federal Energy Regulatory Commission is faced with a request to permit the Atlantic Coast Pipeline extension into South Carolina, that the Office of Regulatory Staff and the Commission should have written notice, so that the Office of Regulatory Staff can make a determination as to whether they wish to intervene in that proceeding. There may be issues that are unique to our State of South Carolina which would need to be raised in that proceeding. And, therefore, I think that's an appropriate finding, as well, that should be included in the order.

For those reasons, I support the motion.

CHAIRMAN RANDALL: Thank you, Commissioner Ervin.

Other Commissioners, questions or comments?

COMMISSIONER WILLIAMS: Mr. Chairman?

CHAIRMAN RANDALL: Yes, sir, Commissioner Williams.

COMMISSIONER WILLIAMS: Thank you, Mr. Chairman.

Commissioner Elam, I appreciate your motion. What I would like to comment on, specifically, is the finding of imprudence.

There's power in a name. And the record is clear that there was a lot of information that was not given to this Commission, and it may be defined in different ways – maybe more transparency was necessary, maybe it was a business decision – but at the end of the day, it was imprudent. And I

1 think it's important that we say that, and I
2 appreciate your motion making it clear that it was
3 wrong for this Commission not to be given
4 information necessary to make a full decision on
5 that new nuclear development.

6 And so, regardless of what the explanations we
7 received, it's important for us to put a name on
8 the actions by the company, and those actions were
9 imprudent. So for that, I support your motion and
10 I appreciate you making it.

11 **CHAIRMAN RANDALL:** Thank you, Commissioner
12 Williams.

13 Any other comments? Commissioner Whitfield.

14 **COMMISSIONER WHITFIELD:** Thank you, Mr.
15 Chairman.

16 Mr. Chairman, I, too, during this discussion
17 phase, would like to acknowledge some of the
18 comments of my colleagues to my right. There's
19 been a lot of discussion about the Atlantic Coast
20 Pipeline. It's very clear that no state in America
21 has interstate jurisdiction for natural gas
22 pipelines. They do have – some states do have, for
23 crude oil and petroleum product pipelines.

24 I think, along with this language, with us
25 requesting that Dominion copy the Commission and
26 the Office of Regulatory Staff in any would-be
27 filing before FERC appropriately addresses that.
28 Some state commissions have the right to intervene
29 in a federal case before FERC; however, in South
30 Carolina, it would be the Office of Regulatory
31 Staff. So we have requested, in this motion, that
32 they be copied on any federal filing.

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Also, as a result of our hearing, this Commission has gained a lot of say-so, if you will, or authority that we might not have had, as a result of the settlement with Transco. Some of you may remember Transco intervened. Initially, they weren't allowed, and through oral arguments, hearing, we reconsidered and allowed Transco to intervene. And as a result of that settlement, this Commission now has the authority to either have Commission approval or the least-cost option. And regardless of what the motive might be for a filing, if this State is able to represent itself before FERC, I certainly think what we've done all we can do. And the statute that Commissioner Elam cited in his motion and the Order – going way back to 1992, that Commissioner Elam cited – also deals with affiliate transactions.

So this Commission has used every tool at its disposal in this matter. And I commend Commissioner Elam, and Commissioner Ervin for your comments regarding that. And, lastly, I'd like to reiterate what Commissioner Williams said. I, too, applaud Commissioner Elam for utilizing the word "imprudence" in his motion. It was important that that be in the motion, for me.

And with that, Mr. Chairman, I'm going to support his motion.

CHAIRMAN RANDALL: Thank you, Commissioner Whitfield.

Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you, Mr. Chairman.

1 Mr. Chairman, I just have one point I'd like
2 to make, concerning the Atlantic Coast Pipeline.
3 And I appreciate the information that Commissioner
4 Whitfield has provided us. But I think a fear that
5 many people had before was the fact that the cost
6 of the pipeline, if it came into South Carolina –
7 especially the Pee Dee, for economic development
8 and agricultural needs. It would bring competition
9 that apparently is needed, because we have many
10 industrial parks that have no availability of
11 natural gas; we have swine producers, turkey
12 producers, chicken producers, that have no ability
13 to receive natural gas. It would be a tremendous
14 asset to them. But the fact is that nobody pays
15 for it except the users. The end users are the
16 ones that would pay for it. Other ratepayers would
17 have no responsibility or no obligation to pay any
18 of the cost.

19 And with that, Mr. Chairman, I do appreciate
20 Mr. Elam's motion and support it fully. Thank you,
21 Mr. Chairman.

22 **CHAIRMAN RANDALL:** Thank you, Commissioner
23 Hamilton.

24 Commissioner Howard.

25 **COMMISSIONER HOWARD:** I, too, want to support
26 Commissioner Elam's motion. It is absolutely
27 imperative that we do determine that imprudency was
28 a product of this case and that imprudency did keep
29 information from us that we would need to make a
30 final decision, and I, too, agree with the motion
31 on the pipeline. I think we've got it covered.

32 Thank you, Mr. Chairman.

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CHAIRMAN RANDALL: Thank you. Thank you,
Commissioner Howard.

Anything else from Commissioners?

[No response]

All right. You've heard the motion. All in
favor, please say "aye"?

COMMISSIONERS: Aye.

CHAIRMAN RANDALL: All opposed, "no"?

[No response]

The motion carries. Thank you.

With that, this hearing is adjourned.

[WHEREUPON, at 11:22 p.m., the
proceedings in the above-entitled matter
were adjourned.]



Date: 1/14/19

Jo Elizabeth M. Wheat, CVR-CM/M-GNSC
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