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Jeffrey M. Nelson
Chief Counsel & Director of Legal Services

December 15, 2017

VIA ELECTRONIC FILING

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

Re: Petition of South Carolina Electric & Gas Company for Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for the V.C. Summer Units 2 and 3 and Related Matters, along with a Motion for Expedited Hearing
Docket No. 2017-244-E

Memorandum of Understanding to Allow Westinghouse to Remove Records

Dear Ms. Boyd:

This letter is intended to inform the South Carolina Public Service Commission ("Commission") regarding the Office of Regulatory Staff's ("ORS") belief that a Memorandum of Understanding ("MOU") exists between South Carolina Electric & Gas ("SCE&G") and the Westinghouse Corporation ("Westinghouse").

ORS conducted an on-site inspection of the facilities and equipment located at the V.C. Summer 2 and 3 ("NND") construction site ("Site") on December 13, 2017. Upon ORS' completion of the site tour, SCE&G shared with ORS a MOU that documents SCE&G's willingness to allow the transfer of all records located at the Site, with the exception of Preventative Maintenance records which are to be retained on site for some period of time, to Westinghouse. It is believed that Westinghouse will then transfer these records to a Westinghouse facility for storage.

During the Site visit, ORS also discussed the status of the Westinghouse Bankruptcy, the issue of plant/equipment ownership, and the fact that neither SCE&G nor Westinghouse has rejected the EPC Contract. All of these activities are fluid and ORS is concerned that the release of all records from the site to Westinghouse may hinder our ability to carry out ORS' duty of monitoring and reporting on the NND project.

While ORS believes that the MOU suggests that the reason for the transfer of records is for safe storage, ORS believes that possession of these materials needs to be maintained by SCE&G for the immediate future pending a final resolution of the issues currently pending before the Commission. ORS believes that if these materials are transferred to Westinghouse that they will be maintained out of State and will be difficult, if not impossible, for ORS to access. The Governor's Office has expressed similar concerns to ORS regarding the importance of record preservation and Site stabilization.

ORS has additionally included herein a copy of letters between SCE&G and Santee Cooper dated December 13th and December 15th regarding the termination of the Design and Construction Agreement ("DCA") between those two entities which we believe to be relevant to the issues in this docket.

Yours Truly,

Jeffrey M. Nelson

Enclosures

cc: Belton T. Zeigler, Esquire (via E-Mail)
K. Chad Burgess, Esquire (via E-Mail)
Matthew W. Gissendanner, Esquire (via E-Mail)
Mitchell Willoughby, Esquire (via E-Mail)

J. Michael Baxley, Sr.
Senior Vice President and
General Counsel
(843) 761-8000
fax: (843) 761-7037
jmbaxley@santeecooper.com

December 15, 2017

Transmitted by Agreement via Email and Certified Mail

Kevin B. Marsh, President and CEO
SCANA Corporation
220 Operation Way
Columbia, South Carolina 29033

Dear Mr. Marsh,

Santee Cooper is in receipt of Jim Stuckey's letter of December 13 alleging that Santee Cooper has unilaterally terminated the VC Summer nuclear construction project, in breach of the Design and Construction Agreement (DCA) between our companies, and SCE&G has been damaged thereby. Santee Cooper disputes those allegations.

At this juncture, it is clear that SCE&G is permanently terminating its interest in the Project. If Santee Cooper, now acting alone, is able to find a buyer, or through some means is enabled to restart the Project, it will be with a new partner. Thus, reserving all legal rights for either entity, I propose that SCE&G and Santee Cooper be deemed to have mutually terminated the current Project (as "Project" is defined in Section 1 of the Design and Construction Agreement dated October 20, 2011) as previously documented by the entities' near simultaneous Board actions on July 31, 2017. Until replaced by a more formal document, the DCA shall remain in place to govern the relationship of the parties with respect to the current Project, particularly Section 6.2.1 of DCA which explicitly addresses "funding required to bring the Project to an orderly shutdown . . . mitigating all financial commitments previously undertaken or approved" and the "dispos[al] of such property using Prudent Industry Practices."

Your demand for immediate agreement to surrender or transfer the NRC Combined Operating Licenses is a separate issue. Santee Cooper has consistently stated that the site, commodities, and equipment should be preserved and maintained for a period of time that will permit either finding an interested buyer or developing an orderly process for sale or salvage. This cannot happen overnight. SCE&G's insistence upon acting immediately—and in any case abandoning the site no later than December 31—frustrates this reasonable approach, violates SCE&G's financial commitments under the DCA, and in turn causes significant harm to Santee Cooper's customers. This is why my December 4 letter to Mr. Stuckey raised multiple objections to SCE&G's shifting costs and risks to Santee Cooper.

Ceding SCE&G's interest in the commodities and equipment on site to Santee Cooper offers at best an unliquidated benefit that we must fight to obtain with Westinghouse, its creditors, and third parties in the bankruptcy court and other venues, while at the same time having to underwrite 100% of the preservation costs necessary to maintain the value of the equipment, including legal costs going forward. The result of the license surrender, stated by SCE&G to be a condition precedent to its immediate abandonment plan, will be the prevention of an orderly wind down of the Project as set forth in the DCA and the transfer of all going forward costs and risks to Santee Cooper's customers.

Final disposition of the NRC licenses by Santee Cooper will require Board approval. Our Board's next scheduled meeting is set for January 22, 2018. In order to perform appropriate due diligence with respect to any license action, and certainly prior to calling a special Board meeting to consider this issue, I ask that SCE&G reconsider the terms of transfer offered to Santee Cooper. We recognize that SCE&G's preferred course of action is intended to deliver the greatest financial benefit to its customers, and hope you recognize that our preferred course of action is intended to do likewise for our customers.

Sincerely yours,

J. Michael Baxley

/sow

cc: Jim O. Stuckey, Esquire, General Counsel

Jim Odell Stuckey
Senior Vice President & General Counsel

December 13, 2017

VIA HAND DELIVERY

South Carolina Public Service Authority
Attn: Chief Operating Officer (M602)
One Riverwood Drive
P.O. Box 2946101
Moncks Corner, SC 29461-6101

RE: V.C. Summer Nuclear Project

Dear Sir:

As you are aware, South Carolina Electric & Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper) are parties to a Design and Construction Agreement (DCA), dated October 20, 2011, which provided for the construction of two new nuclear units (Units 2 and 3) at the V.C. Summer Nuclear Station.

On July 7, 2017, the SCE&G and Santee Cooper leadership teams met in Cayce to discuss the status of the joint comprehensive evaluation of the cost of completing Units 2 and 3. At that time, SCE&G was notified by Santee Cooper's management team that it intended to recommend to Santee Cooper's Board of Directors that construction of Units 2 and 3 cease immediately. In response, SCE&G's management responded that in the event Santee Cooper's Board of Directors agreed with its management's recommendation, SCE&G would have no reasonable alternative other than to abandon construction.

On July 31, 2017, Santee Cooper's Board of Directors voted to direct its Chief Executive Officer to "immediately begin taking those actions necessary to wind-down and suspend construction on the two 1100 MW nuclear units at the V. C. Summer site in Fairfield County…" As a result of the aforementioned action of the Santee Cooper Board of Directors, SCE&G decided to cease construction and pursue recovery of its abandoned costs with the Public Service Commission of South Carolina.

The DCA does not allow either party to "suspend" construction. Instead, the DCA requires uninterrupted construction of Units 2 and 3, or termination of the DCA, whether mutual or unilateral.

Any act by Santee Cooper that purported to commit Santee Cooper to less than complete dedication to the continued and uninterrupted completion of the construction contemplated in the DCA constituted a breach of the DCA, a default under Section 13.1.1 of the DCA, and at minimum a unilateral termination under Section 6.2.2.a of the DCA. Santee Cooper's July 31, 2017 Board vote constituted such an act, as confirmed by Santee Cooper's subsequent public written statements and notices to that effect. Santee Cooper's failure to provide SCE&G the 180-day notice of termination required under Section 6.2.2.a of the DCA was a further breach and default.

To cure this breach and default, SCE&G requests that Santee Cooper agree with SCE&G to treat the termination as a mutually agreed termination under Section 6.2.1. If Santee Cooper agrees to a mutual

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termination with SCE&G, SCE&G asks that Santee Cooper provide written notice of its agreement to so mutually terminate by noon EST on December 15, 2017.

If termination pursuant to Section 6.2.1 is not mutually agreeable, then SCE&G hereby gives Santee Cooper formal notice that SCE&G considers Santee Cooper in breach and default of the DCA. In the absence of mutual termination by noon EST on December 15, 2017, SCE&G will treat Santee Cooper's actions as a unilateral termination, and SCE&G hereby terminates the DCA effective 12:01 p.m, December 15, 2017, pursuant to Section 6.2.2.c(ii) of the DCA, which states that in the event of a unilateral termination by one party, the other party may "terminate the Project, in which case, the Parties shall bear all costs arising from such termination in proportion to their Unit Ownership Shares."

Santee Cooper's uncured default may cause SCE&G significant harm. The DCA under either Section 6.2.1 or 6.2.2.c(ii) contemplates the termination of the "Project." The Project as defined in the DCA includes "(iv) all Government Approvals necessary for acquisition, design, engineering, licensing and construction of the Project, ..." As defined in the DCA, any Governmental Approval would include the Combined Operating Licenses issued by the Nuclear Regulatory Commission (NRC) for the Project. The NRC is the type of Governmental Authority as defined by the DCA that issues Governmental Approvals. Thus, the termination of the Project, either mutually by the Parties pursuant to Section 6.2.1 or by SCE&G pursuant to Section 6.2.2.c(ii) in response to Santee Cooper's unilateral termination, also terminates any Governmental Approval, including the Combined Operating Licenses.

Santee Cooper can only cure its default by agreeing to a mutual termination of the Project by noon EST on December 15, 2017, in which case Santee Cooper must also agree to request the NRC to either terminate the Combined Operating Licenses with SCE&G for the Project or to assign them to Santee Cooper. The failure of Santee Cooper to recognize its obligations under the DCA that the Project is terminated and cure its default could significantly damage SCE&G if such default by Santee Cooper causes SCE&G's loss of a significant federal tax deduction for the 2017 year.

Since July 31, SCE&G and Santee Cooper have taken prompt and aggressive steps to mitigate the impact of the abandonment on customers, by winding down site activities promptly and by selling the rights to the Toshiba guaranty settlement payments for an immediate lump sum of approximately $2.2 billion or 92 cents on the dollar.

SCE&G takes this action because it has the right to do so under the DCA, and because it is in the best interests of SCE&G's customers. SCE&G's customers should get the benefit from the tax deduction and should not have to finance the remote possibility Santee Cooper or its successors in interest might decide to re-start construction a decade or more from now.

Sincerely,

Jim O. Stuckey

Jim Odell Stuckey
Senior Vice President and General Counsel

cc: South Carolina Public Service Authority
Attn: General Counsel (M603)
One Riverwood Drive
P.O. Box 2946101
Moncks Corner, SC 29461-6101