

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Richard Lightsey,

Plaintiff,

vs.

South Carolina Electric and Gas Company,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH CIRCUIT

Civil Action No. 2017-CP-25-335

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

LeBrian Cleckley, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

South Carolina Electric & Gas Company, and
the State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-40-04833

**MOTION TO INTERVENE
BY THE SOUTH CAROLINA
OFFICE OF REGULATORY STAFF**

The South Carolina Office of Regulatory Staff (“ORS”), by and through its undersigned counsel, hereby moves to intervene in the above-captioned case as a matter of statutory right under Rule 24(a), and also with the permission of the Court under Rule 24(b), of the South Carolina Rules of Civil Procedure. ORS is the state regulatory agency with “the duty and responsibility” to represent and protect the public interest in state court “proceedings that could affect the rates or service of any public utility.” S.C. Code Ann § 58-4-50(8). ORS seeks to intervene because this case could affect the rates or service of South Carolina Electric & Gas Company and substantially

affects the public interest in prior decisions and actions by the South Carolina Public Service Commission. This motion to intervene is also made “to secure the just, speedy, and inexpensive determination of every action.” Rule 1, SCRPC.

Rule 24 of the South Carolina Rules for Civil Procedure permits intervention by right and by court permission. ORS meets the standard for both methods of intervention in this case. “Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.” *Ex parte Gov’t Emp.’s Ins. Co.*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007). ORS has a statutory right to intervene in pending actions in circuit court, “except as modified by order of a court of competent jurisdiction.” S.C. Code Ann. § 58-4-90.

ORS has a statutory right to intervene under South Carolina Code section 58-4-80:

The executive director representing the regulatory staff ... **may, as of right and in a manner prescribed by law, intervene** or otherwise participate **in any civil proceeding** which involves the review or enforcement of commission action that the executive director determines may substantially affect the public interest. This right includes intervention in any action for judicial review from commission orders or decisions that are pending **at any stage of the action.**

(emphasis added). In addition, the Base Load Review Act (“BLRA”), S.C. Code Ann. § 58-33-210 *et seq.*, which is the subject of the pending motions for summary judgment and many of the issues in this case, also charges that ORS “shall safeguard the public interest in all matters arising under [the BLRA] . . .” S.C. Code Ann. § 58-33-230(F). Furthermore, disposition of the issues in this case “may as a practical matter impair or impede [ORS’s] ability to protect that interest.” Rule 24(a)(2), SCRPC.

Additionally, the court should find ORS may intervene under Rule 24(b). Intervention by ORS in this case is supported because ORS administers its responsibilities under the statute and regulations on which the current parties in this case are relying, and thus this state agency “may

be permitted to intervene in the action.” Rule 24(b)(2), SCRCF. The pending contested cases before the South Carolina Public Service Commission contain common questions of law and fact with this case, which also supports permissive intervention under Rule 24(b)(2).

The issues in this action intersect with ORS’s rights and obligations to represent the public interest relating to public utilities in state courts. On September 26, 2017, after reviewing the Attorney General Opinion and considering other matters including a previously undisclosed report by the Bechtel Power Corporation, ORS filed a Request with the South Carolina Public Service Commission asking that the Commission Order: (1) SCE&G to immediately suspend all revised rates collections, and (2) further action including credits to future bills or refunds if the General Assembly amends or revokes the BLRA or a court of competent jurisdiction declares the BLRA unconstitutional. ORS is also seeking additional information and documents that have been withheld from ORS and the Commission, including a previously undisclosed Bechtel report. Therefore, ORS has a stake in the questions of law and facts in this case and should be allowed to intervene as party.

Based on the multiple, independent bases for intervention under the rules of civil procedure and the clear statutory bases for ORS’s standing and interests in the issues in this action, ORS respectfully requests an order allowing it to intervene as a party in this action.

The undersigned counsel has consulted the parties to this action and received consent from all parties except SCE&G. Counsel for SCE&G refused to consent.

[Signatures on following page]

Respectfully submitted,

s/Matthew T. Richardson

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Columbia, SC