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VIA EMAIL AND US MAIL
J. Michael Baxley
Senior Vice President and General Counsel
South Carolina Public Service Authority
One Riverwood Drive
Moncks Corner, SC 29461

RE: Demand for Santee Cooper's Contribution to Project-Related Costs

October 21, 2019

Dear Mike:

The South Carolina Public Service Authority ("Santee Cooper") entered into a Design and Construction Agreement ("DCA") with Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas ("SCE&G") on October 20, 2011 for the construction of V.C. Summer Nuclear Station Units 2 and 3 (the "Project"). The DCA outlines the terms and conditions of the parties' joint undertaking with respect to the two new nuclear units. Among other things, the DCA provides that SCE&G was to act as "agent on behalf of the Project with respect to all aspects of the acquisition, design, engineering, licensing and construction of the Project." DCA § 2.3. But the DCA also afforded Santee Cooper first-hand visibility and input on all Project-related matters. *See, e.g.*, *id.* § 7.

As the DCA provided, Santee Cooper was involved in every major decision made since the inception of the Project. Santee Cooper dedicated full-time employees to the site, where they had complete access to the status of the Project at all times. Santee Cooper had full access and the right to participate in every significant meeting regarding the Project, and, in fact, did have its own employees participate regularly in meetings between SCE&G and the Consortium of Westinghouse and Stone & Webster. Santee Cooper employees accompanied SCE&G to module manufacturing sites, the Nuclear Regulatory Commission (NRC), and sites in both China and Japan in attempts to both understand the status of the Project and evaluate the best options available to mitigate Project delays. SCE&G continually and consistently solicited and considered Santee Cooper's input.

Tellingly, Santee Cooper's ongoing false narrative omits any reference to Santee Cooper's own role in the oversight of the Project and fails to acknowledge its causative role in the abandonment of the Project. Santee Cooper was an active partner to SCE&G in the management of the Project and participated in every phase of the construction; and, following the contractor's bankruptcy, it was Santee Cooper's *unilateral* decision to "suspend" funding that triggered abandonment of the Project. And, in a well-publicized effort to publicly castigate SCE&G as the scapegoat for abandonment, Santee willfully breached its obligations under the DCA and improperly disclosed Project information.

Among the most critical provisions in the DCA are those allocating financial responsibility between Santee Cooper and SCE&G for Project-related matters. The DCA describes Santee Cooper's funding obligations for all of these matters (*Id.*, § 8), and as to potential claims against the Owners related to the Project, the DCA is clear and unambiguous: SCE&G and Santee Cooper "shall bear responsibility in proportion to their Unit Ownership Interests for any claims brought by third parties with respect to the services provided by SCE&G" under the agreement. *Id.*§ 4.2. The costs SCE&G incurs in connection with defending claims related to the Project shall

also be allocated among SCE&G and Santee Cooper in accordance with each party's unit ownership interest. *Id.*§ 16.

As you and your senior management and legal teams are aware, SCE&G is, and has been, defending various matters that relate to the Project. SCE&G has resolved at least one significant matter – the *Lightsey* case involving SCE&G customers but not Santee Cooper's customers -- without filing a claim against Santee Cooper. Particularly in light of SCE&G's decision to resolve *Lightsey* without demanding advance contribution from Santee Cooper, we were optimistic that Santee Cooper would acknowledge its obligations under the DCA and contribute its 45% share to the remaining Project-related matters. Our recent discussions and failed efforts to resolve some of these remaining matters have confirmed that Santee Cooper does not intend to comply with its obligations under the DCA.

The allocation of responsibility between Santee Cooper and SCE&G was critical to SCE&G agreeing to serve as the agent on behalf of the Project. Nevertheless, Santee Cooper has been engaged in a concerted effort to re-write the terms of the DCA on this point. This effort began with Santee Cooper's December 18, 2018 letter, which appeared to invoke the dispute resolution procedures of the DCA and claimed that SCE&G had somehow engaged in gross negligence, willful misconduct or bad faith regarding the Project. Santee Cooper had never before made such allegations.

Santee Cooper then asserted cross-claims against SCE&G in the *Cook* matter, thereby flouting not only the allocation of responsibility between the parties, but also the mandatory dispute resolution and arbitration procedures that Santee Cooper had previously appeared to invoke. As discovery progressed in *Cook* (and while SCE&G's motion to compel arbitration of these cross-claims was pending), Santee Cooper's own witnesses testified under oath in depositions and refuted the very same allegations asserted in the December letter.

Specifically, Santee Cooper employees have repeatedly admitted that: (1) Santee Cooper was fully informed regarding the Project and its challenges; and (2) SCE&G did not engage in gross negligence or willful misconduct regarding the Project. Perhaps even more disturbing is that discovery in the *Cook* case has revealed the myriad ways Santee Cooper knowingly and willfully withheld information from SCE&G regarding the Project, primarily related to Santee Cooper's arrangement, intentions, and back-channel communications with Bechtel Power Corporation. Some of this activity directly conflicted with unambiguous representations Santee Cooper made to SCE&G during construction of the Project. These revelations have been troubling to our senior management team who endeavored after the merger of Dominion Energy and SCANA was completed to build productive working relationships with Santee Cooper, only to learn of multiple instances of Santee Cooper's deliberate misdirection and misinformation. And, this limited discovery simply scratches the surface on the fulsome discovery that will be required to address the disputes between Santee Cooper and SCE&G regarding the Project.

Santee Cooper has wrongfully refused to accept responsibility for the potential losses to its own ratepayers in *Cook*, and it consistently refuses to even acknowledge potential liability with any of the other Project-related matters now pending. The premise of Santee Cooper's refusal to live up to its obligations under the DCA – that Santee Cooper was left in the dark regarding the Project and unwittingly led astray by SCE&G – is utterly belied by the extensive contemporaneous documentary record and the sworn testimony of Santee Cooper's own employees. It is the objective truth that Santee Cooper was an integral, participating, and physically present partner with respect to every significant decision on the Project.

Notice of Intent to Institute Arbitration:

Dominion Energy cannot, and will not, countenance Santee Cooper's false narrative any longer. We have no choice but to formally notify Santee Cooper of the Project-related claims and demand that Santee Cooper comply with its obligations under the DCA to contribute its proportionate share of the costs associated with these claims. Specifically, the following actions relate either to the services provided by SCE&G under the DCA and/or to Santee Cooper's own Project-related conduct:

- *Lightsey v. SCE&G, et al.*, Case No. 2017-CP-25-0335 (Hampton County, S.C.);
- *Cook v. Santee Cooper, et al.*, Case No. 2017-CP-25-00348 (Hampton County, S.C.);
- *Glibowski, et al. v. SCANA, et al.*, Case No. 9:18-273-TLW (U.S. District Court, District of South Carolina);
- *Luquire, et al. v. SCE&G, et al.*, Case No. 2019-CP-38-957 (Orangeburg County, S.C.);
- *Arnett v. Fluor Enterprises, SCANA, SCE&G*, Case No. 0:19-00346-JMC (U.S. District Court, District of South Carolina) (the "WARN" class action);
- *Fluor Enterprises, Inc. and Fluor Daniel Maintenance Service, Inc. v. SCE&G, Santee Cooper*, Case No. 2018-CP-20-00343 (Fairfield County, S.C.);
- The South Carolina Department of Revenue ("DOR") sales tax assessment;
- Arbitration proceedings between SCE&G and Cameco Corporation; and
- The FILOT litigation instituted by Fairfield County.

SCE&G has been and continues to actively defend these matters. To date—excepting the actions where Santee Cooper has itself been named as a defendant—Santee Cooper has declined to participate in any meaningful way in the actions listed above. In the very limited, single circumstance where Santee Cooper has participated in one of these matters, Santee Cooper's actions were counterproductive to resolution efforts initiated by SCE&G, and they failed to account for the allocation of liability the parties agreed to in the DCA.

The DCA expressly provides Santee Cooper the right to "control its own litigation" (to the extent any claims are equal to or exceed $30 million, as do those listed above). DCA § 16. Santee Cooper also has the right to participate and approve of any settlement of these actions. *Id.* § 17. Santee Cooper's continued failure to participate in the defense of the above actions or its refusal to agree to any meaningful settlement of the above actions does not absolve Santee Cooper of liability for its proportionate share of responsibility for these actions. Specifically, to the extent Santee Cooper continues to choose not to participate in the defense of these matters, SCE&G reasonably views this inaction as a waiver of Santee Cooper's right to "control its own litigation" pursuant to Section 16 of the DCA. SCE&G also takes Santee Cooper's lack of participation as approval for SCE&G to defend and/or enter into any settlement of the above-listed actions without in any way impacting Santee Cooper's obligation to contribute to these Project-related costs.

SCE&G has rightfully expected that Santee Cooper participate in and coordinate with SCE&G in the defense of the actions listed above. However, to date, Santee Cooper has failed to honor its contractual obligations to do so, and Santee Cooper has failed to acknowledge its obligations under the DCA to cover its allocation of Project-related liability. Repeated efforts to engage with Santee Cooper, including meetings among senior management of Santee Cooper and SCE&G

(as Section 19.1 of the DCA requires in advance of instituting formal arbitration proceedings) have been fruitless. Consequently, SCE&G, now known as Dominion Energy South Carolina, Inc., reserves all of its rights under the DCA and hereby notifies Santee Cooper that it intends to initiate an arbitration proceeding seeking contribution from Santee Cooper for its share of project related litigation fees, costs, settlements, and expenses.

Should Santee Cooper desire additional information regarding the status of these matters or wishes to control the defense of them in any way, Santee Cooper should make that request known within ten days of this letter. Similarly, to the extent Santee Cooper believes any further meetings among senior management are required under the DCA, Santee Cooper should notify SCE&G within ten days, with dates and times at which Santee Cooper senior management is available for those discussions. Our respective legal teams have been in near daily contact over the last two years, so I trust that your team has all of the relevant contact information of Dominion Energy's in-house and outside counsel.

For more than a year, I have personally engaged with you on numerous occasions in a genuine effort to reach a mutually acceptable path forward. I have continually directed members of my in-house and outside counsel teams to work cooperatively with Santee Cooper to resolve these open litigation matters so that we can put all of our focus on serving our respective customers in the best interests of the State of South Carolina. It is a great disappointment that Santee Cooper has not reciprocated this effort.

Sincerely,

Carlos M. Brown
Senior Vice President and General Counsel