

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

**DOCKET NO. 2008-196-E**

IN RE:

Combined Application of South Carolina )  
Electric & Gas Company for Approval )  
of a Certificate of Environmental )  
Compatibility and Public Convenience and )  
Necessity and for a Base Load Review Order) )  
for the Construction and Operation of a )  
Nuclear Facility in Jenkinsville, South )  
Carolina. )  
\_\_\_\_\_ )

**MOTION TO FILE AND PRESENT**  
**PANEL TESTIMONY**

Pursuant to 26 S.C. Code Regs. 103-829 (Supp. 2007) and the South Carolina Rules of Civil Procedure, the South Carolina Office of Regulatory Staff (“ORS”) respectfully submits this Motion (“Motion”) to File and Present Panel Testimony in this docket for South Carolina Electric & Gas Company’s (“SCE&G’s”) Application for Approval of a Certificate of Environmental Compatibility and Public Convenience and Necessity and for a Base Load Review Order for the Construction and Operation of a Nuclear Facility in Jenkinsville, South Carolina (“Application”).

Pursuant to the South Carolina Base Load Review Act (“Act”), ORS’s duties are to safeguard the public interest in all matters arising under the Act, and in carrying out this duty, ORS has full audit rights related to all matters under the Act in reviewing the reasonableness and necessity of all costs.<sup>1</sup> In performing its duties, ORS’s Executive Director is authorized to hire

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<sup>1</sup> S.C. Code Ann. § 58-33-230(F) (Supp. 2007).

expert witnesses and consultants.<sup>2</sup> ORS utilized this authorization and hired consultants with specialized knowledge to assist ORS in its review and to testify during the merits hearing in this docket. Specifically, ORS hired a team of consultants from C.H. Guernsey & Company (“CHG”, “the consultants” or “the team members”) to evaluate, review and provide testimony on SCE&G’s Application.<sup>3</sup> ORS expects to present approximately eight witnesses during the merits hearing -- three ORS employees and five CHG team members.<sup>4</sup>

It is with this Motion that ORS requests to file and present the CHG team’s testimony as a panel. ORS does not seek to file and present the ORS employees’ testimony as a panel.

In support of said Motion, ORS would show the following:

The filing and presentation of witness testimony as a panel will allow specialized knowledge to be shared to the fullest extent, allow questions to be answered expeditiously, provide for an orderly procedure, and promote judicial economy.<sup>5</sup>

The review of SCE&G’s application requires specialized knowledge and because there are few consultants suitable to review nuclear matters, the team members worked together in its evaluation and review. The very nature of the subject – analyzing an application requesting to construct what very well may be the first nuclear reactor built in the United States in over a decade -- requires team, not individualized, review. Accordingly, the team, as a whole, shares knowledge of the Application. While the knowledge of the team members overlap, the panel’s

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<sup>2</sup> S.C. Code Ann. §58-33-295(B) (Supp. 2007).

<sup>3</sup> CHG subcontracted consultants to compose its team.

<sup>4</sup> ORS reserves the right to modify the number of witnesses it presents.

<sup>5</sup> Panel witnesses have previously been allowed before the Public Service Commission of South Carolina. *See* Application of Duke Power Company for an Integrated Resource Plan, Docket No. 1992-208-E, Order No. 93-8, pages 2-3. Further, a brief search of Public Utilities Reports shows that panel witnesses have been allowed in other state commissions such as the Georgia Public Service Commission, the North Carolina Public Utilities Commission, the Nevada Public Utilities Commission, the Texas Public Utilities Commission, Washington Utilities and Transportation Commission, the California Public Utilities Commission, the New Hampshire Public Utilities Commission, the New York Public Service Commission, and the Maryland Public Service Commission.

written testimony will have an index of witnesses' names and the area in which they are mostly familiar. While each consultant will be more familiar with one area of the Application than another, they will have obtained shared knowledge by virtue of having reviewed the Application together. If each consultant had reviewed the Application in isolation without conferring with other team members, it would have been inefficient and defeated the very purpose of having hired consultants.

All parties will have the opportunity to cross examine each consultant witness. ORS proposes that where the testimony of a panel of witnesses is presented, cross-examination may either be addressed to the panel as a whole, in which case any member of the panel may respond, or cross-examination may be directed to a specific panel member, in which case that particular panel member will respond.<sup>6</sup> Article I, § 22 of the South Carolina Constitution states that, "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard...." Generally, due process requires notice, the opportunity to be heard, the right to counsel, the right to raise issues or defenses, the right to contradict, and the right to cross examination before a fair and impartial judge who issues a ruling based on the evidence and the applicable law. Under the procedure proposed by ORS, all parties will have the right to cross examine any specific panel member or the panel as a whole. At no time will a party be limited in its right to cross examine ORS's witnesses.

Granting permission to utilize a panel will provide an orderly procedure, promote judicial economy and ensure all questions are answered expeditiously. S.C. Code Ann. § 58-2-225(A)

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<sup>6</sup> This procedure is also used by the Georgia Public Service Commission. *See* the Procedural and Scheduling Order filed in Georgia Public Service Commission Docket No. 24505 In Re: Georgia Power Company's Application for Approval of its 2007 Integrated Resource Plan and Docket No. 24506-U In Re: Georgia Power Company's Application for the Certification of a Proposal to Construct Three Combined Cycle Generating Units at Plant McDonough and an Application for the de-Certification of the Plant McDonough Coal Facility.

requires that hearings conducted before the Public Service Commission of South Carolina (“the Commission”) be conducted under dignified and orderly procedures designed to protect the rights of all parties. Further, 26 S.C. Regs. 103-842 requires that ORS present its case last after the applicant and all intervenors have presented their witnesses. Currently, there are nineteen individuals or entities listed as having party status in this docket. A panel would facilitate the hearing by making available all consultant witnesses at the same time to answer questions and by providing an opportunity for parties to ask their questions once instead of a multitude of times over the course of the hearing as different witnesses take the stand. Normally, a party would have to repeat its cross examination question until it was asked of the appropriate witness. The panel witnesses, on the other hand, would be available together and answer questions as they are presented instead of causing delay by responding that he or she is not the appropriate witness to answer the inquiry. In other hearings, an answer would be delayed until the appropriate witness takes the stand or is recalled to the stand to answer the question. Requiring each consultant witness to take the stand one at a time, would bring forth inherent limitations and unnecessary delay. Here, the panel would expedite the hearing for the Commission and all parties, would avoid unnecessary interruption and avoid unnecessary duplication of questions.

WHEREFORE, ORS requests the following relief:

1. That the Commission grant ORS's Motion to File and Present Panel Testimony;
2. In the alternate, if such entire Motion is not granted, that the Commission allow the consultants to testify as a panel before the Commission during the hearing on this Application set to begin December 1, 2008; and
3. That the Commission order any other appropriate action the Commission may deem necessary.

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Columbia, South Carolina  
September 26, 2008

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2008-196-E**

IN RE: Combined Application of South Carolina Electric  
and Gas Company for a Certificate of )  
Environmental Compatibility and Public ) **CERTIFICATE OF**  
Convenience and Necessity and for a Base Load ) **SERVICE**  
Review Order for the Construction and Operation )  
of a Nuclear Facility in Jenkinsville, South )  
Carolina )

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **MOTION TO FILE AND PRESENT PANEL TESTIMONY** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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September 26, 2008  
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