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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No. 2026-78-E

In re: Application of Duke Energy Progress, LLC to Have the
Terms of the Electric Rate Stabilization Adjustment Apply to
the Company's Rates and Charges for Retail Electric Service.....Petitioner.

**PETITION FOR ORIGINAL JURISDICTION AND
A COMMON-LAW WRIT OF CERTIORARI**

Pursuant to article V, section 5 of the South Carolina Constitution, section 14-3-310 of the South Carolina Code, and Rule 245(b), SCACR, Duke Energy Progress, LLC (DEP or the Company) respectfully petitions the Court in its original jurisdiction to issue a common-law writ of certiorari to review the of the Public Service Commission of South Carolina's (the Commission) July 15, 2026 order rejecting DEP's right to invoke the Rate Stabilization Adjustment (RSA) mechanism statutes for 2026. Although rates were to take effect August 1, 2026, the Commission wrongfully delayed DEP's (and any utility's) ability to use the RSA mechanism for a year under a novel, *sua sponte*, and flawed reading of the RSA statutes that arbitrarily departed—without explanation—from the Commission's longstanding interpretation of the nearly-identical RSA mechanism gas utilities have used without incident for two decades.

For the reasons that follow and because DEP lacks an effective remedy absent this Court's intervention, the Court should grant certiorari, vacate the Commission's order, and remand with instructions to consider the merits of the Company's application and its pending stipulation with the Office of Regulatory Staff (ORS) under the plain and unambiguous terms of the RSA statutes.

INTRODUCTION

In 2025, the General Assembly passed the South Carolina Energy Security Act. *See* 2025 S.C. Act No. 41. As part of that transformative legislation, it gave electric utilities the same ability to adjust rates through an RSA mechanism that natural gas utilities have used since 2005. *Compare id.* at § 10 (codified as amended at S.C. Code Ann. §§ 58-27-2700 through -2810), *with* 2005 S.C. Act No. 16 (codified as amended at S.C. Code Ann. §§ 58-5-400 through -480).

Under the RSA statutes, “[a] public utility providing retail electric service, in its discretion and at any time, may elect to have the terms of this article apply to its rates and charges for retail electric service, on a prospective basis, by filing a notice of the election.” S.C. Code Ann. § 58-27-2700. Here’s how the RSA mechanism process works:

Procedural Date	Procedural Milestone
No later than March 15	Utility files the annual monitoring report with the Commission and serves it on ORS. S.C. Code Ann. § 58-27-2760(1).
March 31	The Commission issues a notice of filing. S.C. Code Ann. § 58-27-2760(2).
May 15	Interested parties may petition to intervene. <i>Id.</i>
June 1	ORS files an audit report, and other parties may file verified written comments and submit evidence in response to the utility’s monitoring report. S.C. Code Ann. § 58-27-2760(3).
June 15	The utility files verified written comments and submits evidence related to the monitoring report and may request a non-evidentiary hearing. S.C. Code Ann. § 58-27-2760(4).
July 15	The Commission issues the initial order setting forth any changes required in the request to adjust rates. Absent an initial order, the rate adjustment request is deemed granted as filed. S.C. Code Ann. § 58-27-2760(5).
August 1	Any rate adjustments take effect for all bills rendered on or after the first billing cycle of August. S.C. Code Ann. § 58-27-2760(6).

Earlier this year, DEP became the first electric utility to file an application electing to have the RSA mechanism apply to the Company’s rates and charges for retail electric service. App’x p. 22. DEP’s March 13, 2026 filing should have triggered the streamlined and carefully structured ratemaking process under the RSA statutes. *See* S.C. Code Ann. § 58-27-2700.

Unfortunately, starting with its failure to issue a timely baseline order, the Commission has not followed that process. *See id.* (“Upon receipt of notice of the election, the commission shall proceed to make the findings and establish the ongoing procedures required for adjustments in base rates to be made under this article.”); *cf. Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (“‘shall’ or ‘must’ indicates” an “intent to enact a mandatory requirement”). When presented with a stipulation between DEP and ORS, App’x pp. 113–26, the Commission used its mistake to reject the Company’s right to invoke the RSA mechanism in two separate votes.

The Commission first voted to reject the Company’s RSA election for failure to file a June monitoring report. It issued a directive memorializing this vote on June 29, 2026, indicating a full order would follow. App’x p. 20. Given the impending July 15 statutory deadline, DEP asked the Commission to reconsider and vacate this ruling on an expedited basis. *See* App’x pp. 140–53; S.C. Code Ann. § 58-27-2760(5) (“On or before July 15 of each year, the commission shall issue an initial order setting forth any changes required in the utility’s request to adjust rates[.]”). The Commission then scheduled a special business meeting to address this issue.

During the July 13, 2026 special business meeting, the Commission—noting its failure to timely issue a baseline order—voted to vacate its prior ruling but impose a new extratextual requirement.¹ The Commission found “[p]rospective rate adjustments must be based on an

¹ Commissioner Belser, for her part, found “no procedural error by Duke in not filing the March 31 monitoring report by June 15th. If there was error in that report not being filed,” she thought “that lies squarely with this Commission for not having filed the baseline order as requested by

operating experience that occurred while the utility was operating pursuant to the eRSA, rather than the operational experience the utility may have had prior to electing to have the eRSA apply to its rates.” App’x p. 13, Order No. 2026-394 at 13, Docket No. 2026-78-E (S.C. Pub. Serv. Comm’n July 15, 2026). It held “[t]he operational data given from DEP for the calendar year ending December 31, 2025 predates DEP’s election into the eRSA and does not warrant a rate adjustment based on that data.” *Id.* at 16. And it said “all utilities would be subject to the same matching between the election of the eRSA and application of adjustments to their respective rates beginning in that calendar year” without giving the utilities a chance to be heard. *Id.* at 214:1–5.

Commissioner Belser dissented, explaining that “the Initial Order rests upon a flawed and misapplied interpretation of the statutory process established for the eRSA mechanism resulting in an error of law.” *Id.* at 17 (Belser, Comm’r, dissenting).

Although the Department of Consumer Affairs opposed DEP’s application for a host of reasons, App’x pp. 91–112, no party advanced either ground on which the Commission rejected DEP’s right to invoke the RSA mechanism. Yet “our system is designed around the premise that parties represented by competent counsel know what is best for them and are responsible for advancing the facts and argument entitling them to relief.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020). The Commission could have benefited from additional briefing on these issues, but it instead tied this case into procedural knots with *sua sponte* rulings.

At bottom, the Commission rejected the Company’s statutory right to invoke the RSA mechanism for 2026 in a final order. Though it is styled as an initial order and references a review process, that process cannot correct the errors of law plaguing the order. Nor could it change the

Duke.” App’x p. 209:1–6. Chair Williams said “to the extent that the Commission may or may have not fumbled the ball with issuing the . . . initial base order, we can ensure that that won’t happen again.” App’x pp. 209:24–210:2.

result: the order was based on a flawed view of the statute, excluded the financial monitoring information, and cannot “set forth any changes that are required to the rates approved in the Initial Order,” S.C. Code Ann. § 58-27-2790(A)(1), because it excluded audited monitoring information and did not approve rates. So there’s nothing to review in an evidentiary hearing by December 31.

In its haste to erect procedural barriers to the RSA mechanism, the Commission ignored the party-presentation principle, misread and rewrote the law, acted arbitrarily and capriciously, and violated the Company’s due process rights. Because rates “shall take effect for all bills rendered on or after the first billing cycle of August,” S.C. Code Ann. § 58-27-2760(6), DEP is therefore constrained to ask this Court to correct course on these fundamental errors of law now.

STANDARD

This Court “may use a common-law writ of certiorari to correct errors of law, particularly where a trial court exceeded its authority.” *State v. Price*, 441 S.C. 423, 433, 895 S.E.2d 633, 638 (2023); *see also* S.C. CONST. art. V, § 5 (“The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs.”); S.C. Code Ann. § 14-3-310 (same).

“A writ of certiorari is used to keep an inferior tribunal within the scope of its powers.” *City of Columbia v. S.C. Pub. Serv. Comm’n*, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963). The Court has granted the writ in “exceptional circumstances” where resolution “best serves the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.” *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471–72, 674 S.E.2d 154, 160–61 (2009). It is “generally is used only in the absence of other effective relief.” *Rowe v. City of West Columbia*, 334 S.C. 400, 407–08, 513 S.E.2d 379, 383 (Ct. App. 1999). “On certiorari, review by the Court is confined to the correction of errors of law.” *Laffitte*, 381 S.C. at

472, 674 S.E.2d at 161. “Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.” *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008); *see also* 2026 S.C. Act No. 251, § 5 (“[T]he court shall not defer to the agency’s interpretation of the statute or regulation and instead shall interpret the statute or regulation de novo.” (codified as amended at S.C. Code Ann. § 1-23-380(b))).

ARGUMENT

I. The Commission committed errors of law and exceeded its authority under the RSA.

“As a creature of statutes, regulatory bodies . . . have only the authority granted them by the” General Assembly, and “[a]ny action taken . . . outside of [their] statutory and regulatory authority is null and void.” *Responsible Econ. Dev. v. S.C. Dep’t of Health & Envtl. Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007).

In applying the RSA mechanism to electric utilities in Act 41, the General Assembly created one of the most procedurally precise statutory schemes in Title 58. *See* Table, *supra*, at 2; S.C. Code Ann. §§ 58-27-2700 & -2760(3)–(6). But the General Assembly wasn’t starting from a blank canvas. In 2005, it enacted the Natural Gas Rate Stabilization Act. *See* 2005 S.C. Act No. 16, at § 1 (codified as amended at S.C. Code Ann. §§ 58-5-400 through -480). Thus, in passing Act 41, the General Assembly had the benefit of ORS’s and the Commission’s experience with and treatment of the gas RSA mechanism over the last 20 years.² *Cf. State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003) (“There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes

² *See, e.g.*, Order No. 2005-567 at 4, Docket No. 2005-125-G (S.C. Pub. Serv. Comm’n Oct. 13, 2005) (authorizing Piedmont Natural Gas Company, Inc. to implement newly adjusted rates “for bills rendered on and after the first billing cycle in November 2005” in the same calendar year the election was filed); Order No. 2005-619 at 7, Docket No. 2005-113-G (S.C. Pub. Serv. Comm’n Oct. 31, 2005) (same for South Carolina Electric & Gas Company).

are enacted concerning related subjects.”); *Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 215, 423 S.E.2d 101, 104 (1992) (citing with approval *Grove City College v. Bell*, 465 U.S. 555 (1984), where the U.S. Supreme Court said reenacting a statute with knowledge of administrative interpretation of it is a strong indication of legislative approval of that interpretation).

Here, the Commission failed to issue a timely baseline order—which would have triggered filing monitoring reports—and sought to use the absence of a June monitoring report against DEP. After vacating that *sua sponte* decision, the Commission imposed another, never-before-argued requirement. *Cf. Margolin v. Nat’l Ass’n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (summarily reversing for “violating th[e] party presentation principle” as courts “rely on the parties to ‘frame the issues for decision’ and decide ‘only the questions presented’” (quoting *Sineneng-Smith*, 590 U.S. at 375–76)). It held that “[p]rospective rate adjustments must be based on an operating experience that occurred while the utility was operating pursuant to the eRSA,” not one it “had prior to electing to have the eRSA apply.” Order No. 2026-394 at 13. As Commissioner Belser noted, that is not how RSA works. *See id.* at 17 (Belser, Comm’r, dissenting).

“The primary rule of statutory construction is to ascertain the intent of the General Assembly.” *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 497, 854 S.E.2d 836, 838 (2021). “Under the plain meaning rule,” courts have “no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute.” *Creswick v. Univ. of S.C.*, 434 S.C. 77, 81-82, 862 S.E.2d 706, 708 (2021) (per curiam). “[A] court cannot rewrite the statute and inject matters into it which are not in the [General Assembly’s] language.” *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000).

Pursuant to the RSA provision at issue here, “[a] public utility providing retail electric service, *in its discretion and at any time*, may elect to have the terms of this article apply to its

rates and charges for retail electric service, on a prospective basis, by filing a notice of the election with the commission” and serving a copy on ORS. S.C. Code Ann. § 58-27-2700 (emphasis added). Of course, the gas RSA provision is no different. *See* S.C. Code Ann. § 58-4-410 (stating “[a] public utility providing natural gas distribution service, *in its discretion and at anytime*, may elect to have the terms of this article apply to its rates and charges for gas distribution service, on a prospective basis, by filing a notice of the election” (emphasis added)).

For the first time in two decades, however, the Commission found “on a prospective basis” applied not only to the RSA rate adjustment but also—contrary to established ratemaking principles—the operational data underpinning it. *See* App’x pp. 13–14; *contra* Order Nos. 2005-567 & 2005-619 (issuing initial orders the same calendar year RSA election was made). In doing so, the Commission contravened the canons of statutory construction and arbitrarily departed from its longstanding interpretation of the identical RSA statute governing gas utilities.

The Commission’s peculiar reading of “prospective” cannot hold water. Nowhere do the RSA statutes say a utility must wait a year after electing RSA before receiving a rate adjustment. Quite the contrary: they say a utility may file an election “in its discretion at any time,” S.C. Code Ann. § 58-27-2700, and the rate review and adjustment procedures follow. By reading “on a prospective basis” in isolation, the Commission robbed “in its discretion and at any time” of any meaning. *See Duke Energy Corp. v. S.C. Dep’t of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (a court “should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose”).

If the General Assembly intended a one-year delay for adjustments after the RSA election, it would have had no reason to establish a July 15 deadline, a deemed-granted remedy, or an August implementation date during the RSA election year. *See* S.C. Code Ann. § 58-27-2760(5)–(6); *cf.*

Senate ex rel. Leatherman v. McMaster, 425 S.C. 315, 322, 821 S.E.2d 908, 911-12 (2018) (statutes “must be read as a whole[,] and sections which are part of the same general statutory law must be construed together and each one given effect” (quoting *CFRE, LLC. v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011))); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (“The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.”).

Yet the Commission’s order renders these provisions useless and creates a conflict where none exists. *Cf. Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (“statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result”). An RSA election is designed to smooth out rate changes between rate cases by providing a streamlined process for making adjustments on an annual basis. It makes no sense to deprive ratepayers and the utility of a year of reaping those benefits when “the utility must file an application for a general rate proceeding every five years after [the RSA] election.” S.C. Code Ann. § 58-27-5700; *cf. Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (courts “will not construe a statute in a way which leads to an absurd result or renders it meaningless”).

Read in its proper context, “on a prospective basis,” S.C. Code Ann. § 58-27-2700, simply reinforces “the firm principle that rate-making is prospective rather than retroactive.” *S.C. Elec. & Gas Co. v. Pub. Serv. Comm’n*, 275 S.C. 487, 491, 272 S.E.2d 793, 795 (1980). The term “prospective” modifies, and comes directly after, the phrase “rates and charges for retail electric service.” S.C. Code Ann. § 58-27-2700; *cf. Luce v. Lexington Cnty. Health Servs. Dist., Inc.*, 446 S.C. 319, 325, 919 S.E.2d 558, 562 (2025) (“The meaning of words may be known by the company they keep.”). It has nothing to do with the operational data used: those words aren’t in the statute.

While the Commission sought to distinguish data used in rate cases versus RSA mechanism cases in a conclusory sentence, App’x p. 14, the statute draws no such distinction. In fact, “[i]n carrying out the procedures established” under the RSA mechanism, the General Assembly said “the commission shall rely upon and utilize the approved rates, charges, revenues, expenses, capital structure, returns, and other matters established in the public utility’s most recent general rate proceeding pursuant to Section 58-27-860.” S.C. Code Ann. § 58-27-2700.

After all, as the Court has observed, “[t]he historical test year recognizes that ratemaking is a prospective process in which customers who currently use the system pay for its production, rather than requiring future ratepayers to pay for past use.” *Duke Energy Carolinas, LLC v. S.C. Office of Reg. Staff*, 434 S.C. 392, 426, 864 S.E.2d 873, 891 (2021). All ratemaking is prospective but based on prior data. That is how ratemaking works, regardless of whether it arises under the RSA mechanism or in base rate case proceeding, and that is the only point the General Assembly sought to reinforce in section 58-27-2700.

Still, on the Commission’s reading, RSA proceedings will take over sixteen months—between the March 15 election based upon the prior calendar year’s monitoring information and August 1 the following year—before rates can take effect, even though more complex base rate cases are decided in six months. *See* S.C. Code Ann. 58-27-870(B). Requiring DEP to wait until 2027 to implement any adjustment based on costs already audited and reviewed in this proceeding postpones recovery, increases financing costs, and ultimately will require customers to bear more carrying costs. That is anathema to the General Assembly’s policy objectives and the streamlined process it created. *See* S.C. Code Ann. § 58-27-2760(1)–(6); *Hinton v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004) (“Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in

conjunction with the purpose of the whole statute and the policy of the law.”); *cf.* 2005 S.C. Act No. 16 (natural gas RSA is “a more streamlined and predictable ratemaking mechanism”).

In adopting this novel procedural hurdle, the Commission has failed to acknowledge or wrestle with its longstanding interpretation of the identical gas RSA election statute. *See Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985) (“A decision is arbitrary if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.”).

For these reasons, the Commission’s decision cannot stand. As Commissioner Belser noted, while some may not like the Company’s RSA election, “it’s clear that [DEP] was allowed to elect, and they’ve done so, and . . . we need to proceed.” App’x p. 209:17–18.³

II. DEP has no other effective relief under the circumstances.

In its order, the Commission notes there is “a path of review of the Initial Order” set forth in the RSA. App’x p. 15. To be sure, the RSA statutes provide the following review process:

Within thirty days of the issuance of an Initial Order pursuant to Section 58-27-2760, or within thirty days of the failure by the commission to issue an order as required pursuant to Section 58-27-2760, any aggrieved party may petition the commission for review of the Initial Order or failure to issue an order and all interested parties of record shall have a right to be heard at an evidentiary hearing on the matter. The party shall serve a copy of such petition on the Office of Regulatory Staff and other parties of record on the same day and by the same means as it is provided to the commission.

S.C. Code Ann. § 58-27-2780.

³ *Cf. S.C. Pub. Int. Found. v. Wilson*, 447 S.C. 203, 217, 924 S.E.2d 163, 170 (2025) (“Courts must sometimes walk the walls separating the powers of the three branches, but . . . their duties and responsibilities are limited to the interpretation of a statute, and [they] cannot rewrite a statute to suit [their] own policy preferences.”); *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 144, 628 S.E.2d 38, 42 (2006) (stating even if “troubled by [a] result,” courts are “not at liberty to rewrite the statutes, and any amendment must come from the [General Assembly]”).

(A) After conducting the hearing required by Section 58-27-2780, the commission shall issue a final order that:

(1) sets forth any changes that are required to the rates approved in the Initial Order issued under Section 58-27-2760(5);

(2) determines the amount of any overcollection or undercollection by the utility that resulted from collection of the rates authorized in the Initial Order as compared to the rates authorized in the final order issued under this section; and

(3) establishes a credit to refund the amount of any overcollection, or a surcharge to collect the amount of any undercollection that arose during the time that the rates approved in the Initial Order were collected, and requires the utility to apply the credit or surcharge until such time as the overcollection or undercollection is exhausted.

(B) The commission shall issue any final order required under this section by December 31 of the year in which the monitoring report was filed. The order shall make the corrected rates and the credit or surcharge, if any, effective as of the first billing cycle of May of that year.

(C) The provisions of Sections 58-27-2150 and 58-27-2310 concerning rehearing and appeal shall apply to the orders issued pursuant to this section.

S.C. Code Ann. § 58-27-2790. “The review of Initial Orders pursuant to Section 58-27-2780 and Section 58-27-2790 is limited to issues related to compliance with the terms of this article.” S.C. Code Ann. § 58-27-2800.

But here, the Commission suspended the Company’s 2026 election for a year and set aside the Company’s audited financial information solely on legal grounds. Come 2027, the financial monitoring information audited and considered for a rate adjustment will be different. So there is nothing factual for the Commission to review in an evidentiary hearing now to “make the Company whole.” App’x p. 15. Given that the Commission issued a final order rejecting the Company’s right to invoke the RSA mechanism for 2026, there are no “compliance” steps DEP could take for

review of this decision. S.C. Code Ann. § 58-27-2800. And this “review” wouldn’t be complete for another six months, until December 31. *See* S.C. Code Ann. § 58-27-2790(B).

The post-initial order grievance process makes sense only when reviewing an order on the merits of a rate adjustment. Because the Commission’s order prevents the Company from invoking the RSA mechanism in 2026 and provides that the financial review process will not be undertaken until 2027, it is a final order that falls outside the RSA process. Following the review process established for RSA rate adjustments would therefore be an exercise in futility. *See, e.g., Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010) (“A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act.”). Waiting six months for the result not to change is prejudicial, self-defeating, and contravenes the RSA mechanism. That cannot be what the General Assembly intended.

Because DEP has no effective remedy for review of the Commission’s erroneous legal decision, a common-law writ of certiorari is warranted. *See Rowe*, 334 S.C. at 407–08, 513 S.E.2d at 383 (noting the writ “generally is used only in the absence of other effective relief”); *Storm M. H. v. Charleston Cnty. Bd. of Trs.*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (addressing the merits and finding futility when a “decision was certain to be unfavorable,” “administrative remedies would have been inadequate given the immediacy” of the relevant “date and the potential delay of an administrative appeal,” and “a resolution would promote judicial economy”).

III. Resolving this novel question of significant public interest now promotes judicial economy.

From the state constitution to the statutes governing electric service, utility regulation is all about the public interest. *See* S.C. CONST. art. IX, § 1 (“The General Assembly shall provide for appropriate regulation of . . . publicly owned utilities . . . serving the public as and to the extent

required by the public interest.”); S.C. Code Ann. § 58-4-10(B)(1)–(2) (creating ORS and requiring it to “represent the public interest of South Carolina before the commission as it pertains to . . . the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer,” and “preservation of the continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services”); 1980 S.C. Act No. 440, at § 1 (finding “[t]he regulation of . . . utilities is one of the Commission’s most important functions and one that fundamentally affects the daily lives of the citizens of this State”).

As “the West Committee recognized,” “agency decisions often ‘are more significant than laws enacted by the General Assembly or decisions made by the courts.’” *McIntyre v. Sec. Comm’r of S.C.*, 425 S.C. 439, 446, 823 S.E.2d 193, 196 (Ct. App. 2018) (quoting FINAL REPORT OF THE COMMITTEE TO MAKE A STUDY OF THE SOUTH CAROLINA CONSTITUTION OF 1895, at 21 (1969)). That animated the ultimate adoption of article I, section 22 of the South Carolina Constitution, which provides “an additional guarantee of important due process rights.” *Garris v. Governing Bd. of Reins. Facility*, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998).

Here, the Commission raised an issue on its own (twice) to deny the Company its lawful right to invoke the RSA mechanism without “notice” of the issue or “an opportunity to be heard.” S.C. CONST art. I, § 22; *see also* S.C. Code Ann. § 1-23-320(E) (“Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.”). What is more, the Commission said its novel construction of the RSA statute applies to “all utilities.” App’x p. 12. Make no mistake: this was a final rejection for 2026 on legal grounds. And the Commission cannot insulate it from review by invoking an evidentiary process that won’t change the outcome. *Cf. Joseph v. S.C. Dep’t of Labor, Licensing & Reg.*, 417 S.C. 436, 459, 790 S.E.2d 763, 775 (2016) (Kittredge, J., concurring) (noting “the dangers posed by an unchecked administrative state”).

Without timely recovery of the Company's prudently incurred costs, customers will face greater rate increases in the long run. DEP, for example, had approximately \$137 million of construction work in progress in the 2025 test period associated with investments made to serve customers. App'x pp. 155, 162. If recovery is deferred, those balances will continue to accrue an allowance for funds used during construction (AFUDC), increasing the amount ultimately added to plant in service and included in rates in the Company's post-merger rate proceeding next year. *Id.* DEP estimates the Commission's interpretation would result in approximately \$5.9 million of additional AFUDC alone. *Id.* As a result, customers would pay more—not less—due to the delay. Yet the General Assembly made RSA available to electric utilities precisely to avoid this scenario.

DEP appreciates the nature of its request and does “not lightly seek review” from this Court. *Henson v. S.C. Dep't of Corr.*, Op. No. 28343 (S.C. Sup. Ct. July 22, 2026) (Howard Adv. Sh. No. 27 at 16). But DEP is stuck between a procedural rock and a hard place, and the Company must protect its rights. Because rates are supposed to become effective August 1 and the Commission arbitrarily deprived DEP of a lawful RSA election, the Company has no other recourse for meaningful review. Neither a delayed RSA election nor the next rate case can cure this erroneous legal decision that will govern the RSA process for all utilities going forward.

Under these “exceptional circumstances,” a prompt resolution from the Court “best serves the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.” *Laffitte*, 381 S.C. at 471–72, 674 S.E.2d at 160–61. And it offers finality for the parties and DEP's customers.

CONCLUSION

For these reasons, the Court should issue a common-law writ of certiorari in its original jurisdiction to correct the Commission's errors of law, set an expedited briefing schedule, vacate

the Commission's order, and remand with instructions for the Commission to follow the RSA statute as passed by the General Assembly and consider the merits of DEP's settlement with ORS.

Respectfully submitted,

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