

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM THE PUBLIC SERVICE COMMISSION **SC. SUPREME COURT**

Docket No. 2013-392-E
Appellate Case No. 2016-000839

Ex Parte: South Carolina Coastal Conservation League, and Southern Alliance for Clean Energy, Petitioners.

v.

Duke Energy Carolinas, LLC, South Carolina Office of Regulatory Staff, North Carolina Electric Membership Corporation, South Carolina Department of Health and Environmental Control, and Invenergy Thermal Development, LLC, Respondents.

In Re: Joint Application of Duke Energy Carolinas, LLC and North Carolina Electric Membership Corporation for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 752 MW Combined Generating Plant Near Anderson, SC.

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE
SOUTH CAROLINA SMALL BUSINESS CHAMBER OF COMMERCE**

TO: THE SUPREME COURT OF SOUTH CAROLINA AND ALL PARTIES AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that the South Carolina Small Business Chamber of Commerce (“SCSBCC”) hereby moves the Supreme Court for an order allowing it to file the accompanying Brief of Amicus Curiae in support of the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy’s Petition for Writ of Certiorari in this case. In support of this motion, the SCSBCC submits the following:

This case presents novel questions of first impression concerning one of South Carolina's most important statutes protecting small-business and consumers, the Utility Facility Siting and Environmental Protection Act, S.C. Code Ann. § 58-33-10 *et seq.* ("the Act").

The Act is a central pillar of the "regulatory compact" in South Carolina, whereby privately owned utility companies were given exclusive electrical service territories in return for extensive oversight by the Public Service Commission ("PSC") to protect customers. Unless corrected, the errors below would severely weaken the PSC's ability to reduce the costs and impacts of large power plants.

Under the Act, the PSC cannot approve a major power plant "unless" it makes six enumerated determinations. In this case, the PSC focused on one determination – whether the facility will meet a capacity "need" – to the exclusion of others, namely its duty to determine whether the facility's impacts are justified considering the "economics of various alternatives." *Id.* § 58-33-160(1)(a), (c). As a result, the Commission failed to consider a solar energy component that was proposed to lower the Lee Gas Plant's impacts and costs to ratepayers.

The Kentucky Court of Appeals recently reviewed a similar situation. It called a utility commission's failure to undertake a required consumer-protection determination in approving an expensive power plant for which residents and businesses must pay "a complete abdication" of the commission's statutory responsibility, justifying reversal. Kentucky Industrial Utility Customers v. Kentucky Public Service Commission et al., 2016 WL 3886312 (Ky Ct. App. July 15, 2016) (attached as Exhibit 1).

In this case, the PSC also construed the Act as limiting it from making more than minor modifications to save ratepayers money. But the statute explicitly authorizes the Commission to make modifications it "may deem appropriate." *Id.* § 58-33-160(1). The interpretation adopted

below improperly handcuffs the agency in carrying out its consumer-protection, cost-saving mission, and is plainly inconsistent with statutory language and intent.

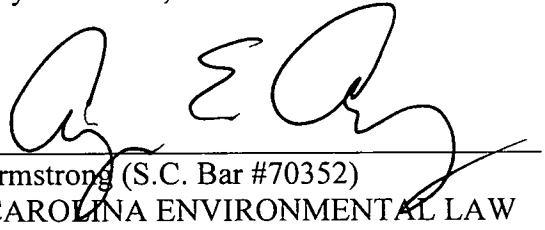
The South Carolina Small Business Chamber of Commerce (“SCSBCC”) is a statewide advocacy organization formed in 2000 to represent the interests of small businesses. It is recognized as the primary organization working on behalf of small businesses on all matters regarding electricity/gas rates and related issues such as net metering that are regulated by the PSC.

Since 2002, the SCSBCC or its president, Frank Knapp Jr., have successfully intervened in eight PSC hearings on petitions filed by either South Carolina Electric & Gas or Duke Power to increase electricity or gas rates. In addition, Mr. Knapp was an intervenor in the PSC’s 2014 hearing on net metering policy and has intervened in SCE&G’s 2016 petition to the PSC for approval of additional construction costs for its nuclear plants.

The SCSBCC represents its members who are ratepayers and who will be directly impacted by the outcome of this litigation.

The Court of Appeals and PSC rulings thwart the regime enacted by the General Assembly to protect South Carolina consumers, including SCSBCC members, and its natural resources. Because this case is of state-wide significance and presents important, novel issues of statutory construction, the South Carolina Small Business Chamber of Commerce seeks permission to file the accompanying Amicus Brief in Support of the South Carolina Coastal Conservation League and the Southern Alliance for Clean Energy’s Petition for Writ of Certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amy E. Armstrong', written over a horizontal line.

Amy E. Armstrong (S.C. Bar #70352)
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CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the Motion for Leave to File Amicus Brief of the South Carolina Small Business Chamber of Commerce upon all counsel by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

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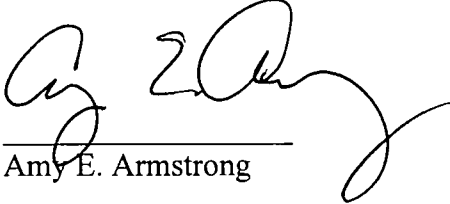
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September 6, 2016

Georgetown, South Carolina