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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Appellate Case No. 2018-001165

Public Service Commission Docket No. 2018-2-E

South Carolina Coastal Conservation League and
Southern Alliance for Clean Energy, ... Appellants,

v.

Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas Company, CMC Steel South Carolina, South Carolina Energy Users Committee, South Carolina Solar Business Alliance, LLC, Southern Current, LLC, and South Carolina Office of Regulatory Staff, ... Respondents;

and

South Carolina Solar Business Alliance, LLC, ... Appellants,

v.

South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas Company, CMC Steel South Carolina, South Carolina Energy Users Committee, Southern Current, LLC, and South Carolina Office of Regulatory Staff,

Of whom, Dominion Energy South Carolina, Inc. f/k/a South Carolina Electric & Gas Company and South Carolina Office of Regulatory Staff are..... Respondents.

RETURN TO PETITION FOR REHEARING

Pursuant to the Court's request under Rule 221(a) of the South Carolina Appellate Court Rules ("SCACR"), and its subsequent Order dated October 16, 2020, extending the time to file, and in accordance with Rule 240(e), SCACR, Respondent Dominion Energy South Carolina, Inc. ("Dominion") submits the within Return in opposition to the Petition for Rehearing ("Petition") of *South Carolina Coastal Conservation League, et al. v. Dominion Energy South Carolina, Inc*., Opinion No. 27994 (S.C. Sup. Ct. filed September 9, 2020, Shearouse Adv. Sht. No. 35 at 53) ("Opinion"), filed by Appellants South Carolina Coastal Conservation League and Southern Alliance for Clean Energy ("Conservation Groups" or "Appellants") on October 9, 2020.

I. INTRODUCTION

The Opinion thoroughly and correctly examines the justiciability of the appeal before it given the articulated interests of the parties, the pertinent law, and the indisputable effect that subsequent administrative proceedings at the Public Service Commission ("PSC") pursuant to statutory amendments have had on the continuing viability of the subject matter before the Court. The Petition present no grounds under this Court's articulated standard for rehearing to question or disturb that result. Rather than demonstrating that an argument has been overlooked or misapprehended, the Petition instead entreats this Court to rewrite the Opinion to give Appellants a pass on standing, claiming -- incorrectly -- that the Opinion's correct legal analysis may make it difficult for the Conservation Groups to meet their burden of demonstrating standing in future cases. In fact, the Petition concedes that the appeal is moot, declining to challenge the Court's determination or analysis on that issue, but asks the Court to simply extend the mootness determination to all of the claims, thereby ignoring the clear distinction recognized by the Opinion between the PR-1 and PR-2 rates set by the underlying order of the PSC which necessitated the Court's standing analysis in the first place.

In refusing to accept the Court's clear statement of law as to the applicable rule and statute governing appellate standing in this matter, the Conservation Groups subject the Court to a wholly unnecessary and an incredibly self-indulgent and meritless argument. On the standing question sought to be overturned, Appellants assert that the Court must either recognize the Conservation Groups' appellate standing for the protection of "ratepayer" interests in PSC proceedings conducted to implement the Federal Public Utilities Regulatory Policy Act of 1978, 16 U.S.C.A. §§ 796, *et seq*. ("PURPA") and in other proceedings before the PSC, or "ratepayers [will be] stripped of their rights to contest Commission decisions." Pet. at 2. The Court recognizes hyperbole of this sort for what it is, but more to the point, this assertion conveniently ignores the fact that the interests of persons or entities which may actually be aggrieved by a PSC determination or which otherwise may be real parties in interest in such proceedings will always be entitled to be represented in a challenge to the PSC's determinations via judicial review under current law as explicated in the Opinion. For this reason and others discussed below, Dominion submits that the Petition should be denied.

II. ARGUMENT

In order to prevail on a petition for rehearing, a party must state with particularity the points of its ***argument*** that the Court is alleged to have overlooked or misapprehended. Rule 221(a), SCACR, "[a] petition for rehearing shall be in accordance with Rule 240, and shall state **with particularity the points supposed to have been overlooked or misapprehended** by the court." (Emphasis added.) *Compare*, e.g., Pet. at 2 ("Rule 221(a), SCACR, provides that a party who believes the Court misapprehended **points of law or fact** is authorized to petition the Court for hearing") (emphasis added). And, while a purpose of rehearing is "to aid the court in deciding correctly a case heard by it" as the Conservation Groups observe, *see* Petition at 2 (*citing Arnold*

v. Carolina Power & Light Company, 168 S.C. 163, ___, 167 S.E.234, 238 (1933)), that is not the standard governing the application of Rule 221(a). Rather, "in order to prevail on a petition for rehearing, [the Conservation Groups] must demonstrate the Court overlooked or misapprehended **their argument**." *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001) (emphasis added).

Because the Conservation Groups never identify any preserved argument that the Court has overlooked or misapprehended, the Court should deny the Petition on that basis alone. *See* Jean H. Toal, Amelia Waring Walker, & Margaret E. Baker, *Appellate Practice in South Carolina* 391 (2016) ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.") (citing *Kennedy*, *Arnold*, *supra*). Moreover, Appellants' arguments do not in any event merit rehearing as: (a) they fail to recognize the core holding of the Opinion, *i.e.*, that under South Carolina law, to possess appellate standing for purposes of a challenge to the avoided cost rates that an electric utility is required to pay to a qualifying facility ("QF") under PURPA, the challenging party is required to be entitled to payment of that rate; (b) they merely repeat arguments that have already been advanced and rejected by the Court; or (c) they make new arguments that are unpreserved.

In sum, the Conservation Groups are not entitled to rehearing of the Opinion because their Petition does not comport with the Court's standards for rehearing. Their arguments -- to the extent they were raised and presented in the Conservation Groups' return in opposition to Dominion's motion to dismiss -- have been fully addressed in the Opinion. Accordingly, the Petition should be denied.

A. Appellants' Own Argument Establishes That Rehearing Is Not Warranted

Appellants state that they "do not seek rehearing on mootness." Petition at 2. To the contrary, Appellants assert that the fact that the Court held that the appeal of the South Carolina Solar Business Alliance ("SCSBA") to be moot rendered its holding that the Conservation Groups lacked standing "unnecessary." Petition at 3. *See also* Petition at 11 ("the Court should withdraw the Opinion's holding regarding standing" because it "is unnecessary given the finding of mootness"). Dominion submits that this assertion is an example of a litigant being "hoist with its own petard."[1]

The unchallenged bases for the Court's holding that the SCSBA appeal is moot are twofold: first, all issues pertaining to the PR-2 rate are mooted because the PSC has subsequently acted to establish avoided cost rates "in light of the requirements [of the Energy Freedom Act]" and, thus, Dominion's "Rate PR-2 is no longer necessary or required." *See* Opinion at 58. And, second, because "not one of the forty qualifying facilities [which had been paid the Dominion PR-1 rate under appeal] is owned by or known to be connected with any member of [the SCSBA]," the appeal is moot as to the PR-1 rate. Opinion at 59. The failure of the Conservation Groups to seek rehearing of the Court's mootness holding actually reinforces the necessity of the Court's standing holding as this failure recognizes that Appellants' are not QFs who will be paid an avoided cost rate for electricity sold to Dominion yet they insist upon seeking appellate relief from the PSC's determination of that rate anyway.

[1] *See Gathings v. Robertson Brokerage Co., Inc.*, 295 S.C. 112, 118, 367 S.E.2d 423, 427, n.3 (Ct. App. 1988) (citing William Shakespeare, *Hamlet*, act iii, line 207) (applying Rules 14 and 18, SCRCP, in an opinion affirming the trial court's dismissal of counterclaims on the grounds of *res judicata* where the counterclaiming defendant could have raised them in a prior action in which it had made unrelated third-party claims against the same party that was subject of the counterclaims in a later action).

More importantly, even assuming Appellants do have appellate standing (which the Court correctly concluded they do not), their failure to seek rehearing of the Court's mootness holding means that no relief is available to them on this motion (or now would be in the underlying appeal if it were to proceed) as the propriety of the PSC's avoided cost rate determination as reflected in both the PR-1 and PR-2 rates is now merely an academic exercise that can have "no practical legal effect." *See* Opinion at 59 (citing *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 863 (1996) (internal citation omitted)). Accordingly, the Petition should therefore be denied without more because "whatever doesn't make any difference, doesn't matter." *See McCall v. Finley*, 294, S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987). *Cf.* Rule 220(c), SCACR (authorizing the Court to affirm on any grounds appearing in the record).[2]

B. The Opinion Is Factually Correct

The Conservation Groups contend that the Opinion "is factually incorrect" because it "reasons …[that] ratepayer bill impacts from avoided cost rates … 'must come from the PSC's ruling in a general ratemaking proceeding, not from the PSC's ruling to set rates for renewable energy under PURPA.'" Petition at 3. This contention fails to appreciate both the general and specific contexts in which the Opinion reaches this conclusion and, therefore, provides no basis for reconsideration.

[2] Moreover, in asserting that the Court should not have reached standing because the case is moot, Appellants fail to recognize this Court's longstanding jurisprudence establishing that standing is a fundamental requirement constituting a threshold issue for justiciability. *See, e.g., Bodman v. State*, 403 S.C. 60, 66-67, 742 S.E.2d 363, 366 (2013) ("**[s]tanding** to sue is a fundamental requirement in instituting an action. Under our current jurisprudence, there are three ways in which a party can acquire this fundamental **threshold** of **standing")**. (Emphasis in original, internal citations omitted.) Thus, it is not only appropriate but necessary that the Court first address standing before it reaches the related concept of mootness as it did in the Opinion.

As to the general context, the Court's reasoning is expressed in connection with its holding that the Conservation Groups are neither "aggrieved" by the PSC's decision nor are "parties in interest" for purposes of appellate standing since neither they nor their members are QFs entitled to receive payment of the avoided cost rate from Dominion. *See* Opinion at 57 ("[n]either organization is 'aggrieved' or a 'party in interest' because the [avoided cost] rates set by the PSC affect only qualifying facilities. The [avoided cost] rates do not affect the environmental or consumer interests represented by the two organizations").[3] Thus, in the general context of this portion of the Opinion, there can be no ratepayer interests as the subject rate is one paid to QFs (which the Conservation Groups are not) and not rates paid by Dominion's customers.[4] With respect to the specific context, the Conservation Groups (understandably) gloss over the Opinion's discussion of the impact of an avoided cost determination on ratepayers, which for purposes of

[3] Similarly, the Conservation Groups ignore the fact that they do not represent "ratepayer" interests which, by statute, were represented by below by the South Carolina Office of Regulatory Staff ("ORS"). *See* S.C. Code Ann. §58-4-10(B). ORS did not appeal from the PSC's orders below and, therefore, any ratepayer interests that could be at play in the context of an avoided cost proceeding were represented at the administrative level and the determination of how those interests would be served was finally resolved by the lack of any appeal by ORS. Moreover, in future proceedings under the Energy Freedom Act, ratepayer interests may be represented not only by ORS, but also by the South Carolina Department of Consumer Affairs. *See* S.C. Code Ann. § 37-6-604 (C). As explained at pp. 12-13, *infra*, these statutes give lie to Appellants' alarm that the Opinion "stripped ratepayers of their rights." Pet. at 2.

[4] In other words, the setting of the avoided cost rate to QFs by the PSC in this proceeding was *in addition to* its review of the routine fuel proceeding. Appellants attempt to confuse the issue by asserting that a general ratepayer interest is implicated by the holding of the Opinion when it is not, as the only issue that Appellants have appealed is the discrete holding of the PSC as to the avoided cost rate to QFs. Further, while the fuel rates were permitted to be charged immediately, the avoided cost rate could not be recovered from customers immediately because at the time the fuel order was issued, Dominion had not entered into or paid any customers for energy at the new avoided cost rate, so there was nothing to recover. Also, as the Opinion recognized, the General Assembly has now required that the avoided cost rate to be charged to QFs be set in a different proceeding from the fuel hearing.

PURPA, must leave ratepayers economically indifferent as to the source of Dominion's energy.[5] *See* Opinion at 57 (citing decisions of the Oklahoma and Pennsylvania supreme courts). In that specific context, the Court's conclusion that there is no impact on customer rates from the proceeding below is entirely accurate.

C. Competition in the Generation of Electricity is Neither a Purpose of PURPA Nor a Basis for Rehearing

The Conservation Groups also continue to peddle the fiction that "competition from independent power producers [is] **required** by PURPA." *See* Petition at 4 (emphasis supplied). The district court order (imposing in a Federal antitrust action a temporary restraining order on a utility to purchase power from a QF) cited by the Conservation Groups for this proposition (Pet. at 4) contains no such holding. To the contrary, this order recognizes that utilities and QFs do not, in fact, compete with one another and simply notes that an "ultimate **effect** of PURPA is to introduce new energy producers into the marketplace." *See Kamine/Besicorp Alleghany LP v. Rochester Gas & Electric Corp.*, 908 F. Supp. 1180, 1192 (W.D.N.Y. 1995) (emphasis supplied). Moreover, and as noted by Dominion in its Respondent's Brief to this Court, the subsequent order of the same district court denying that antitrust plaintiff a preliminary injunction expressly rejected the assertion that PURPA is intended to "foster competition in the utility industry." Brief of Resp. at 37, n. 25 (citing *Kamine/Besicorp Alleghany LP v. Rochester Gas & Electric Corp.*, 908 F. Supp. 1194, 1204 (W.D.N.Y. 1995) (ruling that "PURPA was created as a vehicle to reduce the nation's dependency on foreign oil and to conserve energy, **not to foster competition**") (emphasis

[5] The Conservation Groups' position below as to Dominion's proper avoided cost would decidedly not be a matter of economic indifference to ratepayers as it would result in the avoided cost rate being paid to a QF being *higher* which, under the Conservation Groups' rubric, would "*immediately*" (Pet. at 3) result in higher fuel costs. Given that, the Conservation Groups' claim to represent "ratepayer interests" is at least questionable, if not meritless.

supplied)).[6] Dominion submits that the Court should view all of Appellants' arguments regarding PURPA through the prism of this repeated misstatement of its purpose.

D. Appellants' Argument that the Opinion Conflicts with Federal Law is both Unpreserved and Wrong

The Conservation Groups assert that "a direct conflict … exists between the Court's dismissal and federal law" because 16 U.S.C.A. § 824-a-3(g)(1) and 16 U.S.C.A. § 2633(c)(1) create a "guarantee of judicial review." Pet. at 5-6. For several reasons, this assertion is without merit.

First and foremost, Dominion submits that this argument is not properly before the Court as Appellants did not assert it (or even mention these two subsections of the federal statute they now rely upon) in their memorandum in opposition to the motion to dismiss that is granted in the Opinion, even though they recognized there that "[t]he applicable test here is statutory standing." Pet. at 17. Having failed to raise the contention in their opposition to the motion to dismiss, the Conservation Groups may not raise it now for the first time in support of rehearing. *See Herron v.*

[6] The Conservation Groups will in reply likely "double down" on their contention regarding the putative "competitive" intent and purpose of PURPA by referring to the other two state appellate court decisions relied upon in their reply brief on the merits. *See* Reply Br. of App. at 2, n.2. However, neither of these cases support the Conservation Groups' contention. The first of these, *In re Ownership of Renewable Energy Certificates*, 913 A.2d 825 (N.J. Superior Ct. App. Div. 2007) is an intermediate New Jersey appellate court decision in a dispute **between QFs** which wrongly cites *FERC v. Mississippi*, 456 U.S. 742, 745-46 (1982), for the proposition that Congress enacted PURPA to "increase competition." *In re Ownership Certificates*, 913 A. 2d at 828. Not only does *FERC v. Mississippi* contain no such holding, it does not even mention the word "competition." In the second decision cited in Appellants' reply brief for this proposition, *State ex rel. Sandel v. N. M. Pub. Util. Comm'n*, 980 P.2d 55, 58 (N.M. 1999), although the cited language issued by the New Mexico Supreme Court is accurately quoted by the Conservation Groups in their reply brief, it simply observes that competition is an effect of PURPA -- not that competition is its intent or purpose -- and certainly does not state that it is a requirement of PURPA as the Conservation Groups allege.

Century BMW, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011) ("[A] party may not raise an issue for the first time in a petition for rehearing.") (*citing Kennedy, supra*).

Moreover, the Conservation Groups cite no authority for the proposition that these federal statutory provisions can create standing for purposes of state court appellate review of a decision of the PSC. Of the three appellate court decisions cited by Appellants for this proposition, *see* Pet. at 5-6, only one even mentions 16 U.S.C.A. § 824-a-3(g)(1) and 16 U.S.C.A. § 2633(c)(1),[7] and none involve a dispute over a party's *standing* to seek appellate review of a decision of a state regulatory commission decision implementing PURPA. *See MTSUN*, 2020 WL 5639709 at *2, **12-13 (rejecting a contention by a state regulatory authority and electric utility that a dispute over a legally enforceable obligation, or "LEO," was within the exclusive jurisdiction of a federal court); *Vote Solar v. Mont. Dep't of Pub. Serv. Regul.*, 2020 WL 4931491 (Mont. August 24, 2020) (reviewing determination of state regulatory authority pertaining to avoided cost rates on an appeal by "a renewable energy developer with 11 advanced-stage solar projects in Montana, two of which are at issue in the present action" and two "environmental organizations"); and *Sierra Club v. Pub. Serv. Comm'n of W. Va.*, 827 S.E.2d 224 (2019) (reviewing determination of state regulatory authority in an appeal by environmental organization seeking to overturn approval of an avoided cost rate agreed to by electric utility and a QF higher than previously approved). The Conservation Groups' contention that these three cases support any conclusion regarding the existence of standing to seek judicial review under 16 U.S.C.A.§ 824-a-3(g)(1) and 16 U.S.C.A. § 2633(c)(1) -- much less a guarantee of standing to do so -- is without merit.

[7] See *MTSUN, LLC v. Montana Dep't of Publ. Serv. Reg.*, 2020 WL 5639709 (Mont. Sept. 22, 2020).

Lastly, Appellants' contention in this regard amounts to an assertion that, because they were permitted to intervene at the PSC, they are perforce entitled to seek judicial review. The Opinion rejects such an analysis by distinguishing between administrative standing and appellate standing under South Carolina law in no uncertain terms. *See* Opinion at 57 ("The fact a party was allowed to intervene at the PSC does not equate to standing to appeal the PSC's decision."). The assertion that the Court overlooked this argument is utterly devoid of merit and it should be rejected by the Court out of hand.[8]

E. Appellants' "Far-Reaching Consequences" Argument is An Improper Invitation for the Court to Legislate Masquerading as Legal Argument

In Part II of the Petition, the Conservation Groups present a veritable "parade of horribles" involving the potential effect of the Opinion in future PSC proceedings. Pet. at 6-10.[9] Summarizing these assertions, Appellants' contend that the Opinion "could be read to insulate other important Commission decisions [beside avoided cost determinations] from judicial review" and implore the Court to recognize that the dismissal on standing grounds comes "at a time when the citizens of South Carolina and their elected leaders have sought more – not less – oversight of monopoly

[8] The Conservation Groups also assert that "the erroneous avoided cost rates challenged on appeal also factor into the deployment of Dominion's Demand Side Management and Energy Efficiency ["DSM/EE"] measures" and prevent "sav[ing] customers money and reduc[ing] environmentally harmful fossil fuel generation." Pet. at 6. Although Appellants were clearly cognizant of any DSM/EE considerations at the time they filed their opposition to the Dominion motion to dismiss, they failed to raise this as a basis for a denial of the motion. Accordingly, this argument is similarly not proper for consideration on a petition for rehearing. *See Herron, supra*.

[9] In addition to DSM/EE proceedings, Appellants contend that the Opinion will have an effect on proceedings involving electric utility integrated resource plans ("IRPs") and major utility facilities siting approvals ("Siting Act"). *See* Pet. at 7-8.

utilities." Pet. at 6.[10] For the reasons discussed below, the Court should reject the Conservation Groups' histrionic plea to ignore the clear provisions of the Court's rules, the governing South Carolina statute, and the pertinent PSC regulation governing appellate standing in this matter.

First, Appellants' argument pertaining to speculative impacts in other PSC proceedings if the Conservation Groups are denied rehearing on this Court's determination that they lack standing in this appeal was not advanced in its opposition to Dominion's motion to dismiss. To the contrary, Appellants asserted in their memorandum opposing the motion that "future conduct" of the Commission for purposes of the standing of the Conservation Groups to appeal "means future **avoided cost proceedings**." Pet. Mem. in Opp. at 12 (emphasis supplied). Having failed to raise any argument pertaining to standing in other types of PSC proceedings then, Appellants may not properly advance it now. *See Herron, supra*.

Second, the fact that the PSC has statutory duties to determine a wide variety of matters relating to electric utilities, some of which may ultimately be affected by avoided cost determinations, is not a reason to ignore South Carolina law governing appellate standing. Appellants' argument in this regard boils down to an incredible **conceit** that they alone are in a position to represent the interests of electric utility customers in proceedings involving IRPs, Siting

[10] Appellants also attempt to play the "nuclear card," breathlessly and hyperbolically claiming the Opinion "could usher in a new era in South Carolina utility law," and claiming that the irrelevant issues associated with the V.C. Summer abandonment somehow warrant this Court abandoning its standing jurisprudence and justiciability analysis so as to preserve ratepayers' appellate rights. *See* Pet. at 2. As discussed *infra*, ratepayers' rights are fully protected under current law.

Act approvals, and DSM/EE programs.[11] Appellants' argument in this regard is unavailing as in every one of these proceedings the General Assembly has provided for the representation of ratepayer interests not only individually by customers, but also collectively via the representative functions of two separate state agencies, namely ORS and DCA. *See* S.C. Code Regs. 103-825.A.3 (requiring a proposed intervenor to state "facts from which the nature of the [intervenor's] alleged right or interest can be determined" before such person can be recognized as an intervenor as defined by S.C. Code Regs. 103-804.H); S.C. Code Ann. §58-4-10(B) (defining the public interest required to be served by ORS as including the "concerns of the using and consuming public"); S.C. Code Ann. § 58-4-50(A)(8) ("[i]t is the duty and responsibility of the regulatory staff to … when considered necessary by the Executive Director [of ORS] and in the public interest, provide legal representation of the public interest before state courts"); and S.C. Code § 37-6-604(C) ("The Consumer Advocate … may intervene as a party to advocate for the interest of consumers before the Public Service Commission and appellate courts in such matters as the Consumer Advocate deems necessary and appropriate"). And, if any PSC determination in an IRP, DSM/EE or Siting Act proceeding merits judicial review, any party possessing appellate standing under Rule 201, SCACR or § 58-27-2310 will be able to seek such review.

[11] See, e.g., Petition at 7 (Conservation Groups acknowledging that IRP determinations by the PSC "ha[ve] no immediate rate impacts" but insisting that they must be accorded appellate standing to assert "intervenors' preferred solution" or such determinations will "therefore evade any **meaningful** judicial review") (emphasis supplied). In other words, the Conservation Groups are asserting that only their view matters and only they can take up the cudgel against a perceived erroneous order of the PSC in an IRP proceeding. The temerity of Appellants' paternalistic view aside, this speculative analysis of what might happen in a future IRP (or even DSM/EE or Siting Act proceeding) simply cannot be squared with the Court's holding in this case: in order to have appellate standing in a PSC proceeding, one must either be injured or suffered a loss of property or have a real, material or substantial interest in an the subject matter. Opinion at 57-58.

Third, the Conservation Groups' contention that the Court should decide the Petition based upon Appellants' perception of the desire of legislators[12] and citizens for more regulation of "monopoly utilities" (Pet. at 6) provides no basis for rehearing. In addition to being an insulting suggestion that this Court would abandon its judicial independence in the face of public pressure, Appellants' contention in this regard ignores the constitutional strictures against invasions of the Court's prerogatives under S.C. Const. art. I, § 8 (requiring, unlike the Federal Constitution, that the branches of government remain separate so that one branch does not claim or exercise powers belonging to another branch). Moreover, this contention unmasks the Conservation Groups' true goal, which is to ensure that those with no legal standing to appeal can nonetheless clog up South Carolina appellate courts with appeals based upon a twisted analysis of the constitutional requirement of administrative due process. *See* Pet. at 10 (invoking S.C. Const. art. I, § 22 to address "the broad sweep of the Opinion" but failing to observe the requirement of this constitutional provision that "private rights" be at issue before **administrative** processes are due); *see also South Carolina Ambulatory Surgery Center Association v. South Carolina Workers' Compensation Commission*, 389 S.C. 380, 391-92, 699 S.E.2d 146, 153 (2010) (holding that a claim under art. I, § 22 is the same as a due process violation claim and requires a party invoking its protections to demonstrate a deprivation of a liberty or property interest). Here, it is abundantly clear that Appellants have no property interests at stake – a fact that very likely contributed to their considered, but fatal, decision to accept the Court's mootness determination.

[12] Although not expressly stated, Appellants' reference to "elected leaders" in this context can only refer to members of the General Assembly, which alone possesses the authority to provide for the regulation of public utilities. *See* S.C. Const. art. IX, §1.

III. CONCLUSION

For the reasons set forth hereinabove, the Petition fails to satisfy the Conservation Groups' burden of identifying arguments that this Court overlooked or misapprehended in the Opinion. The Court should therefore deny the Petition.

Respectfully submitted,

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