

RECEIVED

Nov 12 2020

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case Nos. 2018-001165 and 2018-002117

Commission Docket No. 2018-2-E

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

Appellants,

v.

South Carolina Electric & Gas, 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,

Appellant,

v.

South Carolina Coastal Conservation
League and Southern Alliance for Clean
Energy, South Carolina Electric and Gas, CMC
Steel South Carolina, South Carolina Energy
Users Committee, Southern Current, LLC, and
South Carolina Office of Regulatory Staff,

Of whom South Carolina Electric & Gas and
South Carolina Office of Regulatory Staff, are

Respondents.

MOTION TO FILE AMICUS BRIEF IN SUPPORT OF PETITION FOR REHEARING

Pursuant to S.C. App. Ct. R. 213, the South Carolina Solar Business Alliance, Inc., (“SBA”) submits this Motion to file Amicus Brief in Support of the Petition for Rehearing filed by the Coastal Conservation League and the Southern Alliance for Clean Energy (“Conservation Groups”). In support of the Motion, the SBA submits the following:

1. SCSBA is organized for the purpose of promoting and advocating public policy positions supportive of solar power generation in South Carolina. SBA's Trade Members includes solar energy developers, engineering procurement and construction, contractors, professional service firms, equipment distributors and equipment manufacturers engaged in the business of solar energy generation in South Carolina and across the nation. SBA members seek to continue and grow clean energy jobs in South Carolina in a number of sectors to bring the cost-reducing benefits of competitive clean energy to South Carolina ratepayers. SBA routinely participates in matters before the Public Service Commission of South Carolina, (“PSC”) to increase fair competition in the energy sphere and to expand access to clean energy for all South Carolinians, including all residential customers and industrial and municipal customers who are increasingly seeking access to clean energy to meet their sustainability goals. Clean energy access is a key and growing driver of economic development in South Carolina. SBA and its members have a vital interest in ensuring that decision-making by the PSC is clear, legal, and accountable.

2. In Opinion No. 27994 issued on September 9, 2020, this Court dismissed this matter on grounds that the issues were moot as to SBA and further found that Conservation Group petitioners lacked standing. Due to several factors, SBA did not file a motion for rehearing on this Court’s factually-bound mootness holding. SBA is concerned, however, that this Court’s standing holding, which was directed at the Conservation Groups only, could have

unintended consequences that will negatively impact the interest of SBA’s members, and businesses and ratepayers across South Carolina, going forward.

3. The SBA seeks to file an *amicus* brief to assist this Court in understanding issues that this Court overlooked in making its standing ruling and the effects the ruling on other PSC proceedings will have unless corrected. In short, the Order could greatly limit the ability of ratepayers and other affected persons from challenging erroneous decisions of the PSC that could needlessly cost ratepayers millions if not billions of dollars. This outcome, and the resulting erosion of PSC and utility accountability, is the opposite of what is needed to prevent a future fiasco as occurred with the failed V.C. Summer project, which cost South Carolina ratepayers nine billion dollars for a facility that will never produce a kilowatt of electrical energy.

4. Limiting judicial review of PSC actions that unnecessarily and inevitably raise costs for ratepaying families and businesses in South Carolina until such time as those PSC actions may manifest in a future general rate case – sometimes years after the PSC decision has approved a utility course of action – could invite the kind of runaway projects and unaccountable decision-making that led to the failed V.C. Summer nuclear project presided over by the Respondent Dominion Energy South Carolina. If there is anything that the last several years have taught South Carolina, it is that catastrophic utility failures are far harder to undo than to prevent.

5. The statutory measures enacted by the South Carolina General Assembly in response to the V.C. Summer failure include the 2019 Energy Freedom Act, 2019 S.C. Act 62. Among other things, that law requires far more detailed scrutiny of DESC’s integrated resource plans (“IRPs”)—its roadmap for spending ratepayer money to meet anticipated electricity demand—and for the first time directs that such scrutiny include a litigated proceeding before the PSC. S.C. Code Ann. § 58-37-40(A). IRPs must be prepared at least every three years. The PSC

is required to establish a proceeding to review each utility’s IRP, in which interested parties may intervene and conduct discovery for the purpose of “obtaining evidence concerning the [IRP], including the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties.” S.C. Code Ann. § 58-37-40 (C)(1). The IRP must include a number of elements prescribed in the statute, including a set of potential resource portfolios designed to “fairly evaluat[e] the range of demand-side, supply-side, storage, and other technologies and services available to meet the utility’s service obligations.” *Id.* § 58-37-40(B)(1). The PSC is directed to approve a utility’s IRP if it finds that “the proposed integrated resource plan represents the most reasonable and prudent means of meeting the electrical utility’s energy and capacity needs as of the time the plan is reviewed,” after weighting a set of factors enumerated in the statute. S.C. Code Ann. §58-37-40(C)(2).

6. Directly relevant here, an evidentiary hearing in the first such proceeding regarding DESC’s 2020 Integrated Resource Plan, featuring days of expert testimony and significant expenditures of effort by the parties including SBA, recently concluded before the PSC. The PSC is expected to issue a decision in the coming weeks.

7. The General Assembly did not intend for its new IRP proceeding to be an exercise in unaccountable decision-making. Quite the opposite: it intended to ensure that utilities’ plans to spend billions in ratepayer money are subjected to probing inquiry and required that the PSC’s review be thorough and active to guard against future failures like V.C. Summer. The new IRP procedure is also pointedly directed at ensuring that independent clean energy—now price competitive with, and indeed cheaper than, legacy fossil fuel generation—is given the chance to compete in the utility’s scenario modeling.

8. The General Assembly's work in the Energy Freedom Act would be for naught if the newly wrought IRP proceedings are insulated from judicial review. Unfortunately, that could be the implication of the standing decision rendered in this case. SBA is concerned that, unless corrected or modified, the Opinion will be used by DESC to block judicial review of any PSC decision regarding DESC's IRP. DESC's response to the rehearing petition does not appear to deny, much less care about, that disturbing reality.

9. SBA respectfully requests leave to file an *amicus* brief explaining the overlooked ramifications and mistakes of law in the Opinion's standing holding in more detail. While the mootness holding was carefully limited to the facts, the standing holding was not necessary to disposition of the case, misapprehends points of law and fact, and should be corrected, modified, or simply removed.

CONCLUSION

For the foregoing reasons, SBA respectfully requests that the Court grant its Motion to File Amicus Brief in this matter. The proposed Brief is attached to this Motion.

[Signature Page Follows]

Respectfully Submitted,

/s/Richard L. Whitt

Richard L. Whitt,
S.C. Bar #: 62895
WHITT LAW FIRM, LLC
401 Western Lane, Suite E
Irmo, South Carolina 29063
(803) 995-7719
Richard@RLWhitt.Law

Benjamin L. Snowden,
Joseph S. Dowdy,
Kilpatrick Townsend & Stockton LLP
Suite 1400, 4208 Six Forks Road
Raleigh, North Carolina 27609
(919) 420-1700
bsnowden@kilpatricktownsend.com
*Both Admitted Pro Hac Vice, by the Public Service
Commission of South Carolina.*

*All as Attorneys for Appellant South Carolina Solar
Business Alliance, LLC*

November 12, 2020
Irmo, South Carolina