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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.

**REPLY TO DESC'S RETURN TO
SCSBA'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

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The South Carolina Solar Business Alliance, Inc., (“SBA”) hereby Replies to Respondent Dominion Energy South Carolina, Inc.’s (“DESC”), Return to the SBA’s Motion For Leave to File Amicus Curiae Brief.

DESC’s grounds are that SBA cannot file an Amicus Brief because: (1) SBA is a party to this Appeal, and (2) SBA is no longer a party to this Appeal. These two arguments are obviously inconsistent and, as discussed below, each lacks merit. SBA meets all requirements for filing an Amicus Brief and the proposed Brief alerts this Court to an overlooked issue whose significance extends far beyond this case. SBA’s Motion should be granted.

DESC first objects to SBA’s Motion by an *ipse dixit* claim that SBA may not file an Amicus Brief, because it was once a party to this Appeal. DESC cites no authority whatsoever for that broad proposition and SBA is aware of none. In practice, DESC’s posited ban would trigger needless filings with this Court by requiring parties to file petitions for rehearing on issues decided as to *other* parties preemptively, to avoid losing the opportunity of filing an Amicus Brief. Further, DESC’s rule would invariably lead to additional side litigation on whether a party seeking rehearing on issues decided as to *other* parties has standing to do so.

DESC’s second meritless argument proves this exact point. In this inconsistent argument, DESC claims that SBA lacks “*standing*” to file an Amicus Brief, because the Court decided mootness as to SBA and “expressly declined to address” whether SBA had standing (DESC Return at 5 (emphasis in original)). Had SBA followed DESC’s first argument and filed a Petition for Rehearing on standing, DESC would have no doubt litigated SBA’s standing to do so. The result would be pages and pages of side litigation clogging this Court’s already full docket.

The one unifying theme of DESC's opposition is a lack of any law to justify its position. In fact, the Motion filed by SBA satisfies Appellate Court Rule 213 and apprises the Court of overlooked matters with ramifications far beyond this avoided cost case. That is exactly what Amicus Briefs can, and should do, and no Rule prevents this Court's consideration of SBA's Brief here. SBA acted scrupulously and responsibly in *not* seeking rehearing on an issue decided as to another party, and DESC's request to punish SBA for that restraint should be declined.

CONCLUSION

For the foregoing reasons, SBA respectfully requests that this Court grant its Motion For Leave to File an Amicus Brief in this matter.

[Signature Page Follows]

Respectfully Submitted,

/s/Richard L. Whitt

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December 1, 2020
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