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December 1, 2020

VIA ELECTRONIC MAIL

Timothy B. Henseler, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20459

Re: *SEC v. SCANA Corporation, et al., Civil Action No. 3:20-cv-00882 (D.S.C., Feb. 27, 2020)* – Waiver Request by Public Service Company of North Carolina, Incorporated of Disqualification under Rule 506(d) of Regulation D

Dear Mr. Henseler:

On behalf of Public Service Company of North Carolina, Incorporated (“PSNC”), we respectfully request a determination by the Securities and Exchange Commission (the “Commission”) that, given the circumstances described herein, PSNC will not be disqualified from relying on the exemptions available under Rule 506 of Regulation D under the Securities Act of 1933, as amended (the “Securities Act”), as a result of the entry of a settlement and final judgment (the “Judgment”) against PSNC’s direct parent, SCANA Corporation (“SCANA”) and its subsidiary, Dominion Energy South Carolina, Inc., f/k/a South Carolina Electric & Gas Company (“DESC”).

BACKGROUND

On February 27, 2020, the Commission filed a complaint (the “Complaint”) charging SCANA, DESC and two of their former top executives (Kevin Marsh and Steven Byrne) with defrauding investors by making materially false and misleading statements about a failed nuclear power plant expansion project from March 2015 to July 2017. Mr. Marsh was the former President, Chief Executive Officer and Chairman of SCANA and DESC at the time of the alleged misstatements. Mr. Byrne was the former Executive Vice President of SCANA and former President of Generation and Transmission and Chief Operating Officer of DESC, who directly oversaw the expansion project. The Complaint seeks to impose permanent injunctions, disgorgement plus prejudgment interest, and financial penalties against all defendants, and an officer and director bar against Messrs. Marsh and Byrne.

The alleged misconduct relates to the statements and omissions about the planned completion date of the failed expansion of a nuclear power plant partially owned by DESC (the “Expansion Project”). The Expansion Project was one of the largest and most expensive construction projects in South Carolina history. Westinghouse Electric Company LLC (“Westinghouse”) was engaged to design and construct the Expansion Project. Various difficulties were encountered in connection with the project, including Westinghouse’s filing for bankruptcy protection in March 2017. The alleged statements and omissions were made by Messrs. Marsh and Byrne from March 2015 to July 2017 about the planned completion of the Expansion Project in 2019 and 2020, which was expected to result in significant federal tax credits. The Complaint alleges that the statements and omissions occurred when Messrs. Marsh and Byrne knew that the project was significantly delayed and that it would not be completed in time to qualify for the federal tax credits. The Expansion Project was ultimately abandoned in July 2017. Dominion Energy acquired SCANA, DESC and PSNC, on January 1, 2019.

SCANA and DESC submitted a consent (the “Consent”), which the Staff presented to the United States District Court for the District of South Carolina in connection with the civil action referenced above. In the Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, SCANA and DESC consent to the entry of the Judgment, without admitting or denying the allegations contained in the Complaint (other than those relating to the jurisdiction of the Commission, which are admitted), which: (i) permanently restrains and enjoins them from violating Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder; and (ii) orders SCANA to pay a civil monetary penalty totaling \$25 million and for SCANA and DESC to pay disgorgement and prejudgment interest totaling \$112.5 million, which disgorgement and prejudgment interest amount will be deemed satisfied by settlements in (A) a putative class action against SCANA and certain former executive officers and directors in the United States District Court for the District of South Carolina and (B) a class action against DESC, SCANA and the State of South Carolina in the State Court of Common Pleas in Hampton County, South Carolina (the “DESC Ratepayer Case”).

PSNC is a direct, wholly-owned subsidiary of SCANA and a sister company to DESC. PSNC was not named in the Complaint, and PSNC had no involvement with the Expansion Project. PSNC provides regulated natural gas distribution services to certain service territories in North Carolina. PSNC is not an SEC registrant. PSNC issues debt securities periodically to fund its operations primarily through the private placements of securities. Mr. Marsh served as PSNC’s Chairman and Chief Executive Officer during the period covered by the Complaint, as well as its President and Chief Operating Officer beginning in November 2017. Mr. Byrne served as an officer of PSNC beginning in November 2017. Messrs. Marsh and Byrne retired from their officer positions with PSNC effective January 1, 2018 at the same time that they retired from SCANA and DESC. Mr. Marsh resigned from PSNC’s Board of Directors effective December 31, 2017.

PSNC has not previously sought a waiver from the Commission any disqualifications from relying on the exemptions available under Rule 506 of Regulation D under the Securities Act.

DISCUSSION

An issuer is not eligible to rely on the exemption from registration under Rule 506 in connection with the sale of its securities if the issuer is subject to any “order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice (A) [i]n connection with the purchase or sale of any security [or] (B) [i]nvolving the making of any false filing with the Commission”¹

Under Rule 506(d)(2), the Commission (or the Division of Corporation Finance (the “Division”) acting pursuant to authority delegated to it by the Commission) is authorized to waive the application of Rule 506(d)(1) “[u]pon a showing of good cause . . . if the Commission determines that it is not necessary under the circumstances that an exemption be denied...”²

In its Waivers of Disqualification issued on March 13, 2015 (the “Division Guidance”), the Division identified certain factors that it considers in determining whether the standard for relief under Rule 506(d)(2) discussed above is satisfied, including:

- the nature of the violation or conviction and whether it involved the offer and sale of securities;
- whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation;
- who was responsible for the misconduct;
- the duration of the misconduct;
- what remedial steps were taken; and
- the impact if the waiver request is denied.

Absent the relief requested in this letter, upon entry of the Judgment against its parent SCANA, PSNC would be disqualified from relying on the exemptions available under Rule 506 of Regulation D. Based on the facts and circumstances described below, we believe that PSNC has shown good cause for the Commission to determine that it is not necessary under the circumstances that an exemption be denied.

A. The alleged misconduct involved the offer and sale of DESC securities. DESC is a sister company to PSNC. The alleged misconduct did not involve PSNC or the offer and sale of its securities.

As described in the Complaint, Messrs. Marsh and Byrnes engaged in certain conduct that involved the offer and sale of DESC securities prior to Dominion Energy’s acquisition of DESC. The alleged misconduct did not involve PSNC, now a subsidiary of Dominion Energy, or the offer and sale of PSNC securities.

¹ Rule 506(d), 17 C.F.R. § 230.506(d)(1)(ii).

² Rule 506(d)(2)(ii), 17 C.F.R. § 230.506(d)(2)(ii).

As described in detail below, the alleged misconduct does not affect PSNC's current and future fitness to engage in securities offerings. The misconduct alleged in the Complaint relates to alleged material false and misleading statements or omissions made from March 2015 to July 2017 by two former executives of SCANA and DESC about the Expansion Project's construction schedule and SCANA's ability to qualify for federal production tax credits. The Expansion Project was abandoned in July 2017, well before the Dominion Energy's acquisition of PSNC.

PSNC was not named as a defendant in the Complaint, and PSNC had no involvement with the Expansion Project. In addition, PSNC is now controlled by Dominion Energy. Dominion Energy was not named as a defendant in the Complaint and none of the alleged misconduct relates to any activity by Dominion Energy, any of its subsidiaries while those subsidiaries were under the control of Dominion Energy, or any of Dominion Energy's executive officers. PSNC is now led by long-standing employees of Dominion Energy not previously affiliated with SCANA. Additionally, the roles of Chairman, Chief Financial Officer and Chief Accounting Officer of DESC and PSNC, as well as other senior executive positions, have been transitioned to members of Dominion Energy's existing executive leadership team. PSNC's securities offerings and other capital needs are now planned, managed and controlled by Dominion Energy's treasury group, which works closely with Dominion Energy's internal legal team that includes lawyers with expertise in the federal securities laws and external legal counsel that has expertise in the federal securities laws as well as a broad understanding of Dominion Energy's business.

B. The complaint alleges scienter-based violations

The Complaint alleges scienter-based violations, specifically allegations that SCANA violated the antifraud provisions of Section 10(b) of the Exchange Act as well as Section 17(a)(1) of the Securities Act. The Judgment is expected to include the scienter based violations. As previously noted, under the terms of the Judgment, SCANA will neither admit nor deny these allegations. Under the Division Guidance, where there is a scienter-based violation involving the offer or sale of securities, the issuer's burden to show good cause that a waiver is justified is significantly greater.³ For the reasons discussed in this letter, we believe that PSNC satisfies this higher burden.

C. Two former executive officers of SCANA were responsible for the alleged misconduct. The alleged misconduct occurred prior to Dominion Energy's acquisition of PSNC.

In its release adopting the Rule 506 bad actor disqualification provisions, the Commission indicated that a bona fide change of control and the persons responsible for the activities resulting in a disqualification are no longer employed by the entity or exercise influence over the entity are relevant to the waiver analysis.⁴

³ See Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (Mar. 13, 2015).

⁴ See Securities and Exchange Commission, *Disqualification of Felons and other "Bad Actors" From Rule 506 Offerings*, SEC Release No. 33-9414, 2013 WL 3817311, at *13 (July 10, 2013).

The alleged misconduct relates to alleged material false and misleading statements or omissions made from March 2015 to July 2017 by two former executives of SCANA about the Expansion Project's construction schedule and SCANA's ability to qualify for federal production tax credits. The Expansion Project was abandoned in July 2017. Messrs. Marsh and Byrne retired from SCANA effective January 1, 2018. PSNC was not named as a defendant in the Complaint, and PSNC had no involvement with the Expansion Project.

Dominion Energy's acquisition resulted in a change of ownership, control and management of SCANA and PSNC. SCANA and PSNC are now wholly-owned subsidiaries of Dominion Energy. PSNC is now led by Dominion Energy employees.

D. SCANA took remedial action before the acquisition, and Dominion Energy has continued to take remedial action after the acquisition. Dominion Energy has extensive processes in place to ensure PSNC's compliance with Rule 506.

The Division of Corporation Finance's statement on waivers states that it would look at what remedial steps have been taken including changes in the control of the party seeking the waiver, whether the personnel involved in the misconduct remain employed by the party seeking the waiver and whether the party seeking the waiver has taken steps to improve training or has made improvements to its policies, procedures or practices.⁵ PSNC was not named in the Complaint and the misconduct at issue did not involve PSNC. As a result, PSNC has not taken any direct remedial actions. As discussed below, significant remedial action has been taken since the alleged misconduct ended in July 2017, initially by SCANA and DESC and later by Dominion Energy. The former executives named in the Complaint are no longer associated with SCANA or DESC. Dominion Energy's acquisition of SCANA has resulted in a change in control of PSNC, a change in PSNC's management team and improved training and policies, procedures or practices. Dominion Energy, as the new parent of PSNC, has extensive processes in place to ensure PSNC's compliance with 506 when engaging in a securities offering.

SCANA Abandoned the Expansion Project and Secured
Repayment of Some of the Losses from Westinghouse's Parent

SCANA's and DESC's remediation efforts, which started in July 2017, initially focused on the Expansion Project. DESC entered into an agreement with Westinghouse's parent for the return of a portion of the fees that DESC had previously paid to Westinghouse as part of the Expansion Project. More importantly, SCANA made the decision to abandon the Expansion Project in July 2017, which eliminated the underlying basis for the alleged misstatements concerning the project's construction schedule and federal production tax credits for the project.

The Two Executive Officers Named in the Complaint Retired
at the End of 2017 and Forfeited Compensation

Once SCANA abandoned the Expansion Project, Mr. Marsh offered his retirement to the board of directors of SCANA and DESC (the "SCANA Board"). At the same time, the SCANA Board began the process of seeking the retirement of Mr. Byrne. Both retirements were approved

by the SCANA Board in October 2017 and ultimately became effective on January 1, 2018. As a result of the retirements, Mr. Marsh and Mr. Byrne forfeited performance share awards granted with respect to the 2015-2017 period under SCANA's long-term equity compensation plan with a total grant date fair value of \$2,200,619 and \$799,569, respectively. In addition, the SCANA Board determined not to make any cash payments to Mr. Marsh or Mr. Byrne (or any other SCANA officer) for 2017 under SCANA's short term annual incentive (bonus) plan.

SCANA Board Made the Board Chair Independent from Management

The SCANA Board also made changes at the board level in 2017 and 2018. After Mr. Marsh's retirement, in light of the novel and complex issues facing SCANA in connection with the Expansion Project, the SCANA Board separated the roles of Chairman of the Board and Chief Executive Officer, and the SCANA Board elected its independent Lead Director to serve as Non-Executive Chairman to provide independent board leadership at such a critical time. The SCANA Board's decision to separate the roles was intended to direct specific focus on senior management and board leadership efforts to regain shareholder, customer, and community confidence. The SCANA Board also decided not to elect the new Chief Executive Officer to the board so that the SCANA Board was fully independent.

SCANA Board Determined Not to Pay Bonuses to Executive Officers for 2017

Although some SCANA executive officers (including Messrs. Marsh and Byrne) would have qualified for individual bonuses for 2017 performance, the SCANA Board determined that no bonuses or incentive compensation would be paid for 2017.

PSNC is Now Subject to Dominion Energy's Disclosure Controls and Procedures and Other Policies Including its Code of Ethics; Dominion Energy Personnel are Responsible for PSNC Disclosure

As a result of the acquisition, PSNC is now a wholly-owned subsidiary of Dominion Energy. Dominion Energy is a well-capitalized, diverse energy company with significant resources that has established a culture of compliance placing a premium on ethics and integrity. Dominion Energy's approach to disclosure comes from the top down, driven by its core values of ethics and excellence. Its reputation depends on ethical behavior.

As a subsidiary of Dominion Energy, PSNC is now subject to Dominion Energy's disclosure controls and procedures. The disclosure controls and procedures have been designed to include multi-tiered levels of involvement and review by multiple personnel within the disclosure process to provide assurance that no individual or small group can unduly influence material disclosure decisions. A dedicated SEC reporting team, led by a Director of Reporting & Controls, gathers, reviews and reports the required information. Proposed disclosure is reviewed by each business and segment leader as well as by multiple personnel in the financial disclosure group, by members of management from investor relations, finance, tax, regulatory, accounting, treasury and other areas of specific expertise. Disclosure is further reviewed by an experienced internal legal team that includes lawyers with expertise in the federal securities laws and also by external legal counsel that has expertise in the federal securities laws as well as a broad

understanding of the business. Dominion Energy has a disclosure committee comprised of management level employees that represent all areas of the company (each business unit, tax, treasury, environmental, accounting, regulatory, risk, investor relations and administrative services). The disclosure committee meets each reporting period to discuss significant disclosure prior to approving the draft reports. There is a broad sub-certification structure to support the required certifications by Dominion Energy's chief executive officer and chief financial officer, including certifications by each disclosure committee member after each quarterly meeting. The certification process is managed by the office of the corporate secretary to provide an additional layer of corporate governance oversight.

Dominion Energy also has rigorous systems and policies in place to ensure compliance with laws and regulations. Dominion Energy has adopted a Code of Ethics and Business Conduct to define responsibilities of employees and officers and has established a comprehensive ethics and compliance program. The Board of Directors oversees the ethics and compliance program through its Audit Committee. Dominion Energy also has a chief compliance officer who chairs the company's compliance council. Members of the compliance council are high level officers representing the business units and key areas of responsibility. Additionally, the ethics and compliance team members work with the law department, corporate security and human resources to ensure that Dominion Energy follows all applicable laws, regulations and company policies, and maintains high ethical standards in its business activities.

Dominion Energy has implemented a comprehensive annual training for all employees, officers and Board members on the Code of Ethics and Business Conduct. New hires also receive this training when they begin work at Dominion Energy. In addition, other interactive ethics and compliance training and education events are made available to leaders and employees throughout the year. The code requires employees to know and comply with all regulatory requirements that apply to their business areas. Those affected by various regulatory requirements receive training on federal and state codes and standards of conduct, and other applicable regulations. Additional training programs are in place to regularly educate Dominion Energy's employees about various disclosure matters, including the federal securities laws. For example, Dominion Energy engaged in extensive training with respect to SCANA and its subsidiaries including PSNC starting in 2018 in anticipation of the acquisition. The training participants included the Dominion Energy legacy executive who stepped into the role of President at DESC as soon as the acquisition closed in January 2019, as well as focused training for employees who would be involved in DESC's and PSNC's disclosure following the acquisition. In addition, Dominion Energy has provided additional training to SCANA employees engaged in the disclosure process as part of the integration of SCANA and its subsidiaries into Dominion Energy starting in 2019.

PSNC is Currently Managed by Legacy Dominion Energy Executives; Dominion Energy, as the New Parent of PSNC, Has Extensive Processes in Place to Ensure PSNC's Compliance With 506 When Engaging in a Securities Offering.

PSNC is now managed by long-standing employees of Dominion Energy not previously affiliated with SCANA. The roles of Chairman, Chief Financial Officer and Chief Accounting Officer of DESC and PSNC, as well as other senior executive positions, have been transitioned to members of Dominion Energy's existing executive leadership team.

Dominion Energy, as the new parent of PSNC, has extensive processes in place to ensure PSNC's compliance with Rule 506 when engaging in a private placement in reliance on that exemption from registration. Dominion Energy provides critically important electric and natural gas services on a daily basis to approximately 7 million individuals and businesses through its multiple regulated subsidiaries (including PSNC and DESC). Long-term cash needs are met through issuances of securities. Subsidiaries offer debt securities at the operating company level when that structure may be more favorable to ratepayers, whose rates are ultimately impacted by cost of capital. Dominion Energy's treasury group manages the planning and execution of all of Dominion Energy's capital needs, including securities offerings by many of its subsidiaries like PSNC. When evaluating whether a subsidiary will engage in a securities offering, the treasury group will consider a number of factors at the parent versus subsidiary level including credit rating of the subsidiary compared to the parent (which may favorably affect pricing), type of offering, cost of offering and legal structure and documentation. Throughout the process the Dominion Energy treasury group works closely with the internal legal team that includes experienced securities lawyers to evaluate the structure of a securities offering, including how to comply with the federal securities laws, and the documentation of that offering. Both treasury and legal also work closely with Dominion Energy's dedicated SEC reporting team to coordinate disclosure in the offering process. The internal legal team engages experienced outside securities counsel who assist with federal securities law issues and review documentation and assist in the offering process. Finally, the placement agent for each transaction also engages experienced outside securities counsel who also reviews offering terms and documentation.

DESC Ratepayer Relief

As DESC's current parent, Dominion Energy has taken or agreed to take a number of actions (either directly or through DESC as its subsidiary) to remediate the consequences of the abandonment of the Expansion Project and the misconduct alleged in the Complaint. In particular, Dominion Energy has agreed to: (i) refund through DESC in the form of monthly bill relief approximately \$2 billion previously paid by electric ratepayers with respect to costs associated with the Expansion Project over a period of several years, (ii) provide bill credits of \$6.2 million to DESC gas utility customers, (iii) exclude from rate recovery approximately \$2.4 billion in costs of the Expansion Project and (iv) exclude from rate recovery approximately \$180 million of costs associated with the purchase of the Columbia Energy Center in South Carolina, which is intended to replace a portion of the generation capacity previously expected to be provided by the Expansion Project.

Dominion Energy has also settled certain actions against SCANA and DESC by former SCANA shareholders and South Carolina ratepayers. As a part of those settlements, Dominion Energy caused SCANA and DESC to make a cash payment of \$115 million and agreed to transfer certain DESC-owned real estate or sales proceeds from the sale of such properties for the benefit of the plaintiffs in the DESC Ratepayer Case. Dominion Energy is currently in the process of transferring property, plant and equipment with a net recorded value of \$54 million to satisfy the settlement agreement.

F. Loss of the Ability to Rely on Rule 506 as an Exemption to the Registration of Securities Would Significantly Impact PSNC and its New Parent Dominion Energy

PSNC provides regulated natural gas distribution services to certain service territories in North Carolina. PSNC's operations are capital intensive. Because PSNC is not a reporting company under the Exchange Act with access to the public markets, its ability to access the markets through private transactions is a critical component of its financing plan.

PSNC regularly engages in private placements of securities, primarily in reliance on the private placement exemption under Rule 506(b) of Regulation D. Since June 2009, PSNC has engaged in five private offerings totaling an aggregate of \$600 million in debt securities. PSNC intends to continue to regularly engage in private offerings over the next five years to meet PSNC's capital needs. Accordingly, if PSNC were to be disqualified from relying on the Rule 506, its already limited access to the capital markets would be even further restricted and its ability to finance its operations could be significantly disrupted at an increased cost.

Offerings conducted under Rule 506 enjoy a number of significant benefits not available when relying solely on Section 4(a)(2). First and foremost, offerings under Rule 506(b) enjoy the advantage of the certainty and clarity of its safe harbor, which streamlines the private placement process as compared to the uncertainty and greater complexity of making an offer and sale in reliance on Section 4(a)(2) of the Securities Act. For example, offerings in reliance on the safe harbor under Rule 506(b) enjoy the benefit of federal preemption of state securities laws and offer clearer and more certain parameters to the parties participating in the offering as compared to the common law interpretations of Section 4(a)(2), all of which can expedite the offering process and more importantly lower offering costs for the issuer.

In addition, offerings under Rule 506(c) are permitted to utilize certain general solicitations and advertisements that may not otherwise be available to an issuer in the context of a private offering. Although PSNC has not utilized these communications prior to Dominion Energy's acquisition of PSNC, PSNC expects to rely on this benefit in the next five years as part of its financing plans.

CONCLUSION

For the reasons discussed above, PSNC respectfully requests that the Commission (or the Division of Corporation Finance pursuant to delegated authority) waive any disqualification under Regulation D with regard to PSNC arising as a result of the Judgment. We believe PSNC has met the burden of showing good cause that it is not necessary under the circumstances that the exemptions be denied particularly given the nature of the alleged misconduct that ended in July 2017, PSNC's lack of involvement in any of the alleged misconduct and the effects of the change in control of PSNC as a result of Dominion Energy's acquisition balanced against the disproportionate impact on PSNC and innocent third parties.

December 1, 2020

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We thank you for your assistance in this matter. Please do not hesitate to call me at (412) 667-7936, or my colleague, Katherine K. DeLuca, at (804) 775-4385, with any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hannah Thompson Frank', with a stylized flourish extending to the right.

Hannah Thompson Frank

cc: Katherine K. DeLuca