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Testimony to the Senate Special Committee on South Carolina's Energy Future

The League of Women Voters of South Carolina (LWVSC) appreciates the opportunity to address this committee. We were very active in advocacy related to the V. C. Summer debacle and the regulatory reforms that followed. We now find ourselves addressing many of the same questions again, along with some new ones.

We begin by saying that the League shares with many others a deep concern for the effects of energy decisions on our environment. However, we will leave that topic to our colleagues in conservation organizations who have a greater depth of technical expertise in that area. Our focus is instead on the basic "good government" issues related to utility regulation and on how they are related to the impact of changing economic activity in South Carolina.

Regulatory Responsibility and Risk

The foundation of our testimony is the basic principle underlying our system of utility regulation. The State gives our utilities greater protection from risks that most other businesses face. They are given a captive customer base and guaranteed return on investment (ROI), conditions that most business can only envy. As a balance to that, it is the responsibility of the State to protect the public interest, ranging from economic development to ratepayer fairness. Utilities are expected to submit to effective, evidence-based, objective regulation to protect the interests of the state and its people.

However, at the previous meeting of this committee the CEOs of Dominion, Santee Cooper, and Duke Energy made it clear that they want South Carolina to abandon important elements of the system of utility regulation established after the V.C. Summer collapse. The utilities are now seeking to replace effective protections enacted then with a very weak regulatory regime, a new version of the Base Load Review Act (BLRA), an increased ROI, and a lot of personal trust.

Utility executives would like us to forget the past. However, as William Faulkner observed, the past is not dead, it's not even past. We are still paying the heavy cost of a historical system of weak utility oversight. The past appears on our Dominion bills every month, as they collect more than \$2 billion for a generating plant that will never produce energy. This unwelcome ghost will soon also appear for Santee Cooper customers, whose share of the debt remains \$3.6 billion. This is happening because the BLRA very unwisely shifted much of the risk for plant construction away from those who would have profited had they completed the plant onto ratepayers. This isn't capitalism. This is what is meant when people talk about privatizing profits and socializing risk.¹ And now they want to do it to us again.

One way that we got into that awful circumstance was too much reliance on personal trust rather than effective regulation. Not long before the V.C. Summer project collapse was announced, legislators on the Public Utilities Review Committee (PURC) publicly expressed great confidence in the SCANA CEO and others on his team. Later, those executives were found guilty of federal crimes in their

¹ <https://www.investopedia.com/terms/p/privatizing-profits-and-socializing-losses.asp#:~:text=Key%20Takeaways,either%20through%20bailouts%20or%20subsidies.>

conduct of the project. We should not have needed this brutal example to prove the inadequacy of this approach.

A return to provisions like those of the BLRA would probably not play out precisely as V. C. Summer did, but the underlying principle is the same. It is true that reducing risk for lenders and utilities by once more transferring financial risk to ratepayers would lead to lower interest rates on construction loans. However, lenders research their risks thoroughly. The risks that lenders consider in setting rates are real and ratepayers should not be required to bear them. Those who get the profits must bear the risk. If they don't, the moral hazard to flout those risks is high, as we have discovered through bitter experience.

Another concern related to risk is the request by utilities for an increased ROI. In our capitalist economy, ROI is traditionally directly related to risk. The utilities are monopolies for which the State has already removed much of the risk by delivering captive customers and a guaranteed ROI. Now, they are asking to have the remaining risk removed from them, while their profits are increased. This makes no sense to those of us paying the bills.

So, who is to protect the people and businesses of our state as we move forward on the risky road that lies ahead? The State of South Carolina has that authority and that responsibility. There must be no return to a BLRA. There must be no weakening of the overall regulatory structure.

As an essential element in this, the role and authority of the Office of Regulatory Staff (ORS) and the Public Service Commission (PSC) must not be compromised. As ORS staff have often noted, their current mission is not unbalanced. It is to fulfill "the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high-quality utility services." Asking them to return to the role of "protecting the fiscal integrity of utilities" asks for a return to impossibly conflicting demands. Furthermore, utilities are supported by substantial staffs of technical personnel and attorneys to protect their interests. ORS must offset potential unfairness resulting from that, not amplify the imbalance.

Weakening the current role of the PSC should also be off the table. Their current mission requires that they consider all sides as they "regulate just and reasonable rates and service of public utilities in the state of South Carolina" through an impartial and thorough quasi-judicial process. That is as it should be. There must be no *ex-parte* communication, no special weighting of testimony from utilities, no pressures from PURC to make specific decisions, and no automatic victories if a utility just runs out the clock on a proceeding.

Data Centers

As we look at the issue of fairness and how it relates to risk, a specific concern rears its head – data centers. We are told that a substantial percentage of the need for increased generating capacity by Dominion and Santee Cooper relates to new data centers planned to fulfill the demands brought by heavy use of artificial intelligence (AI) and crypto currency. Again, we believe that those who receive the profits should bear the risks and the costs. Data centers are not simply handy for balancing load on the grid using existing capacity. They are demanding capacity that doesn't exist now, and a lot of it. No part of the costs should be passed on to other customers. Why should someone in SC working hard to build a small business or support a family be required to subsidize massively profitable companies such as Google or Facebook?

There is one economic upside to data centers. Local governments can get high property taxes as a result of substantial capital investments in the centers (if they don't agree to waive them) while

demands on public infrastructure are low. Those low demands bring us to the downside. Those demands are low because data centers employ remarkably few people in proportion to the energy and water consumed. With few employees, they bring little money into South Carolina and its communities. Instead, they represent a real opportunity cost in their use of energy, water, and developed property suitable for high tech construction. Other industries, employing more South Carolinians, might use those same resources in ways far more important to the public interest.

We also return to the issue of risk. While data centers to serve AI and crypto currency are expanding quickly, they are still in an early phase of building at scale. This recalls the infamous Dot.com bubble of 2000, when investors pulled back sharply from an industry in which costs were well ahead of benefits, despite long-term growth potential. Some investments that were considered potential gold mines failed altogether. That is where AI and crypto currency are today.

This is not idle speculation. Goldman Sachs, among others, is warning that the ROI from AI may be very disappointing for quite some time.² Because of this, building energy capacity in response to predicted data center needs bears its own significant risk. In the long run, AI will not go away, but investors could easily pull back long enough to give South Carolina another very painful energy experience. The risk for this should be borne by those who stand to make money on these projects if they succeed – companies building data centers and energy companies planning to extract profits from supplying them.

Summary

This committee will hear from a wide range of interests. The committee may decide to recommend adjustments to existing law. Any such changes should be minor. We ask that the committee develop a bill that will continue our current evidence-based regulatory system that so wisely fosters development of a sound energy industry in South Carolina while protecting users from the potential abuses of a monopoly system.

We also ask that the committee take up the issue of data centers and crypto currency. We are not asking that they be prohibited in South Carolina, but that legislation ensure that they pay the full cost of generating and delivering their energy, as well as standard tax rates without special waivers.

Thank you.

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² <https://www.businessinsider.com/ai-return-investment-disappointing-goldman-sachs-report-2024-6>