V. C. SUMMER AUTHORIZATION ON TOSHIBA GUARANTY SETTLEMENT

RESOLUTION

WHEREAS, The Board of Directors of the South Carolina Public Service Authority (the "Authority"), by Resolutions dated October 20, 2006 and December 11, 2006, authorized management to take those actions necessary to begin the process of investigating, permitting, procuring, constructing and installing two 1100MW Westinghouse AP1000 nuclear units at the V.C. Summer site in Fairfield County, South Carolina (the "Project"), and to expend certain funds in that regard; and

WHEREAS, On March 27, 2008, South Carolina Electric & Gas Company ("SCE&G") and the Authority (collectively the "Owners") submitted to the Nuclear Regulatory Commission ("Commission") an application for combined operating licenses ("COLs") to allow SCE&G and the Authority to construct and operate two new AP1000 units at the V.C. Summer site; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated May 22, 2008, authorized the President and CEO of the Authority to execute a Limited Agency Agreement that appointed SCE&G to act as the Authority's agent, subject to certain conditions and limitations, with respect to the Engineering, Procurement and Construction Agreement (the "EPC") with Westinghouse Electric Company, LLC ("Westinghouse") and Stone & Webster, Inc. (together the "Consortium") for the Project, and to expend $1,900,000,000 through December 31, 2011 in that regard; and

WHEREAS, Westinghouse is a subsidiary of Toshiba Corporation ("Toshiba"), and Westinghouse's obligations under the EPC are supported by a Toshiba Parental Guaranty; and

WHEREAS, The Limited Agency Agreement and the EPC were executed on May 23, 2008; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated September 26, 2011, authorized the President and CEO of the Authority to execute the Design and Construction Agreement and the Operating and Decommissioning Agreement for the Project; The Design and Construction Agreement and the Operating and Decommissioning Agreement ("Original Agreements") were executed on October 20, 2011; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated December 12, 2011, extended the previous authorization for the $1,900,000,000 in funding of the Project through December 31, 2012; and
WHEREAS, The Commission issued the COLs on March 30, 2012; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated April 5, 2012, authorized the President and CEO of the Authority to provide prior written consent to SCE&G, as required by the Limited Agency Agreement, to issue the Full Notice to Proceed to the Consortium under the EPC and to expend a sum not to exceed $4,887,715,000 on the Project and $261,233,000 for related transmission facilities, for a total project cost of $5,148,948,000; and

WHEREAS, On April 17, 2012, SCE&G provided Full Notice to Proceed to the Consortium on behalf of itself and the Authority; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated October 27, 2015, authorized the President and CEO of the Authority to execute a Limited Agency Agreement that appointed SCE&G to act as the Authority’s agent with respect to an October, 2015 Amendment to the EPC Agreement (“October 2015 Amendment”). The October 2015 Amendment was executed by SCE&G the same day and became effective on December 31, 2015 upon the consummation of the acquisition by Westinghouse of the stock of Stone & Webster, Inc. from Chicago Bridge & Iron; and

WHEREAS, Among other things, the October 2015 Amendment provided SCE&G and the Authority with an irrevocable option, in their sole discretion, until November 1, 2016 and subject to regulatory approvals, to further amend the EPC Agreement to fix the total amount to be paid to the Consortium for its entire scope of work on the Project (excluding a limited amount of work within the time and materials component of the contract price) after June 30, 2015 at $6.082 billion (the Authority’s 45% portion being approximately $2.737 billion) as set forth in Exhibit D of the October 2015 Amendment (“Option Amendment”). Contemporaneously with the execution of the October 2015 Amendment, Westinghouse also executed the Option Amendment; and

WHEREAS, Toshiba consented to the October 2015 Amendment, and by document dated October 27, 2015, specifically reaffirmed the terms of its Guaranty thereto; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated June 30, 2016, authorized the President and CEO of the Authority to consent to the exercise of the Option Amendment and to increase the total sum to be expended on the Project by $1,100,000,000, for a total project cost of $6,248,948,000; and

WHEREAS, SCE&G with the consent of the Authority and the approval of the Public Service Commission of South Carolina exercised the Option Amendment; and

WHEREAS, On December 27, 2016, Toshiba announced the possibility that the goodwill resulting from the acquisition by Westinghouse of the stock of Stone & Webster, Inc. from Chicago Bridge & Iron would reach a level of several billion U.S. dollars and would be impaired, leaving Toshiba with substantially reduced shareholders' equity. The increase to the amount of goodwill resulted from Westinghouse’s analysis that demonstrated the cost to complete the four Westinghouse AP1000 new nuclear plants in the United States would far surpass the original estimates for construction. In public statements in 2017, Toshiba attributed the cost overruns to, among other things, higher labor costs arising from lower than anticipated work efficiency and the inability to improve such work efficiency over time; and

WHEREAS, The Board of Directors of the Authority, by Resolution dated March 27, 2017, authorized the Chief Executive Officer to enter into an Interim Assessment Agreement (“IAA”) for a period not to exceed ninety (90) days and in an amount not to exceed
expenditures of $250 million in advances of funds under the EPC against the Milestone Payments. That Resolution contemplated that during this ninety (90) day period, SCE&G and the Authority would conduct a complete, detailed, and independent review of the Project construction schedule and cost to completion, and that necessary information for these analyses be obtained directly from primary sources as opposed to unverified information provided through Westinghouse or Toshiba; and

WHEREAS, on March 28, 2017, the Authority and SCE&G entered into an IAA with Westinghouse and WECTEC Global Project Services, Inc. (formerly known as “Stone and Webster”) for a term not to exceed the earlier of (a) April 28, 2017, or (b) the termination of the Vogtle Interim Assessment Agreement. On April 28, 2017, the parties executed “Amendment No. 1 To Interim Assessment Agreement” extending the term of the IAA to June 26, 2017 and decoupling the agreement from the Vogtle Interim Assessment Agreement; and

WHEREAS, Westinghouse filed a Petition pursuant to Chapter 11 of the Bankruptcy Code on March 29, 2017, in the United States Bankruptcy Court for the Southern District of New York, Case No. 17-10751-MEW; and

WHEREAS, after the filing of the bankruptcy proceeding, the Authority and SCE&G entered into negotiations with Toshiba Corporation for the purpose of acknowledging and defining Toshiba’s obligation under the May 23, 2008 Guaranty and establishing a schedule for the full payment of that obligation to the Authority and SCE&G; and

WHEREAS, negotiators for the Authority and SCE&G agreed to a form of agreement (“Settlement Agreement”) with Toshiba, subject to approval of the governing bodies of the three parties, setting forth the terms of such an agreement that includes, among other things:

A. Toshiba’s agreement that it will pay the Guaranty obligation in the amount of $2.168 billion, to be paid in accordance with a schedule set forth in the Settlement Agreement;

B. Toshiba’s agreement that payment of the Guaranty obligation and related payment schedule is not dependent on whether one or both of the two units are completed;

C. Toshiba’s agreement that the Authority and SCE&G are not releasing any claims or rights against Westinghouse;

D. Toshiba’s agreement not to subordinate the Guaranty obligations except to working capital lenders and other relationships necessary to continue and enhance its financial condition;

E. Toshiba, Westinghouse, and the owners of the Vogtle and VC Summer AP1000 Project’s agreement to become parties to a consent order in the Bankruptcy Court that approves assignment by Toshiba to the V.C. Summer and Vogtle owners of all rights to the non-U.S. assets in the Westinghouse family of companies owned by Toshiba, any of Toshiba’s rights against Westinghouse relating to loans, and similar receivables;

F. Agreement by the Parties to the Settlement Agreement to work towards an expeditious sale of Westinghouse;

G. The Authority and SCE&G’s agreement that the distribution proceeds received from the Westinghouse bankruptcy will be a credit against the Guaranty; and

H. The Authority and SCE&G’s agreement not to exercise remedies of the Guaranty,
absent a default, until September of 2022; and

WHEREAS, beginning in late March, 2017, SCE&G and the Authority formed an independent team, led by an experienced construction manager, to undertake a rigorous Estimate-to-Complete (ETC) validation process, including the costing/scheduling expertise of High Bridge Associates and the organizational expertise of ScottMadden, Inc. The process began with gathering and validating information and data received from Westinghouse and Fluor, and creating a new schedule model using SCE&G, Fluor and Westinghouse schedules. The final result of the ETC process was necessary to inform the options that SCE&G and the Authority are now considering, which include completing both units, completing one unit and postponing or abandoning the other, or postponing or abandoning both units; and

WHEREAS, An additional extension of the Interim Assessment Agreement was subsequently executed among Westinghouse Electric Company, LLC, WECTEC Global Project Services, Inc., SCE&G and the Authority on June 27, 2017, for a period not to exceed forty-five (45) days through August 10, 2017, and in an amount not to exceed additional expenditures of $50 million in advances of funds under the EPC against the Milestone Payments, so that the schedule and cost evaluation process might be completed; and

WHEREAS, The Board of Directors has had the opportunity to review the key terms of the Settlement Agreement with regard to consideration of this Resolution and has received and relied upon briefings, opinions and information presented by the Nuclear Executive Management of the Authority, which consists of the President and CEO, Senior Vice President of Nuclear Energy, Senior Vice President and General Counsel, and Senior Vice President and Chief Financial Officer; and

WHEREAS, The Board of Directors has also received and relied upon opinions presented by internal and external legal counsel and external consultants with regard to consideration of this Resolution; and

WHEREAS, Upon recommendation of Nuclear Executive Management, and in reliance upon the opinions and information presented to it as set forth herein, the Board of Directors has determined that the terms of the Settlement Agreement are fair and reasonable; and

WHEREAS, The Board of Directors has considered and appropriately balanced the factors set forth in South Carolina Code Section 58-31-55(A)(3) and has determined that the actions authorized by this Resolution are in the best interests of the Authority; now, therefore, be it

RESOLVED, That the President and CEO of the Authority is hereby authorized to execute the Settlement Agreement with Toshiba Corporation referenced in this Resolution; and be it further

RESOLVED, That until further action of the Board, the President and CEO of the Authority is hereby authorized to continue taking those actions necessary to design, permit, procure, construct, and install two 1100 MW nuclear units at the V. C. Summer Nuclear Station in Fairfield County for commercial operation while the financial analysis of the Project going forward is finalized, reviewed, and appropriate response determined; and be it further

RESOLVED, That the President and CEO of the Authority is hereby authorized to take such further actions and execute such further agreements or instruments as may be necessary to carry out the foregoing Resolution, with the exact terms and conditions to be determined by the President and CEO.