

130 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

South Carolina Electric & Gas Company

Docket Nos. OA08-46-003
OA07-36-004

ORDER GRANTING REHEARING

(Issued March 15, 2010)

1. On July 20, 2009, South Carolina Electric & Gas Company (SCE&G) filed a request for rehearing of the Commission's June 18, 2009 Order¹ in this proceeding. For the reasons set forth below, we grant the request for rehearing.

I. Background

2. In an order issued September 18, 2008,² the Commission accepted, subject to a further compliance filing, SCE&G's transmission planning process as a proposed attachment to its Open Access Transmission Tariff (OATT) to comply with the nine transmission planning principles and other requirements of Order No. 890.³ SCE&G's transmission planning process includes a regional process called the South Carolina

¹ *South Carolina Elec. & Gas Co.*, 127 FERC ¶ 61,275 (2009) (June 2009 Order).

² *South Carolina Elec. & Gas Co.*, 124 FERC ¶ 61,266 (2008) (September 2008 Order).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Regional Transmission Planning (SCRTP) process and an inter-regional transmission planning process called the Southeast Inter-Regional Participation Process (SIRPP). SCE&G included the SCRTP and SIRPP processes as part of its OATT.

3. In the September 2008 Order, the Commission, among other things, directed SCE&G to modify its OATT to remove the requirement that stakeholders obtain authorization from the Commission to access Critical Energy Infrastructure Information (CEII) contained in FERC Form No. 715 before the stakeholders are permitted access to confidential information and CEII related to the transmission planning process.⁴ On December 17, 2008, SCE&G submitted, among other things,⁵ revisions to SIRPP provisions of its OATT to comply with this directive, but also included the following new language:

Resource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to: (a) Determine security constrained unit commitment or economic dispatch of resources; or (b) Perform an economic evaluation of costs and benefits.⁶

4. In the June 2009 Order, the Commission found that the new SIRPP language that forbids Participating Transmission Owners from disclosing certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP. Accordingly, the Commission directed SCE&G to revise the SIRPP language to “require that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.”⁷

⁴ September 2008 Order, 124 FERC ¶ 61,266 at P 23.

⁵ We note that on August 17, 2009, SCE&G submitted a filing to the Commission adding the following language to section III. A: “Information provided by a stakeholder to SCE&G that could reasonably implicate transmission planning may be required to be disclosed to other stakeholders in accordance with the terms and conditions of this Attachment K.” SCE&G, FERC Electric Tariff, Third Revised Vol. No. 5, Second Revised Sheet No. 218.

⁶ SCE&G, FERC Electric Tariff, Third Revised Vol. No. 5, Appendix K-3 (Non-CEII Confidential Information) Original Sheet No. 243.

⁷ June 2009 Order, 127 FERC ¶ 61,275 at P 25.

5. On July 20, 2009, SCE&G filed the instant request for rehearing concerning disclosure of confidential competitive information to merchant function personnel.⁸

II. Request for Rehearing

6. Although SCE&G revised its OATT in its August 17, 2009 compliance filing to delete the language restricting the availability of resource-specific data, as directed in the Commission's June 2009 Order, it seeks assurance in its request for rehearing that it can require stakeholders that request confidential competitive information in the transmission planning process to sign a confidentiality agreement that prevents such information from being shared with the merchant function personnel of such stakeholders. SCE&G states that its concern is focused on "a subset of confidential information, such as resource-specific data concerning individual resources (e.g., heat rates, fuel cost data) or data that is particularly commercially sensitive (e.g., the order of a load serving entity's economic generation dispatch stack)"⁹ It expresses its concern that the release of confidential competitive information to personnel engaged in competitive activities in the wholesale power markets could harm such markets and be used for anticompetitive purposes.

7. SCE&G argues that stakeholders will generally be able to replicate studies and otherwise participate in the planning process without the use of confidential competitive information. SCE&G states that it is seeking assurance that, if a situation arises where it is necessary to release confidential competitive information, such information need not be disclosed to merchant function personnel.¹⁰ In support of its argument, SCE&G cites Order Nos. 890 and 890-A, where the Commission stated that confidentiality agreements may appropriately restrict the sharing of sensitive information with customer personnel that are involved only in transmission functions, as opposed to merchant functions.¹¹

⁸ On August 17, 2009, pursuant to the June 2009 Order, SCE&G submitted its compliance filing regarding its transmission process, deleting, as directed, the language discussed above restricting availability of resource-specific data.

⁹ SCE&G Rehearing Request at 2.

¹⁰ SCE&G states that a Competitive Duty Person (i.e., a Merchant Function Person) is defined as one who engages in merchant activities, including: (i) the marketing or sale of electric power at wholesale, (ii) the purchase or sale of electric power at wholesale, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. *Id.* at 7 n.14.

¹¹ *Id.* at 4, citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 276 n.177 and Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 92 n.48.

8. On August 4, 2009, E.ON U.S. LLC, together with and on behalf of its subsidiaries, Louisville Gas and Electric Company and Kentucky Utilities Company, (collectively, E.ON) submitted an answer in support of the request for rehearing.

III. Discussion

9. As discussed below, we grant SCE&G's request for rehearing.¹²

10. The directive in the June 2009 Order is that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies. This directive was not intended to require that confidential competitive information be disclosed to merchant function personnel. As SCE&G correctly points out, the Commission previously stated in Order Nos. 890 and 890-A that confidentiality agreements may restrict the availability of confidential competitive information and data in the transmission planning process such that it is available only to customer personnel that are involved in transmission functions, as opposed to merchant functions.¹³ The Commission's requirement that Participating Transmission Owners disclose certain resource-specific information, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies did not overturn these previous findings. Accordingly, confidentiality agreements may restrict the availability of certain resource-specific confidential competitive information that is needed to participate in the transmission planning process and/or replicate transmission studies to stakeholder personnel that are involved only in transmission functions, as opposed to merchant functions.

¹² Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2009), bars answers to rehearing requests. Thus, we will reject E.ON's answer.

¹³ *See supra* note 11.

The Commission orders:

The request for rehearing of SCE&G is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.