

132 FERC ¶ 61,043  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

South Carolina Electric & Gas Company

Docket Nos. ER10-1268-000  
ER10-516-000  
ER10-855-000

ORDER ACCEPTING AND SUSPENDING REVISED DEPRECIATION RATES,  
SUBJECT TO REFUND, CONSOLIDATING PROCEEDINGS, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 15, 2010)

1. On May 17, 2010, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> South Carolina Electric & Gas Company (SCE&G) filed proposed revisions to its formula rate for transmission service under its Open Access Transmission Tariff<sup>2</sup> to change the depreciation rates in that formula. In this order, as discussed below, we accept the proposed revisions for filing and suspend them for a nominal period, and make them effective June 1, 2010, subject to refund. We also establish hearing and settlement judge procedures, and consolidate SCE&G's filing with the ongoing proceedings in Docket Nos. ER10-516-000 and ER10-855-000, which involve related issues and are currently in settlement procedures.

**I. Background**

2. On December 29, 2009, in Docket No. ER10-516-000, SCE&G filed revised tariff sheets to implement a cost-of-service formula for calculating the rates for network integration transmission service and point-to-point transmission service.<sup>3</sup> Under its formula, SCE&G will calculate a forecasted net revenue requirement for rates effective from June 1 through May 31, using the most recent calendar year cost data contained in

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> South Carolina Electric & Gas Co., FERC Electric Tariff, Fourth Revised Volume No. 5 (Tariff).

<sup>3</sup> See *S.C. Electric & Gas Co.*, 130 FERC ¶ 61,149, at P 1 (2010) (February 26 Order).

SCE&G's FERC Form No. 1.<sup>4</sup> Any differences between SCE&G's forecasted and actual net revenue requirement for each calendar year will be added or subtracted from each subsequent year's net revenue.<sup>5</sup> SCE&G is required to submit an informational filing containing its annual revenue requirement and supporting data with the Commission in May of each year (Annual Update).<sup>6</sup> The initial rates accepted in Docket No. ER10-516 were based on a forecasted partial year 2009 revenue requirement and were effective, subject to true-up, from March 2 through May 31, 2010. While SCE&G populates its formula rates using actual calendar year cost data in May of each year, its formula rate includes fixed depreciation rates that are not subject to adjustment except through a filing under section 205 or 206 of the FPA.<sup>7</sup> The Commission set SCE&G's proposed formula rate tariff revisions for hearing and settlement procedures, which are ongoing.<sup>8</sup>

3. On March 10, 2010, in Docket No. ER10-855-000, SCE&G filed an unexecuted network integration transmission service agreement for transmission service to Central Electric Power Cooperative, Inc. (Central). The Commission set the service agreement for hearing and settlement judge procedures, and consolidated Docket No. ER10-855-000 with Docket No. ER10-516-000 for the purposes of hearing, settlement, and decision.<sup>9</sup>

4. On the same day that it submitted the instant filing, SCE&G filed its Annual Update showing the transmission rates for network service and point-to-point service for the period June 1, 2010, through May 31, 2011.<sup>10</sup>

## **II. Filing**

5. SCE&G states that the depreciation rates submitted in Docket No. ER10-516 are based on a depreciation study for 2003 and that it is proposing to revise its depreciation rates to reflect a depreciation study conducted in late 2009 based on 2008 plant balances (the 2009 Depreciation Study). SCE&G notes that the Public Service Commission of South Carolina (South Carolina Commission) approved the 2009 Depreciation Study effective January 1, 2009. SCE&G seeks permission to book its revised depreciation

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<sup>4</sup> FERC Form No. 1, Annual Report of Electric Utilities, South Carolina Electric & Gas Co.

<sup>5</sup> February 26 Order, 130 FERC ¶ 61,149 at P 3.

<sup>6</sup> *Id.*

<sup>7</sup> Tariff, Original Sheet No. 214-W.

<sup>8</sup> February 26 Order, 130 FERC ¶ 61,149 at P 30.

<sup>9</sup> *S.C. Electric & Gas Co.*, 131 FERC ¶ 61,113 (2010).

<sup>10</sup> South Carolina Electric & Gas Co., Annual Update, Docket No. ER10-516-000 (filed May 17, 2010).

rates effective January 1, 2009, and asks that the Commission accept its revised depreciation rates effective June 1, 2010, for ratemaking purposes.<sup>11</sup>

6. SCE&G requests such waivers as are appropriate to ensure its filing complies with the requirements of Part 35 of the Commission's rules and regulations. In particular, it requests waiver of the Commission's 60-day notice requirement in order to permit its requested effective date of June 1, 2010. SCE&G argues that waiver is appropriate because it is administratively efficient to implement the new depreciation rates coincident with its Annual Update, as it will align the accounting and FERC Form No. 1 data with its ratemaking. Additionally, SCE&G maintains that its wholesale transmission customers are already aware of the new depreciation study, and its filing precedes the requested effective date.<sup>12</sup>

### **III. Notice of Filing and Responsive Pleadings**

7. Notice of SCE&G's filing was published in the *Federal Register*, 75 Fed. Reg. 29,750 (2010), with interventions and protests due on or before June 7, 2010. Timely motions to intervene and protest were filed jointly by Central and North Carolina Electric Membership Corporation (collectively, the Cooperatives); and the City of Orangeburg and the Town of Winnsboro, South Carolina (collectively, the Municipals). SCE&G filed an answer. The Cooperatives filed an answer to SCE&G's answer.

8. The Municipals argue that SCE&G has not demonstrated that its proposed rates are just and reasonable. They argue that the Commission is not bound by the South Carolina Commission's approval of the depreciation rates.<sup>13</sup> They further state that it is not clear that the proposed depreciation rates are more current than the existing rates (as it appears the 2009 depreciation study is based in part on 2004 data) or even why more current data equates to just and reasonable. The Municipals identify a number of significant differences<sup>14</sup> between the prior depreciation rates and the proposed rates. They argue that the Commission cannot conclude that the proposed changes are just and reasonable because the proposed rates have not been supported with relevant data or

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<sup>11</sup> While for accounting purposes SCE&G has included these depreciation rates in Form No. 1 for 2009, the transmission rates that result from these depreciation changes will not be effective until June 1, 2010.

<sup>12</sup> Filing, Transmittal Letter at 2 (citing *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338-39 (*Central Hudson*), *order on reh'g*, 61 FERC ¶ 61,089 (1992)).

<sup>13</sup> Municipals Protest at 4 (citing *Westar Energy, Inc.*, 131 FERC ¶ 61,183, at P 20 & n.25 (2010)).

<sup>14</sup> For example, the Municipals note that, without any supporting testimony or explanation, a variety of the new accrual rates have more than doubled in the short period between the 2003 data from the prior study and the 2008 data used in the instant filing. Municipals Protest at 5-6.

other analyses. Accordingly, the Municipals request that the Commission set the proposed depreciation rates for hearing procedures to permit interested parties to conduct discovery and engage in settlement discussions.<sup>15</sup>

9. Both the Cooperatives and the Municipals protest SCE&G's filing to the extent that SCE&G seeks to apply its proposed depreciation rates prior to June 1, 2010. They state that their respective reviews of SCE&G's Annual Update indicates that the depreciation expenses used in the true-up for the March through May 2010 period is taken directly from the 2009 FERC Form No. 1, which reflects the new depreciation rates. They maintain that this suggests that SCE&G intends to contravene the filed rate doctrine and the rule against retroactive ratemaking by using its proposed rates in the true-up calculation for the March through May 2010 period, which would result in the proposed rates being included in rates for transmission service before June 1, 2010.

10. The Cooperatives argue that making the proposed rates applicable for the March through May 2010 period violates the purpose of both the filed rate doctrine and the rule against retroactive ratemaking: to ensure that customers have prior notice of any changes in rates. Moreover, they state that this would violate Commission precedent requiring prior approval of a change in depreciation rates before using the rates for ratemaking purposes. The Cooperatives and the Municipals request that if the Commission approves the depreciation rates, it should clarify that SCE&G may not apply the new depreciation rates in any true-up calculation for any portion of the initial rate year that predates the requested June 1, 2010, effective date.<sup>16</sup> The Municipals state that if the Commission permits the revised depreciation rates to be used in the calculation of the rates for transmission service for the March through May 2010 period, it should require SCE&G to provide documentation of the change in rates resulting from use of the revised depreciation rates.

11. The Municipals further argue that the Commission should refuse to waive its requirement that SCE&G document the impact of its proposed changes on customers.<sup>17</sup> According to the Municipals, this case is distinguishable from *Westar*, where the Commission waived this requirement on the basis that the rates at issue would be posted and customers could compare the posted rates to the existing rates, because here

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<sup>15</sup> *Id.* at 9.

<sup>16</sup> *Id.* at 8; Cooperatives Protest at 8-9 (citing *New Dominion Energy Cooperative*, Opinion No. 499, 122 FERC ¶ 61,174, at P 88 (2008) (*New Dominion*); *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs., Regulation Preambles 1996-2000 ¶ 31,104, at 31,695 (2000)).

<sup>17</sup> Municipals Protest at 8 (citing 18 C.F.R. §§ 35.13(c)(1)-(2) (2010)).

customers will be unable to understand the impact of the proposed rates and will be unable to isolate the proposed rates' impact on the March through May 2010 period since there will be no published rates.<sup>18</sup>

12. Finally, the Cooperatives and the Municipals ask the Commission to consolidate this docket with the consolidated proceedings in Docket Nos. ER10-516-000 and ER10-855-000 because the proceedings present common issues of law and fact.<sup>19</sup>

13. In its answer, SCE&G clarifies that it is not seeking to make its proposed depreciation rates effective prior to June 1, 2010. While SCE&G acknowledges that it calculated the true-up, including its proposed depreciation rates, based on its 2009 FERC Form No. 1, it states that the true-up process was merely a part of the process used to calculate the revenue requirement and transmission rates that will go into effect on June 1, 2010. Thus, according to SCE&G, there is no retroactive effect because there is no change to the rates in effect for the March to May 2010 period. It notes that it requested permission to book the rates by January 1, 2009, so that it could take the 2009 depreciation expense from FERC Form No. 1 without adjustment. Further, it states that the component of the reconciliation adjustment represented by the increment in depreciation expense is too small to have a rate effect.<sup>20</sup> And while SCE&G states that it does not object to the motions to intervene or to consolidate, it rejects the contention that the proposed rates are not just and reasonable.<sup>21</sup>

14. In their answer, the Cooperatives reiterate that they believe that SCE&G is seeking to retroactively increase its depreciation rates for the period March 1 through May 31, 2010 by including its proposed depreciation rates in the reconciliation amount starting March 1, 2010, and that this violates the rule against retroactive ratemaking, the filed rate doctrine, and the Commission policy requiring prior notice of a change in depreciation rates.<sup>22</sup> In addition, they argue that the Commission should place no weight on SCE&G's assertion that the implementation of its proposed depreciation rates will not have an effect on rates and that, if SCE&G's assertion is accurate, it should have no objection to their request to calculate the true-up using the pre-existing depreciation rates.<sup>23</sup>

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<sup>18</sup> Municipals Protest at 8-9 (citing *Nestar*, 131 FERC ¶ 61,183 at P 21).

<sup>19</sup> Municipals Protest at 9-10; Cooperatives Protest at 10 (citing *S.C. Electric & Gas Co.*, 131 FERC ¶ 61,113, at P 27 (2010); *E.ON U.S. LLC*, 131 FERC ¶ 61,025, at P 44 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,243, at P 21 (2010); *Commonwealth Edison Co.*, 129 FERC ¶ 61,298, at P 29 (2009)).

<sup>20</sup> SCE&G Answer at 4.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> Cooperatives Answer at 3-4 (citing *New Dominion*, 122 FERC ¶ 61,174 at P 88).

<sup>23</sup> Cooperatives Answer at 4.

#### **IV. Discussion**

##### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise permitted by the decisional authority. We will accept the answers of SCE&G and the Cooperatives because they have provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

17. SCE&G's proposed revisions to its depreciation rates raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

18. Our preliminary analysis indicates that SCE&G's proposed revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept SCE&G's proposed revisions for filing, suspend them for a nominal period, make them effective June 1, 2010, subject to refund, and set them for hearing and settlement judge procedures.

19. We agree with SCE&G that acceptance of the revised depreciation rates effective June 1, 2010, does not run afoul of either the filed rate doctrine or the rule against retroactive ratemaking. In Order No. 618, the Commission stated that utilities may change their depreciation rates for accounting purposes without prior Commission approval.<sup>24</sup> Here, SCE&G changed its depreciation rates for accounting purposes by including its proposed depreciation rates in FERC Form No. 1 for 2009. Under Order No. 618, SCE&G was not required to make a filing under FPA section 205 before doing so.

20. SCE&G is required to obtain Commission approval before it makes its updated depreciation rates effective for rate purposes. Because its formula rate, which is the subject matter of the ongoing settlement proceedings in Docket Nos. ER10-516 and ER10-855 and has been accepted subject to refund, requires that SCE&G use its FERC Form No. 1 data for the most recent calendar year when calculating its Annual Update and the resulting rate, the depreciation rates proposed here were used as part of the true-

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<sup>24</sup> *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104 at 31,695 & n.25.

up process when calculating the rate that went into effect on June 1, 2010.<sup>25</sup> Further, entities had notice prior to March 1, 2010 that the 2009 FERC Form No. 1 data would be included in the true-up process for the June 1, 2010 rates. Thus, SCE&G's proposed depreciation rates are not being given retroactive effect, but were merely used as a component of the calculation of the Annual Update and the resulting transmission rates that went into effect on June 1, 2010, as required by the terms of SCE&G's Tariff.

21. However, we note that if, in the course of the consolidated hearing and settlement judge procedures ordered below, it is determined that SCE&G should not be permitted to use the proposed depreciation rates contained in FERC Form No. 1 to calculate its Annual Update and the resulting rates, or that the proposed depreciation rates are not just and reasonable, SCE&G's use of such depreciation rates will be subject to refund notwithstanding the fact that it booked its rates effective January 1, 2009.

22. We also agree with SCE&G that good cause exists to grant waiver of the 60-day notice requirement to permit its requested effective date to coincide with the effective date of the transmission rate contained in its Annual Update. Therefore, consistent with *Central Hudson*,<sup>26</sup> we will grant waiver of the prior notice requirement to permit an effective date of June 1, 2010, as requested. As far as SCE&G's blanket request for waiver of the remainder of Part 35 of the Commission's rules and regulations, we find that we need not rule on this issue in light of our decision to institute hearing and settlement procedures.

23. Finally, we will grant the motion to consolidate the instant proceeding with Docket Nos. ER10-516-000 and ER10-855-000 for hearing and settlement procedures. The Commission consolidates matters for hearing only if there are common issues of fact or law, and consolidation will ultimately result in greater administrative efficiency.<sup>27</sup> Here, we find consolidation is warranted in light of the agreement of the parties to this proceeding and because this proceeding concerns only one component of SCE&G's formula rate that is at issue in Docket Nos. ER10-516-000 and ER10-855-000, SCE&G's depreciation rates.

The Commission orders:

(A) SCE&G's proposed tariff sheets are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2010, subject to refund, as discussed in the body of this order.

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<sup>25</sup> See section 2 of the Formula Rate Information Protocols (Appendix B to Attachment H of SCE&G's OATT).

<sup>26</sup> 60 FERC ¶ 61,106, at 61,338-39 (1992).

<sup>27</sup> *S. Cal. Edison Co.*, 129 FERC ¶ 61,304, at P 26 (2009).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the proposed tariff sheets as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the body of the order.

(C) SCE&G's filing in Docket No. ER10-1268-000 is hereby consolidated with the ongoing proceedings in Docket Nos. ER10-516-000 and ER10-855-000 for purposes of hearing, settlement, and decision, as discussed in the body of this order.

(D) The settlement judge or presiding judge, as appropriate, designated in the consolidated proceedings in Docket Nos. ER10-516-000 and ER10-855-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission. Commissioner LaFleur voting present.

( S E A L )

Kimberly D. Bose,  
Secretary.