

122 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

South Carolina Public Service Authority

Docket No. NJ07-4-000

ORDER CONDITIONALLY GRANTING
PETITION FOR DECLARATORY ORDER

(Issued February 29, 2008)

1. On June 20, 2007, South Carolina Public Service Authority (Santee Cooper) submitted a petition for declaratory order requesting a finding that its amended and restated “safe harbor” Open Access Transmission Tariff (OATT) continues to be an acceptable reciprocity tariff. Santee Cooper also requests waiver of the filing fee.

2. In this order, we will conditionally grant Santee Cooper’s petition for declaratory order, as set forth below. In addition, we will grant Santee Cooper’s request for waiver of the filing fee.

I. Background

3. Santee Cooper is an electric utility that operates as an agency of the State of South Carolina. It is not a public utility within the Commission’s jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).¹ After the issuance of Order No. 888,²

¹ 16 U.S.C. §§ 824(d), (e) (2000 & Supp. V 2005).

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Santee Cooper sought and obtained a determination by the Commission that it had an acceptable reciprocity tariff.³ Subsequently, Santee Cooper submitted additional filings to ensure that Santee Cooper's OATT would continue to qualify for safe harbor status.

4. In Order No. 890,⁴ the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.⁵ Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability (ATC), open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

II. Santee Cooper's Reciprocity Tariff Filing

5. In this filing, Santee Cooper submits a petition for a declaratory order determining that its amended and restated OATT, which incorporates revisions to the *pro forma* OATT adopted by the Commission in Order No. 890, continues to be an acceptable safe harbor tariff. Additionally, its amended and restated OATT incorporates the *pro forma* Standard Small Generator Interconnection Procedure (SGIP) and Standard Small Generator Interconnection Agreement (SGIA) established pursuant to Order Nos. 2006, *et al.*,⁶ as well as the *pro forma* OATT provisions established in Order Nos. 661, *et al.*,⁷ to accommodate the interconnection of wind generation resources. Santee Cooper

³ *South Carolina Public Service Authority*, 75 FERC ¶ 61,209 (1996), 80 FERC ¶ 61,180 (1997), *reh'g denied*, 81 FERC ¶ 61,192 (1997).

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Statutes and Regulations ¶ 31,261(2007).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 26-61.

⁶ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 34,189 (June 13, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, 70 Fed. Reg. 71,760 (Nov. 30, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, 71 Fed. Reg. 42,587 (July 27, 2006), FERC Stats. & Regs., ¶ 31,221 (2006).

⁷ *Interconnection for Wind Energy*, Order No. 661, 70 Fed. Reg. 34,993 (June 16, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,186 (2005), *order on reh'g*, Order No. 661-A, 70 Fed. Reg. 75,005 (Dec. 19, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,198 (2005).

explains that it adopted the wind generation provisions without modification, but adopted the small generation provisions with limited modifications designed to address Santee Cooper's status as a non-public, state-owned utility. Santee Cooper asserts that most of the differences between its OATT and the revised *pro forma* OATT reflect Santee Cooper's status as a non-public utility. It adds that other differences are intended to accommodate routine, regional operations consistent with the *pro forma* OATT.

6. Santee Cooper also requests waiver of the filing fee applicable to petitions for declaratory orders.

III. Notice of Filing

7. Notice of Santee Cooper's filing was published in the *Federal Register*, 72 Fed. Reg. 36,441 (2007), with comments, protests, or motions to intervene due on or before July 20, 2007. None was filed.

IV. Discussion

A. Reciprocity Tariff

8. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁸ Under this procedure, non-public utilities may voluntarily submit to the Commission a transmission tariff and a petition for declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.⁹ Order No. 890 provides that a non-public utility that already has a safe harbor OATT (e.g., Santee Cooper) must amend its OATT so that its provisions substantially conform or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.¹⁰

⁸ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760; *see also* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-87.

⁹ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) and standards of conduct requirements or obtain waiver of them. Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

9. We have compared the non-rate terms and conditions of Santee Cooper's proposed amended and restated OATT to those in the Commission's *pro forma* OATT. We find that, with certain modifications, discussed below, Santee Cooper's proposed OATT substantially conforms or is superior to the requirements of the *pro forma* OATT. However, we note that Santee Cooper's OATT will not be a safe harbor tariff until Santee Cooper incorporates into its OATT the modifications discussed below.

1. Transmission Planning Process

10. Santee Cooper makes certain revisions to section 2.2 of its OATT to reflect that it will not file its Attachment K (Transmission Planning Process) for approval. Santee Cooper states that it is committed to the regional planning process contemplated under Order No. 890 and has posted its proposal for open planning on its OASIS.

11. The Commission found in Order No. 890 that there is a lack of coordination, openness, and transparency in the existing *pro forma* OATT, which results in opportunities for undue discrimination in transmission planning. In order to correct this, the Commission revised the *pro forma* OATT to require coordinated, open, and transparent transmission planning on both a local and regional level.¹¹ The Commission directed each public utility transmission provider to submit a proposal for a coordinated and regional planning process (Attachment K) that complies with the planning principles and other requirements set forth in Order No. 890.¹² Further, the Commission stated that it expects all non-public utility transmission providers to participate in the planning processes, noting that "a coordinated, open and transparent regional planning process cannot succeed unless all transmission owners participate."¹³

12. We note that Santee Cooper and South Carolina Electric & Gas Company (SCE&G) have developed a joint planning proposal for coordinated, open and transparent transmission planning. This joint planning process will ultimately be reviewed by the Commission in its consideration of SCE&G's Attachment K, which was filed December 7, 2007, in Docket No. OA08-46-000, and amended on December 12, 2007, in Docket No. OA08-46-001. Because Santee Cooper is participating in the regional planning process established by Order No. 890, we find it acceptable that Santee Cooper, as a non-jurisdictional utility, include its Attachment K on its OASIS, instead of in its OATT.

¹¹ *Id.* P 435.

¹² *Id.* P 437.

¹³ *Id.* P 441.

2. Rollover Rights Effective Date

13. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.¹⁴

14. Santee Cooper has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, SCE&G's Attachment K, setting forth its transmission planning process in conjunction with Santee Cooper, which was filed December 7, 2007, in Docket No. OA08-46-000, and amended on December 12, 2007, in Docket No. OA08-46-001, has not yet been accepted by the Commission. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, in order to maintain its safe harbor tariff, Santee Cooper must revise its tariff sheet to reflect the previous language of section 2.2. In addition, to maintain its safe harbor tariff, Santee Cooper should re-submit the rollover reform language established in Order No. 890 after acceptance of SCE&G's Attachment K filing, requesting an effective date commensurate with the date of SCE&G's Attachment K filing.

3. Notification for Failure to Meet Study Deadlines

15. Santee Cooper states that it shares the Commission's desire that studies be completed in a timely manner, and its proposed OATT provides for operational penalties should Santee Cooper fail to meet study deadlines. However, Santee Cooper explains that its proposed OATT does not include the provisions requiring that notification filings be made with the Commission, consistent with its status as a non-public utility.

16. We find this deviation acceptable, because Santee Cooper maintains an active OASIS site which ensures transparency of the process in which Santee Cooper processes transmission requests.

4. Unreserved Use Penalties

17. In Schedule 7 of its OATT, Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service, Santee Cooper sets forth the charge that a customer will pay if it exceeds its firm reserved capacity. Specifically, its OATT states that "the Transmission Customer shall pay 150 percent of the Schedule 7 charge for the delivery period (i.e.,

¹⁴ *Id.* P 1231, 1265.

yearly, monthly, weekly, or daily) for which the Transmission Customer is reserving capacity for the maximum amount that the Transmission Customer exceeds its firm reserved capacity at any Point of Receipt and/or Point of Delivery.” Additionally, if a transmission customer exceeds its reserved capacity for non-firm service, it would be required to pay 150 percent of the charge set forth in Schedule 8 – Non-Firm Point-to-Point Transmission Service.

18. Santee Cooper’s proposal to charge a customer for unreserved use of transmission in certain instances at an unreserved use penalty based upon the non-firm point-to-point rate is inconsistent with Order No. 890. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.¹⁵ In addition, the Commission stated that the unreserved use penalty rate may not be greater than twice the firm point-to-point rate for the period of unreserved use and that the transmission customer must face a penalty in excess of the firm point-to-point transmission service charge it avoids through unreserved use of transmission service or the transmission customer will have no incentive to reserve the appropriate amount of service.¹⁶

19. Here, Santee Cooper’s proposal to base the unreserved use penalty for certain instances of unreserved use on the non-firm point-to-point rate is inconsistent with our finding that the transmission customer will have no incentive to reserve the appropriate amount of service if the unreserved use penalty is not in excess of the firm point-to-point transmission service charge. Furthermore, it is unclear how Santee Cooper would apply its proposed unreserved use penalty in the event a customer is taking both firm and non-firm point-to-point service at the same points of receipt and delivery, i.e., would Santee Cooper apply the firm or non-firm based unreserved use penalty. Therefore, we find that Santee Cooper must base the unreserved use penalty for any unauthorized use on the firm point-to-point rate in order to continue to have an acceptable safe harbor tariff.

20. The Commission finds that Santee Cooper’s proposed unreserved use penalties do not conform to the requirements of Order No. 890. We find that Santee Cooper must modify its unreserved use penalty language to reflect the terms and conditions delineated in Order No. 890 in order to continue to have an acceptable safe harbor tariff. Specifically, Santee Cooper’s unreserved use penalty provision should indicate that (1) unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use is to be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a

¹⁵ *See id.* P 834, 848.

¹⁶ *Id.* P 848.

given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly). Accordingly, we find that Santee Cooper must provide revised tariff sheets reflecting the requirements for unreserved use penalties as set forth in Order No. 890 or to otherwise revise its OATT to remove the unreserved use penalty language in order to continue to have an acceptable safe harbor tariff.

5. Creditworthiness

21. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.¹⁷

22. We have reviewed Santee Cooper's filing and find that while Santee Cooper has addressed the six elements required by Order No. 890, its creditworthiness procedures require further information. Specifically, Attachment L, Section 2a of Santee Cooper's proposal would determine the creditworthiness of a customer not rated by a credit rating agency using a financial analysis coupled with the customer's payment history and compliance with the terms of the Service Agreement or OATT. However, the details of the aforementioned criteria and how they will be applied are unclear and may be unduly discriminatory. Therefore, in order to maintain a safe harbor tariff, Santee Cooper must include in its creditworthiness procedures a more specific methodology to determine an unrated customer's creditworthiness.

6. SGIP and SGIA

23. We find that Santee Cooper's modifications to the *pro forma* SGIP and SGIA substantially conform or are superior to the *pro forma* SGIP and SGIA. These changes reflect the fact that Santee Cooper is not a public utility subject to the filing and review requirements of sections 205 and 206 of the FPA. Among other things, these deviations reflect that Santee Cooper is not required to file arbitration decisions and the SGIA with the Commission. In addition, we find it acceptable for Santee Cooper to modify the *pro forma* SGIA to reflect its municipal status under the tax code.

B. Methodology to Assess Available Transfer Capability

24. Santee Cooper submitted a revised version of Attachment C (Methodology to Assess Available Transfer Capability) to its OATT as required by Order No. 890. Santee

¹⁷ *Id.* P 1656-61.

Cooper's OATT will not be a safe harbor tariff until Santee Cooper incorporates into its Attachment C the modifications discussed below.

1. Available Transfer Capability Methodology

25. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)). The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling, operating and planning horizons.¹⁸ Further, the actual mathematical algorithms must be posted on the transmission provider's website, with the link noted in the transmission provider's Attachment C.¹⁹

26. We have reviewed Santee Cooper's filing and find that Santee Cooper's revised Attachment C does not provide the link to Santee Cooper's website with the actual mathematical algorithms. Therefore, Santee Cooper's OATT does not comply with Order No. 890. In order to ensure that its OATT continues to be a safe harbor tariff, Santee Cooper must revise its Attachment C to provide the link to Santee Cooper's website with the actual mathematical algorithms, as required in Order No. 890.

2. Existing Transmission Commitments

27. In Order No. 890, the Commission required a transmission provider to explain: (i) its definition of Existing Transmission Commitments (ETC); (ii) the calculation methodology used to determine the transmission capacity to be set aside for native load (including network load) and non-OATT customers (including, if applicable, an explanation of assumptions on the selection generators that are modeled in service) for both the operating and planning horizons; (iii) how point-to-point transmission service requests are incorporated; (iv) how rollover rights are accounted for; and (v) its processes for ensuring that non-firm capacity is released properly (e.g., when real-time schedules replace the associated transmission service requests in its real-time calculations).²⁰

28. We have reviewed Santee Cooper's filing and find that Santee Cooper's revised Attachment C does not explain its calculation methodology used to determine the transmission capacity set aside for native load and non-OATT customers. Additionally, the explanation of how point-to-point transmission service requests are incorporated is unclear. Furthermore, Santee Cooper has not provided a clear description of how rollover rights are accounted for and its explanation of its processes for ensuring that non-

¹⁸ *Id.* at *pro forma* OATT, Attachment C; *see also id.* P 323.

¹⁹ *Id.* P 325, 328.

²⁰ *Id.* at *pro forma* OATT, Attachment C.

firm capacity is released properly is not clear. Therefore, Santee Cooper's OATT does not comply with Order No. 890. In order to ensure that its OATT continues to be a safe harbor tariff, Santee Cooper must revise its Attachment C to provide the missing explanations as stated above regarding the ETC-related requirements.

C. Filing Fee

29. We will grant Santee Cooper's request for waiver of the filing fee. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in those circumstances."²¹

30. Accordingly, we will conditionally grant Santee Cooper's petition for a declaratory order. We find that, with certain modifications discussed above, Santee Cooper's proposed OATT substantially conforms or is superior to the requirements of the *pro forma* OATT. We note that Santee Cooper will not have a safe harbor tariff until it incorporates the modifications discussed above.

The Commission orders:

(A) Santee Cooper's petition for declaratory order is hereby conditionally granted, as discussed in the body of this order.

(B) Santee Cooper's request for waiver of the filing fee is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²¹ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89 (footnote omitted).