

130 FERC ¶ 61,149  
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 No. ER10-516-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,  
SUBJECT TO REFUND, AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 26, 2010)

1. On December 29, 2009, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> South Carolina Electric and Gas Company (SCE&G)<sup>2</sup> filed revised tariff sheets for inclusion in its Open Access Transmission Tariff (OATT). The tariff sheets seek to implement a cost-of-service formula for calculating the rates for network integration transmission service (network service) and point-to-point transmission service (point-to-point service) (collectively, the formula rates), and to recover costs that SCE&G incurred in attempting to form a regional transmission organization (RTO). In this order, the Commission accepts for filing and suspends for a nominal period the proposed tariff sheets, to be effective March 2, 2010, subject to refund, and establishes hearing and settlement judge procedures.

**I. Filing**

2. SCE&G states that the proposed formula rates will replace its existing transmission service rates, which are based on a fixed revenue requirement that has not been changed for more than a decade.<sup>3</sup> SCE&G also states that, subject to true-up, the

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> SCE&G is the principal subsidiary of SCANA Corporation and is an investor-owned utility engaged in the generation, transmission, distribution and sale of electric power to retail and wholesale customers in the State of South Carolina. SCE&G's Service territory covers approximately 16,000 square miles and its transmission system consists of approximately 3,500 miles of transmission lines. SCE&G Transmittal Letter at 2 (Transmittal Letter).

<sup>3</sup> *Id.*

first (partial) year annual transmission revenue requirement for network service under the proposed formula is approximately \$91.5 million. This represents a \$46.1 million (101 percent) increase to the existing revenue requirement of \$45.4 million approved in SCE&G's last rate case, which was based on a 1994 test year. SCE&G claims that the proposed increase in its rate base is largely a result of numerous investments that it has made in transmission-related plant.<sup>4</sup> SCE&G adds that substantial transmission expansion is expected over the next decade and that the proposed formula rates will help facilitate these investments, but it does not seek rate incentives in connection with such transmission expansion at this time. However, SCE&G states that the proposed formula contains a placeholder (currently set at zero) for future rate incentives; it will request Commission approval under section 205 of the FPA for any future rate incentives.<sup>5</sup>

3. SCE&G states that the proposed formula enables it to calculate the net annual revenue requirement for each rate year, except the initial partial rate year, and that the formula will cover the annual period from June 1 through May 31. SCE&G will populate the formula each May using actual calendar year cost data, with limited exceptions, and the resulting transmission service rates will become effective each June 1.<sup>6</sup> SCE&G states that it will submit annual informational filings to the Commission containing these data. SCE&G also states that forecasted plant additions will be included in the formula and then true-up after the year is over. The true-ups between the forecasted and actual net revenue requirement will be calculated each subsequent rate year and applied, with interest, as an addition to or a subtraction from the subsequent year's net revenue requirement and resulting rates.<sup>7</sup>

4. SCE&G proposes to convert from fixed-revenue-requirement rates to formula rates on the basis that formula rates will better reflect changes in its transmission revenue requirement, and allow it to recover its transmission costs in a timely manner. It states that this is particularly critical given its expectation of making substantial investments in its transmission system.<sup>8</sup> SCE&G asserts that its proposal to adopt formula rates is in

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<sup>4</sup> *Id.* at 9.

<sup>5</sup> Transmittal Letter at 9-10.

<sup>6</sup> SCE&G notes that the majority of the actual data inputs are reported annually in its FERC Form No. 1. *Id.* at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2. SCE&G adds that in Order No. 679, the Commission found that "formula rates can provide the certainty of recovery that is conducive to large transmission expansion programs." *Id.* at 3 (citing *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 386, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007)).

keeping with Commission case law, which encourages the use of formula rates, and that its proposal is also consistent with previously-approved formula rates.<sup>9</sup>

5. SCE&G states that its proposed tariff revisions also contain formula rate implementation protocols that describe how it will update the formula in future years, what the review procedures are, how customer challenges will be resolved, and how any changes to the annual rate restatements will be implemented. SCE&G states that the review procedures establish certain periods for customer review of data, serving of data requests and responses by SCE&G, and procedures for preliminary and formal challenges to the formula rates. SCE&G explains that the protocols also establish certain periods for filing a complaint with the Commission and SCE&G's responses, in the event formal challenges cannot be resolved by the parties. SCE&G claims that the procedures do not limit its right to file to change the formula or its inputs under section 205 of the FPA, or any other party's right to file a complaint under section 206 of the FPA.<sup>10</sup>

6. SCE&G proposes to include in its formula rate a return on equity (ROE) of 11.3 percent, which is between the median and the midpoint results of the Commission's preferred discounted cash flow methodology.<sup>11</sup> SCE&G argues that an ROE between the midpoint and median is appropriate because the nation is in the midst of a serious financial and credit crisis and the cost of capital is higher today than it was prior to this crisis. It contends that an 11.5 percent ROE is justified, but states that it is willing to accept an ROE of 11.3 percent in order to avoid suspension and hearing.<sup>12</sup>

7. SCE&G asserts that its estimated cost-of-equity is in accordance with the guidance provided by the Commission in earlier orders.<sup>13</sup> SCE&G states that, in order to be included in the proxy group, a company must: (1) operate in the southeast portion of the United States; (2) be publicly traded and have available recent price and dividend data; (3) pay dividends; (4) have an investment grade credit rating; (5) have available growth

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<sup>9</sup> *Id.* at 2 and 4 (citing, e.g., *Baltimore Gas and Electric Co.*, 115 FERC ¶ 61,066 (2006); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 (2007)).

<sup>10</sup> *Id.* at 5.

<sup>11</sup> SCE&G states that the implementation of the discounted cash flow methodology results in a range of reasonableness of 8.76 percent to 16.16 percent, with a median and midpoint of 11.04 percent and 12.46 percent, respectively. Ex. SCE-13 at 4.

<sup>12</sup> Transmittal Letter at 6.

<sup>13</sup> Ex. SCE-13 at 3 (citing *Westar Energy Inc.*, 122 FERC ¶ 61,268 (2008); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008); *Atlantic Path 15*, 122 FERC ¶ 61,135 (2008)).

rate data from *Value Line* or I/B/E/S; and (6) not be involved in recent, current or forecasted merger activity for the six-month period used to calculate the dividend yield. SCE&G notes that the implementation of the above criteria resulted in its proxy group of 14 transmission-owning utilities.<sup>14</sup> SCE&G also states that sample company cost-of-equity estimates are included in the final results if the sample company's cost-of-equity estimate exceeds its estimated market cost-of-debt by at least 100 basis points, and the cost-of-equity estimate does not rely on an estimated growth in earnings per share that exceeds 13.3 percent.<sup>15</sup> SCE&G further states that it also screened its proxy group by eliminating any company with a bond rating more than one notch above or below SCE&G's corporate credit rating of BBB.<sup>16</sup>

8. SCE&G states that it is seeking recovery of costs it incurred attempting to form an RTO, Grid South Transco, LLC (GridSouth), plus a carrying charge. SCE&G states that together with other utilities, it filed, and the Commission accepted, an application seeking approval of GridSouth as an RTO.<sup>17</sup> Later, the Commission directed all of the entities in the various RTO proceedings in the Southeastern U.S. to engage in good faith negotiations to develop a plan for a single Southeastern RTO.<sup>18</sup> The parties' efforts were unsuccessful, and in October 2005, the Commission terminated the GridSouth proceeding.<sup>19</sup>

9. SCE&G states that the total GridSouth costs at the beginning of 2004, plus carrying charges through May of 2010, are \$24,967,230; it proposes to amortize them over a five-year rate period from June 1, 2010, to May 31, 2015. For calculative convenience and to reduce the amount of the initial rate increase, SCE&G proposes that recovery of the GridSouth surcharge begin (and end) over a full rate year. At the end of the five-year amortization period, SCE&G will compare surcharge revenues collected against surcharge costs and true-up the two amounts on a one-time basis during the rate year beginning June 1, 2016. SCE&G estimates the rate impact of the GridSouth surcharge to be about \$0.13 per kw/month compared to an initial transmission rate of \$1.75 per kw/month.<sup>20</sup>

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<sup>14</sup> *Id.* at 21-23.

<sup>15</sup> *Id.* at 3, n.8.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> Transmittal at 7 (citing *Carolina Power & Light Co., et al.*, 94 FERC ¶ 61,273 (2001)).

<sup>18</sup> *Id.* (citing *Regional Transmission Organizations*, 96 FERC ¶ 61,066 (2001)).

<sup>19</sup> *Id.* (citing *GridSouth Transco, L.L.C.*, 113 FERC ¶ 61,053 (2005)).

<sup>20</sup> Exhibit No. SCE-8 at 26-27.

10. SCE&G requests any necessary waivers of Part 35 of the Commission's regulations, including:

waivers of the Commission's rate filing regulations, in 18 C.F.R. § 35.13, related to the provision of Period I and Period II data, including waiver of the requirements pertaining to the filing of costs statements, waiver of the full Period I-Period II data requirements, waiver of the requirement in Section 35.13(c)(6) to submit attestation concerning Period II submissions, and waiver of the requirements in Section 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants.<sup>21</sup>

SCE&G contends that the Commission has consistently granted such waivers and that the testimony and exhibits accompanying its filing, plus publicly-available FERC Form No. 1 information, support the reasonableness of the proposed formula rate.<sup>22</sup>

11. SCE&G requests an effective date of March 1, 2010, and that its filing be accepted with no (or nominal) suspension and without hearing.<sup>23</sup>

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

12. Notice of SCE&G's filing was published in the *Federal Register*, 75 Fed. Reg. 1,763 (2010), with interventions and protests due on or before January 19, 2010. Motions to intervene and protest were filed by the City of Orangeburg and the Town of Winnsboro, South Carolina (collectively, Municipals) as well as Central Electric Power Cooperative, Inc. (Central), and North Carolina Electric Membership Corporation (NCEMC) (all collectively, Protestors). SCE&G filed a response to the protests. Central and NCEMC filed an answer to SCE&G's response.

### **A. Return on Equity and Cost of Service**

13. Central and NCEMC contend that several aspects of SCE&G's filing are unsupported, including: (1) depreciation rates; (2) transmission-related revenue credits; (3) the development of the rate divisor; (4) exclusions from plant-in-service; and (5) allocation of prepayments between labor and plant.<sup>24</sup> Central and NCEMC argue that, since SCE&G's filing fails to support a number of cost-of-service items, SCE&G should be directed to submit full Period I and Period II data requirements under Section

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<sup>21</sup> Transmittal Letter at 11-12.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1.

<sup>24</sup> Central and NCEMC Protest at 22-24.

35.13 of the Commission's regulations. They contend that this would allow the Commission and interested parties the opportunity to verify the bases of the rates to be charged.<sup>25</sup> They also argue that cost-of-service adjustments are required to bring SCE&G's rates into conformance with Commission ratemaking policy and precedent.

14. First, Protestors assert that SCE&G's ROE should be calculated using only the single-stage discounted cash flow methodology applied to the most recent market data available for the proxy group, and should be based solely upon the median of the array of proxy group results. They argue that, if this methodology was followed and the most recent data was used, then the range of reasonable returns would be 7.19 percent to 16.22 percent with a median of 10.57 percent. This is 73 basis points below the 11.3 percent that SCE&G has proposed to use.<sup>26</sup>

15. Second, Protestors argue that the median, rather than the midpoint or some other in-between point, of an array of calculated ROE results is the best measure of central tendency.<sup>27</sup> Central and NCEMC note that recent Commission precedent supports the use of the median when determining the ROE for a single utility bearing the level of risk that is about the same as the average for the proxy group.<sup>28</sup> The Municipals point to recent Commission precedent stating that the median should be used to calculate the ROE.<sup>29</sup>

## **B. Transmission Planning**

16. Central and NCEMC contend that the formula rate is missing vital customer protections and should only include costs associated with transmission projects on which transmission customers have had meaningful input. They add that if it is not properly conditioned with appropriate customer protections, transmission customers will lose the

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<sup>25</sup> *Id.* at 54-55.

<sup>26</sup> *Id.* at 8-10; Municipals Protest at 5.

<sup>27</sup> Central and NCEMC Protest at 10-13; Municipals Protest at 5-6.

<sup>28</sup> Central and NCEMC Protest at 11-12 (citing *Northwest Pipeline Corp.*, 99 FERC ¶ 61,305, at 62,276 (2002); *Midwest Independent Transmission System Operator Corp.*, 106 FERC ¶ 61,302, at P 9-10 (2004); *Golden Spread Electric Cooperative, Inc., v. Southwest Public Service Co.*, Opinion No. 501, 123 FERC ¶ 61,047 (2008); *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 58 (2008)).

<sup>29</sup> Municipals Protest at 5-6 (citing *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 78 (2008); *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 67, n.58 (2008); *Golden Spread Electric Cooperative, Inc. v. Southwest Public Service Co.*, Opinion No. 501, 123 FERC ¶ 61,047, at PP 62-64 (2008)).

benefit of the Commission's powers to suspend, investigate and fix the rates under sections 205 and 206 of the FPA.<sup>30</sup>

17. Central and NCEMC are particularly concerned about the automatic annual flow-through of costs associated with projects for which they have had no opportunity to provide input or to review meaningfully. They note that, with regard to SCE&G's OATT Attachment K,<sup>31</sup> issues linger regarding interregional planning.<sup>32</sup> Central and NCEMC suggest that, for any project for which SCE&G seeks recovery under the formula rate, SCE&G should be directed to disclose as part of its annual update, at a minimum (with supporting documentation): (1) the date on which the project was presented to stakeholders; (2) the date on which customers had the opportunity to comment on the proposed project; and (3) any documentation of SCE&G's response(s) to customer input.<sup>33</sup> Central and NCEMC state that such a requirement is consistent with, and analogous to, precedent in which the Commission conditioned formula rate authority for new transmission project cost recovery on a requirement that the project be reviewed using a Commission-approved transmission planning process.<sup>34</sup> Central and NCEMC argue that, for projects where SCE&G fails to document that wholesale transmission customers were provided a meaningful opportunity for input, SCE&G should be required to seek recovery of its costs through traditional FPA section 205 rate proceedings.<sup>35</sup>

18. Central and NCEMC argue that SCE&G has not justified \$26.6 million in forecasted transmission plant additions through the rate year, and that they cannot tell

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<sup>30</sup> Central and NCEMC Protest at 33 (citing 16 U.S.C. §§ 824d, 824e (2006)).

<sup>31</sup> *Id.* (citing *South Carolina Electric & Gas Co.*, 124 FERC ¶ 61,266 (2008) (accepting revisions to Attachment K of SCE&G's OATT, subject to further compliance filing); *South Carolina Electric & Gas Co.* 127 FERC ¶ 61,275 (2009) (accepting further compliance filing), *reh'g pending*).

<sup>32</sup> *Id.* (citing *Transmission Planning Processes under Order No. 890*, Docket No. AD09-8-000, Notice of Request for Comments at 3-5 (Oct. 8, 2009)). NCEMC filed comments in this docket as part of the TDU Systems and raised many of the same concerns listed above. Comments of the Transmission Dependent Utility Systems on Notice of Request for Comments, Docket No. AD09-8-000 (Nov. 23, 2009); Reply Comments of the Transmission Dependent Utility Systems, Docket No. AD09-8-000 (Dec. 18, 2009).

<sup>33</sup> Central and NCEMC Protest at 35.

<sup>34</sup> *Id.* at 35-36 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 124 (2009)).

<sup>35</sup> *Id.* at 36.

whether these additions are for one project or several. They therefore ask the Commission to require SCE&G to provide: (1) project identification numbers that can be related back to SCE&G's process for regional planning; (2) project description; (3) indication of whether rate incentives have been approved for the project; (4) projected in-service date for the project; (5) year-by-year anticipated expenditures by project; and (6) total estimated cost for the project.<sup>36</sup>

### C. Formula Rate Protocols

19. Protestors contend that the formula rate protocols proposed by SCE&G are insufficient to protect customers' interests.<sup>37</sup> They challenge, and request rejection or revision of, these and other sections of the protocols:

- Central and NCEMC argue that the proposed language of section 3.b of the protocols is too narrow, and that the protocols must be revised to authorize challenges to the implementation of the formula rate beyond simple mathematical calculations and clerical inaccuracy.<sup>38</sup>
- Central and NCEMC contend that SCE&G carved out an unjustified exception in section 3.e for its burden of proving, per section 4.c, that it has reasonably applied the terms of the formula rate.<sup>39</sup>
- Protestors ask the Commission to reject the provisions of section 4.a of the protocols that permit parties 21 days at the end of the review period to submit a formal challenge, and that prohibit parties from formally raising any issue that was not a subject of that Party's preliminary challenge during the applicable review period.<sup>40</sup>
- Protestors contend that section 6 of the protocols, which would allow SCE&G to make "limited" FPA section 205 filings to change certain elements of its

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<sup>36</sup> *Id.* at 36-37.

<sup>37</sup> *Id.* at 37-50; Municipals Protest at 12-16.

<sup>38</sup> Central and NCEMC Protest at 37-38.

<sup>39</sup> *Id.* at 47 (citing *Virginia Electric and Power Company*, 123 FERC ¶ 61,098, at P 47 (2008)).

<sup>40</sup> *Id.* at 38-40; Municipals Protest at 13.

- formula, including ROE and amortization/depreciation rates, contravenes the Commission's long-standing policy disfavoring single-issue rate adjustments.<sup>41</sup>
- Central and NCEMC argue that the protocols must recognize and address how changes other than "Material Accounting Changes" would be handled in SCE&G's formula rate. They add that the proposed protocols require SCE&G to provide notice of "Material Accounting Changes," but do not define this term, and contend that the word "material" should be deleted from this phrase used in the protocols.<sup>42</sup>
- Central and NCEMC also argue that SCE&G's proposed protocols lack numerous customer protections, such as the ability for a customer to review each year's Annual Update through a workable file and the ability for customers to file an informational request individually rather than collectively.<sup>43</sup>

#### **D. Recovery of GridSouth Start-Up Costs**

20. Protestors object to SCE&G's request for recovery of GridSouth start-up costs.<sup>44</sup> Central and NCEMC state that SCE&G's filing does not contain sufficient information to evaluate whether the costs were prudently incurred and whether the costs, the proposed amortization period, or the proposed carrying charges are just and reasonable. They add that Commission precedent allowing recovery of start-up costs for failed RTOs does not support recovery by SCE&G because SCE&G never pursued alternatives to GridSouth, such as participation in another RTO or other independent management of transmission

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<sup>41</sup> Central and NCEMC Protest at 45-47; Municipals Protest at 15-16 (citing *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, 74 Fed. Reg. 12,540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 74 Fed. Reg. 61,511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009), *review docketed sub nom. Nat'l Rural Elec. Coop. Ass'n v. FERC*, No. 08-1278 (D.C. Cir. filed Aug. 22, 2008).

<sup>42</sup> *Id.* at 43-45.

<sup>43</sup> *Id.* at 47-50.

<sup>44</sup> *Id.* at 24-32; Municipals Protest at 6-9.

functions.<sup>45</sup> They conclude that SCE&G's request to recover GridSouth costs should therefore be rejected.<sup>46</sup>

21. Protestors argue that if the Commission allows any recovery of GridSouth start-up charges, it should deny SCE&G the ability to recover any carrying costs. They contend that SCE&G's delay in filing for recovery of those costs is unjustified and unduly burdensome for customers.<sup>47</sup> The Municipals add that, in cases where concerns have been expressed regarding the impacts of a filing delay, the Commission has required the utility to analyze the economic harm that a delay may have on ratepayers.<sup>48</sup> Central and NCEMC note that SCE&G's decision to seek recovery now, rather than in 2004, has resulted in a 77.9 percent increase in total costs.<sup>49</sup> The Municipals request a summary ruling that SCE&G may not recover the nearly \$10 million in carrying charges related to its GridSouth activities that have accumulated since the end of 2003.<sup>50</sup> If the Commission permits any recovery of carrying costs, Central and NCEMC argue that the Commission should limit carrying charges to those incurred through 2004, denying recovery of carrying charges on the GridSouth balance from January 1, 2005, through June 1, 2010, and denying a return on the unamortized balance of these costs due to SCE&G's unexplained delay.<sup>51</sup>

22. At a minimum, however, Central and NCEMC state that if the Commission allows SCE&G to recover the GridSouth costs and to recover carrying charges thereon, the Commission should set for hearing the issue of the appropriate method for calculating

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<sup>45</sup> Central and NCEMC Protest at 24.

<sup>46</sup> *Id.* at 27.

<sup>47</sup> *Id.* at 27-28; Municipals Protest at 7-8.

<sup>48</sup> Municipals Protest at 7 (citing *Ne. Utils. Serv. Co.*, 121 FERC ¶ 61,308, at P 21 (2007)).

<sup>49</sup> Central and NCEMC Protest at 28.

<sup>50</sup> Municipals Protest at 7.

<sup>51</sup> NCEMC notes "that Progress recently entered into a settlement with wholesale transmission customers on its system to recover GridSouth start-up costs, agreeing to amortize the costs over a five-year period and to exclude the unamortized portion of the recoverable wholesale portion of the GridSouth costs in rate base used for formula rate calculations and to forego accrual and recovery of carrying charges on the unamortized balances." Central and NCEMC Protest at 28, n.42 (citing *Progress Energy Carolinas*, Docket No. ER08-889-000, Settlement Agreement, approved by Letter Order dated June 27, 2008).

carrying charges on these costs. Central and NCEMC argue that SCE&G should use the Commission's interest rate for calculating these charges.<sup>52</sup>

**E. Requests for Suspension and Evidentiary Hearing**

23. Central and NCEMC ask the Commission to set for hearing all issues.<sup>53</sup> The Municipals also request that the Commission set the determination of a just and reasonable ROE and all related issues for hearing, but summarily dispose of the issue of the use of the median rather than the midpoint for the proxy group results.<sup>54</sup>

24. Protestors argue that SCE&G's proposed formula rate is unjust and unreasonable and results in substantially excessive revenues, so the filing should be suspended for the maximum five-month period.<sup>55</sup> Central and NCEMC state that the total excessive quantifiable revenue impact is \$6.832 million,<sup>56</sup> and that SCE&G's proposed increase to each company is 13.24 percent and 21.78 percent excessive, respectively, which justifies the maximum suspension.<sup>57</sup>

**F. Waivers of Filing Requirements**

25. Central and NCEMC urge the Commission to reject SCE&G's request for waivers of the Commission's filing requirements and to direct SCE&G to provide the appropriate supporting information. They state that, contrary to SCE&G's arguments, the Commission does not always grant such waivers, and that SCE&G's filing fails to support a number of significant cost-of-service items. They also contend that SCE&G has not adequately supported its exclusions from plant-in-service and that it has not met its initial burden of proof to support the GridSouth expenses that it seeks to recover.<sup>58</sup>

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<sup>52</sup> *Id.* at 28-29.

<sup>53</sup> *Id.* at 7.

<sup>54</sup> Municipals Protest at 5.

<sup>55</sup> *Id.* at 4; Central and NCEMC Protest at 50-51.

<sup>56</sup> *Id.* at 51.

<sup>57</sup> *Id.* at 52, n. 74 (citing *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 27 (2008); *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982)).

<sup>58</sup> *Id.* at 54-55.

### **G. SCE&G's Answer**

26. SCE&G's response to the protests largely reiterates the points made in its initial filing and requests that the Commission reject the protestors' arguments and deny their requests. SCE&G states that recovery of GridSouth costs is in line with Commission precedent, and that the Commission should ignore the protestors' opposing arguments. Additionally, it states that the Commission should reject protestors' request for a five-month suspension, because their challenges to its proposed ROE are unfounded, their claim about its possible retail-customer rate treatment is "wholly speculative," and their challenges to SCE&G's cost-of-service items are erroneous. SCE&G also requests that the Commission reject Central and NCEMC's arguments against SCE&G's request for waivers and deny the protestors' request to expand the scope of any hearing. Finally, SCE&G states that the protestors' requests for further information should not be the basis for a suspension request, but should be addressed as "garden variety discovery or exchange of information" in settlement procedures.<sup>59</sup>

### **H. Central and NCEMC's Answer**

27. Central and NCEMC's answer to SCE&G's response repeats the larger points made in their original protest. It states that SCE&G's response does not address any of their concerns and mischaracterizes their arguments. Central and NCEMC state that a full evidentiary hearing is necessary to resolve disputes regarding the formula rates, including GridSouth cost recovery.<sup>60</sup> They ask the Commission to grant the relief requested in their protest.<sup>61</sup>

## **III. Discussion**

### **A. Procedural Matters**

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>62</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Rule 213(a) of the Commission's Rules of Practice and Procedure<sup>63</sup> prohibits answers to protests or answers, unless otherwise permitted by the decisional authority.

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<sup>59</sup> SCE&G's Response at 2.

<sup>60</sup> Central and NCEMC's Answer at 2-4, 40.

<sup>61</sup> *Id.* at 40.

<sup>62</sup> 18 C.F.R. § 385.214 (2009).

<sup>63</sup> 18 C.F.R. § 385.213(a) (2009).

We will accept SCE&G's and Central and NCEMC's answers because they have provided information that assisted us in our decision-making process.

**B. Commission Determination**

30. Our preliminary analysis indicates that SCE&G's proposed tariff sheets 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 tariff sheets for filing, suspend them for a nominal period, and make them effective March 2, 2010, subject to refund, and set them for hearing and settlement judge procedures.<sup>64</sup>

31. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>65</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>66</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SCE&G's proposal is hereby accepted for filing and suspended for a nominal period, to become effective March 2, 2010, subject to refund, as discussed in the body of this order.

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<sup>64</sup> We will deny the Protestors' request for a five-month suspension. In *West Texas*, we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas Utility Co.*, we would generally impose a nominal suspension. 18 FERC ¶ 61,189, at 61,375 (1982). Here, our examination indicates that the proposed rates may not yield substantially excessive revenues.

<sup>65</sup> 18 C.F.R. § 385.603 (2009).

<sup>66</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission judges and a summary of their background and experience (<http://www.ferc.gov/about/offices/oalj.asp>).

(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 formula rate proposal 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 Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.