

132 FERC ¶ 61,112
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. ER10-855-001
ER10-516-001

ORDER DENYING REHEARING

(Issued August 6, 2010)

1. In this order, we deny rehearing of the Commission's May 6, 2010 order addressing an unexecuted Network Integration Transmission Service Agreement (NITSA) filed by South Carolina Electric & Gas Company (SCE&G).¹ The May 6 Order accepted SCE&G's unexecuted NITSA, suspended it for a nominal period, subject to refund, and set it for hearing and settlement judge procedures. It also consolidated SCE&G's filing in Docket No. ER10-855-000 with the proceeding in Docket No. ER10-516-000 for purposes of hearing, settlement, and decision. As discussed herein, the request for rehearing of the May 6 Order filed by Central Electric Power Cooperative, Inc. (Central) is denied.

I. Background

2. On March 10, 2010, SCE&G filed an unexecuted revised NITSA for transmission service to Central at a new delivery point. SCE&G asserted that the three-way 115 kV motor operated air brake (MOAB) switch and associated equipment that it proposed to install to interconnect Central's Liberty Hall substation to SCE&G's system are direct assignment facilities, as defined in SCE&G's tariff.²

¹ *South Carolina Electric & Gas Co.*, 131 FERC ¶ 61,113 (2010) (May 6 Order).

² SCE&G March 10, 2010 Filing at 2 (citing South Carolina Electric & Gas Company, FERC Electric Tariff, Fourth Revised Volume No. 5, Section 1.11). Section 1.11 defines direct assignment facilities as:

(continued...)

3. In the May 6 Order, the Commission determined that issues of material fact regarding SCE&G's unexecuted NITSA could not be resolved based on the record. Therefore, the Commission accepted the NITSA and suspended it nominally, subject to refund, and established hearing and settlement procedures. The Commission also consolidated SCE&G's filing with the ongoing proceeding in Docket No. ER10-516-000, finding that there are common issues of law and fact in that proceeding and in Docket No. ER10-855-000.

4. Additionally, on May 17, 2010, in Docket No. ER10-1268-000, SCE&G filed proposed revisions to its formula rate to change the depreciation rates used in the formula rate. On July 15, 2010, the Commission accepted the proposed depreciation rates, suspended them, subject to refund, and established hearing and settlement judge procedures.³ The Commission also consolidated that proceeding with the proceeding in Docket Nos. ER10-516-000 and ER10-855-000.

II. Request for Rehearing

5. On June 7, 2010, Central submitted a request for rehearing of the May 6 Order. On June 22, 2010, SCE&G filed an answer to Central's request for rehearing. Central filed a motion for leave to answer and an answer to SCE&G on July 1, 2010.

A. Procedural Matters

6. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2010), prohibits an answer to a request for rehearing. We will therefore reject the answers filed by SCE&G and Central.

B. Substantive Matters

7. Central argues that the May 6 Order erred in setting the entire consolidated matter for hearing and settlement judge proceedings.⁴ It claims that consolidating all the issues has caused SCE&G to delay work on the new delivery point. Central therefore reiterates

Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

³ *South Carolina Electric & Gas Co.*, 132 FERC ¶ 61,043 (2010).

⁴ Central June 7, 2010 Request for Rehearing (Central Rehearing Request).

its earlier request that the Commission immediately assign a hearing judge to examine SCE&G's withdrawal of its offer to relocate its 230 kV transmission lines.⁵

8. Central reiterates the argument in its protest that SCE&G originally presented it with a non-tariff document titled "Relocation authorization to proceed."⁶ According to Central, this document would commit Central unconditionally to pay the entire cost of relocating SCE&G's 230 kV transmission lines, a task that SCE&G asserts is necessary to interconnect Central's new delivery point.⁷ Central objects to such cost treatment, stating that it believes that relocating SCE&G's transmission lines qualifies as a network upgrade, and that the costs of relocating SCE&G's transmission lines should, therefore, be rolled into SCE&G's transmission rates.⁸ Central's rehearing request also realleges that SCE&G declined to relocate the 230 kV transmission lines in retaliation for Central's objection to the direct assignment of these costs.⁹ Central reiterates that it does not object to financing this work up-front, provided that SCE&G refunds such payment if the Commission finds direct cost assignment inappropriate.¹⁰

III. Discussion

9. We will deny Central's request for rehearing. In the May 6 Order, the Commission consolidated the proceedings in Docket Nos. ER10-516-000 and ER10-855-000 because the Commission found that the two proceedings involve common issues of law and fact. Specifically, the Commission found that Central's allegation in Docket No. ER10-516-000 that SCE&G's practice of directly assigning the full costs associated with facilities used to serve SCE&G's retail load to OATT customers is unduly discriminatory is related to Central's challenge to the direct assignment of the costs of the Liberty Hall Tap Facilities in Docket No. ER10-855-000. Central's allegation, both in its protest and on rehearing, that SCE&G refused to relocate its 230 kV transmission lines because Central challenged SCE&G's decision to directly assign some or all of the costs of the facilities to Central, is, therefore, related to the issues raised in Docket Nos. ER10-516-000 and ER10-855-000, because the issues raised relate to whether SCE&G may directly assign the costs of certain facilities to its customers. Therefore, we will deny Central's

⁵ *Id.* at 6; Central March 31, 2010 Motion to Intervene and Protest at 8.

⁶ Central Rehearing Request at 5.

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

⁹ *Id.* at 3.

¹⁰ *Id.* at 5-6.

request that the Commission provide for separate, more expedited consideration of Central's allegation that SCE&G has refused to relocate its 230 kV transmission lines.

10. Further, because settlement proceedings have already begun in this matter,¹¹ it would be inappropriate for the Commission to grant Central's request that the Commission immediately assign a hearing judge to consider Central's allegations that SCE&G has refused to relocate its 230 kV transmission lines and that SCE&G will not do any work on these transmission lines unless Central binds itself contractually to direct assignment of the costs of this work. As stated above, in the May 6 Order, the Commission set for hearing and settlement judge procedures SCE&G's unexecuted NITSA filed in Docket No. ER10-855-000, and all the issues raised by Central in that proceeding, and consolidated SCE&G's NITSA filing with its filings in Docket No. ER10-516-000 for purposes of hearing, settlement and decision. To the extent that Central seeks an immediate hearing and an expedited determination concerning its allegation that SCE&G has refused to relocate its 230 kV transmission lines because Central challenged SCE&G's decision to directly assign all or some of the costs of the new delivery point facilities, Central may raise this request under the procedures set forth in the Commission's regulations.¹² Under these procedures, Central may submit its request with the Chief Administrative Law Judge.¹³

¹¹ See *South Carolina Electric & Gas Co.*, Docket No. ER10-516-000 (June 4, 2010) (Report of the Settlement Judge) (stating that the parties agreed to meet again in a formal settlement conference on June 30, 2010); *South Carolina Electric & Gas Co.*, Docket Nos. ER10-516-000 and ER10-855-000 (July 1, 2010) (Order Scheduling Settlement Conference).

¹² 18 C.F.R. § 385.503(a) (2010). Rule 503(a) of the Commission's Rules of Practice and Procedure provides:

The Chief Administrative Law Judge may, on motion or otherwise, order proceedings pending under this subpart consolidated for hearing on, or settlement of, any or all matters in issue in the proceedings, or order the severance of proceedings or issues in a proceeding. The order may be appealed to the Commission pursuant to Rule 715.

The Commission orders:

The request for rehearing of Central is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.