

149 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

South Carolina Electric and Gas Company
South Carolina Generating Company, Inc.

Docket No. ES14-48-000

ORDER AUTHORIZING ISSUANCE OF SECURITIES

(Issued October 2, 2014)

1. On August 8, 2014, as amended on August 28, 2014, South Carolina Electric and Gas Company (SCE&G) and South Carolina Generating Company (South Carolina Generating) (collectively, Applicants) filed an application seeking authorization under section 204 of the Federal Power Act (FPA)¹ to issue short-term debt securities and to assume liabilities as a guarantor, as described below. We will grant the authorizations, as discussed below.

I. Background

2. Applicants state that SCE&G and South Carolina Generating are each wholly-owned subsidiaries of SCANA Corporation (SCANA). According to Applicants, SCE&G is a corporation organized under the laws of the State of South Carolina that is qualified to do business in the State of South Carolina and as a foreign corporation in the State of Georgia. Applicants add that, pursuant to its market-based rate authority, SCE&G is authorized to sell energy at market-based rates in all geographic markets other than its own balancing authority area, which is the South Carolina service territory.²

3. Applicants state that South Carolina Generating, a corporation organized under the laws of the State of South Carolina, is an affiliate of SCE&G. Applicants explain that South Carolina Generating was created for the sole purpose of owning and operating the A.M. Williams Generating Station and selling the electricity generated by the station to SCE&G.

¹ 16 U.S.C. § 824c (2012).

² Application at 2.

II. Application

4. Applicants state that their current authorization under section 204 of the FPA expires on October 15, 2014.³ Applicants request authorization to engage in the financing activities described below during a two-year period ending October 15, 2016, or, if the Commission issues an order after October 3, 2014, for a period ending two years after issuance of the order.

5. Applicants seek Commission approval for SCE&G to issue short-term debt securities and to assume liabilities as a guarantor in an aggregate principal amount not to exceed \$2.2 billion outstanding at any one time. The \$2.2 billion will consist of no more than \$1.6 billion in outstanding short-term debt issuances and no more than \$600 million in liability as a guarantor. Applicants also seek Commission approval for South Carolina Generating to issue short-term debt securities in an aggregate principal amount not to exceed \$200 million.

6. Applicants state that the short-term debt securities will consist of the following: unsecured promissory notes payable to banks or other institutional lenders (Notes); unsecured promissory notes payable to lenders, brokers and dealers in commercial paper, as well as banks (Commercial Paper); unsecured promissory notes payable to participants in the SCANA Utility Money Pool, as governed by the SCANA Utility Money Pool Agreement⁴ (Other Short-Term Debt); unsecured promissory notes payable to SCANA, which, among other things, may be used to repay borrowings under Other Short Term Debt (Direct Loans); and guaranty agreements by SCE&G in favor of lenders, brokers and dealers in commercial paper, as well as banks who participate in the South Carolina Fuel Company, Inc. (Fuel Company) commercial paper program (SCE&G Guaranty Agreements).⁵

³ Amended Application at 1; *see also South Carolina Electric & Gas Co.*, 141 FERC ¶ 62,002 (Oct. 1, 2012).

⁴ Commission-regulated entities are required to file their cash management agreements with the Commission. The information provided is used to aid the Commission in monitoring cash management programs. The rule is not in the nature of a regulation governing participation in cash management programs. Therefore, this order does not address a request for authorization to participate in a cash management program. *See Regulation of Cash Management Practices*, Order No. 634-A, FERC Stats. & Regs. ¶ 31,152 (2003) (cross-referenced at 105 FERC ¶ 61,098 (2003)).

⁵ Fuel Company is a non-jurisdictional SCANA subsidiary that is a participant in the SCANA Utility Money Pool. Fuel Company acquires, owns, and provides financing solely for SCE&G's nuclear fuel, certain fossil fuels, and emission allowances. Application at 4.

7. Applicants state that interest on the short-term debt securities consisting of Commercial Paper, Notes, and Direct Loans will not exceed the higher of the one-month, three-month, or six-month London Interbank Offered Rate (LIBOR) rate as determined by reference to generally recognized public sources such as the Wall Street Journal, plus up to 175 basis points.⁶ Applicants state that the issuance and placement of their short-term debt securities are exempt from the Commission's competitive bidding and negotiated placement requirements because the securities have a maturity of one year or less.⁷

8. Applicants state that the proceeds from the issuance of the short-term debt securities will be used exclusively for utility purposes and, more specifically, for any and all of the following: (1) to provide temporary financing for Applicants' current transactions, to maintain cash working funds at normal levels, to carry accounts receivable, to provide for periodic large cash needs such as tax payments and to supply temporary funds for unexpected cash requirements; (2) to provide for other types of current operational business requirements of the Applicants; (3) to provide interim financing for SCE&G's or South Carolina Generating's construction programs contemplated between October 1, 2014 and September 30, 2016; and (4) to retire any of Applicants' other authorized short-term debt securities.⁸

9. Applicants state that, as described in Exhibit E-1 (the amended application) and Exhibit E-3 (the application), under a Unit Power Sales Agreement, South Carolina Generating sells 100 percent of the electricity it generates to SCE&G.⁹ Applicants add that, pursuant to the Unit Power Sales Agreement and formula rates approved by the Commission, all of South Carolina Generating's costs, including debt service obligations, are passed through to SCE&G. Applicants state that, in practical effect, the Unit Power Sales Agreement and formula rate provide a guaranteed revenue stream for South Carolina Generating, regardless of whether power is produced and delivered to

⁶ *Id.* at 5.

⁷ *Id.* at 2 (citing 18 C.F.R. § 34.2(b)(3) (2014)). Section 34.2 sets forth the Commission's requirements regarding placement of securities. Section 34.2(b)(3) provides that the provisions governing method of issuance (competitive bid or negotiated placement) do not apply where "[t]he securities have a maturity of one year or less."

⁸ Application at 6-7.

⁹ *Id.* at 47, Ex. E-3; Amended Application at 23, Ex. E-1.

SCE&G.¹⁰ Applicants assert that this ensures South Carolina Generating's ability to service its debt. Applicants add that South Carolina Generating's obligations to third-party debt holders are guaranteed by the system parent, SCANA.¹¹

10. Regarding the request to assume liabilities as guarantor, Applicants state that SCE&G seeks to assume liabilities under the SCE&G Guaranty Agreements in order to allow Fuel Company to secure appropriate financing through its own commercial paper program to enable it to acquire and own nuclear fuel, certain fossil fuels, and emission allowances necessary for SCE&G's operation of its electric generating facilities.¹² Applicants state that, for this reason, SCE&G's Guaranty Agreements assign SCE&G as a guarantor in favor of the lenders, brokers and dealers in commercial paper, as well as banks, that participate in Fuel Company's commercial paper program.

III. Notice of Filing and Responsive Pleadings

11. Notice of Applicant's August 8, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 49,298 (2014), with interventions and protests due on or before August 29, 2014. None was filed.

12. Notice of Applicant's August 28, 2014 amendment to the filing was published in the *Federal Register*, 79 Fed. Reg. 53,180, with interventions and protests due on or before September 8, 2013. None was filed.

IV. Discussion

13. Section 204(a) of the FPA provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: "(a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a

¹⁰ Amended Application at 2 & n.3 (citing *South Carolina Generating Co.*, Opinion No. 280, 40 FERC ¶ 61,116, at 61,311 & n.8 (1987), *order on reh'g*, Opinion No. 280-A, 43 FERC ¶ 61,217 (1988), *order on reh'g*, Opinion No. 280-B, 44 FERC ¶ 61,008 (1988)). Applicants state that the Unit Power Sales Agreement was accepted for filing by the Commission in 1985. Application at 47 (citing *South Carolina Generating Co.*, 30 FERC ¶ 61,163 (1985)).

¹¹ Application at 45, 47; *see also id.* at 49-55, Ex. E-3.1 (Guaranty of SCANA) and *id.* at 56-73, Ex. E-3.2 (Guarantee Agreement).

¹² Fuel Company is a non-Commission jurisdictional SCANA subsidiary that participates in the SCANA Utility Money Pool. *Id.* at 4.

public utility and which will not impair its ability to perform that service; and (b) is reasonably necessary or appropriate for such purposes.”¹³

14. Typically, under FPA section 204, the Commission utilizes an interest coverage calculation in order to determine that the undertaking “will not impair [a public utility’s] ability to perform” service as a public utility.¹⁴ And, typically, the Commission bases its finding that a proposed issuance of securities will not impair an applicant’s ability to perform service as a public utility upon the applicant’s demonstration that it will have an interest coverage ratio that is 2.0 or higher.¹⁵

15. Here, Applicants’ Exhibit E-1, reflecting actual and *pro forma* financial statements for the 12-month period ending June 30, 2014, shows that SCE&G’s *pro forma* interest coverage ratio is 2.99 and South Carolina Generating’s *pro forma* interest coverage ratio is 1.41.¹⁶ Thus, SCE&G satisfies the interest coverage ratio threshold, demonstrating that the proposed issuance of securities will not impair its ability to perform service as a public utility. South Carolina Generating’s *pro forma* interest coverage, however, is below 2.0. As noted above, in section 204 filings, the Commission typically utilizes an interest coverage ratio calculation in its evaluation of a public utility’s financial viability and generally requires an applicant filing under FPA section 204 to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice the total interest expense. Other factors, however, provide the Commission with an alternative basis upon which the Commission may conclude that the proposed issuance of short-term debt will not impair South Carolina Generating’s ability to service the proposed debt securities and continue to provide service as a public utility. Applicants explain that South Carolina Generating’s ability to service its debt is assured by virtue of its relationship with SCE&G and the exclusive nature of the Unit Power Sales Agreement.¹⁷ Specifically, as noted above, all of South Carolina Generating’s costs, including debt service obligations, are passed through to SCE&G under the Unit Power Sales Agreement and formula rates

¹³ 16 U.S.C. § 824c(a) (2012).

¹⁴ 16 U.S.C. § 824c(a); *see also Mississippi Power Co.*, 145 FERC ¶ 61,218, at P 19 (2013); *Transource Missouri, LLC*, 145 FERC ¶ 61,146, at P 19 (2013) (*Transource*).

¹⁵ *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253 (2008) (stating that “this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO’s ability to perform as a public utility.”).

¹⁶ *See* Amended Application at 23, Ex. E-1.

¹⁷ Application at 45, 47; Amended Application at 23, Ex. E-1.

approved by the Commission.¹⁸ Additionally, SCE&G is obligated to pay South Carolina Generating's costs whether or not power is produced or delivered. Moreover, South Carolina Generating's parent, SCANA, is the guarantor of South Carolina Generating's obligations to third-party debt holders. For these reasons, we find that South Carolina Generating's proposed issuance of securities will not impair its ability to perform service as a public utility.¹⁹

16. We find, based on the statements set forth in the Application, as amended, that Applicants meet the standards of FPA section 204. Applicants' proposed issuance of securities and assumption of obligations or liabilities sought in this Application: (1) will be for lawful objects within Applicants' corporate purposes and compatible with the public interest, is necessary or appropriate for or consistent with the proper performance by Applicants of service as a public utility, and will not impair Applicants' ability to perform that service; and (2) are reasonably necessary or appropriate for such purposes. In reaching this determination, we note Applicants' assertions that they will use the proceeds from the new debt securities they are authorized to issue exclusively for utility purposes, such as providing temporary financing for Applicants' current transactions, meeting working capital needs (including construction expenses), retiring any of Applicants' other short-term securities, and for other general corporate purposes related to their ability to perform as a public utility.²⁰ Applicants have shown these are lawful objects within Applicants' corporate purposes, compatible with the public interest, and reasonably necessary or appropriate. As the above analysis indicates, issuance of such short-term debt securities and assumption of guarantor obligations should not impair Applicants' ability to perform their public utility service.²¹

¹⁸ Application at 47.

¹⁹ See *AEP Generating Co.*, 148 FERC ¶ 61,143 (2014) (stating that the interest rate associated with any new securities will be recoverable in the rates charged under the applicant's long-term power supply arrangement and the relevant state public utility commission has approved cost recovery); *AEP Appalachian Trans. Co. Inc.*, 147 FERC ¶ 61,076, at P 21 (2014) (stating that applicants' individual Commission-approved formula rate mechanisms provide for the recovery of all relevant costs); *Transource*, 145 FERC ¶ 61,146 at PP 21-23 (stating that debt service costs will be recovered through the applicant's transmission cost of service formula rate).

²⁰ Application at 6-7; see *supra* P 8.

²¹ See *supra* P 15.

17. In *Westar Energy, Inc.*,²² the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.²³ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or “spun off,” the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. Applicants agree that the debt securities will be subject to the restrictions on securities specified in *Westar*, although they point out that the first two restrictions apply only to secured debt and thus do not apply to the authorizations requested here.²⁴

18. Accordingly, we authorize the following:

a. SCE&G is authorized to issue short-term debt securities in the form of Notes, Commercial Paper, Other Short-Term Debt and Direct Loans in amounts not to exceed \$1.6 billion outstanding at any one time. SCE&G is also authorized to enter into Guaranty Agreements in favor of lenders, brokers and dealers in commercial paper, as well banks, in an amount not to exceed \$600 million outstanding at any one time. The aggregate principal amount outstanding for SCE&G will not exceed \$2.2 billion.

b. South Carolina Generating is authorized to issue short-term debt securities in an aggregate principal amount not to exceed \$200 million outstanding at any one time.

c. The interest rate for the short-term debt securities will not exceed the higher of the one-month, three-month, or six-month LIBOR rate as published in the Wall Street Journal, plus up to 175 basis points.²⁵

19. We grant the requested authorizations effective as of the date of this order, through October 15, 2016.

²² 102 FERC ¶ 61,186, *order on reh’g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

²³ *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

²⁴ Application at 10.

²⁵ *Id.* at 5.

20. The short-term debt securities are exempt from compliance with the Commission's competitive bidding and negotiated placement requirements.²⁶

The Commission orders:

(A) SCG&E is hereby authorized to issue short-term debt securities consisting of Notes, Commercial Paper, Other Short-Term Debt and Direct Loans in an aggregate principal amount not to exceed \$1.6 million; and SCG&E is authorized to guarantee or assume liabilities in an aggregate principal amount not to exceed \$600 million. The total aggregate principal amount for SCG&E will not exceed \$2.2 billion outstanding at any one time, at the interest rates stated in the body of this order.

(B) South Carolina Generating is hereby authorized to issue short-term debt securities in an aggregate principal amount not to exceed \$200 million, at the interest rates stated in the body of this order.

(C) The authorizations granted in this order are effective as of the date of issuance of this order and terminate on October 15, 2016. These authorizations replace the existing short-term debt authorization in Docket No. ES14-53-000.

(D) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(E) The short-term debt securities are exempt from compliance with the Commission's competitive bidding and negotiated placement requirements pursuant to 18 C.F.R. § 34.2 (b)(3).

(F) The authorizations granted in Ordering Paragraphs (A) and (B) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ 18 C.F.R. § 34.2(b)(3).