

158 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

South Carolina Electric & Gas Company

Docket No. ER16-2493-001

ORDER REJECTING AMENDED AND RESTATED AGREEMENT

(Issued January 17, 2017)

1. In this order, we reject the Amended and Restated Interchange Agreement (Amended Interchange Agreement) between South Carolina Electric & Gas Company (SCE&G) and South Carolina Service Authority (Santee Cooper).

I. Background

2. SCE&G provides wholesale transmission services pursuant to its Open Access Transmission Tariff (OATT), and it also provides retail and local distribution services to customers in South Carolina. Santee Cooper is a state-owned electric and water utility.¹ SCE&G and Santee Cooper entered into an Interchange Agreement in 1975, and subsequently modified it in 1978, 1985, and 1995 (1975 Interchange Agreement). Among other things, the 1975 Interchange Agreement sets forth the terms and conditions for coordinating the parties' joint use of interconnection facilities and related transmissions services.² On June 24, 2016, SCE&G and Santee Cooper executed the Amended Interchange Agreement.³

¹ SCE&G August 26, 2016 Filing at 2 (Transmittal Letter).

² Amended Interchange Agreement at Service Schedule A (Reserve), Service Schedule B (Short Term Power), Service Schedule C (Limited Term Power), Service Schedule E (Economy Energy), Service Schedule F (Other Energy).

³ South Carolina Electric & Gas Company, Fifth Revised Volume No. 5, SCPSA, SCPSA Interchange Agreement, 0.0.0.

II. Description of the Filing

3. On August 26, 2016, pursuant to section 205 of the Federal Power Act (FPA),⁴ SCE&G filed the executed Amended Interchange Agreement.⁵ The parties intend for the Amended Interchange Agreement to supersede the 1975 Interchange Agreement.

4. In the Amended Interchange Agreement, SCE&G seeks to add seven new points of interconnection under section 6.3, which it has re-titled “New Facilities.”⁶ Of the seven new interconnection points, SCE&G states that four are currently in service and three will be built in the near future.⁷

5. In addition, SCE&G seeks to revise section 3.1 (Delivery Point) to add that the parties may use “any future” interconnection point to deliver and receive electric capacity and energy.⁸ SCE&G also seeks to revise section 6.2 (Existing Facilities) to add those interconnection points that were not in service when the agreement was last amended in 1995 and have since been constructed, installed, or purchased.⁹ SCE&G explains that the facilities originally listed in the 1975 Interchange Agreement in the Proposed Facilities section have since been built; thus, SCE&G has moved those facilities to section 6.2 and correspondingly deleted the Proposed Facilities section. Section 9.1 (Delivery Points) is

⁴ 16 U.S.C. § 824d (2012).

⁵ Transmittal Letter at 3.

⁶ The seven new interconnection points are listed as: (1) Jasper/Purrysburg 230 kV Interconnection; (2) Yamassee 230 kV Interconnection; (3) Virgil C Summer to Winnsboro 230 kV Interconnection; (4) VC Summer to Pomaria 230 kV Interconnection; (5) Johns Island 115 kV Tap Interconnection; (6) Queensboro to Johns Island 115 kV Interconnection; and (7) Bluffton 115 kV Interconnection.

⁷ *Id.* at 4. Three of the lines have been in service since 2003 and one was added in 2014. SCE&G states that it inadvertently neglected to update the 1975 Interchange Agreement when the new lines were placed in service. *Id.*

⁸ Section 3.1 states: “[E]lectric capacity and energy as is provided for hereunder shall be delivered and received as the now existing or any future interconnection points between the facilities of Authority an of Company or at any other mutually agreeable new point or points, such point or points ~~to be designated~~ and are hereinafter referred as the “Delivery Point(s).” Amended Interchange Agreement § 3.1 (Delivery Point).

⁹ *Id.* §§ 6.3(e) Arthur M. Williams 230 kV Interconnection and 6.3(f) Virgil C. Summer 230 kV Interconnection.

also revised to state that delivery points for power and energy shall include “future,” rather than proposed, interconnections.¹⁰

6. With respect to the rate schedules, SCE&G proposes to add section 4.13, which addresses demand charges for delivering capacity to a receiving party from a third party’s system. Also, SCE&G proposes to add new section 12.11 (No Partnership), which provides that the Amended Interchange Agreement should not be interpreted to create a partnership between the parties and that neither party shall have any right to enter an agreement or act on behalf of the other party.

7. Lastly, SCE&G proposes other administrative and clarifying edits (e.g., noting that an interconnection point uses two circuit breakers instead of one), and it clarifies each party’s obligations and rights under several sections of the agreement.¹¹

III. Deficiency Letter and Response

8. On October 21, 2016, Commission staff issued a letter requesting additional information from SCE&G (Deficiency Letter). On November 18, 2016, SCE&G submitted a response to the Deficiency Letter (Deficiency Response).

9. Commission staff requested that SCE&G clarify whether the transmission services under the Amended Interchange Agreement will be provided pursuant to the rates, terms and conditions of SCE&G’s OATT. Commission staff also requested that SCE&G explain: (1) how the continued use of unbundled service over existing and new interchange connection points conforms to Order No. 888;¹² and (2) why SCE&G

¹⁰ Section 9.1, as revised, thus states: “[u]nless otherwise agreed, the delivery points for power and energy hereunder shall be the interconnection points described in Article VI [section 6] as existing or ~~proposed~~ future interconnection.” Amended Interchange Agreement, § 9.1 (Delivery Points).

¹¹ See, e.g., Amended Interchange Agreement, §§ 8.1 (Operation of Systems in Parallel), 12.5 (Arbitration), and 12.6 (Right to Maintain Suit).

¹² *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).

should not be required to provide the transmission services described in the Amended Interchange Agreement, including service related to the new interconnections points, under the rates, terms and conditions of its OATT. Lastly, Commission staff asked SCE&G to explain whether the modifications to section 9.1 indicate that SCE&G intends to continue providing grandfathered service for all future interconnection points.¹³

10. In response, SCE&G asserts that the Amended Interchange Agreement provides “pre-Order No. 888 services,” and that the parties intend to provide services under the agreement pursuant to the rate schedules provided therein.¹⁴ SCE&G argues that the 1975 Interchange Agreement expressly allows for new interconnection points.¹⁵ Thus, SCE&G argues that submitting documentation of the new interconnection points in the Amended Interchange Agreement does not constitute a modification to the service provided under the 1975 Interchange Agreement. To illustrate this point, SCE&G asserts that section 6.5 of the 1975 Interchange Agreement (and thus of the Amended Interchange Agreement) allows the parties to eliminate a point of interconnection. If the parties acted pursuant to that section, according to SCE&G, they would be required to update the 1975 Interchange Agreement by documenting such action. Similarly, SCE&G argues that it is simply updating the list of interconnection facilities in the agreement by adding seven new interconnection points.¹⁶

11. In the alternative, SCE&G argues that, if adding the new interconnection points is a modification, the addition should be considered a minor modification, which is permitted by Order No. 888. SCE&G asserts that the Commission will allow modifications where the modification does not affect the character or nature of service provided under the grandfathered agreement. Here, SCE&G asserts, the modifications

¹³ Deficiency Letter at 2.

¹⁴ Deficiency Response at 3.

¹⁵ SCE&G references the following: (1) section 1.1 provides that “the purpose of the Agreement is to provide means for utilizing existing interconnections and *future* interconnection in order to coordinate the operation of the respective generation, transmission and substation facilities. . . .” and (2) section 3.1 provides that “electric capacity and energy as is provided for hereunder shall be delivered and received at the now existing interconnection points between the facilities of [Santee Cooper] and of [SCE&G] and any other mutually agreeable *new* point or points. . . .” and (3) section 6.1 provides that transmission-to-transmission interconnection facilities of the respective parties that “are or *will be* utilized in carrying out the provisions of the schedules under the Agreement.” Deficiency Response at 2 (emphasis added).

¹⁶ *Id.* at 3.

in the Amended Interchange Agreement do not alter the character or nature of services under the 1975 Interchange Agreement because the parties are not adding new transmission service and the 1975 Interchange Agreement “expressly contemplated and specifically allow[s]” the addition of new transmission-to-transmission interconnection points.¹⁷

12. Lastly, SCE&G states that the parties intend to continue to use the grandfathered services for all future interconnection points.¹⁸ However, SCE&G states that, if Commission staff’s question in the Deficiency Letter stems from SCE&G’s proposal to substitute “future [facilities]” in section 9.1, it is willing to forgo this revision. SCE&G states that the revision was intended to clarify the distinction between ‘proposed,’ which can be construed as referring to interconnection points still under consideration and not yet finalized, and ‘future’ facilities, which is meant to refer to a more definite point of transmission-to-transmission interconnection facilities that the parties have finalized to construct.¹⁹

IV. Notice and Responsive Pleadings

13. Notice of SCE&G’s August 26, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 60,693 (2016), with interventions and protests due on or before September 16, 2016. None was filed.

14. Notice of SCE&G’s November 18, 2016 response to the Deficiency Letter was published in the *Federal Register*, 81 Fed. Reg. 85,554 (2016), with interventions and protests due on or before December 9, 2016. None was filed.

V. Discussion

15. We find that SCE&G’s proposal to add the new interconnection points in the Amended Interchange Agreement is a modification to the service provided under the 1975 Interchange Agreement that implicates Order No. 888’s requirements. If a pre-Order No. 888 transmission agreement is modified, or otherwise expires by its own terms, Commission policy requires that the modified service be taken pursuant to the

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 4-5.

¹⁹ *Id.* at 5.

rates, terms and conditions of an open access transmission tariff.²⁰ The 1975 Interchange Agreement is a bundled, pre-Order No. 888 agreement that allows the parties to provide transmission service pursuant to the 1975 Interchange Agreement's rate schedules. Here, among other things, SCE&G seeks to amend and restate the 1975 Interchange Agreement to provide for the addition of future interconnection points, as well as the addition of the identified seven new interconnection points. We conclude that the transmission services under any future, as well as the seven new, interconnection points must be provided pursuant to SCE&G's OATT.

16. We disagree with SCE&G's assertion that the 1975 Interchange Agreement allows the parties to add new interconnection points and provide transmission service using such points as proposed by SCE&G under the Amended Interchange Agreement. SCE&G, in support of its assertion, references certain provisions (i.e., pre-existing sections 1.1 and 6.1, and revised sections 3.1) that mention new or future interconnection points to argue that the 1975 Interchange Agreement contemplated the addition of new interconnection points, including the seven new interconnection points listed under the re-labeled section 6.3 (New Facilities). Specifically, SCE&G argues that section 1.1 states that the agreement provides a means for the parties to use both existing and future interconnections, and that section 3.1 states that capacity and energy provided under the agreement shall be delivered at both "now existing" or mutually agreed-upon new points.

17. However, we find that those provisions, in fact, refer to the interconnection facilities that the parties identified in sections 6.2 and 6.3 as existing or proposed facilities under the 1975 Interchange Agreement. Section 3.1 of the 1975 Interchange Agreement provides that electric capacity and energy "shall be delivered and received at the now existing interconnection points between the facilities of [Santee Cooper] and of [SCE&G] or at any other mutually agreeable new point or points, such point or points to be designated and hereinafter referred to as the 'Delivery Point.'"²¹ The term "Delivery Point" is defined in section 9.1 as the "interconnection points described in Article VI as existing or proposed interconnections."²² Sections 6.2 and 6.3 of Article VI set forth the "Existing Facilities" and "Proposed Facilities," respectively. Under section 6.2, Existing Facilities, the parties identified interconnection facilities that were "now

²⁰ *E.g.*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,178; *accord Duke Energy Corp.*, 94 FERC ¶ 61,142, at 61,543 (2001).

²¹ Amended Interchange Agreement § 3.1

²² *Id.* at § 9.1.

existing” and under construction, otherwise not in service.²³ Under section 6.3, Proposed Facilities, the parties identified an interconnection facility that was yet to be built. We find that the future and mutually agreeable new points to which sections 1.1, 3.1, and 6.1 refer are these facilities in sections 6.2 and 6.3 that were not yet in service or not yet built, rather than to the entirely new interconnection points that SCE&G seeks to add to the Amended Interchange Agreement. Thus, the new interconnection points the parties propose to add to the agreement were not previously contemplated by the parties’ agreement.

18. Indeed, SCE&G proposes to change language in sections 3.1 and 9.1 of the 1975 Interchange Agreement so that the Amended Interchange Agreement no longer refers only to interconnection points that were previously designated in the 1975 Interchange Agreement, but to any future interconnection points. For example, proposed section 3.1 states that electric capacity and energy shall be delivered and received “at the now existing or any future interconnection points between the facilities . . . or to any other mutually agreeable new point or points, such point or points are ~~to be designated and []~~ hereinafter referred to as Delivery Point.” Proposed section 9.1 defines a Delivery Point as those interconnection points “described in Article VI [section 6] as existing or ~~proposed~~ future interconnections.”²⁴ SCE&G’s offer to forgo replacing the word “proposed” with “future” in proposed section 9.1 does not change the fact that it is adding entirely new interconnection points and will continue, in perpetuity, to add entirely new interconnection point that were not previously contemplated by the parties. Thus, we find that the new and future interconnection points added under the Amended Interchange Agreement expand the interchange service between SCE&G and Santee Cooper beyond the proposed facilities previously specified under the 1975 Interchange Agreement.

19. We also disagree with SCE&G’s contention that adding new interconnection points to the agreement is similar to updating the agreement after eliminating an interconnection point, as provided under section 6.5. The Commission has allowed a grandfathered agreement to be modified when it has a provision that specifically

²³ For example, the Arthur M. Williams 230 kV Interconnection is listed as an Existing Facility, but prior to the instant filing, the agreement provided that Santee Cooper *shall construct* and *shall install* the interconnection facilities. Interchange Agreement at Section 6.2 (e) (emphasis added).

²⁴ Amended Interchange Agreement §§ 3.1 and 9.1.

governs the modification at issue.²⁵ While section 6.5 allows the parties to eliminate interconnection points that are already identified in the agreement, we do not find a comparable provision for adding unnamed, entirely new interconnection points. Thus, we find that the Amended Interchange Agreement modifies the service beyond that which was provided for under the 1975 Interchange Agreement.

20. Given our finding that transmissions service for the seven new and any future interconnection points must be provided under SCE&G's OATT, we will reject the Amended Interchange Agreement without prejudice to SCE&G effectuating the new transmission services pursuant to the terms and conditions of its OATT.

The Commission orders:

The Amended Interchange Agreement is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ *Alabama Power Co.*, 107 FERC ¶ 61,146, *order on reh'g*, 108 FERC ¶ 61,222, at P 12 (2004) (allowing a public utility to add an interconnection point to a grandfathered agreement because certain provisions in the grandfathered agreement, such as a section titled "New Points of Connection and Increases in Capacity at Existing Points of Connection," already expressly provided for the new points of interconnection at issue.).