

131 FERC ¶ 61,113
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 Nos. ER10-855-000
ER10-516-000

ORDER ACCEPTING AND SUSPENDING UNEXECUTED NETWORK
INTEGRATION TRANSMISSION SERVICE AGREEMENT SUBJECT TO REFUND,
CONSOLIDATING PROCEEDINGS, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued May 6, 2010)

1. On March 10, 2010, pursuant to section 205 of the Federal Power Act (FPA),¹ South Carolina Electric & Gas Company (SCE&G) filed an unexecuted revised Network Integration Transmission Service Agreement (NITSA) for transmission service to Central Electric Power Cooperative, Inc. (Central) at a new delivery point. In this order, we accept the revised NITSA for filing, suspend it for a nominal period, to become effective March 10, 2010, as requested, subject to refund. We also establish hearing and settlement judge procedures and consolidate SCE&G's filing with the ongoing proceeding in Docket No. ER10-516-000, which involves related issues and is currently in settlement procedures.

I. Background

2. Central is an existing customer of SCE&G that currently takes Network Integration Transmission Service under an existing NITSA first accepted in a delegated letter order on October 24, 2005.² According to SCE&G, Central proposes to build a

¹ 16 U.S.C. § 824d (2006).

² *South Carolina Elec. & Gas Co.*, Docket No. ER05-1149-000 (Oct. 24, 2005) (unpublished letter order). SCE&G filed an executed revised NITSA which the Commission accepted in *South Carolina Elec. & Gas Co.*, Docket No. ER08-1474-000

(continued...)

new Liberty Hall substation and requests that SCE&G construct facilities necessary for Central to interconnect with SCE&G's system at its Summerville-Williams Station 115 kV transmission line in Berkeley County, South Carolina.³

3. On December 29, 2009, SCE&G filed revised tariff sheets in Docket No. ER10-516-000 seeking to implement a cost-of-service formula for calculating the rates for Network Integration Transmission Service and Point-to-Point Transmission Service. Central filed a protest in that proceeding in which it alleged, among other things, that SCE&G rolls into its rate base the costs of transmission facilities that only serve SCE&G's retail load, and that "SCE&G's practice of assigning directly to OATT customers the full costs associated with facilities of a kind that, if used to serve SCE&G's retail business, are rolled into the transmission service rate base" is unduly discriminatory.⁴ On February 26, 2010, the Commission accepted SCE&G's tariff sheets, suspended them for a nominal period, subject to refund, and set them for hearing and settlement judge procedures.⁵ The proceeding in Docket No. ER10-516-000 is currently in settlement procedures.

II. Filing

4. SCE&G states that the unexecuted NITSA has been revised to reflect the rates, terms and conditions of service to interconnect the Liberty Hall substation to SCE&G's transmission system. SCE&G explains that it advised Central that it would install a three-way 115 kV motor operated air brake (MOAB) switch and associated equipment (Liberty Hall Tap Facilities) to interconnect the Liberty Hall substation to SCE&G's system. SCE&G states that it considers the Liberty Hall Tap Facilities to be direct

(Oct. 8, 2008) (unpublished letter order). This is the second revised NITSA with Central filed by SCE&G.

³ SCE&G March 10, 2010 Filing at 1-2.

⁴ Central Protest, Docket No. ER10-516-000, at 20 (filed January 19, 2010).

⁵ *South Carolina Elec. & Gas*, 130 FERC ¶ 61,149 (2010).

assignment facilities, as defined in SCE&G's tariff,⁶ and states that it has advised Central of this. SCE&G proposes that Central advance \$341,000, which SCE&G believes represents a good faith estimate of the construction costs of these facilities. SCE&G proposes that Central ultimately pay, as a contribution in aid of construction, the documented actual costs of that construction, with a true-up between the already advanced funds and the documented actual costs. SCE&G states that it will retain ownership of the Liberty Hall Tap Facilities.

5. SCE&G proposes that Central pay "a monthly Liberty Hall O&M [operation & maintenance] charge and management fee to reimburse SCE&G for the operation and maintenance costs related to the [Liberty Hall Tap Facilities]." ⁷ SCE&G states that the O&M charge would be the product of the Liberty Hall O&M charge rate (calculated as 0.6678 percent per month) times the Liberty Hall Covered Expenses. SCE&G states that this O&M charge is cost justified as demonstrated in its Form 1. ⁸ SCE&G also states that such an O&M charge has been accepted in other proceedings. ⁹

6. SCE&G alleges that the Liberty Hall Tap Facilities are directly assignable to Central because their sole purpose is to ensure that service can be immediately restored to Central after an outage. SCE&G also states that the Liberty Hall Tap Facilities provide

⁶ 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:

[f]acilities 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.

⁷ *Id.*

⁸ SCE&G notes that although it has not yet filed the 2009 Form 1, it has largely completed the preparation of the 2009 Form 1 numbers, and has used those 2009 numbers in order to have the most current numbers possible. *Id.* at n.4.

⁹ *Id.* at 2 (citing *South Carolina Elec. & Gas. Co.*, Docket No. ER08-1474-000, (Oct. 8, 2008) (unpublished letter order) (*Prior Central Tap*); *South Carolina Elec. & Gas. Co.*, Docket No. ER07-1374-000 (Nov. 19, 2007) (unpublished letter order) (*Orangeburg Tap*); *South Carolina Elec. & Gas. Co.*, Docket No. ER07-423-000 (April 20, 2007) (unpublished letter order) (*New Horizon Tap*).

no incremental benefits to customers other than Central. SCE&G requests waiver of the 60-day prior notice requirement¹⁰ so that the NITSA can become effective March 10, 2010.

III. Notice of Filing and Responsive Pleadings

7. Notice of SCE&G's filing was published in the *Federal Register*, 75 Fed. Reg. 13528 (2010), with interventions and comments due on or before March 31, 2010. North Carolina Electric Membership Corporation (NCEMC) filed a timely motion to intervene, and Central filed a timely motion to intervene and protest. On April 15, 2010, SCE&G filed an answer to Central's protest and in opposition to NCEMC's motion to intervene. On April 30, 2010, Central and NCEMC filed answers to SCE&G's answer. On May 4, 2010, SCE&G filed an answer to Central's answer.

A. Central's Protest

8. In its protest, Central provides information regarding its discussions with SCE&G regarding the addition of a new delivery point for Central's member loads. Specifically, Central states that on November 4, 2009, SCE&G sent Central a document entitled "South Carolina Electric & Gas Company Authorization to Proceed" (Initial Authorization) that is not included among the *pro forma* documents in SCE&G's tariff.¹¹ According to Central, the Initial Authorization made clear that Central needed to sign it before SCE&G could begin work on the new delivery point.¹² The Initial Authorization also stated that SCE&G will need to install a 115 kV MOAB switch and tap on the Ladson Jct.-Williams Station 115 kV transmission line and to raise two of its 230 kV transmission lines to accommodate Central's request.¹³ Central asserts that it did not sign the Initial Authorization because the Initial Authorization provided that Central would commit "to pay the actual costs for all facilities associated" with the Liberty Hall project.¹⁴

9. Central also explains that it received a letter from SCE&G on February 3, 2010 stating that Central's execution of the Initial Authorization was a condition precedent to

¹⁰ 16 U.S.C. § 824d(d) (2006); 18 C.F.R. § 35.11 (2009).

¹¹ Central March 31, 2010 Protest at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 4 (quoting Initial Authorization).

SCE&G's performance of engineering and procurement related to the Liberty Hall project. According to Central, the letter also made it clear that if Central did not execute the Initial Authorization, the project would be removed from SCE&G's interconnection queue.¹⁵

10. Central states that on February 8, 2010, it sent SCE&G a revised version of the Initial Authorization. Central explains that it did not challenge the stated scope of work or the costs, but it explains that it disagrees with SCE&G's decision to directly assign some or all of the costs of the facilities to Central. According to Central, its revised Initial Authorization committed Central to pay the costs of the facilities upfront and requested that SCE&G file an unexecuted NITSA with the Commission specifying the proposed terms and charges.¹⁶

11. Central also states that on March 4, 2010, SCE&G rejected the terms of Central's revised Initial Authorization, but agreed to file an unexecuted NITSA with a reduced scope of work, including only the installation of the Liberty Hall Tap Facilities.¹⁷ Central claims that SCE&G did not provide for the raising of the two 230 kV lines.¹⁸

12. Central protests SCE&G's position that all costs necessary to provide the Liberty Hall delivery point be directly assigned to Central, but does not challenge the scope of the work or the estimated cost.¹⁹ Central notes that SCE&G rolls in the costs of facilities that serve SCE&G's retail customers and includes those costs in its wholesale transmission costs, and argues that these facilities are "functionally and electrically indistinguishable from the Liberty Hall facilities."²⁰ Thus, Central argues that by proposing to directly assign all costs of the Liberty Hall Tap Facilities to Central, SCE&G is engaging in undue discrimination contrary to its tariff.

13. Additionally, Central states that after it refused to execute the Initial Authorization, SCE&G withdrew its offer to perform the work on its two 230 kV

¹⁵ *Id.*

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.*

transmission lines necessary to accommodate Central's new delivery point.²¹ Central states that it objects to "SCE&G's insistence on directly assigning to Central costs that SCE&G rolls into its transmission rates when the costs are incurred for the benefit of SCE&G's retail customers."²² Central alleges that SCE&G has effectively refused to do necessary work that only it can perform, and that its refusal is unjust, unreasonable, and unduly discriminatory.²³ Central also states that Commission precedent forbids a regulated public utility from withholding or conditioning service in retaliation for a customer's exercise of its tariff or statutory rights.²⁴ Central requests that the Commission set for hearing the question of whether it is unjust and unreasonable for SCE&G to withdraw its offer to raise its two 230 kV transmission lines, at cost, following Central's refusal to execute the Initial Authorization.²⁵

14. Central argues that similar allegations of roll-in versus direct assignment of costs and undue discrimination are raised in SCE&G's transmission formula rate case in Docket No. ER10-516-000. Central, therefore, requests that the Commission suspend the proposed rates, make them subject to refund, and set the NITSA for hearing to be held in abeyance pending resolution of Docket No. ER10-516-000.²⁶

B. SCE&G's Answer

15. In its answer, SCE&G first contends that, consistent with its responsibility under its tariff, it proposed to construct the Liberty Hall Tap Facilities. SCE&G also states that it proposed to construct facilities that ordinarily would be constructed by the transmission customer, which consist of a short overhead lead line running from Central's Liberty Hall substation to the proposed MOAB switch on SCE&G's system. SCE&G explains that its proposal also included the raising of two SCE&G 230 kV transmission lines which would otherwise be crossed by the overhead lead line (all construction on Central's side of the interconnection is referred to as the Central Lead Line). SCE&G says that it proposed to construct the Central Lead Line, in addition to the Liberty Hall Tap Facilities, because there appeared to be some construction efficiencies if SCE&G were to build both.

²¹ *Id.* at 8.

²² *Id.*

²³ *Id.* at 8-9.

²⁴ *Id.* at 9.

²⁵ *Id.*

²⁶ *Id.* at 7-8.

However, SCE&G states that it made clear that its proposal to construct the Central Lead Line was contingent upon Central paying for it “inasmuch as it is Central’s responsibility to build all facilities on its side of the delivery tap.”²⁷

16. SCE&G contends that when Central declined to pay for the Central Lead Line and the Liberty Hall Tap Facilities and asked SCE&G to file an unexecuted NITSA, SCE&G responded that it would file an unexecuted NITSA providing for the requested Liberty Hall Tap Facilities. In connection with the Central Lead Line, SCE&G states that SCE&G made clear its understanding that Central would construct all facilities required to connect the Liberty Hall Tap Facilities and offered Central a choice of interconnecting with the Liberty Hall Tap Facilities either by overhead line or by underground line. SCE&G states that under its NITSA proposal, Central is free to build the Central Lead Line to interconnect with the Liberty Hall Tap Facilities, above or below ground. SCE&G states that if Central builds above ground, “then Central will have to pay to raise (relocate) two SCE&G transmission lines” and if Central chooses to build the facilities below ground, the need to relocate SCE&G’s 230 kV transmission lines will be eliminated.²⁸ SCE&G argues that, consistent with its tariff, it has agreed to provide the Liberty Hall Tap Facilities, and contends that it has “properly left it to Central to build the facilities that are indisputably Central’s sole responsibility.”²⁹ SCE&G also contends that its NITSA filing leaves only a very narrow question for the Commission to decide: whether the cost of the Liberty Hall Tap Facilities should be directly assigned or rolled in.

17. Second, SCE&G objects to Central’s proposal to make this proceeding subject to the outcome of the proceeding in Docket No. ER10-516-000. As an alternative, SCE&G argues that the Commission should allow the parties to pursue settlement discussions.

18. SCE&G contends that the costs of the Liberty Hall Tap Facilities should be directly assigned to Central because, according to SCE&G, its proposal in this case is identical to what was accepted in delegated letter orders in other SCE&G proceedings.³⁰ SCE&G argues that a comparison of the MOAB facility configuration in *New Horizon*

²⁷ SCE&G April 15, 2010 Answer at 4 (citing South Carolina Electric & Gas Company, FERC Electric Tariff, Fourth Revised Volume No. 5, Section 29.4).

²⁸ *Id.* at 6.

²⁹ *Id.* at 5 (citing South Carolina Electric & Gas Company, FERC Electric Tariff, Fourth Revised Volume No. 5, Section 29.4).

³⁰ *Id.* at 6-7 (citing *Prior Central Tap; Orangeburg Tap, New Horizon Tap*).

Tap and *Orangeburg Tap* with the facility configuration in this case demonstrates that the facilities and their configuration “are effectively identical.”³¹ SCE&G also argues that if the Commission chooses to set the matter for hearing, it should not make it subject to the outcome of Docket No. ER10-516-000 because the issue in this case is not related to ER10-516-000, where, according to SCE&G, the issue is Central’s challenge to whether certain facilities should be included in SCE&G’s transmission rate base.

19. Third, SCE&G opposes the request for intervention filed by NCEMC because it contends that NCEMC is not a party to the NITSA and will receive no service under the NITSA.

C. Central’s Answer

20. In its answer, Central reiterates points made in its protest. It also takes issue with the arguments made in SCE&G’s answer.

D. NCEMC’s Answer

21. NCEMC takes issue with points made in SCE&G’s answer. Specifically, it disputes SCE&G’s arguments in opposition to NCEMC’s intervention, argues that NCEMC meets the standard for timely intervention in this proceeding, and requests that the Commission permit its intervention.

E. SCE&G’s Answer

22. In its answer, SCE&G responds to Central’s arguments. It states that Central fails to recognize that SCE&G has followed its tariff, asserts that comparability arguments are irrelevant to this proceeding, and argues that this case should not be consolidated with or made subject to the outcome of Docket No. ER10-516-000.

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Central’s timely, unopposed motion to intervene serves to make it a party to this proceeding. Notwithstanding SCE&G’s opposition to NCEMC’s motion to intervene, we find that good cause exists to permit NCEMC to intervene in this proceeding. We find that NCEMC has an interest that may be directly affected by this

³¹ *Id.* at 7.

proceeding, because the ultimate determinations in this proceeding could affect its rates as a transmission customer of SCE&G.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by SCE&G, Central, and NCEMC because they have provided information that assisted us in our decision-making process.

B. Commission Determination

25. The unexecuted NITSA filed by SCE&G raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

26. Our preliminary analysis indicates that the unexecuted NITSA has 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 unexecuted NITSA for filing, suspend it for a nominal period, to be effective on March 10, 2010, as requested, subject to refund, and set it for hearing and settlement judge procedures.

27. Notwithstanding Central's request that the Commission set the NITSA for hearing to be held in abeyance pending resolution of Docket No. ER10-516-000, and SCE&G's argument that the issue in this case is not related to the proceeding in Docket No. ER10-516-000, we find that there are common issues of law and fact in this proceeding and the filings made by SCE&G in Docket No. ER10-516-000. In that proceeding, Central has alleged that SCE&G's practice of assigning directly to OATT customers the full costs associated with facilities used to serve SCE&G's retail load is unduly discriminatory.³² This issue is related to Central's challenge to the direct assignment of the costs of the Liberty Hall Tap Facilities here. Therefore, we will consolidate SCE&G's filing with its filings in Docket No. ER10-516-000 for purposes of hearing, settlement, and decision.

The Commission orders:

(A) SCE&G's unexecuted NITSA is hereby accepted for filing and suspended for a nominal period, to become effective March 10, 2010, as requested, subject to refund, as discussed in the body of this order.

³² Central Protest, Docket No. ER10-516-000, at 20 (filed January 19, 2010).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by 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 SCE&G's unexecuted NITSA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the body of this order.

(C) SCE&G's filing in Docket No. ER10-855-000 is hereby consolidated with the ongoing proceeding in Docket No. ER10-516-000 for purposes of hearing, settlement and decision, as discussed in the body of this order.

(D) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER10-516-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.