

167 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

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

Docket No. ES19-14-000

ORDER ON REQUESTS FOR AUTHORIZATION TO ISSUE SECURITIES

(Issued April 18, 2019)

1. On January 30, 2019, South Carolina Electric & Gas Company (SCE&G) and South Carolina Generating Company, Inc. (GENCO) (together, Applicants) filed a joint application pursuant to section 204 of the Federal Power Act (FPA)<sup>1</sup> (Application) seeking authorization to issue short-term debt securities. As discussed below, we grant SCE&G and GENCO authorization effective for one year from the date of this order.

**I. Application**

**A. Background**

2. Applicants state that SCE&G is a public utility incorporated under the laws of South Carolina. Applicants state that pursuant to SCE&G's Commission-granted market-based rate authority, it is authorized to enter into wholesale sales of electricity at market-based rates in all geographic markets other than SCE&G's own balancing authority area. Applicants also state that SCE&G provides electric transmission service pursuant to a Commission-approved Open Access Transmission Tariff.<sup>2</sup> Applicants explain that GENCO is a public utility incorporated under the laws of South Carolina.<sup>3</sup> Applicants state that they are wholly owned subsidiaries of SCANA Corporation (SCANA) and, as

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<sup>1</sup> 16 U.S.C. § 824c (2012).

<sup>2</sup> Application at 3.

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

of January 1, 2019, indirect wholly owned subsidiaries of Dominion Energy, Inc. (Dominion).<sup>4</sup>

3. Applicants explain that in 2008, SCE&G, on behalf of itself and as agent for the Public Service Authority of South Carolina (Santee Cooper), entered into a contract with Westinghouse Electric Company LLC (Westinghouse Electric) and WECTEC Global Project Services, Inc. (WECTEC) to design and build two nuclear generating units (Nuclear Project). However, Applicants state that in 2017, Westinghouse Electric and WECTEC filed petitions for protection under Chapter 11 of the U.S. Bankruptcy Code and publicly announced their inability to complete the Nuclear Project. Applicants state that, based on the results of comprehensive analyses performed by SCE&G following the bankruptcy filing and, in light of Santee Cooper's decision to suspend construction of the Nuclear Project, SCE&G determined to stop construction of the Nuclear Project and pursue cost recovery under the abandonment provisions of South Carolina's Base Load Review Act.

4. Applicants explain that, after the bankruptcy and abandonment, various aspects of the Nuclear Project were challenged before the South Carolina Public Service Commission (South Carolina Commission) and the South Carolina General Assembly. Applicants also explain that SCE&G is subject to certain legal proceedings arising from the bankruptcy and abandonment, and SCE&G cannot predict when the pending litigation matters may be resolved or what additional actions may be proposed or taken, including other litigation.<sup>5</sup>

5. Applicants state that, on January 12, 2018, SCE&G and Dominion filed with the South Carolina Commission a joint petition for review and approval of a proposed business combination whereby SCANA would become a wholly owned subsidiary of Dominion, and for approval of a customer benefits plan and a cost recovery plan for the Nuclear Project. After a hearing, the South Carolina Commission issued a final order on December 21, 2018 approving the merger between Dominion and SCANA, subject to certain conditions, and approving a customer benefits plan (Merger Approval).<sup>6</sup>

6. Applicants explain that, on June 27, 2018, the South Carolina General Assembly adopted legislation (Act 258), effective June 28, 2018, to temporarily reduce the amount

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<sup>4</sup> *Id.* at 1-2. The merger was approved by the Commission in *Dominion Energy, Inc., SCANA Corporation, and South Carolina Electric & Gas Co.*, 164 FERC ¶ 62,025 (2018).

<sup>5</sup> Application at 13.

<sup>6</sup> *Id.* at 7.

that SCE&G can collect from customers under the Base Load Review Act. According to Applicants, Act 258 requires the South Carolina Commission to order a reduction in the portion of SCE&G's retail electric rates associated with the Nuclear Project from approximately 18 percent of the average residential electric customer's bill to approximately 3.2 percent. Applicants state that the new rates and retroactive credits required by Act 258 were put into effect with the first billing cycle of August 2018 and remained in effect until they were superseded by the customer benefits and rate reduction provisions in the Merger Approval.<sup>7</sup>

7. Applicants state that impairment losses from the abandoned Nuclear Project total \$1.122 billion. Furthermore, due to various merger benefits, reduced customer rates and a cost recovery plan from the Merger Approval, additional impairment losses and other charges totaling as much as approximately \$2.6 billion are expected to be recorded.<sup>8</sup> According to Applicants, these additional losses would result from the write-off of unrecovered Nuclear Project costs of approximately \$1.5 billion recorded within regulatory assets, the refund of certain amounts collected under revised rates under the Base Load Review Act of approximately \$1.0 billion, and the payment of certain amounts required in the settlement of class action litigation of approximately \$160 million.<sup>9</sup>

#### **B. Request for Issuances of Securities**

8. Applicants explain that the exclusive purpose for Applicants' issuances of short-term debt securities is to use the proceeds for corporate purposes, specifically: (1) to provide interim financing for SCE&G's or GENCO's construction programs through March 29, 2021; (2) to provide for other types of current operational business requirements of Applicants; (3) to provide temporary financing of 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 or customer refunds and to supply temporary funds for unexpected cash requirements; and (4) to retire any of Applicants' other authorized debt securities.<sup>10</sup>

9. Applicants request Commission approval to issue short-term debt securities, including the following: (1) unsecured promissory notes payable to banks or other

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<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 8-9.

<sup>10</sup> *Id.* at 11-12.

institutional lenders from which Applicants may borrow funds for periods not exceeding twelve months from the date of issue (Notes); (2) unsecured promissory notes payable to lenders, brokers and dealers, and banks in commercial paper for periods not exceeding nine months from the date of issue (Commercial Paper);<sup>11</sup> (3) promissory notes issued to affiliates and other inter-company loans not exceeding twelve months, including, but not limited to, inter-company financing from Dominion to the Applicants, and, for GENCO, transactions in the SCANA utility money pool<sup>12</sup> (Inter-Company Loans) (collectively, Short-Term Debt).<sup>13</sup>

10. Applicants state that Short-Term Debt will bear prevailing market interest rates for commercial paper and other short-term debt of comparable quality and similar maturity. According to Applicants, interest rates for Short-Term Debt will not exceed the higher of the one-month, three-month, or six-month London Interbank Offered Rate (LIBOR) plus up to 165 basis points.<sup>14</sup>

## **II. Notice of Filing**

11. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 2,219 (2019), with interventions and protests due on or before February 20, 2019. None were filed.

## **III. Discussion**

### **A. Analysis Under Section 204 of the FPA**

12. 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

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<sup>11</sup> Applicants note that Commercial Paper will not be extended, renewed, or automatically rolled-over at the option of the holders or Applicants. *Id.* at 4.

<sup>12</sup> FERC-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 any request for authorization to participate in a cash management program. *See Regulation of Cash Management Practices*, 105 FERC ¶ 61,098 (2003).

<sup>13</sup> Application at 4-5.

<sup>14</sup> *Id.* at 5.

finds that the issuance or assumption: (1) 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 public utility, and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.<sup>15</sup>

13. In reviewing an application under section 204, the Commission uses an interest coverage ratio calculation to determine whether the issuances for which authorization are sought “will not impair [a public utility’s] ability to perform” service as a public utility.<sup>16</sup> The Commission typically bases its finding that proposed issuances of securities will not impair an applicant’s ability to perform service as a public utility in part upon the applicant’s demonstration that it will have an interest coverage ratio that is 2.0 or higher.<sup>17</sup> In making this finding, the Commission reviews the financial statements submitted with an application filed under section 204 and applicant’s calculation of the interest coverage ratio, which is the sum of income before interest and income taxes divided by total interest expense.<sup>18</sup> The interest coverage ratio is a screen used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant’s ability to perform public utility service.<sup>19</sup> The Commission has stated, however, that whether or not an applicant meets the 2.0 interest coverage ratio screen does not by itself determine whether the Commission will authorize or deny the

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<sup>15</sup> 16 U.S.C. § 824c(a) (2012).

<sup>16</sup> See, e.g., *Old Dominion Elec. Coop.*, 145 FERC ¶ 61,132, at P 12 (2013); *Startrans IO, LLC*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*).

<sup>17</sup> *Startrans*, 122 FERC ¶ 61,253 at P 18 (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”).

<sup>18</sup> *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15 & n.15 (2003) (*Westar*).

<sup>19</sup> *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans*, 122 FERC ¶ 61,253 at P 18). The Commission has also described the interest coverage ratio as a measure of a utility’s ability to meet future debt and interest payments. *Westar*, 102 FERC ¶ 61,186 at P 15.

application.<sup>20</sup> The Commission has approved section 204 applications that have not met the 2.0 interest coverage ratio screen.<sup>21</sup>

14. Applicants have filed, as Exhibits C-1, D-1, D-2, E-1, and E-2 to the Application, actual and *pro forma* financial statements for the 12-month period that ended September 30, 2018. Exhibit E-1 of the Application shows that Applicants have *pro forma* interest coverage ratios below the Commission's 2.0 times interest coverage ratio screen. However, each Applicant argues that it nevertheless will be able to meet its financial obligations and perform its obligations as a public utility following authorization by the Commission of issuance of short-term debt securities.<sup>22</sup>

### 1. SCE&G

15. Applicants assert that there are alternative bases that indicate that the proposed issuance of securities will not impair SCE&G's ability to perform service as a public utility. First, Applicants state that SCE&G's credit ratings as a corporate issuer and for short-term borrowings are at investment grade by all three credit rating agencies, and SCE&G has recently been able to access the capital markets.<sup>23</sup>

16. Second, Applicants state that SCE&G maintains access to committed lines of credit that can be accessed during the requested authorization period. Applicants state that, as of September 30, 2018, SCE&G had committed lines of credit totaling \$700 million which will expire in December 2020. Applicants further state that, on or before December 2020, these existing credit lines will be terminated and replaced with SCE&G access to Dominion credit facilities, in an initial amount of \$500 million, with the ability to increase that amount up to \$1 billion, at Dominion's discretion.<sup>24</sup>

17. Third, Applicants state that, as a result of the consummation of the merger between Dominion and SCANA, SCE&G is indirectly owned by Dominion, and has

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<sup>20</sup> See, e.g., *Startrans*, 122 FERC ¶ 61,253 at n.7.

<sup>21</sup> See, e.g., *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014).

<sup>22</sup> Application at 9-11, 14-15.

<sup>23</sup> *Id.* at 9-10.

<sup>24</sup> *Id.* at 10.

access to more substantial financial backing, if needed, to obtain equity contributions or other means of support.<sup>25</sup>

## 2. GENCO

18. Applicants assert that there are two alternative bases that demonstrate that GENCO's proposed issuance of short-term debt will not impair its ability to service the proposed debt securities and to continue to provide service as a public utility. First, Applicants note that SCANA has guaranteed the long-term debt issued by GENCO, and Applicants have provided a description and copies of these guarantees in Exhibit E of the Application.<sup>26</sup>

19. Second, Applicants state that, under a Unit Power Sales Agreement, GENCO sells 100 percent of the electricity it generates to SCE&G, and that, under this agreement and formula rates approved by the Commission, GENCO's costs, including debt service obligations, are passed through to SCE&G. Applicants explain that, in practical effect, the Unit Power Sales Agreement and formula rates provide a guaranteed revenue stream for GENCO ensuring GENCO's ability to service its debt.<sup>27</sup>

20. Applicants also assert that, even though GENCO's *pro forma* interest coverage ratio is below 2.0, in assessing GENCO's prior section 204 applications, the Commission has regarded the commercial relationship between SCE&G and GENCO and the SCANA guarantee of GENCO debt as providing alternative bases to conclude that GENCO's proposed issuance of short-term debt will not impair its ability to service the proposed debt securities and to continue to provide service as a public utility.<sup>28</sup>

### B. Commission Determination

#### 1. SCE&G

21. We find that, although SCE&G does not meet the Commission's interest coverage ratio screen, Applicants have provided other factors that are an alternative basis upon which to conclude that the company should reasonably be able both to service the

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<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 14.

<sup>27</sup> *Id.* at 15.

<sup>28</sup> *Id.* (citing *South Carolina Electric & Gas Co.*, 149 FERC ¶ 61,008, at P 15 (2014)).

proposed new debt securities for which authorization is sought in the Application, and to continue to be able to provide service as a public utility. SCE&G has credit ratings as a corporate issuer and for short-term borrowings that are investment grade according to all three credit rating agencies, committed lines of credit that can be accessed during the requested authorization period, and access to increased financial backing from Dominion.<sup>29</sup>

22. On balance, we find that, notwithstanding the failure to meet the interest coverage ratio screen, given the statements set forth in the Application, SCE&G meets the standards of section 204. SCE&G's proposed issuance of Short-Term Debt: (1) will be for lawful objects within SCE&G's corporate purposes and compatible with the public interest, is necessary or appropriate for or consistent with the proper performance by SCE&G of service as a public utility, and will not impair SCE&G's ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

23. Accordingly, we authorize the following for SCE&G:

- a. SCE&G is authorized to issue Short-Term Debt in an aggregate amount not to exceed \$2.2 billion.
- b. The interest rate for Short-Term Debt will not exceed the higher of the one-month, three-month, or six-month LIBOR as published in The Wall Street Journal, plus up to 165 basis points.

## 2. GENCO

24. With respect to GENCO, although GENCO does not meet the Commission's interest coverage ratio screen, Applicants have provided other factors that are an alternative basis upon which to conclude that the company should reasonably be able both to service the proposed new debt securities for which authorization is sought in the Application, and to continue to be able to provide service as a public utility. Applicants explain that GENCO's ability to service its debt is assured by virtue of its relationship with SCE&G and the Unit Power Sales Agreement.<sup>30</sup> Specifically, as discussed above, all of GENCO's costs, including debt service obligations, are passed through to SCE&G under the Unit Power Sales Agreement and formula rates approved by the Commission.<sup>31</sup> Moreover, GENCO's parent, SCANA, is the guarantor of GENCO's long-term debt. For

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<sup>29</sup> We also add that no protests to the requested authorizations were filed.

<sup>30</sup> *Id.* at 14-15.

<sup>31</sup> *Id.*



these reasons, we find that GENCO's proposed issuance of securities will not impair its ability to perform service as a public utility.

25. On balance, we find that, notwithstanding the failure to meet the interest coverage ratio screen, based on the statements set forth in the Application, GENCO meets the standards of section 204. GENCO's proposed issuance of Short-Term Debt: (1) will be for lawful objects within GENCO's corporate purposes and compatible with the public interest, is necessary or appropriate for or consistent with the proper performance by GENCO of service as a public utility, and will not impair GENCO's ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

26. Accordingly, we authorize the following for GENCO:

- a. GENCO is authorized to issue Short-Term Debt or transact in the SCANA utility money pool in an aggregate amount not to exceed \$200 million.
- b. The interest rate for Short-Term Debt will not exceed the higher of the one-month, three-month, or six-month LIBOR as published in The Wall Street Journal, plus up to 165 basis points.

### **3. Authorization Period**

27. Applicants requested a two-year authorization period. However, given Applicants' circumstances, we deny Applicants' requested two-year authorization, and instead grant authorization for one year from the date of this order. As described by Applicants, SCE&G is subject to certain regulatory and legislative proceedings at the state level, as well as certain legal proceedings, arising from the bankruptcy and abandonment of the Nuclear Project, and additional impairment losses and other charges totaling as much as approximately \$2.6 billion are expected to be recorded. These circumstances, combined with the fact that GENCO relies on its relationship with SCE&G for its ability to service its debt as a basis to support its requested authorization, support a shorter authorization period. Applicants may submit an application for further authorization under section 204 in the future, with updated financial statements, and also updates on the proceedings described above.

28. Accordingly, we grant SCE&G and GENCO the requested authorizations effective for one year from the date of this order.

### **4. Westar Restrictions**

29. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.<sup>32</sup> First, public utilities seeking authorization to

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<sup>32</sup> *Westar*, 102 FERC ¶ 61,186 at P 21.

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. We will condition our authorization on Applicants abiding by these restrictions. Applicants each acknowledge an obligation to comply with the four restrictions on secured and unsecured debt 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.<sup>33</sup>

The Commission orders:

- (A) SCE&G is hereby authorized to issue Short-Term Debt in an aggregate amount not to exceed \$2.2 billion, at the interest rates stated in the body of this order.
- (B) The authorization is granted to SCE&G effective for one year from the date of this order.
- (C) GENCO is hereby authorized to issue Short-Term Debt in an aggregate amount not to exceed \$200 million outstanding at any one time, at the interest rates stated in the body of this order.
- (D) The authorization is granted to GENCO effective for one year from the date of this order.
- (E) 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*.
- (F) The authorizations granted in Ordering Paragraphs (A) and (C) 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.

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<sup>33</sup> Application at 16.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission. Commissioner McNamee is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.