

108 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

South Carolina Public Service Authority

Docket No. NJ04-3-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER, SUBJECT
TO MODIFICATIONS

(Issued July 8, 2004)

1. On April 26, 2004, South Carolina Public Service Authority (Santee Cooper) filed revisions to its “safe harbor” reciprocity open access transmission tariff (OATT) in order to incorporate a Standard Large Generator Interconnection Procedure (LGIP) and a Standard Large Generator Interconnection Agreement (LGIA). Santee Cooper requests that the Commission find that its OATT will continue to be an acceptable reciprocity tariff.¹ In this order, the Commission grants Santee Cooper’s petition for declaratory order, subject to the modifications discussed below.

¹ While Santee Cooper simply requested that the Commission find that its revised OATT continues to be an acceptable reciprocity tariff, its filing is in essence a petition for a declaratory order and we will treat it as such. Moreover, consistent with Order No. 888-A, we will waive the filing fee for Santee Cooper. *See* 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 at 31,760-61(1996) (Order No. 888), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89 (1997), *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 (1997), *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).

Background

2. In Order No. 2003,² pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)³ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append a *pro forma* LGIP and *pro forma* LGIA to their OATTs. Revisions to the *pro forma* LGIP and LGIA in Order No. 2003-A became effective on April 26, 2004. The Commission left it to Transmission Providers⁴ to justify any variation to the *pro forma* LGIP or LGIA based on either regional reliability requirements or the “consistent with or superior to” rationale.⁵

3. Santee Cooper, an electric utility authorized by the State of South Carolina to produce, transmit and distribute electric energy at wholesale or retail, is not a public utility within the Commission’s jurisdiction under sections 205 and 206 of the FPA. It is therefore not subject to the open access requirements of Order Nos. 888 and 2003 applicable to public utilities, although it may voluntarily file an OATT with the Commission.

4. In Order No. 888, the Commission required non-public utilities that own, operate or control transmission facilities, as a condition of receiving open access transmission service from a public utility under its OATT, to provide reciprocal transmission service on comparable terms. As one method of satisfying this reciprocity requirement, the Commission allowed non-public utilities to file an OATT with the Commission under the voluntary safe harbor provision. Under this provision, the Commission issues a declaratory order finding that the OATT is an acceptable reciprocity tariff if its

² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., ¶ 31,146 (2003) (Order No. 2003), *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004) (Order No. 2003-A); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

³ 16 U.S.C. §§ 824d, 824e (2000).

⁴ The “Transmission Provider” is the entity with which the Generating Facility is interconnecting. The term “Generating Facility” means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the “Interconnection Customer.”

⁵ *See* Order No. 2003 at P 826.

provisions substantially conform or are superior to the *pro forma* OATT. Order No. 2003 states that a non-public utility that has a safe harbor tariff may add to its tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the *pro forma* LGIA and *pro forma* LGIP if it wishes to continue to qualify for safe harbor treatment.⁶ The Commission previously determined Santee Cooper's safe harbor tariff to be acceptable and, in this filing, Santee Cooper proposes to incorporate an LGIA and LGIP to its reciprocity tariff so that it can continue to qualify for safe harbor treatment.⁷

5. Santee Cooper's filing, as permitted by Order No. 2003, reflects variations from the *pro forma* LGIP and *pro forma* LGIA. Santee Cooper states that the proposed variations reflect: (1) its status as a non-public utility not subject to the filing and review requirements applicable to sections 205 and 206 of the FPA; (2) its status as an arm of the South Carolina state government; (3) restrictions in state law governing its operations; and (4) certain limited regional practices by virtue of existing regional reliability standards applicable to its membership in the Southeastern Electric Reliability Council (SERC). Santee Cooper also points to the Commission's order in *Southern Company Services, Inc. (Southern)*⁸ where the Commission accepted for filing similar variations by finding them sufficiently supported by regional reliability standards.

Proposed Modifications to the LGIP

6. Section 3.2.1.2 (The Study) of the Commission *pro forma* LGIP sets forth the study requirements for the Energy Resource Interconnection Service. The study is required to consist of short circuit/fault duty, steady state (thermal and voltage), and stability analyses. Section 8.2 (Interconnection Facility Procedures), identifies the electrical switching configuration of the connection equipment and estimates the cost of equipment, engineering, procurement and construction work needed to implement the conclusions to the study and electrically interconnect the Interconnection facility to the Transmission System. It requires that the study consist of a short circuit analysis, a stability analysis, and a power flow analysis. Santee Cooper proposes to adopt with modifications sections 3.2.1.2 and 8.2 to require a grounding review, a reactive power

⁶ See Order No. 2003 at P 842.

⁷ See South Carolina Public Service Authority, 75 FERC ¶ 61,209 (1996), 80 FERC ¶ 61,180 (1997), *reh'g denied*, 81 FERC ¶ 61,192 (1997) (*South Carolina PSA*).

⁸ Southern Company Services, Inc., 106 FERC ¶ 61,311 (2004).

analysis, a regional transfer capability analysis, and a nuclear plant off-site power analysis (where applicable). Santee Cooper argues that these modifications are acceptable because they are SERC regional practices and were accepted by the Commission in *Southern*.

7. Section 3.2.2.2 (Network Resource Interconnection Service) of the *pro forma* LGIP sets forth the study requirements for this service. It requires that the Interconnection Study assure that, as a general matter, the interconnection is studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions. The Interconnection Study helps determine whether, with the Large Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission Provider's Transmission System, consistent with the Transmission Provider's reliability criteria and procedures. Santee Cooper proposes to adopt section 3.2.2.2 without the phrase "at peak load" in order to permit analyses at various load levels. Santee Copper states that the SERC regional requirement for such studies is referenced in the existing SERC Supplement to the North American Electric Reliability Council (NERC) Planning Standards I.A.S1, namely, SERC I.A. Planning Standards, at 6, 8. Santee Cooper notes that it is aware of the Commission requiring the utility in *Southern* to provide further evidence of the need to study interconnection at other than peak loads and that it is prepared to provide further evidence to support this change should that be necessary.

8. Sections 3.4, 5.1.1.3, 5.1.2, 5.2, 6.2, 7.3, 11.3, 11.4 and 13.5 of the *pro forma* LGIP state that customers involved in disputes over the terms of service may request that the unexecuted LGIA be filed with the Commission for the resolution of the issues. Santee Cooper proposes to adopt these provisions with modifications to enable customers to initiate service under unexecuted LGIAs, subject to dispute resolution under section 13.5 of the LGIP. It points out that the LGIAs will not be filed with the Commission since it is not a public utility. Section 13.5 (Disputes) of the *pro forma* LGIP sets forth detailed requirements for the Dispute Resolution process. Santee Cooper proposes to adopt this provision with two modifications. First, the obligation to file the arbitrator's decision with the Commission would be deleted. Santee Cooper argues that removing this obligation is consistent with its non-public utility status and the fact that Commission review of a non-public utility OATT is only for the purpose of determining whether the entity is entitled to reciprocal service. Santee Cooper states that for the same reason a service agreement under an OATT is not filed with the Commission, the LGIA would not be filed. Second, section 13.5 would invoke Commission and other precedent in establishing the substantive standard for the conduct of any arbitration that is desired to ensure substantial conformity with Commission practice applicable to jurisdictional LGIPs.

9. Section 13.6 (Local Furnishing Bonds) of the Commission's *pro forma* LGIP is applicable only to a Transmission Provider that has financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in section 142(f) of the Internal Revenue Code. This section provides that, notwithstanding other provisions of the LGIP and LGIA, the Transmission Provider is not required to provide Interconnection Service to an Interconnection Customer if the provision of such Transmission service would jeopardize the tax-exempt status of any local furnishing bonds used to finance Transmission Provider facilities that would be used in providing such Interconnection Service. Santee Cooper has substituted provisions protecting its tax exempt bonds in place of section 13.6.1 of the *pro forma* LGIP.

10. Appendix 1 of the *pro forma* LGIP is the application form the Interconnection Customer uses in making an Interconnection Request. Santee Cooper proposes to add to Part 5 of Appendix 1 the following requirement: "The date(s) each generating unit within the Large Generating Facility plan to initiate test operations and input power and energy from such a unit into the Transmission Provider's Transmission System." This would require the Interconnection Customer to provide information on test schedules for each generating unit when electric power will be injected into the grid. Santee Cooper also proposes to add language to the Commercial Operation Date in part 5 of Appendix 1.

Proposed Modifications to the LGIA

11. Santee Cooper proposes revising articles 2.3 and 2.4 of the *pro forma* LGIA, which discuss the procedures and costs associated with terminating an LGIA. Santee Cooper also proposes revising article 9.9.2 of the *pro forma* LGIA, which provides for third party use of a Transmission Provider's Interconnection Facilities if allowed by applicable laws and regulations or if the parties mutually agree. Santee Cooper's proposed revisions to these articles provide that a Terminating Party will submit to Dispute Resolution before terminating the LGIA, in lieu of the *pro forma* provisions specifying that disagreements over termination will be resolved by the Commission. Santee Cooper argues that these changes are consistent with its non-public utility status and the Commission's recognition that the filing and review requirements of sections 205 and 206 of the FPA are inapplicable to Santee Cooper.

12. Similarly, in articles 3 and 4.3 (Regulatory Filings and Performance Standards, respectively) of the *pro forma* LGIA, Santee Cooper has deleted the obligation to file the LGIA with the Commission.

13. Article 5.17 of the *pro forma* LGIA concerns customer contributions in aid of construction. Santee Cooper has changed this provision to conform to its municipal status under the tax code. Santee Cooper states that it has deleted language that relates

almost exclusively to provisions of the Internal Revenue Code applicable to contributions to capital, and related questions regarding the taxability of such revenues received by taxable entities for system improvements. Santee Cooper has retained the statement in article 5.17.1 that Interconnection Customer payments are not taxable, but modified it to indicate that the basis for this treatment lies in Santee Cooper's status as a nontaxable municipal entity under applicable tax law. Santee Cooper proposes to adopt the provision in article 5.17.3 specifying that Interconnection Customer will indemnify Santee Cooper in the unanticipated event that the interconnection transaction causes Santee Cooper to incur a tax liability.

14. Article 18.3.5 (Insurance) of the *pro forma* LGIA provides the minimum requirements for insurance coverage throughout the period of the LGIA. Santee Cooper has revised this provision to: (1) eliminate any obligation by Santee Cooper to name the Interconnection Customer as an insured on its insurance policies; and (2) eliminate the requirement that its insurance policies require insurers to waive all rights of subrogation. Santee Cooper states that it cannot agree to add Interconnection Customers as additional insureds on its primary Commercial General Liability policy because that policy is with the South Carolina State Insurance Reserve Fund, which does not permit Santee Cooper to add insureds or waive all rights to subrogation.

15. Article 21.1 (Comparability) of the *pro forma* LGIA states that the Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time. Santee Cooper states that it cannot make such a commitment by contract. Santee Cooper argues that as a non-public utility transmission provider it has voluntarily agreed to abide by the provisions of the LGIP and LGIA where specific obligations are known, but it cannot agree to assume additional obligations that are not now knowable. Nevertheless, Santee Cooper acknowledges in article 21.1 that its ability to take advantage of reciprocal utility access may depend on compliance with relevant comparability rules and precedent.

Notice

16. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 25,075 (2004), with interventions and protests due on or before May 17, 2004. None was filed.

Discussion

17. The Commission finds that, with certain modifications, Santee Cooper's provisions substantially conform or are superior to the requirements of the *pro forma* LGIP and LGIA and that its safe harbor tariff will remain valid.⁹
18. In prior orders, the Commission conditionally accepted proposed variation from the *pro forma* LGIP section 3.2.2.2.¹⁰ In order for Santee Cooper's safe harbor tariff to remain valid, Santee Cooper would need to add to its proposed modification to section 3.2.2.2 that if requested by the customer, Santee Cooper would provide, in writing, justification that non-peak load based contingencies warrant such studies for reliability purposes. Moreover, we remind Santee Cooper that, in order to continue to meet the reciprocity condition, it must provide comparable service to others; thus, it must study non-peak conditions for interconnection of its own and its affiliates' generating units under the same circumstances in which it studies non-peak conditions for non-affiliated generators.
19. Santee Cooper cites no regional reliability standard to justify its proposed variations to Appendix 1 of the LGIP. Because Santee Cooper has not shown that these provisions substantially conform or are superior to the *pro forma* LGIP, we cannot find that Santee Cooper has a valid safe harbor tariff unless Santee Cooper removes the modifications to Appendix 1.
20. We recognize that Santee Cooper is unable to commit to comply with unknown future Commission decisions regarding comparability. However, we cannot find that Santee Cooper's OATT continues to provide safe harbor protection unless Santee Cooper commits to inform the Commission if it feels that it cannot comply with any future comparability precedent as specified in article 21.1 of the *pro forma* LGIA. At that time, the Commission will determine if Santee Cooper will maintain safe harbor status despite not complying with comparability precedent.
21. We find that Santee Cooper's remaining modifications to the *pro forma* LGIP and LGIA substantially conform or are superior to the *pro forma* LGIP and LGIA. These changes reflect the fact that Santee Cooper is not a public utility subject to the filing and review requirements of 205 and 206 of the FPA. These modifications for Santee Cooper

⁹ See Order No. 2003-A at P 773.

¹⁰ MidAmerican Energy Co., Docket No. ER04-497-002 (June 15, 2004 unpublished letter order), and Southern Company Services, Inc., 107 FERC ¶ 61,317 (2004).

include removing the obligation to file arbitration decisions, notice of termination, and the LGIA with the Commission. In addition, we find it acceptable for Santee Cooper to modify the *pro forma* LGIP and *pro forma* LGIA to reflect its municipal status under the tax code and remove the obligation to provide service that jeopardizes the tax exempt status of any local furnishing bonds. The insurance modification to article 18.3.5 is also acceptable, given Santee Cooper's status as an arm of state government with insurance covered by the state's insurance reserve fund.

22. In addition, as in *Southern*, the Commission will accept Santee Cooper's proposed modification to sections 3.2.1.2 and 8.2 of the LGIP to include analyses regarding grounding review, reactive power, regional transfer capability, and nuclear plant off-site power (where applicable), because it is sufficiently supported by an existing regional reliability standard.

The Commission orders:

Santee Cooper's petition for a declaratory order is hereby granted, subject to the conditions discussed in the body of the order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.