

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. NJ04-3-001

ORDER ON REHEARING

(Issued November 26, 2004)

1. In this order, the Commission grants in part and denies in part rehearing of its July 8, 2004 Order,¹ which granted a petition for declaratory order, subject to modifications, of South Carolina Public Service Authority (Santee Cooper). In the July 8 Order, the Commission found Santee Cooper's proposed revisions to its "safe harbor" reciprocity open access transmission tariff (OATT) incorporating a Standard Large Generator Interconnection Procedure (LGIP) and a Standard Large Generator Interconnection Agreement (LGIA) to be acceptable, subject to modifications. Santee Cooper requests rehearing of the July 8 Order with respect to its proposed revisions to Appendix 1 of the *pro forma* LGIP and article 21.1 of the *pro forma* LGIA.

¹ *South Carolina Public Service Authority*, 108 FERC ¶ 61,019 (2004) (July 8 Order).

I. 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. 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 is not subject to the Commission’s jurisdiction under sections 205 and 206 of the FPA because it is an electric utility authorized by the State of South Carolina. It is therefore not subject to the open access requirements of Order Nos. 888⁶ and 2003 applicable to public utilities. However, it may voluntarily file an OATT with the Commission. In Order No. 888, the Commission required non-public utilities that

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); *reh’g pending*; *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.

⁶ *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).

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. To achieve this, 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 provisions “substantially conform or are superior to” the *pro forma* OATT.

4. On April 26, 2004, Santee Cooper filed a *pro forma* LGIP and LGIA, with variations. Santee Cooper proposed to modify Part 5 of Appendix 1 of the LGIP, the application form the Interconnection Customer uses in making an Interconnection Request, by requiring the Interconnection Customer to provide: “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 differs from the *pro forma* in two respects. The *pro forma* does not require the date of testing and Santee Cooper proposes to modify Appendix 1 to require it. Also, while the *pro forma* does require the date of commercial operation, Santee Cooper proposed to add language to require the commercial operation date “for each generating unit within the Large Generating Facility.”

5. In the July 8 Order, the Commission noted that Santee Cooper cited no regional reliability standard to justify its proposed variations to Appendix 1 of the LGIP. Because Santee Cooper also did not show that the proposed revisions substantially conform or are superior to the *pro forma* LGIP, we stated that we “cannot find that Santee Cooper has a valid safe harbor tariff unless Santee Cooper removes the modifications to Appendix 1.”⁷

6. Santee Cooper also proposed to modify article 21.1 of the *pro forma* LGIA, which 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 stated that it cannot make such a commitment to unknown obligations, but acknowledged that its ability to take advantage of reciprocal utility access may depend on compliance with relevant comparability rules and precedent.

7. In the July 8 Order, the Commission stated that 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,

⁷ July 8 Order at P 19.

the Commission will determine whether Santee Cooper will maintain safe harbor status despite not complying with comparability precedent.”⁸

II. Issues

A. Whether Santee Cooper Can Require Additional Information in Appendix 1

8. Santee Cooper argues on rehearing that the Commission erred by not permitting the modifications to Appendix 1 of the *pro forma* LGIP. In the original April 26 filing, Santee Cooper had stated that the additional information Santee Cooper proposed to require in Appendix 1 is “critical for study and planning purposes, since the testing and in-service dates for individual units may vary meaningfully.” In its request for rehearing, Santee Cooper states that the time lag between the testing and operation dates for various units within a generating facility can be substantial and:

can have a direct impact on the time and nature of needed transmission upgrades...Modeling and timing the necessary system modification in the most efficient way, accordingly, demand the information Santee Cooper has detailed in its modifications to LGIP Appendix 1.

It seems most apparent that the changes Santee Cooper has proposed to the LGIP on this point either ‘substantially conform or are superior to’ the *pro forma* tariff language. In the past, when reviewing the proposed changes to the *pro forma* OATT under Order No. 888, the Commission has approved deviations that are a practical improvement over the *pro forma* language [footnote omitted]. In the instant case, the changes Santee Cooper has proposed will enable it to evaluate the impact of proposed interconnections more efficiently, with what will inevitably be resulting economic benefits.

Request for rehearing at pages 3, 4.

9. We deny Santee Cooper’s request for rehearing of our decision regarding its proposed modifications to Appendix 1 of the *pro forma* LGIP. In its request for rehearing, Santee Cooper argues that its proposed variation is a practical improvement, but still has not shown that the proposed variations meet the “substantially conform or superior to” standard. Santee Cooper has not shown that the information it would require from an interconnection customer realistically can be provided (for example, because of

⁸ July 8 Order at P 20.

delays due to acquiring permits), and whether the dates must be firm or can be changed. Also, Santee Cooper has not shown that that there would be economic benefits or that this modification to the *pro forma* would enable it to evaluate the effect of the proposed interconnections more efficiently.

B. Whether Santee Cooper Must Adopt the Provision on Changes in Laws, Rules, and Regulations

10. Santee Cooper also states that the Commission erred in rejecting its modification to article 21.1 of the *pro forma* LGIA. Santee Cooper states that it is unclear whether the Commission's decision permits Santee Cooper to delete the specification in article 21.1 that the company will be in compliance with the Commission's comparability and code of conduct precedent, as it evolves over time. Santee Cooper states that it cannot:

agree to enter into an interconnection agreement that binds Santee Cooper to unknown and potentially dramatic changes to the OATT and the existing Standards of Conduct. Santee Cooper has agreed to these provisions voluntarily, and will only agree to consider any such changes to its commitments on a case-by-case basis....Santee Cooper cannot agree, as the July 8 Order certainly appears to contemplate, to enter an ongoing dialogue with the Commission over ever-evolving precedent on comparability and Standards of Conduct....Moreover, as with the promulgation of the *pro forma* LGIP and LGIA under Order No. 2003 and the revised Standards of Conduct in Order No. 2004, when the Commission has issued substantial generic rule changes, it has made clear that NJEs [non-jurisdictional entities] have the option to file to adopt these provisions or risk losing their safe harbor status.

Request for rehearing at pages 6, 7.

11. We will grant rehearing and find that it "substantially conforms" with the *pro forma*. Santee Cooper's proposed modification to article 21.1 of the *pro forma* LGIA includes the following sentence:

The Transmission Provider acknowledges that its ability to take advantage of reciprocal utility access under FERC Order Nos. 888, and progeny, may depend on its compliance with relevant comparability and code of conduct rules and regulations, as amended by FERC from time to time.

Santee Cooper is aware that it cannot rely on an out-of-date safe harbor tariff, and that if changes are not made to its *pro forma* to follow future changes that the Commission makes, a public utility might refuse to give Santee Cooper transmission service because

the safe harbor tariff would no longer be valid. Therefore, the Commission will accept Santee Cooper's proposed modification to article 21.1 of the LGIA.

The Commission orders:

The request for hearing is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.