

128 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

South Carolina Electric & Gas Company

Docket No. ER96-1085-013

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND
COMPLIANCE FILING

(Issued July 16, 2009)

1. In this order, the Commission accepts an updated market power analysis filed by South Carolina Electric & Gas Company (South Carolina Electric & Gas). As discussed below, the Commission concludes that South Carolina Electric & Gas continues to satisfy the Commission's standards for market-based rate authority in the Southeast region, excluding the South Carolina Electric & Gas balancing authority area.¹ The Commission also accepts South Carolina Electric & Gas's proposed market-based rate tariff revisions to incorporate provisions as adopted in Order No. 697-A, effective June 6, 2008, as requested.²

¹ South Carolina Electric & Gas does not have market-based rate authority in the South Carolina Electric & Gas balancing authority area. See *South Carolina Electric & Gas Co.*, 114 FERC ¶ 61,143 (2006); *South Carolina Electric & Gas Co.*, 121 FERC ¶ 61,263 (2007); *South Carolina Electric & Gas Co.*, Docket No. ER08-800-000 (May 29, 2008) (unpublished letter order) (May 2008 Order).

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 914-918, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

2. Additionally, as discussed below, South Carolina Electric & Gas meets the criteria for a Category 2 seller and is so designated. South Carolina Electric & Gas must file its next updated market power analysis in accordance with the regional schedule adopted in Order No. 697.³

I. Background

3. South Carolina Electric & Gas is a public utility that owns and controls generation and transmission in the central, southern and southwestern portions of South Carolina.

4. South Carolina Electric & Gas operates in the South Carolina Electric & Gas balancing authority area, where it owns or controls approximately 5,800 MW of generation. Its first-tier balancing authority areas include Duke Energy Carolinas, LLC, Progress Energy Carolinas East, Santee Cooper and Southern Company. South Carolina Electric & Gas does not have market-based rate authority in its home balancing authority area (the South Carolina Electric & Gas balancing authority area) and is not seeking market-based rate authority within that balancing authority area.⁴

5. On September 2, 2008, South Carolina Electric & Gas filed an updated market analysis in accordance with the regional reporting schedule adopted in Order No. 697.⁵

³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-893, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9, 10, App. D-1; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Apps. D, D-1, and D-2. *See also* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 47-48 (amending in part App. D-2).

⁴ South Carolina Electric & Gas was authorized to sell electric energy and capacity at wholesale at market-based rates in *South Carolina Electric & Gas Co.*, 75 FERC ¶ 61,151 (1996). In *South Carolina Electric & Gas Co.*, 114 FERC ¶ 61,143, the Commission accepted South Carolina Electric & Gas's voluntary proposal to prohibit wholesale sales at market-based rates in the South Carolina Electric & Gas balancing authority area, absent Commission approval for such sales. In the May 2008 Order, the Commission accepted South Carolina Electric & Gas's cost-based rate tariff to govern all short-term sales in the South Carolina Electric & Gas balancing authority area, with a term not to exceed one week.

⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that "both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable." *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

South Carolina Electric & Gas also submitted revised tariff sheets to incorporate the changes required by the Commission in Order No. 697-A, as well as certain additional revisions.

6. South Carolina Electric & Gas prepared the pivotal supplier and wholesale market share screens for its first-tier balancing authority areas, consistent with the requirements of Order No. 697.⁶

7. On December 23, 2008, Commission Staff issued a request that South Carolina Electric & Gas submit additional information regarding the Simultaneous Transmission Import Limit (SIL) study South Carolina Electric & Gas submitted on September 2, 2008. On January 13, 2009, South Carolina Electric & Gas submitted a filing in response Commission Staff's December 23, 2008 request. On April 9, 2009, Commission Staff issued another request to South Carolina Electric & Gas notifying it that additional information concerning South Carolina Electric & Gas's SIL study was still needed. On May 7, 2009, South Carolina Electric & Gas submitted additional information in response to Commission Staff's April 9, 2009 request.

II. Notice

8. Notice of South Carolina Electric & Gas's September 2, 2008 filing was published in the *Federal Register*,⁷ with interventions or protests due on or before November 3, 2008. None was filed.

9. Notice of South Carolina Electric & Gas's January 13, 2009 filing was published in the *Federal Register*,⁸ with interventions or protests due on or before July 6, 2009. None was filed.

10. Notice of South Carolina Electric & Gas's May 7, 2009 filing was published in the *Federal Register*,⁹ with interventions or protests due on or before May 28, 2009. None was filed.

⁶ *Id.* P 231-232.

⁷ 73 Fed. Reg. 53,214 (2008).

⁸ 74 Fed. Reg. 31,425 (2009).

⁹ 74 Fed. Reg. 23,687 (2009).

III. Discussion

A. Market-Based Rate Authorization

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁰ The Commission concludes that South Carolina Electric & Gas satisfies the Commission's standards for market-based rate authority, excluding the South Carolina Electric & Gas balancing authority area, as discussed below.

B. Horizontal Market Power

12. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹¹ South Carolina Electric & Gas prepared the pivotal supplier and wholesale market share screens for its first-tier balancing authority areas, the Duke Energy Carolinas, LLC, Progress Energy Carolinas East, Santee Cooper and Southern Company balancing authority areas, consistent with the requirements of Order No. 697.¹² South Carolina Electric & Gas did not study its home balancing authority area, where it does not have and is not seeking market-based rate authority.

13. The Commission has reviewed South Carolina Electric & Gas's pivotal supplier and wholesale market share screens. As noted above, Commission Staff issued data requests on December 23, 2008 and April 9, 2009 requesting that South Carolina Electric & Gas provide additional information regarding the SIL study South Carolina Electric & Gas submitted as part of its updated market power analysis. In response to those requests, South Carolina Electric & Gas submitted additional information and revised SIL studies. Commission Staff requested the other transmission owners in the Southeast that filed SIL studies with their updated market power analyses (Southeast Transmission Owners)¹³ to submit similar information as well. As detailed in an order being issued

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

¹¹ *Id.* P 62.

¹² *Id.* P 231-232.

¹³ There were seven separate updated market power filings submitted on behalf of Southeast Transmission Owners. They include submissions by: (1) Duke Energy Carolinas, LLC; (2) South Carolina Electric & Gas Company; (3) Tampa Electric Company; (4) Carolina Power & Light Co. and Florida Power Corporation; (5) Entergy Services, Inc., Entergy Power Ventures, LP, EWO Marketing, LP, and Entergy Power, Inc.; (6) LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky
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concurrently with this order, the Commission has made adjustments to the SIL studies submitted by the Southeast Transmission Owners, which we will use in evaluating market power analyses filed in the Southeast Region.¹⁴

14. We find that South Carolina Electric & Gas passes the pivotal supplier and wholesale market share screens in its first-tier markets. Specifically, using the Commission-adjusted SIL study results, South Carolina Electric & Gas's market shares for the relevant balancing authority areas are as follows: Southern Company balancing authority area market shares range from 0.1 to 0.8 percent; Progress Energy Carolinas East balancing authority area market shares range from 3.5 to 6.6 percent; Duke Energy Carolinas, LLC balancing authority area market shares range from 0.5 to 1.5 percent; and the Santee Cooper balancing authority area market shares range from 1.2 to 2.0 percent.

15. Accordingly, as discussed herein, we find that South Carolina Electric & Gas satisfies the Commission's requirements for market-based rate authority regarding horizontal market power, excluding the South Carolina Electric & Gas balancing authority area.

C. Vertical Market Power

16. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.¹⁵

17. South Carolina Electric & Gas states that service over its transmission system in the Southeast Region is subject to the terms and conditions of its Commission-approved OATT.¹⁶

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁷ The Commission requires a seller to provide

Utilities Company, and Western Kentucky Energy Corporation; and (7) Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

¹⁴ *Carolina Power & Light Co.*, 128 FERC ¶ 61,039 (2009).

¹⁵ *Id.* P 408.

¹⁶ South Carolina Electric and Gas's September 2, 2008 filing at 5; *See South Carolina Electric & Gas Co.*, 75 FERC ¶ 61,151 (1996); *South Carolina Electric & Gas Co.*, 122 FERC ¶ 61,070 (2008).

a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹⁸ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.¹⁹

19. South Carolina Electric & Gas states that it and its affiliates own or control intrastate natural gas transportation and intrastate natural gas storage in the Southeast through their natural gas local distribution and storage operations.

20. The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁰

21. South Carolina Electric & Gas affirmatively states that neither South Carolina Electric & Gas, nor any of its affiliates, has erected barriers to entry into the relevant markets and that they will not erect barriers into the relevant markets.

22. Based on South Carolina Electric & Gas's representations, we find that it satisfies the Commission's requirements for market-based rate authority regarding vertical market power.

D. Compliance Filing

23. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: (1) a provision requiring compliance with the Commission's regulations; and (2) a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.²¹ In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

¹⁸ *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

²⁰ *Id.* P 447.

²¹ *Id.* P 914.

they are applicable.²² In Order No. 697-A, the Commission also required that each seller include in its market-based rate tariff a provision identifying which category of seller it qualifies as in each region.²³

24. The Commission previously accepted South Carolina Electric & Gas tariff changes required by Order No. 697.²⁴ South Carolina states it is revising the required language concerning seller category in compliance with Order No. 697-A. South Carolina Electric & Gas also include a list of assets as required by Order No. 697.²⁵ South Carolina Electric & Gas's revised market-based rate tariff therefore satisfies the Commission's requirements set forth in Order No. 697 and Order No. 697-A. Accordingly, we will accept South Carolina Electric & Gas's revised market-based rate tariff, effective June 6, 2008, as requested.²⁶

E. Reporting Requirements

25. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.²⁷ Public

²² *Id.* P 917.

²³ Order No. 697-A, FERC Stats. & Regs. ¶ 61,268 at P 391-393.

²⁴ *South Carolina Electric & Gas Company*, Docket No. ER96-1085-011 (June 4, 2009) (unpublished letter order).

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

²⁶ *South Carolina Electric & Gas Company*, FERC Electric Tariff, Sixth Revised Volume No. 2, Original Sheet Nos. 1-5 (supersedes FERC Electric Tariff, Fifth Revised Volume No. 2).

²⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Report to the Commission using the EQR Submission System Software, which
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utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.²⁸

26. South Carolina Electric & Gas must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.²⁹

27. Additionally, in Order No. 697, the Commission created two categories of sellers.³⁰ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888³¹); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market

may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²⁸ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²⁹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2008).

³⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³¹ *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).

power issues.³² Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly scheduled updated market power analyses.³³

28. Based on South Carolina Electric & Gas's representations, we find that South Carolina Electric & Gas meets the criteria for a Category 2 seller and is so designated based on its ownership of generation totaling greater than 500 MW of capacity and its ownership of transmission facilities in the Southeast region of the United States. Thus, South Carolina Electric & Gas must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.³⁴ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) South Carolina Electric & Gas's updated market power analysis is hereby accepted for filing.

(B) South Carolina Electric & Gas's revisions to its market-based rate tariff sheets are hereby accepted for filing, effective June 6, 2008, as requested.

(C) South Carolina Electric & Gas is hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³² 18 C.F.R. § 35.36(a)(2) (2008).

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

³⁴ *Id.* P 882.