

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Standards of Conduct for Transmission Providers)

Docket No. RM01 -10-000

SUPPLEMENTAL COMMENTS OF
SOUTH CAROLINA ELECTRIC & GAS COMPANY,
PUBLIC SERVICE COMPANY OF NORTH CAROLINA,
SOUTH CAROLINA PIPELINE CORPORATION,
SCG PIPELINE, INC.
SCANA ENERGY MARKETING, INC. and
SCANA SERVICES, INC.

South Carolina Electric & Gas Company, Public Service Company of North Carolina, South Carolina Pipeline Corporation, SC G Pipeline, Inc., SCANA Energy Marketing, Inc. and SCANA Services, Inc. (collectively referred to as “SCANA Companies”) hereby submit supplemental comments on the proposed rulemaking on “Standards of Conduct for Transmission Providers” (“Proposed Rule”) issued by the Commission on September 27, 2001.¹

The SCANA Companies filed initial comments on the Proposed Rule on December 20, 2001. On April 25, 2002, the Commission issued a Notice of Staff Conference announcing a public conference to discuss proposed revisions to the Proposed Rule that were contained in a FERC Staff Paper that accompanied the Notice of Staff Conference. Finally, on May 8, 2002, the Commission issued a further Notice Organizing Technical Conference that stated that interested parties may file additional comments on the issues discussed at the conference, or other matters relevant to this

¹ *Standards of Conduct for Transmission Providers*, 96 FERC ¶61,334 (2001), FERC Stat. & Regs. ¶32,555 (“NOPR” or “Proposed Rule”).

proceeding, including alternative proposals, by June 14, 2002. The SCANA Companies' supplemental comments herein are filed in response to this request.

I. SUMMARY

The SCANA Companies support many of the proposed revisions to the Proposed Rule in the Staff Paper. In particular, the SCANA Companies support the Staff Paper's proposed changes to the Proposed Rule to: (1) allow transmission providers and energy affiliates to share crucial operational information necessary to maintain the reliability of the transmission system; (2) retain the exception that transmission providers are not required to disclose information to all non-affiliates regarding their transmission providers' marketing affiliates' request for service; (3) extend from 3 to 7 days the time required to post changes to job descriptions and organizational charts; (4) change the rule on posting of discounts to when the discount offer is contractually binding, rather than when first offered; and (5) to continue the permitted sharing of non-transmission functions (i.e., legal, accounting, human resources) between the transmission business and its energy affiliates.

The SCANA Companies are also supportive of the Staff Paper's narrowing of the definition of an "energy affiliate" to exclude other affiliated regulated transmission providers and holding or service companies that do not engage in or are involved in transmission transactions in U.S. energy markets.² However, as discussed further below, the SCANA Companies request that the Commission further refine the scope of the functions of an "energy affiliate" covered by the Proposed Rule. Furthermore, certain language the Staff Paper proposes as an exception to the definition of energy affiliate is

²Staff Paper at 8.

ambiguous and the SCANA Companies suggest clarification as to the meaning of this exception as further discussed herein.

In sum, the SCANA Companies urge the Commission in the final rule to incorporate the following: (1) limit the independent functioning requirement of the interstate gas pipelines' Standards of Conduct solely to an energy affiliates' marketing and sales employees; (2) in the absence of adopting such a limitation, allow for a limited exception to the Standards of Conduct between small interstate pipelines and the operational employees of its energy affiliates; (3) exclude public utilities' marketing and sales employees for native bundled load from the final rule or provide an exception to exclude public utilities in states without retail access; and (4) adopt the "no -conduit" rule as the standard for information sharing.

II. COMMENTS

A. **The Rule Should be Clarified to Permit Free Communication between Transmission Employees within a Family of Energy Companies.**

The Proposed Rule extends the scope of the current standards of conduct to reach certain defined affiliates. ³ As the SCANA Companies observed in their initial comments, the Proposed Rule does not purport to change the essential purpose of the Standards of Conduct, *i.e.*, to insure that the transmission function is independent of the merchant function. Thus, although reaching more entities, the Proposed Rule is limited to "merely

³ Proposed Section 358.3(b). The SCANA Companies agree with the recommendations in the Staff Paper to narrow the definition of energy affiliate to exclude holding or service companies and "affiliated regulated transmission providers" from the definition of an energy affiliate. However, as discussed in *infra* Section II.C, the SCANA Companies believe that the Commission needs to precisely define what entities are covered by this latter exemption.

requiring the employees engaged in sales functions to operate independently of the transmission function.”⁴

However, as drafted, the Proposed Rule may have inadvertently created walls between the various energy affiliates in addition to the intended wall between the merchant and transmission functions. As drafted, the Proposed Rule literally applies to all “energy affiliate employees,” without distinction as to the function of those employees. The Proposed Rule should be modified to clarify that the prohibition on communications with “energy affiliate employees” should be limited to “marketing or sales” employees of the energy affiliate. Thus, the SCANA Companies recommend that the proposed regulations should be amended to read as follows⁵:

Proposed Section 358.4(a)(1) should be changed as follows:

- (1) Except in emergency circumstances affecting system reliability, the transmission function employees of the transmission provider must function independently of the transmission provider’s marketing or sales employees, and its energy affiliates’ marketing and sales employees.

Proposed Section 358.5(b)(1) and (2) should be changed as follows:

- (1) An employee of the transmission provider may not disclose to its marketing or sales employees, or to the marketing or sales employees of the transmission provider’s energy affiliates any information concerning the transmission system of the transmission provider or the transmission system of another....
- (2) A transmission provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet

⁴ FERC Stat. & Regs. ¶32,555 at 34,084.

⁵ The SCANA Companies’ definitions are contingent on FERC excluding native bundled load from the Proposed Rule as further discussed infra in Section II. D. If FERC declines to do so, the SCANA Companies would recommend that the Commission change the definition of “sales and marketing” to exclude certain sales functions performed by a public utility that do not participate in a retail open access program more fully discussed in its initial comments at pages 9 -11.

website, with its marketing or sales employees or energy affiliate marketing or sales employees, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary service.

These changes would accomplish the Commission's stated purpose of creating a wall between the transmission and merchant employees of each family of energy companies, without creating a wall between the transmission employees and the other different elements of the corporate family. The SCANA Companies' proposed language to carve out the sales and marketing functions of energy affiliates accomplishes the same objective as the proposals advanced by Dominion Transmission, Inc. and several other speakers at the May 21 technical conference who advocated a "non-commercial" or "operational exception" for the employees of energy affiliates, particularly for LDCs and intrastate pipelines. However, rather than attempt to define what employees or functions would be covered by an "operational" or "non-commercial exception", the SCANA Companies' proposed regulatory language uses a definition "marketing and sales" that is already defined in the proposed rule.⁶ Furthermore, the SCANA Companies' proposed language as applied to the sales and marketing employees of the energy affiliates also mirrors the same language as applied to the transmission provider itself.⁷ This is clearly the result suggested by the discussion in the Proposed Rule, and there is no justification in the Proposed Rule to suggest a far more expansive reach for energy affiliate employees.

B. If the Commission does not Narrow the Reach of the Proposed Rule to Apply only to Sales and Marketing Employees of Energy Affiliates, the Commission

⁶ See Proposed Section 358.3(e). This definition also refers to "brokering", although the Proposed Rule does not include brokering in its text, which may have been an inadvertent omission.

⁷ See Proposed Sections 358.4(a)(1), 358.5(b)(1) and (2).

Should Allow a Transmission Function Exception for Small Interstate Pipelines Operated by Energy Affiliates

Assuming that the Commission declines to limit the reach of the Proposed Rule to reach only the sales and marketing employees of energy affiliates, the Commission should allow for a transmission function exception for small interstate pipelines. The SCANA Companies provide a real -world example of the costs and inefficiencies that could flow from the Proposed Rule as presently drafted.

SCANA has recently formed a wholly owned new subsidiary, SCG Pipeline, Inc, (“SCG”) to construct, operate and maintain a 33 mile interstate pipeline in Georgia and South Carolina. SCG filed its certificate application on December 26, 2001 in Docket No. CP02 -57-000, *etal* . The SCG Project is intended to provide a direct connection with Southern LNG’s Elba Island facility in order to transport new gas supply to markets in South Carolina and southeastern Georgia. ⁸ SCG proposes an in -service date of November 1, 2003.

SCANA also owns and operate a large intrastate pipeline, SCPC, which serves customers throughout the State of South Carolina. ⁹ SCPC already has a full operations, engineering, and human resources staff and SCANA plans to use this existing staff to operate and maintain its proposed new interstate pipeline, SCG. Included among these shared functions would be a shared E -BB to manage nominations, scheduling, and other operational functions for both SCG and SCPC.

⁸ See SCG Application at p.5

⁹ The SCANA Companies noted in their initial comments that SCPC was in the process of converting to an open -access pipeline. In light of uncertainty in energy markets and lack of customer support, SCPC has subsequently withdrawn its application to become an open -access intrastate pipeline.

The Proposed Rule, as presently drafted, would treat SCPC, SCE&G and SCG as energy affiliates.¹⁰ Thus, SCG would be required to function independently of the employees of SCPC and need to establish its own EBB, engineering staff, transmission function (operations) staff and all the expertise and other functions necessary to operate and maintain an interstate pipeline. The result would be redundant employees and underutilization of resources that would increase the operational costs of SCG and unnecessarily increase its transportation rates.

SCANA is not unique in this respect. There are dozens of small interstate pipelines throughout the U.S. that are operated by their affiliated intrastate pipelines or LDCs. In many cases, the only reason that these pipelines are interstate at all is a result of the vagaries of the state borders. At the May 21 technical conference, representatives from the American Gas Association and Northwest Natural Gas Company voiced the same concerns as the SCANA Companies and requested an operational exception for small interstate pipelines.

The SCANA Companies note that if its suggested revisions to limit the Proposed Rule to sales and marketing employees are adopted, the concern raised above is vitiated. Furthermore, the SCANA Companies' proposed language changes would continue intact the current prohibition in the Standards of Conduct on sharing of information between the interstate pipeline and its marketing affiliates.¹¹ However, if the Commission declines to limit the reach of the Proposed Rule to reach only the sales and marketing employees of

¹⁰ As discussed in the next section, it is not clear whether the Staff Paper's change to the definition of energy affiliate would modify this relationship.

¹¹ See 18 C.F.R. Section 161.1.

energy affiliates, the SCANA Companies urge the adoption of an operational exception for small interstate pipelines, like SCG, on a case by case basis.

C. The Exception from the Definition of Energy Affiliate as Proposed in the FERC Staff Paper Requires Clarification

The SCANA Companies support the proposal in the FERC Staff Paper to refine the definition of “energy affiliate” to exclude “other affiliated regulated transmission providers” and “holding or service companies that do not engage in or are involved in transmission transactions in U.S. energy markets.”¹² However, this first exception requires clarification to understand what entity qualifies as an “affiliated regulated transmission provider.” Although the Staff Paper clearly intends to exclude LDCs from this exception,¹³ it is unclear whether NGA section 1(c) Hinshaw pipelines, such as SCPC, are also excluded. SCPC is clearly a regulated transmission provider, although like an LDC, it is not regulated by FERC, but by the South Carolina Public Service Commission. Thus, the SCANA Companies believe that the Staff Paper’s intent was to exclude “affiliated transmission providers regulated by the FERC” (e.g., other interstate pipelines).

However, even accepting the definition above as the Staff Paper’s intent, if SCPC were to obtain a limited jurisdiction blanket certificate pursuant to section 284.224 of the Commission’s regulations to engage in the sale or transportation of natural gas in interstate commerce, it is unclear if SCPC would then be considered a regulated transmission provider by virtue of being subject to limited FERC jurisdiction. The answer is not obvious, and thus, if the Commission adopts the exceptions as proposed in

¹² Staff Paper at 8.

¹³ Staff Paper at 9 -10.

the Staff Paper, the SCANA Companies respectfully request that the Commission answer the questions posed above and define any exceptions to the energy affiliate definition with greater certainty.

D. The Bundled Retail Sales Function Should Remain Outside the Scope of the Proposed Rule

In its initial comments, the SCANA Companies opposed the provision in the Proposed Rule which would require a separation of the transmission function from all sales functions, including bundled retail sales and would impose restrictions on preferential access to transmission information for the bundled retail sales function.¹⁴

The SCANA Companies explained that any such extension of the Standards of Conduct requirements would create burdens that far outweigh any benefits. The SCANA Companies further stated that at the very least, the Commission should not apply this requirement in the context of utilities operating in states that do not offer retail choice programs.¹⁵

At the technical conference, various vertically integrated utilities¹⁶ similar to SCE&G also implored the Commission to proceed with caution in this area, noting that there is substantial overlap between transmission and distribution functions in their operations and that it would cost millions of dollars to re-functionalize their operations. Several participants also agreed with the SCANA Companies and suggested that at the very least, the Commission exempt marketing personnel in bundled sales in states without retail access.

¹⁴ FERC Stats. & Regs. ¶32,555 at 34,084.

¹⁵ See SCANA Companies Initial Comments at p. 9 -11.

¹⁶ Comments of Southern Company, Pinnacle West, Cinergy Services, Louisville Gas & Electric Company.

Accordingly, the SCANA Companies reiterate that the Commission should exclude bundled retail sales marketing employees from the Proposed Rule, or alternatively, provide an exemption for states without retail access.

E. The Commission Should Adopt the “No Conduit” Rule as the Standard for Information Sharing

The Staff Paper also advocates that the Proposed Rule adopt the “automatic imputation rule”, which means that any shared employee who receives confidential information is automatically assumed to be sharing this information with the energy affiliate that the shared employee also works for.¹⁷ This standard is used in the current pipeline Standards of Conduct and is stricter than the “no -conduit” rule that the present electric Standards of Conduct use.

The SCANA Companies submit that the “no -conduit” rule should be the information sharing standard for the Proposed Rule. At the May 21 technical conference, nearly all of the public utilities and gas utilities supported adopting the no -conduit rule. In addition to the corporate governance issues regarding potential obstacles to officers and directors from discharging their fiduciary duties to provide adequate corporate oversight raised at the technical conference, the SCANA Companies believe that a no -conduit rule should be adopted in order to avoid having to implement strict separation of functions within the family of energy affiliates. The imputation rule is workable in the gas pipeline industry because it is only necessary to separate the interstate pipeline’s marketing affiliate’s employees (who are typically already operationally separate) from the pipeline’s transmission function employees. On the other hand, the proposed application of the imputation rule would require all transmission function employees to

¹⁷ Staff Paper at 17 -20.

operate not only separately from the marketing affiliates, but also would require their separation and isolation from any employees within the company and of the energy affiliates.

Further, the imputation rule would seem to preclude the recommendation in the Staff Paper¹⁸ that the Commission continue to permit the sharing of non -transmission functions between the transmission business and its energy affiliates, since to do so under the imputation rule could render the entire energy affiliate “in the know” from information that flows to the non -transmission function employee who also works for the energy affiliate.

The no -conduit rule has been used largely without incident by public utilities and there has been no greater incidence of improper information sharing in the electric industry as opposed to the gas industry.¹⁹ Finally, if any party suspects that a non -operating employee is acting as a conduit to improperly pass information between the transmission and merchant functions, the Commission’s complaint procedures in section 206 provide a remedy.

¹⁸ Staff Paper at 17.

¹⁹ The SCANA Companies are aware of four cases where the Commission either found or suggested a violation of the electric standards of conduct. See *Arizona Public Service Company v. Power Company*, 87 FERC ¶ 61,303 (1999); *Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation*, 87 FERC ¶ 61,327 (1999); *Utah Municipal Power Systems v. Pacifi Corp.* 83 FERC ¶ 61,337 (1998) and *The Washington Water Power Company*, 83 FERC ¶ 61,097 (1998). This compares to four cases the SCANA Companies are aware of where the Commission or its Enforcement Staff has found violations of the natural gas standards of conduct. See *Columbia Gas Transmission Corporation et al.*, 93 FERC ¶ 61,057 (2000); *Kinder Morgan Interstate Gas Transmission LLC*, 90 FERC ¶ 61,310 (2000); *Amoco Production Company and Amoco Energy Trading Company v. Natural Gas Pipeline Company of America*, 82 FERC ¶ 61,038 (1998); *Arizona Corporation Commission v. El Paso Natural Gas Company et al.*, 59 FERC ¶ 61,183 (1992).

III. CONCLUSION

Wherefore, SCANA Companies respectfully requests that the Commission accept its supplemental comments and adopt the recommendations set forth herein.

Respectfully submitted,

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June 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in Docket No. RM01-10.

Dated at Washington, D.C. this 14th day of June, 2002.

/s/William Lavarco
William Lavarco

**SOUTH CAROLINA ELECTRIC & GAS COMPANY
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