

170 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Dominion Energy South Carolina, Inc.
South Carolina Generating Company, Inc.

Docket No. ES20-14-000

ORDER ON REQUESTS FOR AUTHORIZATION TO ISSUE SECURITIES

(Issued March 25, 2020)

1. On January 30, 2020, Dominion Energy South Carolina, Inc. (DESC) and South Carolina Generating Company, Inc. (GENCO) (together, Applicants) filed a joint application pursuant to section 204 of the Federal Power Act (FPA)¹ (Application) seeking authorization to issue short-term debt securities. As discussed below, we grant DESC and GENCO authorization effective for one year from the date of this order.

I. Application

A. Background

2. Applicants state that DESC is a public utility incorporated under the laws of South Carolina. Applicants state that DESC is authorized to enter into wholesale sales of electricity at market-based rates in all relevant geographic markets other than the DESC balancing authority area. Applicants also state that DESC provides electric transmission service pursuant to an Open Access Transmission Tariff.² Applicants explain that GENCO is a public utility incorporated under the laws of South Carolina.³ Applicants state that they are indirect wholly owned subsidiaries of Dominion Energy, Inc. (Dominion).⁴

¹ 16 U.S.C. § 824c (2018).

² Application at 2.

³ *Id.*

⁴ *Id.* at 1. Applicants explain that DESC was previously named South Carolina Electric & Gas Company, but its name was changed to DESC after it became an indirect, wholly owned subsidiary of Dominion. *Id.* at 2.

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 DESC following the bankruptcy filing and, in light of Santee Cooper's decision to suspend construction of the Nuclear Project, DESC 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 state that, on January 12, 2018, DESC and Dominion filed with the South Carolina Public Service Commission (South Carolina Commission) a joint petition for review and approval of a proposed business combination whereby DESC would become an indirect, 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, subject to certain conditions, and approving a customer benefits plan (Merger Approval Order).⁵

5. 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 that DESC 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 DESC's retail electric rates associated with the Nuclear Project from approximately 18% of the average residential electric customer's bill to approximately 3.2%, retroactive to April 1, 2018. Applicants state that the new rates and retroactive credits required by Act 258 were put into effect in 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 Order.⁶

6. Applicants state that DESC recorded impairment charges of \$1.4 billion from the Nuclear Project in the fourth quarter of 2018, approximately \$1.46 billion in charges related to provisions in the Merger Approval Order in the first quarter of 2019, and \$120 million in charges related to a tax dispute that arose from the abandonment of the Nuclear

⁵ *Id.* at 6.

⁶ *Id.* at 7.

Project during the 12 months ending September 30, 2019.⁷ According to Applicants, the Merger Approval Order also approved the removal of DESC's investment in certain transmission assets which, as of September 30, 2019, included \$345 million within net utility plant and \$32 million within regulatory assets, which amount represents certain deferred operating costs.⁸ Applicants state that the South Carolina Commission approved deferral of the operating costs related to the investment until recovery of the transmission capital costs and associated deferred operating costs is addressed in a future rate proceeding. Applicants state that DESC believes these transmission capital and deferred operating costs are probable of recovery, but if the South Carolina Commission were to disallow recovery of or a reasonable return on all or a portion of them, an impairment charge equal to the disallowed costs may be required.⁹

B. Request for Issuance of Securities

7. Applicants explain that the exclusive purpose for Applicants' issuances of short-term debt securities is to use the proceeds for corporate purposes, specifically to: (1) provide interim financing for DESC's or GENCO's construction programs through April 15, 2022; (2) provide for other types of current operational business requirements of Applicants; (3) provide temporary financing of Applicants' current transactions, maintain cash working funds at normal levels, carry accounts receivable, provide for periodic large cash needs such as tax payments or customer refunds, and supply temporary funds for unexpected cash requirements; and (4) retire any of Applicants' other authorized debt securities.¹⁰

8. Applicants request Commission approval to issue short-term debt securities, including the following: (1) unsecured promissory notes payable to banks or other institutional lenders from which Applicants may borrow funds for periods not exceeding 12 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); (3) promissory notes issued to affiliates and other inter-company loans not exceeding 12 months, including, but not limited to, inter-company financing from Dominion to Applicants, and, for GENCO,

⁷ *Id.* at 7-8.

⁸ *Id.* at 8.

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 12.

transactions in the SCANA Corporation utility money pool¹¹ (Inter-Company Loans) (collectively, Short-Term Debt).¹²

9. 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 200 basis points.¹³

II. Notice of Filing

10. Notice of the Application was published in the *Federal Register*, 85 Fed. Reg. 8270 (Feb. 13, 2020), with interventions and protests due on or before February 20, 2020. None were filed.

III. Discussion

A. Analysis Under FPA Section 204

11. Section 204(a) of the FPA provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission 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.¹⁴

12. In reviewing an application under section 204, the Commission uses an interest coverage ratio calculation to determine whether the issuances for which authorization are

¹¹ 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).

¹² Application at 3-4.

¹³ *Id.* at 4.

¹⁴ 16 U.S.C. § 824c(a) (2018).

sought “will not impair [a public utility’s] ability to perform” service as a public utility.¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸ 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 application.¹⁹ The Commission has approved section 204 applications that have not met the 2.0 interest coverage ratio screen.²⁰

13. Applicants have filed, as Exhibits C-1, D-1, and E-1 to the Application, actual and *pro forma* financial statements for the 12-month period that ended September 30, 2019. Exhibit E-1 of the Application shows that GENCO has a *pro forma* interest coverage ratio which meets the Commission’s 2.0 times interest coverage ratio screen. However, DESC has a *pro forma* interest coverage ratio below the Commission’s 2.0 times interest coverage ratio screen. Nevertheless, Applicants state that there are other factors that

¹⁵ 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*).

¹⁶ *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”).

¹⁷ *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15 & n.15 (2003) (*Westar*).

¹⁸ *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.

¹⁹ See, e.g., *Startrans*, 122 FERC ¶ 61,253 at n.7.

²⁰ See, e.g., *NorthWestern Corp.*, 151 FERC ¶ 61,120 (2015); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005 (2014).

indicate that the proposed issuance of securities will not impair DESC's ability to perform service as a public utility.²¹

14. First, Applicants state that DESC's credit ratings as a corporate issuer and for short-term borrowings are rated as investment grade by all three credit rating agencies, and DESC has recently been able to access the capital markets.²² For example, Applicants state that DESC sold an aggregate of \$700 million in first mortgage bonds on August 15, 2018.²³

15. Second, Applicants state that Dominion and its subsidiaries have a \$6 billion revolving credit agreement, and the credit facility can be used by DESC to support bank borrowings, the issuance of commercial paper, and the issuance of letters of credit.²⁴ According to Applicants, a maximum of \$1 billion of the credit facility is available to DESC, subject to any sub-limit agreed to from time to time, which was \$500 million as of September 30, 2019.²⁵

16. Third, Applicants state that DESC is indirectly owned by Dominion, and has access to substantial financial backing, if needed, to obtain equity contributions or other means of support.²⁶ For example, Applicants note that DESC received equity contributions of \$675 million in February 2019 and \$50 million in September 2019 that were funded by Dominion, and DESC used these funds to redeem long-term debt.²⁷

B. Commission Determination

1. DESC

17. We find that, although DESC 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

²¹ Application at 9.

²² *Id.* at 9-10.

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 11.

²⁷ *Id.*

continue to be able to provide service as a public utility. Specifically, DESC has credit ratings as a corporate issuer and for short-term borrowings that are investment grade according to all three credit rating agencies, a credit facility that can be accessed during the requested authorization period, and access to financial backing from Dominion.²⁸

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

19. Accordingly, we authorize the following for DESC:

- a. DESC 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 at the time of issuance, plus up to 200 basis points.

2. GENCO

20. GENCO satisfies the two times interest coverage ratio; therefore, it can be reasonably expected that the proposed issuances of securities will not impair GENCO's ability to perform service as a public utility.

21. We also find that 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.

22. 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.

²⁸ We also note that no protests to the requested authorizations were filed.

- b. The interest rate for Short-Term Debt will not exceed the higher of the one-month, three-month, or six-month LIBOR at the time of issuance, plus up to 200 basis points.

3. Authorization Period

23. Applicants request a two-year authorization period. However, given DESC's 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, during the 12-month period that ended September 30, 2019, DESC recorded impairment losses of \$1.4 billion from the Nuclear Project, charges of \$1.46 billion related to provisions in the Merger Approval Order, and charges of \$120 million related to a tax dispute arising from the abandonment of the Nuclear Project. Moreover, additional impairment charges may be required depending on how much of DESC's investment in certain transmission assets can be recovered. These circumstances support a shorter authorization period. Applicants may submit an application for further authorization under FPA section 204 in the future, with updated financial statements, and with updates on the proceedings described above.

24. Accordingly, we grant DESC and GENCO the requested authorizations effective for one year from the date of this order.

4. Westar Restrictions

25. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.²⁹ First, public utilities seeking authorization to 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 by being divested or spun off as well. 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

²⁹ *Westar*, 102 FERC ¶ 61,186 at P 21.

two restrictions apply only to secured debt, and thus do not apply to the authorizations requested here.³⁰

The Commission orders:

(A) DESC 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 DESC 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.

(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.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁰ Application at 16.