

UNITED STATES OF AMERICA 100 FERC ¶ 62,155
FEDERAL ENERGY REGULATORY COMMISSION

South Carolina Electric & Gas Company
012
City of Columbia, South Carolina

Project No. 1895-

ORDER APPROVING TRANSFER OF LICENSE

(Issued September 03, 2002)

By application filed on July 10, 2002, South Carolina Electric & Gas Company (SCE&G or transferor) and the City of Columbia, South Carolina (City or transferee) jointly request Commission approval to transfer the license for the 10.6-megawatt Columbia Project No. 1895¹ from SCE&G to the City.² The project is located on the Broad and Congaree Rivers in Richland County, South Carolina. As described below, the transfer will be granted.³

As consideration for the City granting SCE&G a franchise to supply the City's electricity and gas service, SCE&G has agreed, pursuant to a Conveyance Agreement dated February 20, 2002,⁴ to convey the Columbia Project to the City, and to pay for all

¹The project was originally licensed to SCE&G in 1944, and was issued a new, 30-year license in 1980. 11 FERC ¶ 62,057. The project was again relicensed, for a 40-year term, on May 30, 2002. 99 FERC ¶ 62,152 (2002) reh'g pending.

²On June 13, 2002, SCE&G also filed an application, under Section 203 of the Federal Power Act (FPA), seeking authority to sell the project facilities in Docket No. EC02-75-000. The application is pending before the Commission.

³The transfer application also requests that the new license issued May 30 be amended by deleting Article 204, requiring the establishment and maintenance of an amortization reserve account, because it does not apply to municipalities. However, the effectiveness of this request is conditioned upon a future occurrence (i.e., the consummation of the transfer) and is therefore prohibited under Section 4.32(j) of the Commission's regulations (18 CFR 4.32(j) (2002)). Accordingly, the request will be dismissed without prejudice to being re-filed after the transfer is effective.

⁴Exhibit A in the transfer application.

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expenses required by the license.⁵ The City plans to execute a contract with SCE&G to provide the personnel and expertise necessary to operate the project in accordance with the terms and conditions of the license.⁶

Public notice for the transfer application was issued August 1, 2002, with a deadline of August 16, 2002, for filing comments, protests, and motions to intervene. The U. S. Department of the Interior, the National Marine Fisheries Service (NMFS), and the South Carolina Coastal Conservation League and American Rivers (jointly, League) filed motions to intervene.⁷

Intervenors note that, under the Conveyance Agreement, SCE&G would assume all responsibility for construction of the fish passage facilities required by the license. They ask that the transfer order clarify that, upon transfer to the City of the license, the City will be ultimately responsible for the construction and operation of all project facilities. The Intervenors are indeed correct that, irrespective of the any contractual obligations the City may enter into for the execution of its license requirements, the City, as licensee, is ultimately responsible for ensuring the fulfillment of its license obligations.⁸

CONCLUSIONS

⁵Section 2.2 of the Conveyance Agreement. SCE&G will also convey to the City the area's transit system, which SCE&G currently owns and operates.

⁶In its contractual arrangements with SCE&G for financing and operating the project, the City, as the licensee, must maintain control over the project to fulfill its license requirements and to enable the Commission, through the City, to carry out its regulatory responsibilities with respect to the project. See, e.g., Duke Energy Corporation, et al., 97 FERC ¶61,177 at pp. 61,824-25 (2001).

⁷Timely unopposed motions to intervene are automatically granted after 15 days. Late intervention must be expressly granted or denied. See 18 C.F.R. § 385.214 (2002). By filing of August 28, 2002, the licensee stated that it does not oppose the interventions. On August 30, 2002, the Secretary issued a notice waiving the applicable 15-day period response periods and granting intervention to Interior, NMFS, and the League.

⁸In addition, the League raises an issue relating to the requirements of license Article 412. However, rehearing of the requirements of that article is currently pending in another proceeding. Those issues therefore will not be addressed here.

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SCE&G has satisfactorily complied with the terms and conditions of the license.⁹ SCE&G has paid and agrees to continue to pay annual charges which accrue until the transfer is effective.

The City is not a licensee of the Commission. Therefore, we have no hydroelectric compliance record to review. However, as noted, the City intends to retain SCE&G's personnel to operate the project. The City is qualified to hold the license and to operate the properties under the license,¹⁰ and it has agreed to accept all the terms and conditions of the license, and be bound by the license as if it were the original licensee.

The proposed transfer is consistent with the Commission's regulations and is in the public interest.

The Director orders:

(A) Transfer of the license for the Columbia Project No. 1895 from South Carolina Electric and Gas Company to the City of Columbia, South Carolina, is approved, subject to ordering paragraph (C), below.

(B) South Carolina Electric and Gas Company shall pay all annual charges that accrue up to the effective date of the transfer.

(C) Approval of the transfer is contingent upon: (1) transfer of title of the properties under license and delivery of all license instruments to the City of Columbia, South Carolina, which shall be subject to the terms and conditions of the license as though it were the original licensee; and (2) the City of Columbia, South Carolina, acknowledging acceptance of this order and its terms and conditions by signing and returning the attached acceptance sheet. Within 60 days from the date of this order, the City of Columbia, South Carolina, shall submit certified copies of all instruments of conveyance and the signed acceptance sheet.

⁹SCE&G also holds licenses for the Saluda, Parr Shoals, Neal Shoals, and Stevens Creek Projects (Project Nos. 516, 1894, 2315, and 2535, respectively).

¹⁰An attestation to the City's authority to own and operate the project and a copy of the City's corporate charter are provided in Exhibits B and C, respectively, of the transfer application.

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(D) The request to delete Article 204 from the license upon approval of the transfer of the license is dismissed, as described in this order.

(E) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2002).

J. Mark Robinson
Director
Office of Energy Projects

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IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this order, the City of Columbia, South Carolina, this _____ day of _____, 20__, has caused its corporate name to be signed hereto by _____, its President, and its corporate seal to be affixed hereto and attested by _____, its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the ___ day of _____, 20____, a certified copy of the record of which is attached hereto.

By _____

Attest:

Secretary
(Executed in quadruplicate)