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GEORGIA PUBLIC SERVICE COMMISSION

244 Washington Street SW
Atlanta GA 30334-5701
(404) 656-4501 or 1 (800) 282-5813
fax: (404) 656-2341
www.psc.state.ga.us

November 14, 2003

~~XXXXXXXXXXXXXXXXXXXX~~

Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

RP04-92-000

OFFICE OF THE SECRETARY
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FEDERAL ENERGY
REGULATORY COMMISSION

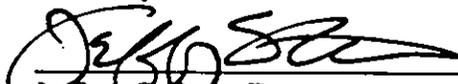
Re: Petition for Declaratory Order of the Georgia Public Service Commission
Docket No. _____

Dear Ms. Salas:

Enclosed for filing pursuant to Rule 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure is an original and fourteen copies of a Petition for Declaratory Order of the Georgia Public Service Commission and an original and two copies of a Petition for Exemption From Fees of the Georgia Public Service Commission. Also enclosed is a form of notice suitable for publication in the Federal Register and an electronic version of the notice on a computer diskette.

If you have any questions or require further information, please do not hesitate to contact Mr. Stair at 404-657-2795 or Mr. Marzo at 404-463-4230.

Sincerely,



Jeffrey C. Stair, Esq.

Attorney for the Georgia Public Service Commission

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

In Re: Petition for a Declaratory Order)
Georgia Public Service Commission) Docket No. _____

**PETITION BY THE GEORGIA PUBLIC SERVICE COMMISSION
FOR A DECLARATORY ORDER**

Pursuant to 18 C.F.R. § 385.207, the Georgia Public Service Commission (“Georgia Commission” or “GPSC”) hereby petitions the Federal Energy Regulatory Commission (“FERC”) for a declaratory order to remove uncertainty with respect to the jurisdiction of the Georgia Commission and the FERC concerning the FERC capacity release requirement¹ and conditions placed on the assignment of interstate capacity. In particular, the Georgia Commission requests the FERC to declare:

Whether the FERC would preempt the Georgia Commission if the Georgia Commission adopted a plan that provided for the permanent assignment of the interstate capacity assets currently held by Atlanta Gas Light Company to certificated natural gas marketers and placed conditions upon that assignment of the interstate capacity assets.

I. BACKGROUND OF CONTROVERSY

A. Relevant Georgia Legislation

Since 1997, the Georgia Commission has been charged with the implementation and administration of the state’s “Natural Gas Competition and Deregulation Act,” O.C.G.A. § 46-4-150 *et seq.* (“Deregulation Act”). Pursuant to the Deregulation Act, Atlanta Gas Light Company (“AGLC”), elected to unbundle its gas distribution services from its gas sales services and a

¹ 18 C.F.R. § 284.8.

number of gas marketing companies received certificates of authority from the Georgia Commission to sell gas to retail customers in Georgia through AGLC's distribution system. The Deregulation Act has required 1) AGLC to "continue to be responsible for acquiring and contracting for the interstate capacity assets necessary for gas to be made available on its system, whether directly or by assignment to marketers...unless determined otherwise by the commission..." (O.C.G.A. §46-4-155(e)(2)), and 2) the Georgia Commission to approve a capacity supply plan for AGLC that includes the "array of interstate capacity assets ... to meet [firm customer] requirements" and the "portion of the interstate capacity assets which must be retained and utilized by the electing distribution company [AGLC] to manage and operate its system." O.C.G.A. §46-4-155(e)(6). Accordingly, pursuant to the Deregulation Act and in accordance with the FERC capacity release rules, AGLC has released capacity to marketers on a monthly and long-term basis based on the respective marketer's market share of the Georgia retail sales market.²

In 2002, the Georgia legislature enacted the Natural Gas Consumers' Relief Act ("Relief Act"). As part of the Relief Act, the Georgia legislature obligated the Georgia Commission to hold a hearing no later than July 1, 2003 to consider plans for the assignment of interstate capacity assets held by the electing distribution company, AGLC. Specifically, O.C.G.A. § 46-4-155(e)(13), states that:

Notwithstanding any other provisions in this Code section to the contrary, no later than July 1, 2003, the commission shall, after notice afforded to the electing distribution company, the consumers' utility counsel division of the Governor's Office of Consumer Affairs, all marketers who have been issued a certificate of authority in accordance with Code Section 46-4-153, and all owners or operators of interstate gas pipelines that are a part of said capacity supply plan, hold a hearing regarding a plan for assignment of interstate assets. After such hearing, the commission may adopt a plan for assignment of interstate capacity assets held

² AGLC retains a portion of its interstate capacity for system management, operations, and balancing purposes.

by the electing distribution company, except for those interstate capacity assets reasonably required for balancing. If adopted, the plan shall provide for interstate capacity assets to be assigned to certificated marketers who desire assignment and who are qualified technically and financially to manage interstate capacity assets. Marketers who accept assignment of interstate capacity assets shall be required by the commission to use such assets primarily to serve retail customers in Georgia and shall be permitted to use such assets outside Georgia so long as the reliability of the system is not compromised. Thereafter, the commission shall annually review the assignment of interstate capacity assets.

In order to adopt a plan of assignment, the Georgia Commission is required to make the following findings that are found in O.C.G.A. § 46-4-155(e)(14):

Any order eliminating the responsibility of the electing distribution company for acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this subsection and any plan for assignment of interstate capacity assets pursuant to paragraph (13) of this subsection shall, at a minimum, ensure that:

(A) Shifts in market share are reflected in an orderly reassignment of interstate capacity assets;

(B) Marketers hold sufficient interstate capacity assets to meet the needs of retail customers;

(C) Before any such assignment is authorized, the assignee demonstrates to the commission that such assignment will result in financial benefits to firm retail customers;

(D) Before any marketer discontinues service in the Georgia market, it assigns its contractual rights for interstate capacity assets used to serve Georgia retail customers in a manner designated by the commission;

(E) In the event that the commission imposes temporary directives in accordance with Code Section 46-4-157, interstate capacity assets assigned to marketers are subject to reassignment by the commission to protect the interests of retail customers; and

(F) Any other requirement that the commission finds to be in the public interest is imposed upon assignees as a condition of the assignment of interstate capacity assets.

B. Plan of Assignment Hearing

In June 2003, the GPSC held a hearing to consider plans for the assignment of interstate capacity assets held by AGLC. Two plans of assignment were filed with the Georgia Commission, one plan by Scana Energy Marketing, Inc. ("Scana"), a certificated gas marketer, and the other by a joint group comprised of the Georgia Commission Staff, the Consumers' Utility Counsel, a variety of gas marketers³, and the Electing Distribution Company, AGLC (the "Joint Parties"). During the hearings, the parties addressed how the Georgia Commission could satisfy the requirements of O.C.G.A. § 46-4-155(e)(13-14) consistent with federal and state law.

Under the plan presented by the Joint Parties, AGLC would continue to release Part 284 capacity to the marketers consistent with the FERC's capacity release rules. Under the plan presented by Scana, AGLC would essentially permanently release the interstate capacity to Scana (or another marketer that might opt in to the Scana plan of assignment) and that marketer would exercise all contract rights with respect to such released interstate capacity. Scana also proposed that the Georgia Commission could amend the individual certificate of authority issued by the GPSC to such marketer to require the marketer to assign its interstate capacity contract to another marketer, AGLC, or the Georgia Commission in the event that the marketer were no longer going to serve retail customers in Georgia, were unable to pay its bills, were to file for bankruptcy, or such other event that the Georgia Commission identifies.

Further, Scana proposed that, in addition to placing conditions on the marketer's certificate of authority, Scana (or a marketer opting into Scana's plan of assignment) could execute with the Georgia Commission an agreement whereby the marketer would agree to

³ The participating gas marketers are ACN Energy, Inc., Coweta-Fayette EMC Natural Gas, Energy America, LLC, Infinite Energy, Inc., PS Energy Group Inc. d/b/a GasKey, Shell Energy Services Company L.L.C., Southern Company Gas, Southstar Energy Services, LLC d/b/a Georgia Natural Gas and Walton EMC Natural Gas.

“voluntarily reassign interstate capacity assets ... to any third party designated by the Commission” upon occurrence of certain prescribed events.

C. Georgia Commission Order

At an Administrative Session on July 24, 2003, the Georgia Commission adopted the plan of assignment of the Joint Parties “in its entirety, as a reasonable, fair, and workable interstate capacity assignment resolution which addresses the concerns of market participants, Georgia consumers, and the requirements of the Act...” *In Re: Proceeding to Consider Plans for the Assignment of Interstate Capacity Assets as Required by O.C.G.A. §46-4-155(e)(13)*, Final Order, p.22 (August 6, 2003) (attached hereto as Attachment 1). As part of the its Final Order, the Georgia Commission “...recognized its reasonability to ensure that the requirements of O.C.G.A. § 46-4-155(e)(14) are satisfied, including the orderly reassignment of interstate capacity assets in the event of shifts on market share, marketer discontinuation of service, and the ability to reassign capacity under a Commission temporary directive.” Final Order, p. 9 (August 6, 2003)

The Final Order further stated that, “...the Scana plan fails to offer a solution to the difficulties arising from the conflicts between the FERC jurisdiction and the [Georgia] Commission’s obligations under O.C.G.A. § 46-4-155(e)(14) (D) & (E) to ensure that the capacity is reassigned back to Georgia upon the exit of a marketer from this State, and its duty to ensure that it can impose temporary directives to reassign capacity to protect Georgia consumers”.

The GPSC is deeply concerned that Scana’s proposed plan is inconsistent with the FERC’s capacity release mechanism and may have significant impact on Georgia consumers. The Georgia Commission is also concerned that adoption of Scana’s proposed plan may result in

the GPSC losing its ability to enforce its directives, as it is required to do by statute. The GPSC currently regulates AGLC, and therefore, the Georgia Commission is able to enforce its directives by requiring AGLC to recall capacity pursuant to its GPSC-approved tariff. As the GPSC Order in Docket 16682-U makes clear, the “[Georgia] Commission will not at this time risk the well being of the Georgia ratepayers or the deregulated market based on the [Georgia] Commission’s doubtful ability to enforce certain undefined marketer certificate conditions.” Final Order, Page 11 (August 6, 2003)

One of several rationales for the GPSC’s denial of Scana’s plan was Scana’s inability to provide the Georgia Commission with the adequate assurances required by law that Scana’s plan of assignment would not expose Georgia ratepayers and other market competitors to significant harm. The Georgia Commission ultimately found and concluded that the Joint Plan of the Stipulating Parties adequately balanced the FERC’s interstate pipeline jurisdiction with the Commission’s intrastate jurisdiction as it relates to interstate capacity assets.

In light of the fact that there was uncertainty regarding the jurisdictional issues that were raised in the hearing, the Georgia Commission directed its Staff to seek a declaratory order “to seek resolution of the limited question of whether the FERC would preempt the [Georgia] Commission on any decision regarding conditions being placed on the assignment of interstate capacity assets.” Final Order, p. 23 (August 6, 2003)

D. Continued Uncertainty

The Georgia Commission ultimately adopted a plan of assignment of interstate capacity assets, however the issues raised by Scana concerning the Georgia Commission’s jurisdiction with respect to interstate capacity contracts have not been settled and may be raised again before the Georgia Commission. Therefore, the Georgia Commission respectfully requests that the

FERC issue a declaratory order to remove uncertainty with respect to the jurisdiction of the Georgia Commission and the FERC over conditions placed on the assignment of interstate capacity.

II. NOTICE AND COMMUNICATIONS

Notice and communications regarding this petition should be addressed to the following person(s):

Jeffrey C. Stair, Esq.
Georgia Public Service Commission
244 Washington Street, NW
Atlanta, Georgia 30334

Brandon Marzo, Esq.
Georgia Public Service Commission
244 Washington Street, NW
Atlanta, Georgia 30334

III. CONCLUSION

WHEREFORE, the petitioner, Georgia Public Service Commission, requests that the FERC declare the extent of the jurisdiction of the Georgia Commission and FERC with respect to the question presented above.

Respectfully submitted, this the 14 day of November 2003.



Jeffrey C. Stair, Esq.
Georgia Bar No. 674013

Attorney for the Georgia Public Service Commission