COMMISSION HEARING OFFICER DIRECTIVE

ADMINISTRATIVE MATTERS	☐	DATE	**September 1, 2005**
MOTOR CARRIER MATTERS	☐	DOCKET NO.	**2005-180-E**
UTILITIES MATTERS	☒	ORDER NO.	-

HEARING OFFICER: Jeffrey M. Nelson

DOCKET DESCRIPTION:
Complaint by South Carolina Electric and Gas Company against Aiken Electric Cooperative alleging a violation of Commission Regulation 103-304.

ADMINISTRATIVE MATTER UNDER CONSIDERATION:
Motion by Defendant Aiken Electric Cooperative, Inc. to Vacate, Modify, and/or reconsider the Commission's Order to Consolidate Dockets 2003-254-E and 2005-180-E.

HEARING OFFICER ACTION:
Motion to Vacate the Commission's Order of Consolidation is granted.

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2005-180-E – ORDER NO. 2005-

IN RE:

South Carolina Electric & Gas Company,	)	ORDER GRANTING
	)	MOTION TO VACATE
Complainant,	)	COMMISSIONS ORDER
	)	TO CONSOLIDATE
vs.	)	
	)	
Aiken Electric Cooperative, Inc.,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Public Service Commission of South Carolina ("PSC" or "the Commission") by way of two initial applications filed with the PSC by South Carolina Electric & Gas Company ("SCE&G"). On August 27, 2003 SCE&G filed a Complaint with the PSC alleging that Aiken Electric Cooperative, Inc. ("Aiken") had violated S.C. Code Ann. Regs. 103-304(1) (Supp. 2004). This initial Complaint was assigned Commission Docket No.2003-254-E and remains a pending matter before this Commission. On June 9, 2005, SCE&G filed a second Complaint with the Commission alleging another violation by Aiken of Regulation 103-304(1). This second case was assigned Commission Docket No. 2005-180-E. Along with the second complaint filed on June 9, 2005, SCE&G filed, and served on all parties, a Motion to Consolidate Dockets 2003-254-E and 2005-180-E alleging that both cases involved similar willful violations of the Commissions' regulations by Aiken.

On June 24, 2005 the Commission listed SCE&G's Motion to Consolidate as a matter to be considered at its weekly meeting to be held on June 30, 2005. At its June 30, 2005, the Commission voted to grant SCE&G's Motion to Consolidate and entered a formal written Order of Consolidation of these two cases under Docket No. 2005-180-E on July 7, 2005. Subsequently, on July 8, 2005 Aiken served and filed its Motion to Vacate, Modify and/or Reconsider the Commission's Order of Consolidation. By a Directive of the Commission issued on July 19, 2005, the Commission designated me as Hearing Officer in this case to rule on Aiken's Motion to Vacate, Modify, and/or Reconsider the Commission's Order to Consolidate. SCE&G opposed Aiken's Motion to Vacate or Modify the Order.

Memorandums were received by the Commission from both parties supporting their respective positions and a hearing for arguments was commenced before me in the Commission's Hearing Room in Columbia, South Carolina at 2:00PM on August 22, 2005.

No witnesses were presented at the hearing. Oral arguments were made on behalf of Aiken by Mr. Marcus Manos, Esq., on behalf of SCE&G by Mr. Rob Tyson, Esq., and on behalf of the Office of Regulatory Staff ("ORS") by Ms. Shannon Hudson, Esq. Counsel's arguments restated the parties' positions as set forth in the briefs and Memorandums filed by the parties in this action and which are a part of the Commission's docket in this matter.

FINDINGS OF FACT

1. SCE&G and Aiken are both an "Electrical Utility" as defined in S.C. Code Ann. Regs. 103-302 (1976) and are therefore subject to the terms and conditions of the Rural Territorial Act and assignment of service areas as provided in S.C. Code Ann. Section 58-27-640 and Reg. 103-304.

2. On August 27, 2003 SCE&G filed a Complaint with the Commission alleging that Aiken had violated Commission Regulation 103-304(1) by providing service to a Dollar General Store in the vicinity of Swansea, South Carolina. This case was assigned Docket No. 2003-254-E by the Commission and is still a pending matter before the Commission.

3. On June 9, 2005 SCE&G filed a Complaint with the Commission alleging Aiken violated Commission Regulation 103-304(1) by providing service to a poultry processing plant in the vicinity of Monetta, South Carolina. This action was assigned Docket No. 2005-180-E by the Commission.

4. Along with this second Complaint, SCE&G also filed, and served on the Respondent Aiken, a Motion for Consolidation of 2003-254-E and 2005-180-E, alleging that both of the actions concerned willful violations of the Commissions' regulations and that consolidation of the two matters would therefore be in the best interest of judicial economy.

5. At its weekly meeting on June 30, 2005 the Commission voted to grant SCE&G's Motion to Consolidate and consolidated the two matters under Docket No.

2005-180-E. Commission Order No. 2005-360 consolidating these cases was signed by the Commission and served on the parties on July 7, 2005.

6. On July 8, 2005 Aiken served and filed its Motion to Vacate, Modify, and/or Reconsider Commission Order No. 2005-360.

7. The Commission appointed Jeffrey Nelson as Hearing Officer to consider Aiken's arguments in opposition to the Order of Consolidation, and SCE&G's arguments in support. Both Aiken and SCE&G filed Memorandums with the Commission in support of their Respective positions.

8. A hearing was held before the Hearing Officer at the Offices of the Commission at 2:00 PM on August 22, 2005.

9. I find that although Aiken was Noticed in both Docket No. 2005-180-E and 2003-254-E on June 17, 2005 of SEC&G's Motion to Consolidate, that the Commission Ordered Consolidation of the cases on June 30, 2005; thirteen (13) days after service of the Complaint. Under S.C. Code Ann. Regs. 103-841(B)(2) Aiken was not required to file an Answer to the Complaint in 2005-180-E until thirty (30) days after service of the Complaint, which would have been Monday, July 18, 2005.

10. I find that there are identical parties and certain common issues in both cases which have been consolidated in docket No. 2005-180-E. However, Aiken had not been afforded the permitted thirty (30) days to formulate its responsive pleading to SCE&G's Complaint in 2005-180-E. I find that Aiken's Answer in the second action is significant in determining their position and arguments regarding the Motion to Consolidate.

11. I find that while there do appear to be common legal issues in the two cases which were consolidated in Order No. 2005-360, Aiken may have raised a defense in its responsive pleading which could affect the propriety of the Commissions joinder of the two pending actions. The simple fact that the two cases involve two different locations, one in Swansea and one in Monetta, indicate that Aiken at least may have reasonable grounds to oppose the consolidation.

12. We find that Aiken should at least have the opportunity to argue its opposition to the Consolidation and that therefore Commission Order No. 2005-360 should be vacated.

13. In vacating the prior Order of Consolidation, the Motion of SCE&G for Consolidation shall be re-docketed by the Commission.

CONCLUSIONS OF LAW

1. Consolidation under Commission Regulation 103-835(C), similar to S.C. Rules of Civil Procedure Rule 42(a), may be ordered by the Commission whenever common questions of law or fact are pending before it. As with a Court under SCRCP Rule 42(a), this Commission is given broad discretion in considering issues of consolidation.

2. In exercising that discretion, I conclude that Aiken must be permitted thirty (30) days to respond to the second of the two actions being consolidated prior to the Commission Ordering Consolidation. S.C. Code Ann. Regs. 103-841(B)(2) (Supp. 2004). Aiken should, therefore, be provided the opportunity to make its arguments in opposition to the Motion to Consolidate before the Commission, particularly when to

provide it with such an opportunity does not prejudice SCE&G's right to continue to seek consolidation.

3. Based on the findings of fact, I conclude that Order No. 2005-360 consolidating Case No. 2003-254-E and 2005-180-E should be vacated. The Motion of SCE&G for Consolidation shall be re-docketed to allow for both parties to make arguments in support of their respective positions regarding the Motion.

IT IS SO ORDERED.

Jeffrey M. Nelson
Hearing Officer