20021011-3003 Received by FERC OSEC 10/10/2002 in Docket#: ER00-1608-002

UNITED STATES OF AMERICA 101 FERC ¶ 61,035
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Southern Company Services, Inc. Docket Nos. ER00-1608-002
and ER01-2166-002

ORDER DENYING REHEARING

(Issued October 10, 2002)

1. On April 10, 2002, the Commission issued an order rejecting an "informational" filing made by Southern Company Services, Inc. (Southern) notifying the Commission of the company's intention to recover from Tenaska Alabama Partners, L.P. (Tenaska) and Duke Energy North America, LLC (DENA) costs associated with construction-related transmission line outages.[1] Southern has requested rehearing of the April 10 Order. For the reasons discussed below, the Commission denies the request for rehearing.

2. This order benefits customers because it encourages the building of additional generating facilities by ensuring that generators will be charged only for those interconnection costs specifically identified by the parties in the interconnection agreements.

BACKGROUND

3. Southern sought to recover the following indirect costs allegedly caused by the construction of interconnection facilities for these two generators: (1) the costs associated with procuring power to compensate for line losses caused by transmission line outages; and (2) refunds that Southern paid to transmission customers to whom service would have been provided but for the line outages.

[1] 99 FERC ¶ 61,031 (2002) (April 10 Order).

4. In the April 10 Order, the Commission determined that Southern had not shown that the agreements with Tenaska and DENA allowed for recovery of line outage costs. The Commission determined further that, even if the agreements allowed for such recovery, Southern did not show that the costs were just and reasonable. Southern also had not shown that the losses that allegedly occurred during the outages were attributable only to Tenaska and DENA.

5. The Commission also noted that Southern had not addressed the concerns regarding another category of indirect costs of construction, redispatch costs, expressed in Cambridge Electric Light Co. (Cambridge), 95 FERC ¶ 61,339 (2001), where the Commission found that determining how much cost responsibility should be assigned to an interconnecting generator, when other factors may also contribute to the need to redispatch, would be unacceptably arbitrary.[2] Finally, we found that, even if the line outage costs were attributable to Tenaska or DENA, Southern would not be allowed to retroactively charge them. However, since the Commission was rejecting Southern's filing, that issue was moot.

SOUTHERN'S REQUEST FOR REHEARING

6. On May 10, 2002, Southern filed a request for rehearing of the Commission's April 10 Order. It first contends that § 5.2.1 in the Tenaska and DENA interconnection agreements puts the burden of "all costs" related to interconnecting Tenaska's and DENA's generators to Southern's transmission grid on Tenaska and DENA and not on Southern and Southern's customers. The fact that every particular cost was not enumerated in the agreements does not mean that the agreements fail to specify who agreed to bear the costs.

7. Second, according to Southern, the April 10 Order ignored Southern's right to recover refunds paid to a transmission customer for line-outage caused curtailment of that customer's firm service pursuant to the transmission service agreement. Southern

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[2]Southern also identified other expenses, specifically redispatch costs and costs associated with lost non-firm sales allegedly incurred when Tenaska and DENA connected their generators to Southern's transmission grid. Southern stated that while it was not assessing these costs against Tenaska and DENA in this instance, that was only because the company had not developed a methodology for calculating and allocating these costs.

argues that these costs are appropriate for recovery because they were incurred solely due to the line outages.

8. Southern challenges the April 10 Order's finding that, even if the agreements did allow for the recovery of such costs, Southern had not demonstrated that the losses occurring during the outages were solely attributable to Tenaska and DENA, and not the result of other conditions, such as load, weather conditions, or other outages in the area. According to Southern, the methodology used for calculating line losses and determining the associated costs was clearly defined, relied on verifiable costs, and used standard industry mechanisms to calculate the assigned costs, and therefore is sufficient evidence that all the line outage costs are attributable to Tenaska and DENA.

9. Southern also challenges the April 10 Order's discussion of Cambridge in which the Commission stated that it will not allow transmission providers to charge generators for redispatch costs associated with line outages.[3] Southern states that this finding is puzzling because Southern was not seeking recovery of such costs.

10. Finally, Southern argues that its filing is not a retroactive charge because the parties had agreed to the recovery of such costs in their interconnection agreements, Southern provided Tenaska and DENA estimates before seeking to recover the costs, and Southern did not invoice the parties until the informational filing was made.

11. Southern argues that the April 10 Order violated the company's due process rights and failed to meet the standards of the Administrative Procedure Act because it ignored the evidence submitted by Southern to support the costs to be recovered and rejected Southern's answer filed in response to the interveners' filings.

12. DENA filed an answer to Southern's request for rehearing on May 28, 2002.

DISCUSSION

Procedural Matters

[3] See Cambridge, supra.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally prohibits an answer to a request for rehearing.[4] We are not persuaded to allow DENA's answer and, accordingly, will reject the answer.

Commission Decision

14. The Commission rejects Southern's argument that interconnection agreements here provide for recovery of the costs at issue because of the "all costs and expenses" language in § 5.2.1.[5] We do not read that language as allowing Southern to charge the generators for costs that Southern has not shown to be appropriately allocated to them. Transmission outages occur in the normal course of business, not just to interconnect generation facilities (e.g. routine maintenance, reconfiguring or adding transmission facilities or due to weather conditions). Southern has provided no basis, and we find it discriminatory to directly assign the costs associated with line outages due to the interconnection of Southern's competitors.

15. The Commission's regulations require that all rates and charges must be clearly and specifically set forth in the rate schedule.[6] The Commission requires transmission providers to include sufficient information in interconnection agreements for the Commission to determine the reasonableness of any costs proposed to be charged under the agreement and to determine that any direct assignment of costs is appropriate, including a clear and separate identification of all direct costs, all indirect costs and any associated carrying charges as well as detailed cost support for all proposed services.[7]

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[4]18 C.F.R. § 385.213(a)(2) (2002).

[5]While Southern is only seeking to recover costs associated with line outages and costs associated with refunds made to other Southern customers that resulted from the line outages at this time, the Commission's finding applies equally to any assumption by Southern that it is entitled to recover those costs from Tenaska and DENA. See note 2.

[6]18 C.F.R. § 35.1 (2002).

[7]See e.g., Entergy Services, Inc., 91 FERC ¶ 61,149 at 61,562 (2000).

16. As we noted in the April 10 Order, identification of broad cost categories is not sufficient.[8] Interconnection agreements must specifically identify the outage costs to be recovered.[9] The Commission has rejected requests for the assessment of outage-related costs where the interconnection agreement did not specifically identify the types of costs to be recovered or the justification for recovering such costs.[10] Identification of broad cost categories leaves too much discretion to the transmission provider in determining and assessing the reasonableness and appropriateness of charges that clearly fall under the Commission's jurisdiction.[11]

17. In its rehearing request, Southern continues to assert that its methodology for calculating additional line losses and determining their costs was clearly defined, relied on verifiable costs, and used a standard industry mechanism to calculate the assigned costs. Southern also states that the informational filing contained generation pricing data, set forth on an hourly basis, that supported the calculation of the energy costs associated with the power line losses. Finally, Southern notes that Tenaska and DENA had an opportunity to review and verify the costs and expenses by examining the databases, software, and models used to capture, isolate and calculate the respective losses and charges. It says that they failed to submit any information to contradict Southern's conclusions.

18. We find that Southern still has not shown that the outages are attributable solely to Tenaska and DENA. Southern has not shown that the increase in losses is not the result of other conditions, such as load, weather conditions, or other outages in the area. In any event, even if the outages could be attributable only to Tenaska and DENA (which has not been shown to be the case here), the broad language in § 5.2.1 of the agreements with Tenaska and DENA does not provide the specificity required to allow for the recovery of these costs.

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[8] Id.

[9] American Electric Power Service Corporation, 97 FERC ¶ 61,200 at 61,872.

[10] See e.g., Cambridge, 95 FERC at 62,277; American Electric Power Service Corporation, 97 FERC ¶ 61,200 at 61,872 (2001) (AEP); and Appalachian Power Company, 97 FERC ¶ 61,199 at 61,869 (2001) (Appalachian).

[11] See AEP, 97 FERC at 61,872.

19. Finally, we reject Southern's claim that the April 10 Order violates the company's due process rights because we ignored both Southern's evidence submitted to support recovery of these costs and Southern's answer filed in response to the interveners. The April 10 Order's finding that the interconnection agreements did not allow for the recovery of these costs mooted any need to take the next step and address whether or not the methodologies used to calculate these costs were appropriate. The Commission's regulations require a utility to make its case in its filing.[12] Rule 213 provides further that an answer may not be made to a protest unless otherwise ordered by the decisional authority. Southern therefore had no right to answer the interveners' protests to Southern's filing.

The Commission orders:

Southern's request for rehearing is denied for the reasons discussed in this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[12]See 18 C.F.R. Parts 35 and 385 (2002).