

102 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.
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Docket No. ER03-379-

ORDER ACCEPTING ROLLOVER SERVICE
AGREEMENT AS MODIFIED

(Issued February 25, 2003)

1. Southern Company Services, Inc.¹ filed an unexecuted rollover transmission service agreement (TSA) for long-term point-to-point transmission service with Williams Energy Marketing & Trading Company (Williams) under the Open Access Transmission Tariff (OATT) of the Southern Companies.² The Commission accepts in part and modifies in part Southern's filing, to be effective January 1, 2003, and directs Southern to make a compliance filing removing Sections 5.0 and 6.0 of the TSA, which conditions Williams' future rollover rights and the effectiveness of the TSA, respectively. This decision benefits customers because it provides certainty regarding transmission service customers' rollover rights consistent with Commission policy.

Background

2. On October 31, 2002, Williams submitted to Southern a request to rollover its existing 50 MWs of firm point-to-point transmission service provided under Service

¹Southern Company Services, Inc. acts as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies or Southern).

²FERC Electric Tariff, Fourth Revised Volume No. 5, First Revised Service Agreement No. 451 under the OATT. The TSA was filed as Addendum 1 to the original Service Agreement For Firm Point-To-Point Transmission Service between Southern and Williams.

Agreement No. 451, a one-year transmission service agreement which was to expire December 31, 2002. Because the parties could not agree on the terms of service, specifically, Williams' future rollover rights, Williams requested that Southern file the TSA in unexecuted form.

Southern's Filing

3. Southern filed the TSA on January 6, 2003. The TSA continues the transmission service provided under the previous service agreement, but includes limitations on future rollovers and conditions the effectiveness of the TSA. Specifically, Section 5.0 of the TSA states:

[T]he Transmission Provider has determined that after December 31, 2003, insufficient capacity exists to accommodate both the future rollover by the Transmission Customer of this Rollover Service Agreement and to provide service to Transmission Customers having an earlier priority for transmission service. Therefore, the Transmission Customer's right to continue to take transmission service hereunder (in whole or in part) after December 31, 2003 is expressly conditioned on the availability of sufficient transmission capacity after the following [four] Transmission Customers exercise their rights to transmission service or to rollover their respective agreements:

Additionally, the Transmission Provider has determined that 7500 MW of transmission capacity are needed to meet its forecasted native load growth for 2003 to 2011. The reservations for transmission capacity necessary to meet this native load growth forecast are identified on OASIS In accordance with Order No. 888-A, the Transmission Customer's right to continue to take transmission service hereunder (in whole or in part) under this Rollover Service Agreement is expressly conditioned upon the availability of sufficient transmission capacity after the allocation of capacity to meet the Transmission Provider's native load needs. The Transmission Customer's right to continue to take transmission service hereunder (in whole or in part) under this Rollover Service Agreement is also expressly conditioned upon the availability of sufficient transmission capacity after the requests for transmission service on the Georgia Integrated Transmission System having an earlier priority than the Transmission Customer (if any) have been accommodated.

Upon receipt of a request by the Transmission Customer to rollover service under this Rollover Service Agreement, the Transmission Provider will, within a reasonable amount of time, notify the Transmission Customer which (if any) of the above Transmission Customers have exercised their rights to transmission service or to rollover their respective service agreements and will also notify the Transmission Customer of the amount (if any) of transmission capacity that the Transmission Customer may rollover for purposes of Section 2.2 for continued transmission service hereunder after December 31, 2003.

4. Section 6.0 of the TSA states:

[T]he effectiveness of this Rollover Service Agreement is expressly conditioned upon the Commission's acceptance of all provision's hereof, without change or condition, along with a waiver by the Commission of any regulations to the extent necessary to effectuate all the provisions hereof.

Southern's Arguments

5. Southern states that although there are no reasonably foreseeable limitations on Williams' request for service from January 1, 2003 to December 31, 2003, the transmission customers listed in Section 5.0 have reservations for service commencing on or after December 31, 2003 that could affect Williams' ability to roll over its service after the expiration of the TSA on December 31, 2003.³ According to Southern, since the transmission customers listed in Section 5.0 submitted reservations for service before Williams' initial request for transmission service, if Williams seeks to continue service after the expiration of the TSA on December 31, 2003, the listed transmission customers will have priority over Williams for the affected capacity.

6. Southern asserts that the Commission's policy concerning rollover rights has created confusion and uncertainty in the industry, noting the Commission's recognition of the need to incorporate certain of its clarifications into the interim tariff proposed to be

³Notwithstanding the limitations in Section 5.0, Southern requests that the Commission at least accept for filing those portions of the Rollover Agreement that allow Southern to provide the requested service to Williams for the requested term of January 1, 2003 to December 31, 2003. See Southern's Transmittal Letter, p. 6 n.7.

adapted by the Standard Market Design NOPR.⁴ Southern also argues that the Commission's policy allowing certain limitations on rollover rights only if they are contained in the original service agreement was not clarified until the issuance of Nevada Power Company.⁵ In addition, Southern points out that before August 30, 2002, the date Southern was issued, the Commission's rejections of transmission providers' attempts to limit customers' rollover rights were based on native load reservations only, not on any other limitations such as higher-queued reservations by third parties.⁶ Thus, Southern requests that the Commission apply its policy only to service agreements executed after the issuance of Nevada Power.

7. Furthermore, Southern requests that the Commission reconsider the policy of requiring any limitations on rollover to be contained in the original service agreement. Southern asserts that this policy is flawed, and urges the Commission to at least clarify that a customer's rollover rights may be limited for reasons that were not reasonably foreseeable when the original request for service was studied and at a minimum, apply its new policy on a prospective basis. Southern also asks that if the Commission applies its recent pronouncements regarding rollover "retroactively," the Commission should further clarify what is meant by a "competing request" under Section 2.2 of the pro forma tariff.

8. Finally, Southern requests that the Commission waive its 60-day prior notice requirement, to allow an effective date of April 27, 2002, the date on which service commenced under the original agreement, Service Agreement No. 451.

Public Notice and Further Filings

9. Notice of Southern's filing was published in the Federal Register,⁷ with interventions, comments, and protests due on or before January 27, 2003. On January 27, 2003, Williams filed a motion to intervene and protest.

⁴See Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, Docket No. RM01-12-000, 100 FERC ¶ 61,138 at PP 121-23 (2002).

⁵Nevada Power Company, 97 FERC ¶ 61,324 (2001) (Nevada Power).

⁶Transmittal Letter at 5, citing Southern Company Services, Inc., 100 FERC ¶ 61,237 at PP 13-14 (2002) (Southern).

⁷68 Fed. Reg. 2327 (2003).

10. Williams argues that Southern's attempt to limit its rollover rights should be rejected as inconsistent with Commission policy and Commission precedent. Williams highlights the Commission's policy on rollover rights citing the Commission's recent orders in Southern and Exelon.⁸

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ Williams' timely, unopposed motion to intervene is granted.

B. Analysis

12. Southern's arguments to limit Williams' rollover rights (*i.e.*, there has been a lack of clarity; the rollover policy is flawed; and the requirement that limitations be included in the original service agreement should be applied prospectively), are virtually identical to those arguments raised in Southern. In Southern, the Commission rejected Southern's attempt to limit Dynegy Power Marketing, Inc.'s rollover rights in virtually identical factual circumstances. There, as here, the transmission customer requested rollover of an existing transmission service agreement and Southern attempted to insert limitations on the customer's future rollover rights based on higher-queued transmission service requests even though the limitations were not included in the original transmission service agreement. For the reasons stated in Southern, and the order on rehearing that is being issued contemporaneously,¹⁰ we reject Southern's arguments to restrict Williams' rollover rights. Further, consistent with the Commission's precedent in other cases, we reject Southern's attempt to restrict Williams' rollover rights based on reservations for native load growth since these restrictions were not in the original service agreement.¹¹

⁸Exelon Generation Company, LLC v. Southwest Power Pool, Inc., 99 FERC ¶ 61,235 (2002) (Exelon), *reh'g denied* 101 FERC ¶ 61,226 (2002) (Exelon rehearing).

⁹18 C.F.R. § 385.214 (2002).

¹⁰Southern Company Services, Inc., 102 FERC ¶ 61,200 (2003).

¹¹See, *e.g.*, Exelon rehearing at PP 27-29; Constellation Power Source, Inc. v. American Electric Power Service Corporation and Southwest Power Pool, Inc., 100 FERC ¶ 61,157 at PP 27-29 (2002).

Accordingly, we shall accept the TSA but direct Southern to make a compliance filing within 30 days of the date of this order that removes Section 5.0.

13. While we have decided this case based on our policy that any rollover limitations must be included in the original service agreement, the Commission expresses its concern with the nature and accuracy of Southern's filing. Section 5.0 lists five sets of OASIS Assignment References (AREFs) associated with four transmission customers representing a total of 57 OASIS transmission service requests upon which Southern attempted to condition Williams' rollover rights. Of these, as of February 6, 2003, 32 are no longer valid transmission service requests having statuses of Declined, Refused, or Withdrawn.¹² The remaining 25 have a status of Study.¹³

14. Southern has also not explained how one of the requests in Study status (AREF 280719) would have any impact on Williams' request. Specifically, AREF 280719 is a

¹²We note the OASIS AREFs for 18 of these invalid requests were last updated on January 8, 2003, two days after Southern's filing, and we are uncertain if the status of these requests was changed by that update. Nonetheless, we are concerned that 14 requests were presented as transmission service requests with a priority over Williams' request, when in fact they were invalid. Without confidence in the information and evidence before it, the Commission cannot fulfill its statutory mandate.

¹³These capitalized terms are defined in the OASIS Standards and Communications Protocol, Version 1.4, effective July 26, 2000 as follows:

Declined= assigned by Provider or Seller to indicate that the terms and conditions, such as the BID-PRICE, are unacceptable and that negotiations are terminated or that contractual terms and conditions have not been met. (Final state).

Refused= assigned by Provider or Seller to indicate service request has been denied due to lack of availability of transmission capability. (Final state).

Study= assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate service request.

Withdrawn= assigned by Customer at any point in request evaluation to withdraw the request from any further action. (Final state).

request for service from a Duke Energy generation facility, located in Enterprise, Mississippi, to the Southern/Entergy interface, which would be expected to have a generally westerly flow. Conversely, Williams' request for service is from the Tenaska generation facility in Autauga, County, Alabama, to load located in Georgia, which would indicate a generally easterly flow. It would appear that any effects between the two requests would be minimal and not affect whether or not Williams' request could be granted.

15. Southern has also included Section 6.0 which states:

The effectiveness of this Rollover Service Agreement is expressly conditioned upon the Commission's acceptance of all provision's hereof, without change or condition, along with a waiver by the Commission of any regulations to the extent necessary to effectuate all the provisions hereof.

We find such conditional language to be unacceptable since it is inconsistent with the Commission's statutory requirement to ensure just and reasonable rates. Such language implies that if the Commission accepts the agreement subject to modification, then the service agreement may be rendered moot. We find this inappropriate. Accordingly, we direct Southern to delete Section 6.0.

16. Lastly, Southern has not supported its requested effective date of April 27, 2002, the effective date of the original service agreement. We shall grant waiver of the Commission's 60-day prior notice requirement and accept Southern's filing, as modified, to be effective January 1, 2003, the date service commenced under the TSA.¹⁴ Southern's request for the earlier effective date is denied.

The Commission orders:

(A) Southern's request for an effective date of April 27, 2002 is hereby denied.

(B) Waiver of the Commission's 60-day notice requirement is granted and Southern's TSA with Williams is accepted for filing, as modified, to be effective January 1, 2003.

¹⁴See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

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(C) Southern is hereby directed to submit a modified service agreement removing Sections 5.0 and 6.0 of the TSA, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary