

103 FERC ¶ 61,117
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.

Docket Nos. ER03-355-000
ER03-355-001

ORDER ACCEPTING TRANSMISSION SERVICE
AGREEMENT AS MODIFIED

(Issued May 2, 2003)

Introduction

1. On December 20, 2002, Southern Company Services, Inc.¹ (SCS) filed a rollover service agreement for firm point-to-point transmission service under the Open Access Transmission Tariff (OATT) of the Southern Companies.² In a letter dated February 28, 2003 and filed March 13, 2003, SCS submitted supplemental information related to the service agreement. The Commission accepts in part and modifies in part SCS's filing, to be effective December 1, 2002, and directs SCS to make a compliance filing deleting certain sections of the rollover service agreement that limit the Transmission Customer's rollover rights in a manner contrary to Commission policy. The Commission also clarifies its filing and reporting requirements and directs SCS to revise its Electric Quarterly Report to include both conforming and nonconforming agreements. This action benefits customers by providing certainty regarding transmission service customers' rollover rights consistent with Commission policy and by clarifying Commission filing and reporting requirements.

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

²FERC Electric Tariff, Fourth Revised Volume No. 5.

Background

2. The rollover service agreement filed in this proceeding is a rollover of a service agreement for firm point-to-point transmission service provided by Southern Companies to Oglethorpe Power Corporation. SCS requests that the Commission accept the rollover service agreement with an effective date of December 1, 2001, the effective date of the original service agreement.

3. SCS's filing was noticed in the Federal Register³ with a due date of January 21, 2003 for interventions and protests. No comments were received. On February 10, 2003, the Director, Tariffs and Market Development-South, Office of Markets, Tariffs, and Rates issued a letter order pursuant to delegated authority informing SCS that under the provisions of Order No. 2001⁴ its filing was unnecessary and thus rejected. In the letter filed March 13, 2003, SCS responded to the letter order, clarifying that the agreement was an executed but nonconforming rollover transmission service agreement. SCS further noted that it had not included the agreement in the February 13, 2003 Electric Quarterly Report for the Southern Companies.

4. On March 21, 2003, the Commission issued a notice rescinding the letter order and a notice of SCS's March 13, 2003 supplement. The notice of filing specified a due date of April 4, 2003 for protests and interventions. On April 4, 2003, SCS submitted a motion for leave to file comments and comments.

Discussion

Limitation of Rollover Rights

5. The agreement submitted by SCS includes provisions that would limit the rollover rights of the transmission customer, Oglethorpe, to continue to receive firm point-to-

³68 Fed. Reg. 1453 (2003).

⁴See Revised Public Utility Filing Requirements, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, order on reh'g, Order No. 2001-A, 100 FERC ¶ 61,074, order on reh'g, Order No. 2001-B, 100 FERC ¶ 61,342 (2002).

point transmission service. Since issuing Order Nos. 888 and 888-A,⁵ the Commission has consistently reaffirmed its policy in orders directed to SCS and other parties that a transmission provider can deny a customer the ability to roll over a long-term (one year or longer) firm point-to-point transmission service agreement only if the provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract. In short, any limitations to rollover rights must be stated clearly in the original transmission service agreement.⁶ (Once a transmission provider evaluates the impact on its system of serving a customer (as Southern Companies has done with Oglethorpe), Commission policy requires the transmission provider to plan and operate its transmission system with the expectation that it will continue to provide service to the customer should the customer request rollover.)

6. As noted above, the rollover service agreement submitted by SCS in this proceeding adds language that was not in the original service agreement and which is contrary to Commission policy on rollover rights. Section 5.0 of the agreement states:

The Transmission Provider has determined that after December 1, 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 1, 2003 is expressly conditioned on the availability of sufficient transmission capacity after the

⁵See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part, 225 F.3d 667 (D.C. Cir. 2000), aff'd, 535 U.S. 1 (2002).

⁶See Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,665; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,197-198; Nevada Power Company, 97 FERC ¶ 61,324 (2001); Southwest Power Pool, 100 FERC ¶ 61,239 (2002); Southern Company Services, 102 FERC ¶ 61,200 (2003); Southern Company Services, 102 FERC ¶ 61,319 (2003); Tenaska Power Services Company v. Southwest Power Pool, 99 FERC ¶ 61,344 (2002), reh'g denied, 102 FERC ¶ 61,140 (2003); Constellation Power Source v. American Electric Power Service Corporation and Southwest Power Pool, 100 FERC ¶ 61,157 (2002), reh'g denied, 102 FERC ¶ 61,142 (2003).

following Transmission Customers exercise their rights to transmission service or to rollover their respective service 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 (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 (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 1, 2003.

As explained above, however, the Commission has determined that once a transmission provider commits to provide long-term transmission service to a customer without including any restrictions on that customer's rollover rights in the original agreement, that provider is required to allow rollover of the agreement. SCS is thus directed to make a compliance filing, within 30 days of the date of this order, removing Section 5.0 from the agreement with Oglethorpe as inconsistent with Commission policy.

7. In addition, Section 6.0 of the agreement states:

The effectiveness of this Rollover Service Agreement is expressly conditioned upon the Commission's acceptance of all provisions 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.

In previous orders, the Commission has directed SCS to delete an identical provision from transmission service agreements, finding that the provision, which essentially would allow SCS to decide what terms and conditions it wished to abide by, is inconsistent with the Commission's statutory authority to ensure just and reasonable rates for jurisdictional services.⁷ Therefore, SCS is directed to delete this section from the agreement at issue here.

Effective Date

8. SCS has not justified making the effective date of the transmission service agreement in this filing the same as the effective date of the original transmission service agreement. In a previous filing, moreover, SCS made a similar request which we denied for lack of support.⁸ Accordingly, we deny SCS's request here. We shall, however, consistent with our precedent, grant waiver of the Commission's 60-day prior notice requirement and accept SCS's agreement, as modified, to be effective December 1, 2002, the date service commenced.⁹

Filing Requirements for Rollover Agreements

9. In its April 4 comments, SCS explained that it had filed the agreement in compliance with the requirement in Order No. 2001 that agreements that do not precisely match the applicable standard form of service agreement or that are not executed are nonconforming and must be filed individually for Commission approval.¹⁰ SCS states that, because the Southern Companies' OATT does not provide a form of service agreement for the applicable category of service (*i.e.*, rollover long-term firm point-to-

⁷Southern Company Services, 102 FERC ¶ 61,201 at P 15 (2003); Southern Company Services, 102 FERC ¶ 61,319 at P 11 (2003).

⁸Southern Company Services, 102 FERC ¶ 61,319 at P 12 (2003)(Southern).

⁹See Prior Notice and Filing Requirements under Part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,984, order on reh'g, 65 FERC ¶ 61,081 (1993) (providing for certain agreements to be filed up to 30 days after service commences); accord Southern, 102 FERC ¶ 61,319 at P 12.

¹⁰See Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 196.

point transmission service)¹¹ it was its understanding that the agreement is nonconforming and, thus, must be filed with the Commission.¹²

10. SCS is correct that the rollover service agreement was properly filed for Commission approval, but not for the reasons stated. The filing was necessary because the rollover service agreement includes certain provisions not included in the pro forma service agreement. These changes rendered the rollover service agreement nonconforming.

11. If a service agreement is rolled over with no changes, and the terms of the original service agreement conformed to the pro forma service agreement, the terms of the rollover service agreement likewise would conform to the pro forma service agreement; thus, the rollover service agreement would be conforming and would not need to be filed. As noted above, it was the inclusion of nonconforming provisions in this instance that required that a filing be made.

Electric Quarterly Report

12. In a footnote in its March 13, 2003 letter, SCS noted that the Oglethorpe rollover agreement was not listed in Southern Companies' Electric Quarterly Report (EQR) filing, made on February 13, 2003, because the rollover was a nonconforming agreement. However, the Commission requires all conforming and nonconforming agreements to be included in the EQR. Therefore, SCS is directed to update, within 30 days of the date of the issuance of this order, its February 13 EQR filing to include both conforming and nonconforming agreements.

The Commission orders:

(A) SCS's proposed transmission service agreement with Oglethorpe Power Corporation is hereby accepted for filing, as modified, to be effective December 1, 2002. Waiver of the Commission's 60-day prior notice requirement is hereby granted to permit an effective date of December 1, 2002.

¹¹Southern Companies have a pro forma service agreement for long-term firm point-to-point transmission service.

¹²We note that, contrary to Southern's understanding, the rollover of a service agreement is not a separate service unto itself that would, of its own accord, necessitate its own separate pro forma service agreement.

Docket Nos. ER03-355-000 and ER03-355-001

-7-

(B) SCS is hereby directed to submit a revised agreement, as discussed in the body of this order, within 30 days of the date of this order.

(C) SCS is hereby directed to submit a revised Electric Quarterly Report, including both conforming and nonconforming agreements, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.