

108 FERC ¶ 61, 229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Southern Company Services, Inc.

Docket Nos. ER03-1381-001
ER03-1381-002

ORDER DENYING AND GRANTING REQUEST FOR REHEARING AND
ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued September 10, 2004)

1. This order addresses Southern Company Services, Inc.'s (Southern) request for rehearing of the Commission's order that accepted in part the unexecuted interconnection agreement (IA) between Georgia Power Company (Georgia Power) and Live Oaks Company, LLC (Live Oaks), conditioned upon Georgia Power's refiling the agreement consistent with Commission policy.¹ This order benefits customers by requiring that the interconnection customer receive transmission credits for payments it made for network upgrades, consistent with Commission policy.

I. Background

2. This case began when Southern, as an agent for Georgia Power, filed an unexecuted IA with the Commission that addressed cost responsibility for the facilities needed to interconnect Live Oaks's generating facility with Georgia Power's transmission system.² According to Georgia Power, the parties reached consensus on all

¹ Southern Company Services, Inc., 105 FERC ¶ 61,221 (2003) (November Order).

² Live Oaks proposed to own and operate an electric generating facility near the City of Brunswick in Glynn County, Georgia, and the IA provided that Georgia Power would install the facilities needed to connect the Live Oaks facility with the Georgia Power transmission system.

issues except cost allocation and credits for the interconnection facilities and network upgrades.

3. In the November Order, the Commission accepted the IA for filing, conditioned upon Georgia Power's refiling the agreement in compliance with Commission policy. Specifically, the Commission found that under the IA, Live Oaks would be responsible for all costs in connection with the construction, operation, and maintenance of the facilities. However, the Commission found that certain of the upgrades were at or beyond the point where the customer connects to the grid and were network upgrades, and thus rejected the direct assignment of their costs to Live Oaks.³ The Commission explained that since the facilities at issue were "at or beyond" the point where the customer connects to the grid, Commission policy articulated in *Consumers Energy Company*, 96 FERC ¶ 61,132 (2001) (*Consumers*) and *Entergy Gulf States, Inc.*, 98 FERC ¶ 61,014, *reh'g denied*, 99 FERC ¶ 61,095 (2002) (*Entergy*) required that the customer receive credits against its transmission rates to reflect its payment for these network facilities.⁴ Therefore, the Commission directed Georgia Power to revise the IA to be consistent with Commission's policy within 30 days of the date of the order.

4. In addition, the Commission found that the IA did not provide for interest on monies paid from the date of collection until the transmission service credit was reimbursed. Therefore, consistent with *American Electric Power Service Corp. (AEP)*,⁵ the Commission directed Georgia Power to revise the IA to provide that the transmission

³ The Commission disagreed with Live Oaks' assertion that the interconnection facilities on Live Oaks' side of the point of interconnection with the grid were also network upgrades. Thus, the Commission determined that Live Oaks was responsible for all costs associated with those interconnection facilities. November Order at P 11.

⁴ In *Consumers*, the Commission rejected the direct assignment of improvements to integrated grid facilities (network upgrades) even if those facilities would not have been installed but for a particular request for service. In *Entergy*, the Commission clarified that network facilities include all facilities at or beyond the point where the generator connects to the grid because these are facilities that provide system-wide benefits. See also *Entergy Services, Inc.*, 95 FERC ¶ 61,437, *reh'g denied*, *Entergy Services, Inc.*, 96 FERC ¶ 61,311 (2001), *aff'd*, *Entergy Services, Inc. v. FERC*, 319 F.3d 536 (D.C. Cir. 2003).

⁵ 97 FERC ¶ 61,098 (2001).

credits will include interest on the monies paid from the date of collection until the date the transmission service credit is reimbursed.⁶

5. The Commission also found a discrepancy regarding the assessment of the operating and maintenance (O&M) costs in sections 5.2 and 5.4.2 of the IA. The Commission stated that under section 5.2, Live Oaks would be responsible for the O&M costs and expenses for both the interconnection facilities and network upgrades, while section 5.4.2 stated that O&M costs would be assessed on interconnection facilities only. We noted that in *Duke Energy Corp.*, 95 FERC ¶ 61,279 at 61,980 (2001), the Commission held that the direct assignment of O&M charges was improper where the facilities were network upgrades, as opposed to interconnection facilities. Thus, we found that the direct assignment of O&M expenses for network upgrades was inappropriate. Therefore, the Commission directed Georgia Power to clarify the discrepancy and limit assessment of the O&M costs to the interconnection facilities, within 30 days of the date of the order.⁷

6. In addition, the Commission found that there was no basis for Georgia Power's argument that the Commission's interconnection pricing and cost allocation policy is inconsistent with the Energy Policy Act of 1992 and section 212 of the Federal Power Act (FPA).⁸ The Commission stated that under Commission policy, the cost of transmission system upgrades to address short-circuit and stability problems on the integrated transmission system must be allocated to all users of the transmission system and not to a single generator. We said that Georgia Power's reliance on sections 210, 211, and 212 of the FPA was misplaced because section 212 only applies to section 210 and section 211-ordered interconnections, and did not apply to the facts presented here.⁹

7. Finally, the Commission rejected Georgia Power's attempt to assess transmission line outage costs to Live Oaks, noting that the Commission had denied other transmission providers' (including Georgia Power) attempts to collect these costs because of a lack of specificity in their proposals. Likewise, the Commission found that Georgia Power included only a broad category of costs with insufficient cost support to justify a finding that the estimated costs were just and reasonable. Therefore, the Commission concluded that Georgia Power could not recover any line outage costs related to Live Oaks'

⁶ November Order at P 12.

⁷ *Id.* at P 13.

⁸ 16 U.S.C. § 824k (a) (2000).

⁹ November Order at P 14.

interconnection, and directed Georgia Power to modify section 5.2 of the IA to be consistent with this finding within 30 days of the date of this order.¹⁰

II. Request For Rehearing

8. On December 18, 2003, Southern filed a request for rehearing of the November Order. Essentially, Southern argues that the policy in *Consumers* and its progeny does not result in the appropriate distribution of costs, and is contrary to longstanding Commission policy. Southern asserts that the November Order requires retail and other transmission customers to bear the cost of upgrades that provide no benefit or that benefit only the generator. Southern asks that the Commission revert to what Southern says was the Commission's previous policy of allocating the costs of interconnection to the generators (those who cause the costs and receive the benefits) and allow Georgia Power to directly assign the cost of the interconnection facility upgrades to Live Oaks.

9. In addition, Southern asserts that the Commission incorrectly found that the cost recovery policy in section 212 of the FPA is inapplicable to the Live Oaks IA, and that the Commission's policy violates the Energy Policy Act of 1992.

10. Southern also claims that the November Order provides for disparate treatment of transmission providers and their customers who are not part of an RTO or ISO because the new policy on interconnection costs only applies to transmission providers that are not members of an RTO or ISO.

11. Southern also claims that the November Order improperly prohibits Georgia Power from assessing O&M charges for the facilities at issue. Southern argues that if Georgia Power is prohibited from directly assigning these costs to Live Oaks, Georgia Power's existing wholesale, retail, and other transmission customers will be forced to bear the cost of providing Live Oaks with interconnection service. Therefore, Southern requests that the Commission permit Georgia Power to directly assign the O&M costs to Live Oaks.

12. Next, Southern argues that the November Order improperly requires Georgia Power to include interest on the monies paid for network upgrades. Southern claims that this policy also creates cost subsidization. Southern adds that ordering transmission providers to provide credits with interest to generators for the cost of network upgrades creates perverse results by permitting generators to obligate transmission customers to pay higher transmission costs and to subsidize the generator's poor siting decision.

¹⁰ *Id.* at P 18.

13. Finally, Southern contends that the November Order improperly prohibited Georgia Power from recovering line outage costs incurred to remove transmission lines from service in order to perform construction and installation activities related to the facilities at issue here.

III. Compliance Filing

14. On December 18, 2003, Southern filed a compliance filing in accordance with the November Order. Specifically, Southern states that a new section 5.7 has been added in order to provide Live Oaks with transmission credits (with interest) for the cost of the facilities that have been reclassified as network upgrades. Southern also states that section 5.2 has been revised to: (a) limit the assessment of O&M costs to the facilities on Live Oaks' side of the point of interconnection; and (b) remove the language addressing line outage costs. Notice of Southern's compliance filing was published in the Federal Register, 69 Fed. Reg. 1582 (2004) with comments, protests, and interventions due by January 8, 2004. No comments were received.

IV. Discussion

A. Southern's Request for Rehearing – General Pricing Issues

15. On rehearing, Southern complains that Commission's generator interconnection cost allocation policy improperly departs from longstanding precedent and practice. We deny Southern's request for rehearing on this issue. In the initial order in *Consumers*, on which the court relied in affirming the *Entergy* orders, we categorically stated:

The Commission's policy regarding credits for network upgrades associated with the interconnection of a generation facility has been, and continues to be, that all network upgrades (*the cost of all facilities from the point where the generator connects to the grid*), including those necessary to remedy short-circuit and stability problems, should be credited back to the customer that funded the upgrades once delivery service begins. [¹¹]

16. The idea that network upgrades consist of facilities "from the point where the generator connects to the grid"-- or, alternatively, facilities "at or beyond" the point where the customer connects to the grid -- is inherent in the policy affirmed by the court in *Entergy*. Thus, the Commission properly applied in this proceeding the rule set out in *Consumers* with respect to appropriate designation of interconnection facilities.

¹¹ *Consumers*, 95 FERC at 61,804 (emphasis added).

17. At the outset we also note that all of the arguments that Southern has raised in its request for rehearing were raised and fully addressed in Order No. 2003 and Order No. 2003-A, as we discuss below.¹² While that order does not apply to this case, the arguments Southern raises were raised by it and others in the rulemaking proceeding, and the reasoning in Order No. 2003 explains the flaws in Southern's arguments on rehearing.¹³

18. Specifically, in Order No. 2003, the Commission discussed at length the appropriateness of its new interconnection cost policy.¹⁴ First, the Commission stated that, consistent with the Commission's long-held policy of prohibiting "and" pricing for transmission service, the crediting policy ensures that the interconnection customer is not charged twice for the use of the transmission system. Second, the Commission stated that the crediting policy helps to ensure that the interconnection customer's interconnection was treated comparably to the interconnections that a non-independent transmission provider completes for its own generating facilities. Finally, the Commission determined that the policy would enhance competition in bulk power markets by removing unnecessary obstacles to the construction of new generation. Therefore, this policy is consistent with the Commission's long-held view that competitive markets are the best way to meet its statutory responsibility to assure adequate and reliable supplies of electric energy at just and reasonable prices.¹⁵

¹² Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), *reh'g pending*.

¹³ We note that many of the same arguments were raised by Southern in prior Commission cases that are now on appeal before the United States Court of Appeals for the District of Columbia Circuit. *See* Southern Company Services, Inc., 100 FERC ¶ 61,246 (2002), *appeal docketed*, No. 03-1023 (D.C. Cir. Feb. 13, 2003); Southern Company Services, Inc., 101 FERC ¶ 61,309 (2002), *appeal docketed*, No. 03-1023 (D.C. Cir. Feb. 13, 2003).

¹⁴ Order No. 2003 at P 693-703.

¹⁵ *Id.* at P 694.

19. In Order No. 2003-A, we added that the Commission did not intend to abandon any of the fundamental principles that have long guided our transmission pricing policy. Thus, we clarified that under our interconnection cost policy, a utility may charge a transmission rate that is the higher of: (1) a rate based on the embedded (rolled-in) costs of the transmission system, including the cost of the upgrades in the numerator and the additional usage of the transmission system in the denominator; or (2) an incremental rate (a rate associated with the cost of the upgrades divided by the projected transmission usage of the new generator).¹⁶ We concluded that our pricing policy provides efficient incentives for new generation and transmission expansion, while our “higher of” ratemaking standard prevents subsidization of merchant generation and prevents undue discrimination by native load or other transmission customers. The Commission added that the policy ensures that all transmission customers bear a fair share of the cost of the transmission system reflecting that all customers benefit from having a transmission system.¹⁷ Accordingly, we clarify that Southern may propose an incremental rate for the network upgrades at issue here, as we discussed in Order No. 2003-A.

20. Southern also maintains that the facilities at issue do not provide system-wide benefits and their cost thus should not be spread to all transmission customers. We deny rehearing on this issue for the reasons discussed in Order No. 2003-A. In Order No. 2003-A, we stated that in assessing the benefits of the network upgrades needed to interconnect new generating capacity, we look beyond the direct usage-related benefits and recognize the reliability benefits of a stronger transmission infrastructure and more competitive power markets that result from a policy that removes unnecessary obstacles to the interconnection of new generating facilities.¹⁸ We added that the transmission system is a cohesive, integrated network that operates as a single piece of equipment, and that network facilities are not “sole use” facilities, but facilities that benefit all transmission customers. Finally, we noted that we have consistently priced the transmission service of a non-independent transmission provider based on the cost of the grid as a whole, and have rejected proposals to directly assign the cost of network upgrades.¹⁹

¹⁶ Order No. 2003-A at P 580. *See also* South Carolina Electric & Gas Company, 106 FERC ¶ 61,265 at P 21 (2004), *reh’g pending*.

¹⁷ Order No. 2003-A at P 590.

¹⁸ *Id.* at P 583-584.

¹⁹ *Id.* at P 585.

21. Next, Southern maintains that the Commission's interconnection cost policy would result in inefficient siting of new generation. We disagree for the reasons discussed in Order No. 2003-A. As we stated in Order No. 2003-A, since the interconnection customer must provide the up front funding to finance the cost of the interconnection facilities, it has a strong incentive to make efficient siting decisions. We noted, moreover, that a number of the factors that influence siting decisions are beyond the control of both the interconnection customer and the Commission, and most importantly, the approval and siting of new generating facilities is ultimately under the control of state authorities.²⁰

22. Southern also asserts that the Commission's interconnection cost policy violates section 722 of the Energy Policy Act of 1992, which amended section 212 of the FPA. We deny rehearing on this issue. We find that the section of the FPA on which Southern relies applies only to orders by which the Commission *compels* interconnection by a utility. Thus, the section Southern cites is irrelevant to this proceeding, which involves no such order. Likewise, in Order No. 2003-A, in response to arguments that the Commission's pricing policy violated section 212 of the FPA, we stated that section 212 applies only to transmission service ordered under section 211. In reviewing Southern's filing, we are acting under section 205, not section 211. Even if section 212 applied here, the Commission's policy would not violate section 212 because it promotes economic efficiency, is just and reasonable, and is needed to prevent transmission providers that have an incentive to discourage competitors from unduly discriminating against those competitors. Moreover, we found in Order No. 2003-A that the legislative history of the Energy Policy Act of 1992 did not support a conclusion that section 212 was intended to require a particular type of transmission pricing.²¹

23. Southern also contends that if transmission credits are required, the Commission should reconsider its directive in the October Order that Georgia Power pay interest to the generator in connection with any required transmission credits. We deny rehearing on this issue for the reasons discussed in Order Nos. 2003 and 2003-A; the interconnection customer is entitled to a refund for the costs of the network upgrades for which it paid, including a reasonable estimate of the carrying costs incurred in making the advance payments.²²

²⁰ *Id.* at P 627.

²¹ *Id.* at P 599-600.

²² Order No. 2003 at P 723; Order No. 2003-A at P 582-583, 612-618.

24. Next, Southern claims that the October order illegally discriminates against transmission providers and their customers who are not part of an RTO or ISO. We deny rehearing on this issue for the reasons discussed in Order Nos. 2003 and 2003-A. As we stated in Order No. 2003, allowing an independent transmission provider to adopt a pricing policy that differs from the crediting approach that the Commission required for non-independent entities is not unduly discriminatory. Where the transmission provider is an independent entity, the Commission is much less concerned that all generation owners will not be treated comparably, because the independent transmission provider has no incentive to treat interconnection customers differently.²³ Thus, different treatment is fair because the two types of transmission providers are not similarly situated. As we said in Order No. 2003-A, because of their inherent subjectivity, new approaches such as participant funding could allow a non-independent transmission provider to propose methods that frustrate the development of new generating facilities that would compete with its own. We explained that because RTOs and ISOs are independent, and neither own nor had affiliates that own generating facilities, we have less concern that existing utility-owned generating facilities would be favored over new generating facilities or that the transmission provider will “gold plate” its system at the interconnection customer’s expense.²⁴ In addition, we found that an independent transmission provider can implement a policy of direct assignment for network upgrades without violating our prohibition on “and” pricing.²⁵ We added that the purpose of the policy is to ensure a level playing field, and not to penalize the utility that did not join an RTO or ISO.²⁶

25. Southern also claims that the November Order improperly prohibits Georgia Power from assessing O&M charges for the interconnection facility upgrades. We deny rehearing on this issue. As we stated in Order No. 2003-A, since network upgrades provide a system-wide benefit, expenses associated with owning, maintaining, repairing, and replacing them shall be recovered from all transmission customers (unless the utility requests and the Commission approves incremental pricing) rather than being directly assigned to the interconnection customer.²⁷

²³ Order No. 2003 at P 701.

²⁴ Order No. 2003-A at P 691.

²⁵ *Id.* at P 692.

²⁶ *Id.* at P 693.

²⁷ *Id.* at P 424.

B. Southern's Request for Rehearing – Transmission Line Outage Costs

26. Lastly, Southern argues that the Commission inappropriately rejected the collection of line outage costs. We will grant rehearing on this issue for the reasons discussed in Order No. 2003-A. In Order No. 2003-A, the Commission reasoned that, if authorized contractually, recovery could be justified on a case-by-case basis, depending on the facts of individual cases.²⁸ For the same reason, we will grant rehearing and will not require Southern to remove the language in section 5.2 of the IA that states the generator will reimburse Georgia Power for all costs and expenses incurred by Georgia Power that are caused by or reasonably related to scheduled transmission line outages associated with interconnecting Southern Power's interconnection facilities to the Georgia Power electric system. However, we will require Southern to specify the categories of line outage costs it is contractually authorized to recover so that the Commission can determine whether each item is properly recoverable. When Southern seeks to collect line outage costs under the IA, its bill must break out the costs into the specified categories ultimately approved by the Commission.

C. Southern's Compliance Filing

27. In the November Order the Commission directed Southern to make certain modifications to the IA. Specifically, the Commission ordered Southern to modify the IA to reclassify the facilities at or beyond the point of interconnection as network upgrades for which Live Oaks is entitled to transmission credits with interest. The Commission also ordered Southern to revise the IA to limit the assessment of the O&M costs to the interconnection facilities and clarify that O&M expenses will not be assessed for network upgrades. In addition, the Commission ordered Southern to modify section 5.2 of the IA so that line outage costs would not be recovered from Live Oaks.

28. In its compliance filing, in Docket No. ER03-1381-002, Southern states that it has added a new section 5.7 in order to provide Live Oaks with transmission credits (with interest) for the cost of the facilities that have been reclassified as network upgrades. Southern also states that section 5.2 has been revised to: (a) limit the assessment of O&M costs to the interconnection facilities; and (b) remove the language addressing line outage costs.

29. We accept Southern's compliance filing, with one modification. Since we have granted Southern's request for rehearing on line outage costs, we will permit Southern to make a compliance filing that restates the line outage cost language in section 5.2 of the

²⁸ *Id.* at P 647.

IA. However, consistent with Order No. 2003-A's discussion on this issue, we direct Southern to specify the categories of line outage costs it is contractually authorized to recover so that the Commission can determine whether each item is properly recoverable. This compliance filing should be filed within 30 days of the date of this order.

The Commission orders:

(A) Southern's request for rehearing is hereby denied in part and granted in part, as discussed in the body of the order.

(B) Southern's compliance filing is hereby accepted, as discussed in the body of the order, subject to ordering paragraphs (C) and (D).

(C) Southern may submit a compliance filing proposing an incremental rate for the network upgrades, as we discussed in Order No. 2003-A.

(D) Southern may submit a compliance filing restating the line outage costs language in the IA, 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.