110 FERC ¶61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc. Docket No. ER05-413-000

ORDER ACCEPTING TRANSMISSION
SERVICE AGREEMENT, AS MODIFIED

(Issued February 28, 2005)

1. On December 30, 2004, Southern Company Services, Inc. (SCS)[1] filed a rollover transmission service agreement (TSA) for long-term firm point-to-point transmission service with Progress Ventures, Inc. (Progress Ventures) under the Open Access Transmission Tariff (OATT) of the Southern Companies.[2] In this order, the Commission accepts the TSA for filing, as modified below, to become effective December 1, 2004, and directs SCS to make a compliance filing removing section 5.0, which conditions Progress Ventures' future rollover rights, and revising section 4.0. This order benefits customers because it provides certainty regarding transmission service customers' rollover rights consistent with Commission policy.

Background

2. The TSA at issue here represents the fourth iteration of a service agreement SCS first entered into with Oglethorpe Power Corporation (Oglethorpe) on August 25, 2000 providing for long-term firm point-to-point transmission service for the period December 1, 2000 through November 30, 2001. That original service agreement did not contain conditions on Oglethorpe's rollover rights. Oglethorpe rolled that agreement over to continue the transmission service for the period from December 1, 2001 through November 30, 2002. That agreement also did not contain any rollover conditions.

---

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

[2] FERC Electric Tariff, Fourth Revised Volume No. 5, Third Revised Service Agreement No. 431 under the OATT.

20050228-3044 Issued by FERC OSEC 02/28/2005 in Docket#: ER05-413-000

3. Oglethorpe and SCS executed another rollover service agreement for the period December 2002 through November 2003. That agreement did contain conditions on Oglethorpe's right to roll over its transmission service, however. The Commission accepted that agreement, but directed SCS to remove the rollover conditions.[3] Oglethorpe and SCS then executed yet another rollover service agreement for the period December 1, 2003 through November 30, 2004. This agreement also contained conditions on the transmission customer's rollover rights.[4] Finally, Oglethorpe and SCS executed the most recent rollover service agreement for the period December 1, 2004 through November 30, 2005 (which was then assigned to Progress Ventures). This agreement also contained conditions on the transmission customer's rollover rights.

4. Prior to the commencement of service under the December 2004-November 2005 agreement, Oglethorpe assigned this agreement to Progress Ventures. At SCS's insistence, Progress Ventures and SCS executed a new TSA to provide for long-term firm point-to-point transmission service under the Southern Companies' OATT beginning on December 1, 2004 and ending on November 30, 2005. SCS states that this TSA replaces the agreement between Oglethorpe and SCS, and is a "nearly identical" service agreement with the only difference being the name of the entity to take and pay for the transmission service.

5. SCS asserts that the TSA was necessary because Oglethorpe and Progress Ventures had entered into an assignment and assumption agreement under which Progress Ventures assumed Oglethorpe's rights and obligations. SCS states that, in such assignment situations, it is SCS's historical practice for the assignee, in this case Progress Ventures, to execute an agreement. SCS contends that this procedural formality, while technically unnecessary, establishes a privity of contract relationship between SCS and the assignee, thereby avoiding any potential confusion as to the identity of the transmission customer to a particular agreement.

6. SCS requests that the Commission waive its 60-day prior notice requirement and permit the TSA to be effective December 1, 2004, the date upon which service commenced under the agreement.

---

[3] *See Southern Company Services, Inc.*, 103 FERC ¶ 61,117 at P 1 (2003), *reh'g denied*, 108 FERC ¶ 61,174 (2004), *appeal pending sub nom. Southern Company Services, Inc. v. FERC*, Nos. 03-1252 and 04-1269 (D.C. Cir.)

[4] This agreement became effective by operation of law when the Commission did not act on the filing within the statutorily-prescribed period. However, the Commission subsequently instituted a Federal Power Act section 206 investigation to determine whether the rollover conditions are just and reasonable. *See Southern Company Services, Inc.*, 106 FERC ¶ 61,248 at P 9 (2004).

20050228-3044 Issued by FERC OSEC 02/28/2005 in Docket#: ER05-413-000

Notice, Interventions and Comments

7. Notice of SCS's filing was published in the *Federal Register*, 70 Fed. Reg. 3014 (2005), with interventions and protests due on or before January 21, 2005. Oglethorpe filed a timely motion to intervene. Progress Ventures filed a timely motion to intervene and protest. SCS filed an answer to Progress Ventures' protest.

8. Progress Ventures points out that the conditions on rollover rights that SCS is seeking to impose on it are similar to conditions that the Commission has ordered SCS to eliminate or has set for investigation in the past. Progress Ventures argues that the conditions should be rejected because the conditions are inconsistent with Commission policy, and so requests the Commission to order SCS to eliminate section 5.0 from the TSA.

Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SCS's answer and will, therefore, reject it.

10. For the reasons discussed below, we will accept SCS's filing, as modified below to remove section 5.0 and to revise section 4.0, to be effective December 1, 2004.

11. The Commission has consistently stated that a transmission provider can deny a customer the ability to roll over its long-term firm service contract only if the transmission 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 at the end of the contract term.[5] The Commission has further stated that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future. For example, if the transmission provider knows at the time of the execution of the original service agreement that available transfer capability to serve the customer will only be available for a particular time period, after which it is already committed to another transmission customer under a previously-confirmed transmission request (*i.e.*, an agreement under which service

[5] *E.g., Southern Company Services, Inc.*, 108 FERC ¶ 61,093 at P 10-11 (2004); *accord Southwest Power Pool, Inc.*, 109 FERC ¶ 61,041 at P 6-7 (2004).

20050228-3044 Issued by FERC OSEC 02/28/2005 in Docket#: ER05-413-000

would commence at some time in the future), the transmission provider can reflect those obligations in the long-term contract and thereby limit the prospective transmission customer's rollover rights.[6] In order to make this demonstration, a transmission provider must identify the pre-existing contracts that commence in the future or show that native load growth projections are sufficiently specific and provide support in the record at the time of the original transmission service agreement.

12. The TSA submitted by SCS includes provisions that would limit the rollover rights of the transmission customer, Progress Ventures, to continue to receive long-term firm point-to-point transmission service. We find that SCS has failed to demonstrate that native load growth or pre-existing contract obligations that commence sometime in the future will constrain Southern's transmission system such that it cannot provide transmission service to Progress Ventures beyond the end of its agreement.

13. As noted above, the rollover TSA submitted by SCS in this proceeding adds language that was not in the original TSA and which is contrary to Commission policy on rollover rights.[7] Section 5.0 of the TSA with Progress Ventures states that "[t]he Transmission Provider has determined that after December 1, 2005, insufficient capacity exists to accommodate both the future rollover by the Transmission Customer of this Rollover Service Agreement and to provide service to Transmission

---

[6] Once a transmission provider evaluates the impact on its system of serving a customer (as SCS did with these agreements), 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. *See Southern Company Services, Inc.*, 103 FERC ¶ 61,117 at P 5 (2003).

[7] According to SCS, under the prior TSA between Oglethorpe and SCS, Southern Companies provided long-term firm point-to-point transmission service to Oglethorpe from December 1, 2003 to November 30, 2004. SCS points out that that TSA contained a condition limiting Oglethorpe's ability to take service for another term beyond the expiration of this one-year agreement. SCS states that, prior to expiration of that agreement, Oglethorpe and SCS entered into another TSA for December 1, 2004 to November 2005, that permitted Oglethorpe to continue taking long-term firm point-to-point transmission service from Southern Companies. SCS states that that latter agreement with Oglethorpe also conditioned Oglethorpe's ability to roll over the agreement for another one-year term upon its expiration. SCS fails to recognize, however, that the original service agreement between Oglethorpe and SCS was, in fact, the agreement for service for the period December 1, 2000 through November 30, 2001. And that original service agreement did not contain conditions on Oglethorpe's rollover rights.

20050228-3044 Issued by FERC OSEC 02/28/2005 in Docket#: ER05-413-000

Customers having an earlier priority for transmission service." It then provides that Progress Venture's rollover rights are expressly conditioned on the availability of sufficient transmission capacity after a specified list of transmission customers (identified by Open Access Same-time Information System (OASIS) Reference Numbers) exercise their rights to transmission service or roll over their respective service agreements. Section 5.0 further states that "the Transmission Provider has determined that 7500 MW of transmission capacity are needed to meet its forecasted native load growth for 2003 to 2011."[8] It further provides that Progress Ventures' rollover rights are 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 Progress Ventures have been accommodated.

14. 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, the circumstance present here, that provider is required to allow rollover of the agreement. Therefore, we direct SCS to make a compliance filing, within 30 days of the date of this order, removing section 5.0 from the TSA with Progress Ventures as inconsistent with Commission policy.

15. Finally, in its filing, SCS alleges that this TSA is a "nearly identical" service agreement to the service agreement with Oglethorpe with the only difference being the name of the entity to take and pay for the transmission service. However, the respective sections 4.0 in the most recent agreement between SCS and Oglethorpe (for service between December 1, 2004 and November 30, 2005) and the TSA between SCS and Progress Ventures contain different language. The former agreement contains the following italicized language, which is omitted from the latter agreement:

> This Rollover Service Agreement will allow the Transmission Customer to continue taking service under the Transmission Provider's Tariff *based on the same terms and conditions (except as provided herein) and will have the same effective date as the Service Agreement.* Service under this Rollover Service Agreement shall terminate on November 30, 2005.

---

[8] SCS explains that the reservations for transmission capacity necessary to meet this native load growth forecast in section 5.0 are identified on Southern Companies' OASIS, and the reservations most likely to be used to schedule deliveries are modeled in the Base Case Load Flows used to conduct studies under Southern Companies' OATT.

20050228-3044 Issued by FERC OSEC 02/28/2005 in Docket#: ER05-413-000

16. SCS appears to have deleted the latter part of the italicized language ("and will have the same effective date as the Service Agreement") in response to a previous order on an earlier TSA, which found that the effective date of a rollover agreement cannot be coincident with the original agreement.[9] However, SCS does not explain the omission of the former part of the italicized language ("based on the same terms and conditions (except as provided herein)"). Accordingly, we will direct SCS to modify section 4.0 of the TSA to insert the phrase "based on the same terms and conditions (except as provided herein)" at the end of the first sentence of section 4.0, in addition to the modification to section 5.0 ordered above.

17. The Commission will grant waiver of the Commission's 60-day prior notice requirement and accept SCS's filing, as modified, to be effective December 1, 2004.[10]

The Commission orders:

(A) SCS's TSA with Progress Ventures is hereby accepted for filing, as modified, to be effective December 1, 2004.

(B) SCS is hereby directed to submit a revised 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)

Linda Mitry,
Deputy Secretary.

---

[9] *Southern Company Services, Inc.*, 103 FERC ¶ 61,117 at P 8 (2003); *Southern Company Services, Inc.*, 102 FERC ¶ 61,319 at P 12 (2003).

[10] *See 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.