120 FERC ¶ 61,288
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern Company Services, Inc. Docket No. ER07-1219-000

ORDER ACCEPTING IN PART AND REJECTING IN PART
PROPOSED TARIFF REVISIONS

(Issued September 27, 2007)

1. On July 31, 2007, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies), submitted a Federal Power Act (FPA) section 205 filing[1] to amend their Open Access Transmission Tariff (OATT) to address some outstanding issues that they identified in their implementation of Order No. 890[2] and to address additional errors in their OATT (Filing). As discussed below, the Commission accepts in part and rejects in part Southern Companies' proposed tariff revisions, to become effective on September 29, 2007.[3]

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of

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[1] 16 U.S.C. § 824d (2000).

[2] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

[3] On July 13, 2007, in Docket No. OA07-38-000, Southern Companies filed under FPA section 206 a compliance filing providing revised tariff sheets to their OATT to comply with the *pro forma* OATT as modified in Order No. 890. 16 U.S.C. § 824e (2000). That filing will be addressed in a separate Commission order.

available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.[4]

4. In addition, after submission of their FPA section 206 compliance filings, non-ISO/RTO transmission providers may submit FPA section 205 filings proposing rates for the services provided for in their tariffs, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are "consistent with or superior to" the *pro forma* OATT.[5]

II. Notice of Filing and Responsive Pleadings

5. Notice of Southern Companies' Filing was published in the *Federal Register*, 72 Fed. Reg. 44,840 (2007), with interventions and protests due on or before August 21, 2007. Alabama Municipal Electric Authority filed a timely motion to intervene. Timely motions to intervene and protests were filed by: Alabama Electric Cooperative, Inc. and South Mississippi Electric Power Association (collectively, AEC and SMEPA); and Georgia Transmission Corporation (GTC). Morgan Stanley Capital Group Inc. (Morgan Stanley) and Coral Power, L.L.C. (Coral) each filed a motion for leave to intervene out of time and protest. On September 5, 2007, Southern Companies filed a motion for leave to answer and answers to the protests of AEC and SMEPA and GTC (September 5 Answer).

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[4] The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

[5] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

On September 13, 2007, Southern Companies filed a motion for leave to answer, an answer to Coral and Morgan Stanley's motions for leave to intervene out of time and an answer to Coral and Morgan Stanley's protests (September 13 Answer).

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Southern Companies challenge Coral and Morgan Stanley's untimely motions to intervene. Southern Companies argue that both Coral and Morgan Stanley had sufficient notice of Southern Companies' filing. Southern Companies also note that Coral has filed several untimely motions to intervene with the Commission over the last five years. Southern Companies further argue that the untimely motions to intervene impose additional burdens and require duplicative efforts by Southern Companies and the Commission to respond. Moreover, Southern Companies argue that these requirements are particularly onerous given the pressing deadlines for Southern Companies' Order No. 890 implementation efforts as well as other pending Commission matters. Southern Companies ask the Commission to reject Coral and Morgan Stanley's pleadings.

8. Despite the opposition of Southern Companies, we find that Coral and Morgan Stanley have demonstrated that they have an interest in this proceeding and that their participation will not delay the proceeding or prejudice the rights of any other party. While Southern Companies note their additional burden to respond to the untimely motions, Coral and Morgan Stanley raise concerns similar to those raised in the timely protests. Accordingly, for good cause shown, we will grant the opposed, late-filed motions to intervene.[6]

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Southern Companies' answers because they have provided information that assisted us in our decision-making process.

[6] 18 C.F.R. § 385.214(d) (2007).

B. Southern Companies' Filing

1. Addition of Separate Definitions for Incremental Costs and Decremental Costs for Purposes of Schedule 4 Energy Imbalance Service and Schedule 10 Generator Imbalance Service

a. Order No. 890

10. In Order No. 890, the Commission defined both incremental costs and decremental costs, for purposes of Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service),[7] as:

> the Transmission Provider's actual average hourly cost of the last 10 MW dispatched to supply the Transmission Provider's Native Load Customers, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.[[8]]

b. Southern Companies' Filing

11. Southern Companies believe that Order No. 890 erred in providing a single definition for both incremental costs and decremental costs for purposes of Energy Imbalance Service and Generator Imbalance Service, arguing that the definition adopted in Order No. 890 applies only to the transmission provider's decremental cost.[9] Southern Companies argue that the Commission erred in relying on the cost of the last generation dispatched in defining both incremental and decremental costs. Southern Companies assert that the appropriate method for computing incremental cost is the cost of the *next* generation dispatched, not the cost of the *last* generation dispatched. Southern

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[7] Southern Companies note that, while Generator Imbalance Service is found at Schedule 9 of the *pro forma* OATT, it is found at Schedule 10 in Southern Companies' OATT because they already had a Schedule 9 attached to their OATT prior to the adoption of Order No. 890. Filing at 3, n.4.

[8] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at App. C, Original Sheet Nos. 133, 141-42.

[9] Filing at 3. Southern Companies also raised this issue in their request for rehearing of Order No. 890, which is pending before the Commission.

Companies assert that the cost of the next generation dispatched could be significantly different than the cost of the last generation dispatched. Accordingly, Southern Companies submit revised tariff sheets[10] that provide for separate definitions for incremental costs and decremental costs for purposes of Energy Imbalance Service and Generator Imbalance Service. While Southern Companies propose use of the *pro forma* OATT's definition for decremental cost, they propose the following new definition for incremental cost:

> For purposes of this Schedule, incremental cost represents the Transmission Provider's actual average hourly cost of the next 10 MW dispatched to supply the Transmission Provider's Native Load Customers, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.[[11]]

Southern Companies argue that, since the two types of costs are different, the revisions are consistent with or superior to the *pro forma* OATT.

12. In addition, Southern Companies note that in their request for rehearing of Order No. 890 (which is pending before the Commission), they advocated for the Commission to make several clarifications regarding what cost components could be included in the calculation of incremental and decremental costs, seeking compensation for, among other things, environmental costs, dispatch losses, effects of off-system sales and purchases, and opportunity sales. Southern Companies reiterate their request and state that they "intend to recover those costs . . . in any incremental or decremental cost calculations performed under their Schedules 4 and 10."[12] If necessary, Southern Companies request waiver to allow them to implement this interpretation.

c. <u>Commission Determination</u>

13. We reject, without prejudice, Southern Companies' proposed definitions for incremental costs and decremental costs for purposes of Energy Imbalance Service and Generator Imbalance Service. The proposal to define incremental cost as the next 10

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[10] *Id.*, Exh. B at Proposed Second Revised Sheet No. 101 and Proposed First Revised Sheet No. 113b.

[11] *Id.* at 4.

[12] *Id.* at 5.

MW of generation dispatched could be interpreted to allow Southern Companies to assess imbalance charges based on costs that have not been incurred. This would not be appropriate. Only costs actually incurred should be included as incremental costs. With regard to recovery of environmental costs, dispatch losses, effects of off-system sales and purchases, and opportunity sales, Southern Companies have not submitted a specific proposal to recover those costs. In order for the Commission to consider a request to modify the incremental costs definition to recover such costs in an imbalance charge, the applicant must submit a detailed description of how such charges would be calculated and a justification for why these costs should be recovered as a part of the imbalance charge. Therefore Southern Companies have not shown that their proposed definitions are consistent with or superior to the definition for incremental costs and decremental costs for purposes of Energy Imbalance Service and Generator Imbalance Service provisions adopted in Order No. 890.

14. We direct Southern Companies to amend their Schedule 4 Energy Imbalance Service provisions and Schedule 10 Generator Imbalance Service provisions to reflect the definitions used in the revised *pro forma* OATT in a compliance filing to be submitted within 30 days of the date of this order. Moreover, we note that Southern Companies have raised this issue and other related matters in their request for rehearing of Order No. 890 in Docket Nos. RM05-17-001 and RM05-25-001. Southern Companies' concerns regarding the definitions will be addressed in those proceedings.

2. Addition of Form of Service Agreement for Schedule 10 Generator Imbalance Service

a. Order No. 890

15. The *pro forma* OATT Schedule 9 details the rates for Generator Imbalance Service[13] ancillary service for customers taking firm and non-firm point-to-point transmission service, and network integration transmission service.[14]

b. Southern Companies' Filing

16. Southern Companies provide Generator Imbalance Service to their transmission customers under Schedule 10 of the OATT. Southern Companies contend that, in many

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[13] Schedule 9 of the *pro forma* OATT is found at Schedule 10 in Southern Companies' OATT. *See supra* note 7.

[14] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at App. C, Original Sheet Nos. 143-52, 157.

instances, the generator responsible for a generator imbalance is not the transmission customer under the OATT.[15] Accordingly, they ask the Commission to clarify that interconnection customers may take service under their proposed Schedule 10. Southern Companies note that their existing interconnection agreements, including those filed after the adoption of Order No. 2003, require that interconnection customers demonstrate that they have appropriate arrangements for their respective generators' imbalances. Southern Companies state that, currently, interconnection customers have the option to satisfy this requirement by, among other things, taking service under Southern Companies' Generator Balancing Service Tariff. Accordingly, "[t]o facilitate an interconnection customer's ability to satisfy its generator balancing requirement by taking service under Schedule 10," Southern Companies propose to amend their OATT to adopt a form of service agreement as Attachment R (Form of Service Agreement For Tariff Schedule 10 – Generator Imbalance Service) to their OATT. Southern Companies state that the form is consistent with or superior to the *pro forma* OATT because the form provides an additional option for interconnection customers to satisfy their Generator Imbalance Service requirements.

c. Commission Determination

17. The Commission accepts Southern Companies' proposal to add the form of service agreement for Generator Imbalance Service.[16] We agree with Southern Companies that this proposal will provide another option for interconnection customers to satisfy Generator Imbalance Service requirements. In addition, the proposed form of service agreement generally follows the template and organization of other OATT forms. Therefore, we find this proposal to be consistent with or superior to the *pro forma* OATT.

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[15] Southern Companies also raised this issue in their request for rehearing of Order No. 890, which is pending before the Commission.

[16] We accept Southern Companies' Proposed Sixth Revised Sheet No. 7A and Proposed Original Sheet Nos. 221-23.

3. Amendment to Section 17.7 of the OATT to Avoid Possibly Allowing the Transmission Customer to Escape its Contractual Obligation

a. Order No. 890

18. Section 17.7 of the *pro forma* OATT sets forth the criteria under which transmission customers may extend the commencement of service by a transmission provider for firm point-to-point transmission service.[17]

b. Southern Companies' Filing

19. Southern Companies contend that there is a discrepancy between the Order No. 890 preamble and the *pro forma* OATT with respect to section 17.7 of the OATT. Southern Companies argue that the preamble provides that, under section 17.7, a transmission provider "is able to" terminate a request for transmission service if a transmission customer does not pay the required reservation fee in the appropriate timeframe, but the *pro forma* OATT provides that if a transmission customer does not pay the required reservation fee in the appropriate timeframe, the customer's application "shall be deemed withdrawn and its deposit . . . shall be returned with interest."[18] Southern Companies argue that, rather than making termination of the customer's reservation requirements permissive with the transmission provider should the customer breach its OATT requirements, the language in the *pro forma* OATT appears to make the termination of the reservation customer mandatory.

20. Southern Companies assert that the customer should not be able to escape its contractual obligations by simply requesting an extension of commencement of service and then failing to timely provide the reservation fee. Southern Companies maintain that the transmission customer would have committed to a binding contract for service and the transmission provider would already have reserved the underlying transmission

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[17] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at App. C, Original Sheet Nos. 69-70.

[18] Filing at 6-7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1390 and App. C, Original Sheet Nos. 69-70). Southern Companies also raised this issue in their request for rehearing of Order No. 890, which is pending before the Commission.

capacity for that customer. Accordingly, Southern Companies propose to amend section 17.7 of their OATT to provide that:

> If the ~~Eligible~~ Transmission Customer does not pay this non-refundable reservation fee within 15 days of notifying the Transmission Provider it intends to extend the commencement of service, then the ~~Eligible Customer's application shall be deemed withdrawn and its deposit, pursuant to Section 17.3, shall be returned with interest.~~ Transmission Provider may deem the Transmission Customer in breach and may terminate the Transmission Customer's Service Agreement.[[19]]

c. Commission Determination

21. The Commission conditionally accepts Southern Companies' proposed revisions to section 17.7 to make termination of the customer's reservation requirements by the transmission provider in the event of customer breach of its OATT requirements permissive rather than mandatory.[20] Southern Companies say that the proposed revisions are consistent with or superior to the *pro forma* OATT because the mandatory language could allow a customer to escape an obligation for service by choosing not to provide a reservation fee in a timely fashion. We agree that this revision is consistent with or superior to the *pro forma* OATT. However, Southern Companies must modify section 17.7 of their OATT to provide, consistent with the *pro forma* OATT, that if Southern Companies deem the transmission customer in breach and terminate the transmission customer's service agreement, the transmission customer's deposit, pursuant to section 17.3, shall be returned with interest. We direct Southern Companies to submit this modification as part of the compliance filing to be submitted within 30 days of the date of this order.

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[19] *Id.* at 7-8 and Exh. B, at Proposed Second Revised Sheet No. 52.

[20] Under the standards of conduct for electric transmission providers, Southern Companies are required to "maintain a written log, available for Commission audit, detailing the circumstances and manner in which they exercised their discretion under any terms of the tariff . . . within 24 hours" of when Southern Companies exercise any discretion under this, or any other, terms of their OATT. 18 C.F.R. § 358.5(c)(4)(i) (2007). Any exercise of discretion under Southern Companies' revised section 17.7 must be included as part of that log.

4. Adoption of a Loss Recovery Mechanism for Extending Unsecured Credit and Annual Credit Evaluation Fee

a. Order No. 890

22. Order No. 890 requires transmission providers to specify the qualitative and quantitative criteria that they use to determine the level of secured and unsecured credit required.[21]

b. Southern Companies' Filing

23. As part of their Order No. 890 compliance filing under FPA section 206 in Docket No. OA07-38-000, Southern Companies propose procedures for determining the level of secured and unsecured debt. In addition to the creditworthiness criteria that Order No. 890 required transmission providers to include as Attachment L to their OATTs,[22] Southern Companies included three new provisions: (1) a lowering of the credit rating at which Southern Companies will extend unsecured credit; (2) a mechanism under which all market participants would share the losses incurred as a result of Southern Companies' extension of unsecured credit (loss recovery mechanism); and (3) an annual credit evaluation fee. Southern Companies state that because they consider these three provisions to be "integral parts" of their creditworthiness criteria, they had included them as part of their FPA section 206 compliance filing. Southern Companies state however, that because the Commission may construe the provisions to contain changes in "rate terms and conditions" that should not have been included in the FPA section 206 compliance filing, they resubmit the three provisions in this filing, under FPA section 205. Southern Companies request that, to the extent the Commission believes that these changes are appropriately filed under FPA section 205, the proposed tariff revisions are just and reasonable.[23]

24. First, with regard to extensions of unsecured credit, Southern Companies propose lowering their lowest Credit Rating with respect to which they will extend any unsecured

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[21] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

[22] While creditworthiness provisions are found at Attachment L in the *pro forma* OATT, they are found at Attachment Q in Southern Companies' OATT.

[23] To the extent the Commission deems these, or any other tariff revisions proposed herein, are properly filed under FPA section 205, Southern Companies ask the Commission to waive any regulatory requirements that might apply under 18 C.F.R. § 35.13 (2007). Filing at 13.

credit from BBB+ to BBB-, as compared to their pre-Order No. 890 creditworthiness criteria.

25. Second, Southern Companies argue that since market participants benefit from transmission providers' extending unsecured credit, such participants should share in associated risks, and therefore Southern Companies propose, in Attachment Q (Creditworthiness Procedures), a mechanism for sharing losses incurred in extending unsecured credit.[24]

26. Third, Southern Companies argue that since the transmission provider incurs costs in evaluating an unrated OATT Customer's credit, it is just and reasonable that the customer bear the cost that it causes the transmission provider to incur in performing that evaluation. Accordingly, Southern Companies propose that each unrated applicant and customer pay a non-refundable annual fee of $750.00 to offset the cost of each credit evaluation (or reevaluation) that must be conducted by Southern Companies. Under Southern Companies' proposal, they may waive such fee if the applicant or customer providing an acceptable Irrevocable Letter of Credit agrees that its Unsecured Credit Line is and shall be zero.

c. <u>Protests</u>

27. AEC and SMEPA, Coral, GTC and Morgan Stanley all argue that the Commission should reject Southern Companies' proposal that all market participants share the losses incurred in Southern Companies' extension of unsecured credit.

28. AEC and SMEPA, Coral and Morgan Stanley challenge Southern Companies' arguments that the mutualization of default risk justifies the proposed loss recovery methodology. AEC and SMEPA argue that the contention "ignores the complete absence of cost causation by the non-defaulting or non-late-paying OATT customers," asserting that "there is no arguable benefit to those paying OATT [c]ustomers from [Southern

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[24] The formula for computing the amount of loss allocated to a customer for each loss incurred and the payment structure for allocated losses are described in Southern Companies' Filing, Exh. B at Proposed First Revised Sheet Nos. 216-17. In addition, references to the mechanism are included in Schedules 7A (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service), 7B (Recallable Long-Term Firm Point-to-Point Transmission Service), 8 (Non-Firm Point-to-Point Transmission Service) and 10 and Attachment H (Network Integration Transmission Service). *See* Filing, Exh. B at Proposed Sixth Revised Sheet No. 108, Proposed Second Revised Sheet No. 109A, Proposed Fourth Revised Sheet No. 110, Proposed Original Sheet No. 113c and Proposed Third Revised Sheet No. 140.

Companies'] decision to provide service to a defaulting or late-paying OATT [c]ustomer."[25] AEC and SMEPA argue that where a cost is attributable to a particular identifiable customer or, secondarily, to Southern Companies' themselves, there is no basis to charge a customer class on any allocated basis.[26] Coral also argues that Southern Companies fail to identify the benefits non-defaulting customers receive from Southern Companies' extension of unsecured credit or how those benefits might justify an allocation of losses to other customers. Coral notes that the proposal would create cost uncertainty for Southern Companies' transmission customers who have no role in causing these losses.[27] Coral further notes that transmission customers have no control over to whom Southern Companies grant credit. Morgan Stanley argues that Southern Companies have not demonstrated "how responsible (secured, non-defaulting) OATT customers benefit from Southern [Companies] extending unsecured credit to defaulting customers."[28] Morgan Stanley also argues that the proposal "may constitute 'double dipping' by the utility to the extent that the utility is already compensated for the risks associated with defaults through its authorized return on equity."[29]

29. Further, GTC and Morgan Stanley argue that the proposal is not warranted because Southern Companies already have adequate safeguards under their OATT. They assert that other provisions in Southern Companies' Attachment Q allow them to request adequate credit and suspend service of a customer that defaults in its payment or other credit obligations. These parties also maintain that there is no requirement that Southern Companies extend credit to uncreditworthy customers. Morgan Stanley argues that Southern Companies fail to explain why the loss recovery mechanism is consistent with or superior to the *pro forma* OATT.

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[25] AEC and SMEPA Protest at 4-5 (citing *California Independent System Operator Corp.*, 113 FERC ¶ 61,348, at 65,127-29 (2005), *aff'd*, Opinion No. 492, 117 FERC ¶ 61,348, at 62,745-47 (2006)).

[26] *Id.* at 5 (citing *Orange and Rockland Utilities, Inc.*, 111 FERC ¶ 61,248 (2005), *City of College Station, Texas*, 97 FERC ¶ 61,152, at 61,667 (2001)).

[27] Coral Protest at 6 ("This cost uncertainty would disadvantage these customers, while the counterweighing certainty of cost recovery would benefit only Southern [Companies] – the party that was in a position to manage the credit risk from the outset.").

[28] Morgan Stanley Protest at 7.

[29] *Id.*

30. In addition, the protesters maintain that Commission precedent does not support these tariff revisions. AEC and SMEPA, GTC and Morgan Stanley maintain that there is no support in Order No. 890 for Southern Companies' proposal, arguing that Order No. 890 simply required transmission providers to provide more specificity with respect to their creditworthiness provisions and did not require the type of loss recovery mechanism proposed by Southern Companies.

31. Moreover, all four protesters argue that the Commission's *Creditworthiness Policy Statement* supports mutualization of default risk only in the context of ISOs/RTOs.[30] They argue that mutualization may be appropriate for ISOs/RTOs because such entities are non-profit organizations that serve as the "clearing" firm for all market participants, but Southern Companies are for-profit, non-ISO/RTO entities.[31] GTC and Morgan Stanley also maintain that Southern Companies have not demonstrated that they have considered the "credit clearing" mechanisms (such as credit insurance or netting) identified in the *Creditworthiness Policy Statement*. They further assert that Southern Companies have not provided for refunding any amounts ultimately collected from defaulting parties.

32. In addition, protesters argue that Southern Companies' proposal is too vague. Coral, GTC and Morgan Stanley argue that it is not clear what constitutes a "monetary loss" under the proposed methodology. Coral and GTC argue that Southern Companies provide no detail as to when an amount owed by a customer becomes a "monetary loss" that can be allocated to other OATT customers. GTC asks: "[i]s such a loss only for payments owed for transmission services *already provided*, or is it also for future services relating to a long term transmission agreement the customer has breached?"[32] Additionally, Coral argues that the phrase "associated with" requires no particular causal effect for the loss. Coral maintains that the Commission customarily rejects tariff

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[30] *See, e.g.*, AEC and SMEPA Protest at 5-6 (citing *Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations*, 109 FERC ¶ 61,186, at 61,903 and 61,905-06 (2004) (*Creditworthiness Policy Statement*)); GTC Protest at 6; Coral Protest at 4.

[31] *See* Morgan Stanley Protest at 7-8; GTC Protest at 6.

[32] GTC Protest at 5 (emphasis in original). GTC also states: "it appears that if such 'monetary losses' exceed $1 million, Southern [Companies] could automatically allocate such amount to other OATT customers. Southern [Companies] appear[] to have no responsibility or incentive for initiating legal action to recover the owed amount from the customer causing the loss." *Id.*

provisions that provide too much discretion.[33] Similarly, Morgan Stanley argues that Southern Companies' proposed formula for computing the amount of loss allocated to a customer for each loss incurred and matrix for invoicing do not provide any basis by which a customer or the Commission could determine when or how much of a loss is incurred.

33. Accordingly, the protesters ask that the Commission reject Southern Companies' proposed loss recovery methodology and direct Southern Companies to delete the proposed revisions to Schedules 7A, 7B, 8 and 10 of Attachment H, and Schedule V of Attachment Q to their OATT.

d. <u>Answer</u>

34. In their answers to the protests, Southern Companies argue that the protests must be rejected on procedural and substantive grounds. On procedural grounds, Southern Companies argue that all four of the protests are moot because Southern Companies' creditworthiness provisions, originally filed as part of its Order No. 890 FPA section 206 compliance filing in Docket No. OA07-38-000, were not contested in that proceeding.

35. With regard to the substance of the protests, Southern Companies argue that the protests include, and are based on, incomplete information and analysis, and therefore should be rejected. First, Southern Companies argue that GTC and Morgan Stanley's request for Southern Companies' to consider certain credit clearing mechanisms (including netting and other suggestions) is inconsistent with the *Creditworthiness Policy Statement*, which found several of those strategies to be inadequate. Moreover, Southern Companies challenge Morgan Stanley's contention that customers have no say in the formulation of Southern Companies' credit policies, arguing that customers have had opportunities to comment in numerous Commission proceedings on the issue, including the *Creditworthiness Policy Statement* and Order No. 890.

36. Second, Southern Companies defend their reliance on Order No. 890 as a basis for changes to their creditworthiness provisions. They argue that protesters are wrong that Order No. 890 did not adversely impact the tariff protections for non-payment situations. They maintain that Order No. 890 "definitely expanded the scope and type of customers who may receive unsecured credit by, among other things, requiring that transmission

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[33] Coral Protest at 5 (citing *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,043 (2005), *Indicated Shippers v. Columbia Gulf Transmission Co.*, 106 FERC ¶ 61,040, at P 35-36 (2004), *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (1999)).

provisions consider qualitative credit factors."[34] Southern Companies also note that "market vicissitudes make it difficult, if not impossible, to completely eliminate credit losses" noting that "[e]ven highly-rated entities sometimes default on their obligations."[35] Southern Companies argue that "Order No. 890 and other Commission rulings lead [them] to believe the Commission prefers, if not requires, transmission providers to provide for increased, not more limited, unsecured credit."[36] Southern Companies also argue that protesters' conclusion that costs be directly assigned is a collateral attack on Order No. 890 and ignores the fact that Southern Companies and their retail load are not causing the loss.

37. Third, Southern Companies assert that protesters' arguments that responsible OATT customers derive no benefits from defaults or from Southern Companies permitting defaults to occur misses the point because "[t]he question is not *who benefits from the losses* . . . . Instead, when assigning costs arising from the Commission's policy to expand the availability of unsecured credit (and Southern Companies' compliance therewith), the question which must instead be answered is *who benefits from such credit policy*. The answer clearly is OATT customers, especially those receiving large amounts of unsecured credit."[37] Southern Companies argue that OATT customers benefit from unsecured credit provided for in Southern Companies' credit policy and should, accordingly, share in the costs for such policy.[38]

38. Fourth, Southern Companies argue that if OATT customers do not pay their proportionate share of losses, such losses will be borne by Southern Companies' retail customers and "[c]learly, Southern Companies' bundled retail load does not cause, and certainly receives no benefit from, either an OATT customer's default or Southern

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[34] Southern Companies September 5 Answer at 6.

[35] *Id.* at 7.

[36] *Id.* at 9 (citing *Creditworthiness Policy Statement*, 109 FERC ¶ 61,186 at P 19).

[37] *Id.* (emphasis in original).

[38] Southern Companies note that GTC and AEC are among the largest beneficiaries of Southern Companies' extension of unsecured credit to OATT customers. Southern Companies September 5 Answer at 10-11. Southern Companies state that Coral and Morgan Stanley may not directly receive unsecured credit, but they "indirectly receive significant unsecured credit, as they are relying upon the unsecured credit of their affiliate guarantor to secure OATT service." Southern Companies September 13 Answer at 14.

Companies' liberalized OATT credit policies."[39] Southern Companies argue that it is more appropriate that losses incurred by extending unsecured credit under the OATT fall on wholesale customers rather than bundled retail load. Southern Companies further argue that "[i]t makes even less sense for Southern Companies' retail load to be expected to absorb losses for OATT service than for ISO/RTOs to be expected to absorb losses."[40]

39. Finally, Southern Companies also dispute protesters' implication that Southern Companies are permitting or causing any default or that, under the loss recovery mechanism, Southern Companies would not have an incentive to prevent losses and diligently pursue defaulting parties. Southern Companies note that their "affiliates/generation functions are in the aggregate the largest OATT customers and, accordingly, under Southern Companies' loss spreading mechanism, would bear the largest share of losses."[41] Southern Companies note that, in Order No. 890, "the Commission (in discussing who bears the cost responsibility for transmission capacity 'hoarded' by an affiliate of the transmission provider) recognized that costs incurred by affiliates of the transmission provider ultimately rested with the corporate parent of the affiliate and the transmission provider."[42]

e. <u>Commission Determination</u>

40. We agree with protesters that Southern Companies' loss recovery mechanism is beyond the scope of the requirements of Order No. 890. Order No. 890 required transmission providers to include in their FPA section 206 compliance filing their existing creditworthiness provisions. Because Southern Companies propose substantive revisions to their creditworthiness practices that go beyond the requirements of Order No. 890, the proposed tariff provisions were properly filed as part of an FPA section 205 as a change in rates, terms and conditions.[43] Accordingly, we review here Southern Companies' adoption of these substantive provisions to determine whether the provisions are consistent with or superior to the *pro forma* OATT.

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[39] Southern Companies September 5 Answer at 11.

[40] *Id.* at 13.

[41] *Id.* at 12.

[42] *Id.* at 12-13.

[43] Accordingly, whether or not protests on these proposed tariff revisions were filed in Docket No. OA07-38-000 is immaterial to the Commission's analysis.

41. We accept Southern Companies' proposal to lower the lowest credit rating with respect to which they will extend any unsecured credit from BBB+ to BBB-. In addition, we conditionally accept Southern Companies' proposed annual credit evaluation fee.[44] The Commission understands that Southern Companies will incur costs associated with evaluating an unrated OATT Customer's credit. Southern Companies explain that the charge of $750 is based on a rate of $68 per hour taking approximately 11 hours to perform.[45] We agree with Southern Companies that it is just and reasonable for applicants and customers to bear the cost of the annual credit evaluation. However, where an applicant or customer provides or maintains an Irrevocable Letter of Credit and agrees that its Unsecured Credit Line is zero, Southern Companies would not undertake any work to perform a credit evaluation. Under these circumstances, there is no cost to Southern Companies. Accordingly, we direct Southern Companies to file revised tariff sheets in a compliance filing to be submitted within 30 days of the date of this order to ensure there is no annual credit evaluation fee to such applicants or customers.

42. We reject Southern Companies' proposed loss recovery mechanism. Southern Companies have not demonstrated that it is reasonable for losses incurred by virtue of Southern Companies extending unsecured credit to be charged, on a *pro rata* basis, to OATT customers via separate surcharges to the OATT. In the *Creditworthiness Policy Statement*, the Commission focused on the unique nature of ISO/RTO markets that exposed market participants to greater risks from the extension of unsecured credit.

> Since ISOs/RTOs are typically non-profit entities that administer the market on behalf of market participants and, in this capacity, serve as the clearing firm to every transaction, ISO/RTO members are exposed to the credit risk of other members. In addition, ISOs/RTOs are generally not capitalized sufficiently to absorb the impact of defaults by market participants on an outstanding obligation. If collateral posted by a defaulting party is not sufficient to cover the amount of its default, the remaining credit risk exposure and costs are socialized across an ISO's/RTO's members. As such, the credit/default risk of undercapitalized market participants lies with the non-defaulting participants, not the ISO/RTO. In other words, due to the nature of ISO/RTO markets, credit is, in effect, collectively extended by market members to each individual market participant.

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[44] We accept Southern Companies' Proposed First Revised Sheet No. 206, subject to Southern Companies' correcting the effective date.

[45] Filing at 9-10.

> Furthermore, that exposure is not truly under a market participant's control because it is the ISO/RTO that serves as the gatekeeper for the integrity of the markets they administer. As a result, ISO/RTO market participants are exposed to risks based on an ISO's/RTO's determination of other market participants' creditworthiness, and they have little ability to mitigate that risk. Furthermore, market participants must trust ISOs/RTOs to implement their credit policies in a manner created to limit, as much as possible, the risk of credit defaults. As a result, the level of exposure faced by ISOs/RTOs can significantly affect market development by dampening the willingness of various entities to participate in ISO/RTO markets that inadequately mitigate mutualized risks through a clear, workable mechanism for minimizing the mutualized default risk.[[46]]

43. Southern Companies have not shown that they are similarly situated to the ISOs/RTOs to warrant the treatment granted to those entities in the *Creditworthiness Policy Statement*. Accordingly, we direct Southern Companies to remove the proposed revisions to Schedules 7A, 7B, 8 and 10 of Attachment H, and Schedule V of Attachment Q to their proposed OATT and file revised tariff sheets in a compliance filing to be submitted within 30 days of the date of this order.[47]

44. We do not object, in principle, to the recovery of losses that may be incurred by Southern Companies as a result of a customer default. However, we do not intend to allow transmission providers to establish separate surcharge mechanisms in their OATTs to recover these losses. We believe such recovery should be achieved through a formula rate mechanism. Formula rates can include accounts in which customer defaults can be recovered. Formula rates provide the opportunity for the Commission and customers to track and verify these charges and to ensure there is no double recovery for these losses. To the extent that Southern Companies' formula rate permits or can be amended to allow recovery of these losses, the formula rate would be the appropriate rate design mechanism to support and recover such costs.

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[46] *Creditworthiness Policy Statement*, 109 FERC ¶ 61,186 at P 17-18 (internal citations omitted).

[47] We reject, and Southern Companies must replace, the following tariff sheets: Proposed Sixth Revised Sheet No. 108; Proposed Second Revised Sheet No. 109A; Proposed Fourth Revised Sheet No. 110; Proposed Original Sheet No. 113c; Proposed Third Revised Sheet No. 140; and Proposed First Revised Sheet Nos. 216-17.

5. Network Operating Agreement

a. Southern Companies' Filing

45. Southern Companies propose to revise their generic Network Operating Agreement to eliminate the detailed provisions which "have proven largely out-dated." Southern Companies propose

> to retain the general issues that must be addressed in a [Network Operating Agreement], such as metering, control area and data equipment, etc., but then allow the parties to negotiate the specifics of how those issues are to be addressed between the parties. Once those negotiations are finalized and the [Network Integration Transmission Service Agreements] and [Network Operating Agreements] are executed, then this contract information will be reported in the Electric Quarterly Reports in accordance with Order No. 2001.[[48]]

Southern Companies argue that these revisions are consistent with or superior to the *pro forma* OATT.[49]

b. Commission Determination

46. We accept Southern Companies' proposed Form of Network Operating Agreement as consistent with or superior to the *pro forma* OATT.[50] The remaining information in the proposed agreement maintains the general issues that must be addressed in a Network Operating Agreement and is consistent with or superior to the *pro forma* OATT. We agree that Southern Companies' revisions will allow Southern Companies and the network transmission customer additional flexibility to negotiate specific terms of the agreement. In addition, Southern Companies will report the contract

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[48] Filing at 11.

[49] The *pro forma* OATT does not provide a form of Network Operating Agreement, simply noting that the language is "[t]o be filed by the Transmission Provider." Order No. 890, FERC Stats. & Regs. ¶ 31,241 at App. C, Original Sheet No. 158.

[50] We accept Southern Companies' Proposed Second Revised Sheet No. 129 and Proposed First Revised Sheet Nos. 130-34, as well as Southern Companies' proposed deletion of Original Sheet Nos. 135-38 and First Revised Sheet No. 139.

information in their Electronic Quarterly Reports in accordance with Order No. 2001.[51] This proposal will facilitate negotiations of the parties for transmission service while ensuring that terms in the agreements are not unduly discriminatory.

6. Typographical Errors

a. Southern Companies' Filing

47. Southern Companies identify several typographical errors in their OATT. While several of the proposed changes are minor in nature, Southern Companies identify two more substantive matters. First, Southern Companies identify an error that was included as part of their Order No. 890 FPA section 206 compliance filing in Docket No. OA07-38-000. They note that the loss recovery mechanism of Southern Companies' proposed creditworthiness criteria was inadvertently included in the wrong sub-section of Schedule 8, the sub-section that discussed deriving the charges for non-firm use of Southern Companies' subtransmission facilities. Second, Southern Companies note that their proposed formula rate to derive the charges under their OATT in Attachment M included an incorrect cross-reference in section 3.2.4. Southern Companies state that the reference to the Net Plant allocator should read "3.2.16.e" and not "3.2.16.c."

b. Commission Determination

48. We will accept in part and reject in part Southern Companies' proposed tariff revisions. Because we reject the loss recovery mechanism proposed in Southern Companies' Filing, we reject as moot Southern Companies' proposed revisions to move the location of references to the loss recovery mechanism within Schedule 8. We find, however, that the other proposed ministerial changes have been shown to be consistent with or superior to the *pro forma* OATT. Accordingly, we direct Southern Companies to file revised tariff sheets reflecting the approved typographical errors with a corrected effective date, as discussed below, but not including the loss recovery mechanism language rejected above.[52]

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[51] *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003).

[52] Accordingly, we accept only Southern Companies' Proposed Second Revised Sheet No. 172.

7. Effective Date

a. Southern Companies' Filing

49. Southern Companies request waiver of the Commission's prior notice requirements to apply an effective date of August 1, 2007 for the tariff revisions proposed in Southern Companies' Filing. Southern Companies argue that because Southern Companies' Order No. 890 FPA section 206 compliance filing has already become effective, good cause exists to grant the early effective date for the Order No. 890-related provisions of the Filing. As to the proposed tariff revisions not related to Order No. 890, Southern Companies argue that an early effective date is warranted because the revisions to the Network Operating Agreement prevent the waste of resources due to out-dated tariff provisions, and the typographical errors should be corrected in the OATT.

b. Commission Determination

50. We will deny Southern Companies' request for waiver of the 60-day prior notice requirement to make the proposed tariff revisions effective August 1, 2007. Southern Companies have not shown good cause to justify their waiver request. The fact that related tariff revisions have already gone into effect pursuant to a section 206 filing does not warrant, on its own, an early effective date for proposed tariff revisions submitted in a section 205 filing.

The Commission orders:

(A) Southern Companies' proposed tariff revisions are hereby accepted in part and rejected in part, effective September 29, 2007, as discussed in the body of this order.

(B) Southern Companies are hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.