

109 FERC ¶ 61,049
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. ER03-454-001
ER03-454-002

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued October 12, 2004)

1. On April 24, 2003, Southern Company Services, Inc. (SCS)¹ filed a request for rehearing of the Commission's March 26, 2003, Order,² in which the Commission accepted for filing, as modified, three service agreements under the Open Access Transmission Tariff (OATT) of the Southern Companies. The Commission's modifications deleted sections of the agreements limiting the transmission customers' rollover rights in a manner contrary to our policy. In its rehearing request, SCS asks that the Commission accept the executed rollover service agreements as originally filed. We deny the request for rehearing, and accept SCS's compliance filing revising the service agreements. This order benefits customers by assuring that the Commission's policy with respect to rollover rights is consistently applied.

Background

2. As explained in the March 26 Order, the three service agreements filed in this proceeding are between SCS and the following transmission customers: (1) Carolina Power & Light Company (CP&L); (2) Calpine Energy Services, LP (Calpine); and (3) Duke Energy Corporation (Duke). While SCS's filing referred to the agreements as "rollover service agreements," the March 26 Order designated them "transmission service agreements" (TSAs), with addendums for rolling over the existing agreements for another term.

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

² *Southern Company Services, Inc.*, 102 FERC ¶61,319 (2003) (March 26 Order).

3. The March 26 Order went on to summarily reject certain sections of the addendums to the filed service agreements, in accordance with prior Commission orders addressing similar transmission service agreements filed by SCS which had substantially similar addendums for rolling over the existing agreements for another term.³ First, the Calpine Agreement continued the transmission service provided under the previous service, but included limitations (in section 5.0 of the agreement) on future rollovers which conditioned the effectiveness of the TSA, contrary to our holding in Southern I. Second, all three agreements contained a section 6.0 identical to the same section the Commission required SCS to eliminate in Southern II. This section attempted to condition the effectiveness of the rollover addendum upon the Commission's acceptance of all of the provisions in the addendum, which Southern II found inconsistent with our statutory requirement to ensure just and reasonable rates. Therefore, the Commission directed SCS to make a compliance filing to delete the offending sections from its TSA addendums.

4. Finally, the March 26 Order rejected SCS's request for making the effective dates of the TSAs in this filing the same as the effective dates of the original TSAs. The Commission nonetheless granted waiver of our 60-day prior notice requirement and accepted the filing of the agreements, as modified, to be effective January 1, 2003, the date on which service commenced under them.

5. On April 24, 2003, SCS filed its request for rehearing of the March 26 Order, raising the following issues: (1) the Commission's rollover policies are confusing, unclear and unlawfully developed; (2) policy requiring rollover limitations to be included in original agreements has been unclear; (3) because the Commission failed to provide notice of its policies, the March 26 Order is arbitrary and capricious, and violates due process requirements; (4) placing Calpine ahead in the queue is inconsistent with the tariff; (5) the rollover policy results in operating problems, can lead to industry-wide reliability problems, and will hamper Southern Companies' reliability; (6) the Commission has been unclear on competing requests for transmission capacity; and (7) the imposed effective date makes the rollover agreement a new agreement.

³ March 26 Order at P 9 & n.4, citing *Southern Company Services, Inc.*, 102 FERC **&61,200** (2003) (*Southern I*); *Southern Company Services, Inc.*, 102 FERC **&61,201** (2003) (*Southern II*); *Public Service Company of New Mexico*, 99 FERC **&61,162** at 61,667 (2002); *Nevada Power Co.*, 97 FERC **&61,324** at 62,493 (2001); *Constellation Power Source, Inc. v. American Electric Power Service Corp. and Southwest Power Pool, Inc.*, 100 FERC **&61,157** (2002), *reh'g denied*, 102 FERC **&61,142** (2003); *Tenaska Power Services Co. v. Southwest Power Pool, Inc.*, 99 FERC **&61,344** (2002), *reh'g denied*, 102 FERC **&61,140** (2003).

6. Also on April 24, 2003, SCS made a compliance filing in which it removed the offending sections of the rollover agreements, in accord with the directives of the Commission's March 26 Order. SCS submitted the compliance filing under protest, in view of its request for rehearing.

7. Notice of SCS's compliance filing was published in the *Federal Register*, 68 Fed. Reg. 23,982 (2003), comments due on or before May 15, 2003. None were filed.

Discussion

8. The issues raised by SCS in its rehearing request are substantially the same as those the Commission has addressed in prior orders concerning SCS's rollover agreements.⁴ Therefore, for the reasons stated in those decisions, the Commission denies rehearing in this proceeding.

9. As in the Oglethorpe Rollover Order, the March 26 Order directed SCS to remove sections 5.0 and 6.0 from the rollover agreement. Our review of SCS's compliance filing indicates that SCS has complied with the Commission's directive (albeit under protest). We therefore dismiss SCS's protest and accept the compliance filing, effective January 1, 2003, the effective date previously granted for the rollover agreement at issue, as modified.

The Commission orders:

(A) SCS's request for rehearing is hereby denied, as discussed in the body of this order.

(B) SCS's compliance filing is hereby accepted, to be effective January 1, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁴ See *Southern Company Services, Inc.*, 108 FERC ¶ 61,174 (2004) (*Oglethorpe Rollover Order*); *Southern Company Services, Inc.*, 104 FERC ¶ 61,140 (2003); *Southern I.*