

171 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Tenaska Alabama II Partners, L.P.
Alabama Power Company

Docket No. EC20-4-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES AND
ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued April 22, 2020)

1. On October 2, 2019,¹ pursuant to sections 203(a)(1)(A), 203(a)(1)(B), 203(a)(1)(D), and 203(a)(2) of the Federal Power Act² (FPA) and the Commission's regulations,³ Tenaska Alabama II Partners, L.P. (TAP II) and Alabama Power Company (Alabama Power) (together, Applicants) filed an application requesting authorization for Alabama Power to acquire 100% of the membership interests of TAP II from Tenaska Alabama B, L.P. (Alabama B), Tenaska Alabama II, Inc. (Alabama II), and TC Alabama GP, LLC (TC Alabama GP) (collectively, Sellers) and then TAP II will be merged or dissolved into Alabama Power (Proposed Transaction).

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁴ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ Application for Approval of Transaction Under Section 203 of the Federal Power Act, Docket No. EC20-4-000 (Oct. 2, 2019) (Application).

² 16 U.S.C. §§ 824b(a)(1)(A), 824b(a)(1)(B), 824b(a)(1)(D), and 824b(a)(2) (2018).

³ 18 C.F.R. pt. 33 (2019).

⁴ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203*

I. Background

A. Description of Parties

1. TAP II

3. Applicants state that TAP II owns and operates the Tenaska Central Alabama Generation Station (Central Alabama Facility), an approximately 915/890 (winter/summer ratings) megawatt (MW) natural gas-fired, combined cycle generating facility in Autauga County, Alabama located in the Southern Company balancing authority area.⁵ Applicants state that TAP II is an exempt wholesale generator and has a market-based rate tariff and a rate schedule for reactive power supply on file with the Commission.⁶

4. Applicants state that TAP II transferred operational control over the Central Alabama Facility to an unaffiliated third party, Shell Energy North America (U.S.), L.P. (Shell), under a long-term Energy Conversion Agreement (Shell Agreement), which will expire on May 24, 2023. Shell in turn entered into a separate Energy Conversion Agreement with Gulf Power Company (Gulf Power) (Gulf Power Agreement) (together with the Shell Agreement, the Central Alabama Tolling Arrangement). Applicants state that the Gulf Power Agreement transfers all of Shell's rights acquired under the Shell Agreement to Gulf Power through May 24, 2023. Applicants state that the Central Alabama Facility is included in a centrally-dispatched power pool (Southern Pool)

Supplemental Policy Statement, 120 FERC ¶ 61,060 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008); *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006); *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

⁵ Application at 1-2, 4.

⁶ *Id.* at 4 (citing *Tenaska Ala. II Partners, L.P.*, 103 FERC ¶ 62,052 (2003); *Tenaska Ala. II Partners, L.P.*, Docket No. ER01-137-000 (Dec. 8, 2000) (delegated order); *Tenaska Ala. II Partners, L.P.*, 125 FERC ¶ 61,357 (2008)).

administered by Southern Company Services, Inc., a subsidiary of Southern Company, pursuant to the Southern Company Intercompany Interchange Contract (IIC).⁷

5. Applicants state that TAP II is currently owned by the Sellers as follows: Alabama II owns a 0.65% managing general partnership interest, TC Alabama GP owns a 0.35% general partnership interest, and Alabama B owns a 99% limited partnership interest.⁸

2. Alabama Power

6. Applicants state that Alabama Power is a vertically integrated franchised public utility with market-based rate authority. Applicants state that Alabama Power has approximately 1.48 million customers and owns or controls approximately 12,600 MW of generation. Applicants also state that Alabama Power is a wholly owned subsidiary of Southern Company.⁹

3. Southern Company

7. Applicants state that Southern Company is an electric and gas utility holding company with its operations conducted through several wholly owned operating companies including Alabama Power, Georgia Power Company, Mississippi Power Company, and Southern Power Company (collectively, Southern Operating Companies).¹⁰ Applicants explain that Gulf Power is a former subsidiary of Southern Company that will continue to be a party to the Southern Company IIC through a transition period of five to seven years.¹¹ Applicants assert that pursuant to the Southern Company IIC, Southern Company Services, Inc. administers the Southern Pool, under which the generation resources of the Southern Operating Companies and Gulf Power function on an integrated basis as a centrally-dispatched power pool to serve the collective obligations of the Southern Operating Companies and Gulf Power. Applicants also represent that Southern Company is the upstream parent company of Southern Company Gas, an energy services holding company whose primary business is the

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

¹¹ *Id.* at n.14 (citing *NextEra Energy, Inc.*, 165 FERC ¶ 61,263, at P 13 (2018); *So. Co. Servs., Inc.*, Docket No. ER18-1947-001 (Dec. 20, 2018) (delegated order)).

distribution of natural gas through natural gas distribution utilities. Applicants state that Southern Company Gas owns and controls, through subsidiaries, intrastate natural gas transportation, storage, and local distribution facilities.¹²

B. Description of the Proposed Transaction

8. Applicants state that under a Purchase and Sale Agreement, Alabama Power will acquire 100% of the equity interests of TAP II. According to Applicants, upon closing under the Purchase and Sale Agreement, Alabama Power will complete the merger and Alabama Power will become the sole equity owner of the Central Alabama Facility and will hold the Shell Agreement. Applicants state that the Central Alabama Facility will continue to be part of the Southern Pool administered by Southern Company Services, Inc. In addition, Applicants state that TAP II's market-based rate tariff will be terminated and wholesale sales from the Central Alabama Facility will be subject to Alabama Power's market-based rate tariff. Finally, Applicants assert that the Proposed Transaction will not result in any change in market or operational control of the Central Alabama Facility.¹³

II. Notice of Filing and Responsive Pleadings

9. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 54,137 (Oct. 9, 2019), with interventions and protests due on or before October 23, 2019. Southern Renewable Energy Association (SREA) filed a motion to intervene and a motion requesting an extension of time to submit comments. An extension of time was granted, with interventions and protests due on or before November 6, 2019. On November 6, 2019, SREA filed comments (SREA Comments). On December 20, 2019, Applicants filed a motion for leave to answer and answer to SREA's comments (Applicants Answer).

10. On October 23, 2019, Commission staff issued a data request (First Data Request). Applicants submitted a response to the First Data Request (First Data Response) on November 21, 2019.¹⁴ Notice of the First Data Response was published in the

¹² *Id.* at 6, 8.

¹³ *Id.* at 8-9.

¹⁴ We note that Applicants' First Data Response does not comply with the Commission's requirements regarding text-searchable formats. Responses and other text-only documents must be either created through the print-to-PDF process or saved after applying Optical Character Recognition. Applicants should comply with these requirements with all future electronically filed documents. *Filing Via the Internet*, 121 FERC ¶ 61,171, at PP 6, 23 (2007).

Federal Register, 84 Fed. Reg. 654,806 (Nov. 29, 2019), with interventions and protests due on or before December 5, 2019. On December 20, 2019, SREA filed a motion for leave to answer and comments (SREA Answer).

11. On February 7, 2020, Commission staff issued a data request (Second Data Request). Southern Company Services, Inc. on behalf of Applicants submitted a response to the Second Data Request (Second Data Response) on March 9, 2020. Notice of the Second Data Response was published in the *Federal Register*, 85 Fed. Reg. 14,936 (March 16, 2020), with interventions and protests due on or before March 23, 2020. On March 23, 2020, SREA filed comments (SREA March Comments).

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motion to intervene serves to make SREA a party to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁵ prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

14. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.¹⁶ The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on

¹⁵ 18 C.F.R. § 385.213(a)(2) (2019).

¹⁶ 16 U.S.C. § 824b(a)(4) (2018). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application at Exhibit L. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

rates; and (3) the effect on regulation.¹⁷ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction “will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.”¹⁸ The Commission’s regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹⁹

2. Analysis of the Proposed Transaction

a. Effect on Horizontal Competition

i. Applicants’ Analysis

15. Applicants state that the Proposed Transaction will not have an adverse effect on horizontal competition because it will not result in any change in “market control” of the Central Alabama Facility. Applicants state that the relevant geographic market for the Central Alabama Facility is the Southern Company balancing authority area. Applicants explain that the output of the Central Alabama Facility has been committed under the Central Alabama Tolling Arrangement. Because the full capability of the Central Alabama Facility already is contractually committed on a long-term basis, and that commitment will not change as a result of the Proposed Transaction, Applicants state that the Proposed Transaction does not result in a change to the attributed “market control” over the facility.²⁰

ii. First Data Request and Response

16. In the First Data Request, Commission staff requested the provisions in the Gulf Power Agreement that apply if Gulf Power chooses to end the Gulf Power Agreement before May 24, 2023. Commission staff requested Applicants to explain where the Central Alabama Facility’s capacity will be located once Gulf Power is not part of the Southern Company balancing authority area. In addition, Commission staff asked if the

¹⁷ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁸ 16 U.S.C. § 824b(a)(4).

¹⁹ 18 C.F.R. § 33.2(j)(2019).

²⁰ Application at 11-12.

Central Alabama Facility would be subject to another long-term agreement with a public utility after the Gulf Power Agreement expires.

17. In the First Data Response, Applicants state that neither TAP II nor Alabama Power is a party to the Gulf Power Agreement, so the provisions applicable to any termination of the Gulf Power Agreement are between Shell and Gulf Power. Applicants state that based on Article 11 and Article 22 of the Gulf Power Agreement, Gulf Power's right to terminate the Gulf Power Agreement appears limited to the delineated events of default by Shell or certain accounting determinations. In addition, Applicants state that the Gulf Power Agreement does not appear to permit a unilateral early termination for convenience before the expiration of the term.²¹

18. Applicants state that if the Gulf Power Agreement were to terminate before the expiration date of May 24, 2023, the Central Alabama Facility would continue to be within the Southern Company balancing authority area. Also, Applicants explain that if the Gulf Power Agreement were to terminate, the Shell Agreement would remain in place, expiring on May 24, 2023. Applicants state that Shell's control over the Central Alabama Facility would not diminish if the Gulf Power Agreement terminated.²²

19. Applicants state that after May 24, 2023, Alabama Power expects to have "market control" over the Central Alabama Facility and keep the facility subject to commitment and dispatch under the terms of the Southern Company IIC. Finally, Applicants state that Alabama Power does not anticipate that the Central Alabama Facility will be committed to a third party under a long-term power sale arrangement with another public utility or otherwise.²³

iii. Comments

20. SREA argues that the Commission should evaluate the Proposed Transaction "as part of a holistic strategy by Southern Company to restrict market competition and acquire merchant natural gas power plants in the region."²⁴ SREA states that merchant power plants have little ability to counteract monopolistic behavior, given that the primary customer is likely to be a Southern Company affiliate. SREA argues that the Proposed Transaction exacerbates anti-competitive behavior, and approval of the

²¹ First Data Response at 2-3.

²² *Id.* at 3.

²³ *Id.*

²⁴ SREA Comments at 2.

Proposed Transaction encourages further anti-competitive behavior by affiliate companies.²⁵ SREA states that independent power producers attempting to enter and compete in the Southern Pool effectively must turn over economic dispatch to Alabama Power and Southern Company with no independent third party verifying fair competition.²⁶ In addition, SREA argues that the small handful of independent power producer generation in Alabama will be reduced even further because of the Proposed Transaction. SREA states that the Proposed Transaction will set precedent for a similar Commission filing in the future, which will only further near total monopolization of the Southern Company balancing authority area.²⁷

21. SREA argues that Alabama Power relied on its integrated resource plan as justification for procurement for the Central Alabama Facility.²⁸ SREA states that Alabama Power's integrated resource plan is filed with its Certificate of Convenience and Necessity with the Alabama Public Service Commission (Alabama Commission) and that there are no opportunities to intervene in a state level docket specific to the integrated resource plan.²⁹ SREA states that Alabama Power mentions that its integrated resource plan demonstrates a need to add approximately 2,400 MW of additional resources by 2023-2024. SREA argues that the Alabama Power's integrated resource plan only shows a need of 300 MW capacity by 2023 and an additional 900 MW by 2025. SREA asserts that five solar power purchase agreements would result in approximately 340 MW of capacity by 2023, which would fulfill the need of 300 MW of capacity. SREA argues that Alabama Power's integrated resource plan excluded renewable energy resources in its evaluations, and that only natural gas combustion turbines and natural gas combined cycle units were available for the expansion planning models. SREA contends that this practice restricts market entry for renewable energy resources and results in market manipulation.³⁰

22. SREA states that in Alabama Power's Certificate of Convenience and Necessity filing with the Alabama Commission, Alabama Power includes an economic analysis summary, which includes five solar power purchase agreements and three natural gas

²⁵ *Id.*

²⁶ *Id.* at 9.

²⁷ *Id.* at 14.

²⁸ *Id.* at 2.

²⁹ *Id.* at 3.

³⁰ *Id.* at 4-6.

resources. SREA argues that Alabama Power's economic analysis demonstrates that all five solar power purchase agreements are lower cost and result in net present value benefits compared to all three proposed natural gas plans. SREA asserts that the Central Alabama Facility is the highest total project cost, arguing that selecting natural gas units when reliable and low-cost alternatives are available is anti-competitive behavior.³¹

23. SREA argues that even though Gulf Power is now no longer part of Southern Company, moving power from Gulf Power to Alabama Power will result in a market change in the Southern Company balancing authority area.³² SREA states that the Proposed Transaction will affect the "market control" of Alabama Power.³³

24. SREA states that it evaluated the Central Alabama Facility and four other natural gas power plants in Alabama and compared their capacity factors from 2003 to 2018. SREA states that the Central Alabama Facility and one other facility were not owned or operated by Southern Company or its affiliates. SREA states that between the years 2004 to 2009, these two facilities generated at low levels, but that shortly after the Gulf Power Agreement was enacted, Central Alabama Facility's generation capacity factors "skyrocketed" while the other facilities not owned or operated by Southern Company or its affiliates remained stagnant. SREA argues that "it appears that [Southern Company or its affiliates] restricted market access."³⁴

25. SREA states that Alabama Power included its 2018 capacity request for proposal (2018 Capacity RFP) in its Certificate of Convenience and Necessity filing with the Alabama Commission. SREA states that the 2018 Capacity RFP artificially constrained proposals by effectively requiring bids to enter into the interconnection queue ahead of issuance of the request for proposal. SREA asserts that the 2018 Capacity RFP almost guaranteed that new generation in the queue would be severely disadvantaged compared to either self-build generation or already existing capacity units. SREA argues that if Alabama Power intentionally restricted the 2018 Capacity RFP, Alabama Power's anti-competitive behavior in the 2018 Capacity RFP has resulted in "poisoned fruits," including the Proposed Transaction.³⁵

³¹ *Id.* at 6.

³² *Id.* at 10.

³³ *Id.* at 14.

³⁴ *Id.* at 10-13.

³⁵ *Id.* at 14-15.

iv. Answers

26. Applicants reply that the Proposed Transaction does not involve any change to the control or operational status of Central Alabama Facility; rather, the Proposed Transaction involves a change in upstream ownership of a generation facility already attributed to the “market control” of Alabama Power and its Southern Company affiliates, and therefore horizontal market power concerns are not present.³⁶ Applicants argue that SREA’s comments do not explain how the proposed change in ownership of the Central Alabama Facility, with no change to control under the Central Alabama Tolling Arrangement, implicates horizontal market power concerns.³⁷

27. Applicants also state that SREA’s comments relate to matters pending solely before the Alabama Commission in connection with Alabama Power’s petition for a Certificate of Convenience and Necessity, address state-level policy, have no relevance to the Commission, and that SREA’s assertions are highly conjectural, speculative, and lack evidentiary support.³⁸ Applicants assert that resource portfolio fuel mix and certification of generation resource additions by a load-serving, vertically-integrated public utility regulated under state law is a matter within the exclusive jurisdiction of the states.³⁹

28. In its answer, SREA argues that Alabama Power has not clearly stated its plans for the Central Alabama Facility beyond the May 24, 2023 termination date of the Central Alabama Tolling Arrangement.⁴⁰ SREA also asserts that Central Alabama Facility’s dispatch has only been subject to “Gulf Power desires,” which indicates that the Southern Pool has been restricting the market. SREA “encourages the [Commission] to require a non-redacted version of both” the Shell and Gulf Power Agreements be filed in this docket.⁴¹

³⁶ Applicants Answer at 5.

³⁷ *Id.* at 7-8.

³⁸ *Id.* at 1-2.

³⁹ *Id.* at 9-10.

⁴⁰ SREA Answer at 2.

⁴¹ *Id.* at 4.

v. **Second Data Request and Response**

29. On February 7, 2020, Commission staff issued the Second Data Request, asking for a Horizontal Competitive Analysis Screen, if applicable, that accounts for change in control over the Central Alabama Facility after May 24, 2023. In addition, Commission staff requested Applicants to explain whether Alabama Power's control over the Central Alabama Facility after May 24, 2023 will have an adverse effect on horizontal competition, and if so, to explain how Applicants propose to remedy such an effect.

30. In the Second Data Response, Applicants state that the Proposed Transaction does not involve any change in the operational control over the Central Alabama Facility. Applicants state that under the Central Alabama Tolling Arrangement, until May 24, 2023, the Central Alabama Facility is committed to Gulf Power regardless of who owns the Central Alabama Facility.⁴² Similarly, Applicants state that since 2009, Gulf Power, under the Central Alabama Tolling Arrangement, transferred operational control of the Central Alabama Facility to the Southern Pool under the Southern Company IIC.⁴³ Applicants assert that after May 24, 2023, the operational control of the Central Alabama Facility will be unchanged.⁴⁴

31. Applicants state that as a Southern Pool resource under the Southern Company IIC, the Central Alabama Facility is subject to the exclusive operational control of Southern Company Services, Inc. Applicants state that Southern Company Services, Inc. serves as the exclusive operating agent for all parties for the coordinated operation of all the Southern Pool resources to meet all the parties' operating, dispatch, and reserve requirements. Applicants assert that the Proposed Transaction does not involve, cause, or result in any change in this operational/dispatch control paradigm. The only change is the change in ownership of the Central Alabama Facility. Applicants assert that regardless of the identity of the ownership of the physical resource, the Proposed Transaction is incapable of causing or resulting in a change in control that would involve the need for a Horizontal Competitive Assessment Screen.⁴⁵

32. Applicants state that Southern Company and the Commission have treated all generation capacity subject to centralized integrated operation under the Southern Company IIC as being under the operational control of Southern Company for purposes

⁴² Second Data Response at 3.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 3-4.

of horizontal market analysis.⁴⁶ To confirm their assertions of no control, Applicants submitted a delivered price test that assumed Southern Company retained control over the facility both before and after the Proposed Transaction.

vi. Comments

33. SREA comments that the tables and analyses provided by Applicants “only evaluate potential impacts on the entirety of the Southern Company system, not directly in Alabama or within more localized impacts of the Southern [Company] system.”⁴⁷ SREA also states that Gulf Power controls the Central Alabama Facility, as per the Gulf Power Agreement. SREA argues that it appears that the Central Alabama Facility is not subject to a standardized merit-order dispatch in the Southern Pool. SREA therefore argues that the actual dispatch of the Central Alabama Facility will inherently change.⁴⁸ Further, SREA argues that Applicants’ assertion that nothing will change undercuts their justification for the Proposed Transaction that it is needed to address a reliability need.⁴⁹

vii. Commission Determination

34. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.⁵⁰

35. Based on Applicants’ representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. It is uncontested that the Central Alabama Facility is currently committed to the Southern Pool under the Southern Company IIC. Applicants further represent that it will remain part of the Southern Pool through the end of the Central Alabama Tolling Arrangement on May 24, 2023, and that afterwards operational control of the Central Alabama Facility will remain unchanged. We therefore find that the Proposed Transaction will not result in any change in control of the Central Alabama Facility so long as it remains committed to the Southern Pool

⁴⁶ *Id.* at 4.

⁴⁷ SREA March Comments at 1.

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 3.

⁵⁰ *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

under the Southern Company IIC.⁵¹ As a result, we decline to reject the Proposed Transaction based on SREA's arguments that Gulf Power controls the Central Alabama Facility and that Alabama Power has not clearly stated its plans for the Central Alabama Facility after May 24, 2023.

36. We also reject, as speculative and outside the scope of this proceeding, SREA's assertion that "it appears that [Southern Company or its affiliates] restricted market access" based on a review of capacity factors of natural gas plants in Alabama. To the extent that SREA seeks non-redacted versions of the Shell and Gulf Power Agreements, the appropriate procedures for requesting such documents are set forth section 388.112 of the Commission's regulations.⁵²

37. We also decline to reject or condition our approval of the Proposed Transaction based on SREA's arguments about Alabama Power's integrated resource plan and related state filings and proceedings (the Certificate of Convenience and Necessity and the 2018 Capacity RFP). Alabama Power's integrated resource plan and related filings and proceedings at the Alabama Commission are under the purview of the state of Alabama, not this Commission. We note that our approval of the Proposed Transaction under FPA section 203 does not affect or preempt any state proceedings, and that the timing of our determination does not have any impact on state jurisdiction.⁵³

b. Effect on Vertical Competition

i. Applicants' Analysis

38. Applicants state that the Proposed Transaction has no adverse effect on vertical market competition. Applicants state that the Proposed Transaction does not involve network transmission facilities; the only ones involved are limited customer owned

⁵¹ Our finding here relies on Applicants' representation that the Central Alabama Facility will remain under the operational control of the Southern Pool even if Gulf Power's transition period described above ends prior to May 24, 2023. The Central Alabama Facility no longer being under the operational control of the Southern Pool prior to the expiration of the Gulf Power Agreement on May 24, 2023 would constitute a material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction that would trigger the requirement in Ordering Paragraph B, below, that Applicants inform the Commission of such change within 30 days.

⁵² 18 C.F.R. § 388.112 (2019).

⁵³ See *Nev. Power Co.*, 145 FERC ¶ 61,022, at P 48 (2013).

interconnection facilities necessary to deliver the Central Alabama Facility's output to the interstate transmission system.⁵⁴ Applicants assert that the Proposed Transaction does not involve a transfer of ownership or control of transmission facilities, apart from the limited interconnection facilities necessary to connect the Central Alabama Facility to the transmission grid. In addition, Applicants state that the Southern Operating Companies' transmission facilities are located within the Southern Company balancing authority area and service over those facilities are available pursuant to the Southern Company Open Access Transmission Tariff.⁵⁵

39. Applicants state that Alabama Power and its affiliates do not have dominant control over power plant sites for new capacity development in relevant markets. In addition, Applicants state that Alabama Power's affiliates own natural gas transportation and storage facilities; however, these facilities are subject to federal and state regulation, which creates a rebuttable presumption that such ownership or control does not present vertical market power or barriers to entry concerns. Further, Applicants state that neither Alabama Power nor its affiliates own or control inputs to electricity products that could be used to erect barriers to entry and the Proposed Transaction does not involve inputs to electricity products.⁵⁶

ii. Comments

40. SREA argues that because Alabama Power's integrated resources plan is a "key input" to power supply, the Commission must evaluate the integrated resource plan.⁵⁷ SREA also states that in November 2004, TAP II and Tenaska Georgia Partners, L.P. filed separate complaints requesting that the Commission reclassify certain facilities and provide transmission credits for the costs of the facilities.⁵⁸ SREA states that Southern Company argued in those proceedings that TAP II and Tenaska Georgia Partners, L.P.'s facilities were not providing system wide benefits, while Alabama Power asserts in this proceeding that its integrated resource plan shows that the Central Alabama Facility is

⁵⁴ Application at 10.

⁵⁵ *Id.* at 12-13.

⁵⁶ *Id.* at 14.

⁵⁷ SREA Comments at 7.

⁵⁸ *Id.* at 7-8.

needed to maintain system reliability.⁵⁹ SREA states that in the Commission order,⁶⁰ the Commission articulated that Southern Company reclassify the facilities at issue as network upgrade facilities and provide payment credits for the network upgrades. SREA states that Alabama Power notes in the Application that the Proposed Transaction does not involve network transmission facilities and the only ones involved are limited customer owned interconnection facilities necessary to deliver the Central Alabama Facility's output to the interstate transmission system.⁶¹ SREA argues that "Southern Company initially argued that the [Central Alabama Facility] provide[d] no system benefit, while under this filing [Alabama Power] is claiming a system benefit [in its integrated resource plan] as justification for acquisition."⁶²

iii. Answers

41. In response to SREA, Applicants state that SREA misconstrues the area of vertical market power analysis, which focuses on physical inputs, not state policy decisions or resource procurement consistent with an integrated resource plan. Applicants also state that no vertical market power or barriers to entry concerns are present because the Proposed Transaction does not involve any change of control over inputs to power production and is between non-affiliated entities.⁶³

iv. Commission Determination

42. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new

⁵⁹ *Id.* at 8.

⁶⁰ *Id.* at 9 (citing *Tenaska Ala. II Partners, L.P.*, 118 FERC ¶ 61,037, at PP 22, 26-27 (2007)).

⁶¹ *Id.*

⁶² *Id.* at 8.

⁶³ Applicants Answer at 6-7.

competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.⁶⁴

43. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. As stated by Applicants, the Proposed Transaction involves only limited customer-owned interconnection facilities necessary to deliver the Central Alabama Facility's output to the interstate transmission system, and the Proposed Transaction does not involve a transfer of ownership or control of transmission facilities. Alabama Power represents that the facility will remain subject to commitment and dispatch under the terms of the Southern Company IIC following the consummation of the Proposed Transaction and therefore there will be no change with respect to access to transmission. In addition, Applicants represent that Alabama Power and its affiliates do not have dominant control over power plant sites for new capacity development in relevant markets, and that while Alabama Power's affiliates own natural gas transportation and storage facilities, these facilities are subject to federal and state regulation that creates a rebuttable presumption that such ownership or control does not present vertical market power or barriers to entry concerns. Further, Applicants represent that neither Alabama Power nor its affiliates own or control inputs to electricity products that could be used to erect barriers to entry and the Proposed Transaction does not involve inputs to electricity products.

44. We dismiss SREA's assertion that the Commission must evaluate the integrated resource plan, and the contention that additional scrutiny of the Central Alabama Facility's interconnection facilities is warranted. Applicants represent that the Proposed Transaction includes only those transmission facilities necessary to deliver the Central Alabama Facility's output to the interstate transmission system, and SREA has not presented evidence that shows otherwise. In addition, as noted earlier, Alabama Power's integrated resource plan and related proceedings are subject to the jurisdiction of the Alabama Commission, not this Commission.

c. Effect on Rates

i. Applicants' Analysis

45. Applicants state that the Proposed Transaction will not have an adverse effect on rates. Applicants assert that all wholesale sales of electric energy, capacity, and ancillary services by TAP II are made at market-based rates pursuant to its market-based rate tariff or at cost-based rates based on the revenue requirement set forth in the reactive rate

⁶⁴ *Upstate N.Y. Power Producers*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

schedule.⁶⁵ Applicants explain that the Commission “has recognized that the need to provide rate protection does not extend to market-based rate customers, who freely engage in power sales at rates in competitive generation markets.”⁶⁶ Applicants further explain that “the Commission has also recognized that rate schedules like the Reactive Rate Schedule do not allow for the pass-through of transaction-related costs without Commission authorization under FPA [s]ection 205 of the FPA and thus do not raise concerns under the ‘effect on rates’ prong of the Commission’s analysis.”⁶⁷

46. Applicants state that the Proposed Transaction will not have an adverse effect on Alabama Power’s transmission service rates, because the Central Alabama Facility involves only generation and associated customer-owned interconnection facilities, which will be recorded as generator outlet costs and will not be included as transmission investment in Southern Company Open Access Transmission Tariff transmission rates.⁶⁸ In addition, Applicants state that Alabama Power will not capitalize any transaction-related costs to any transmission-related account under Southern Company’s Open Access Transmission Tariff’s formulary rate.⁶⁹

47. Applicants state that the Proposed Transaction will not have an adverse effect on the rates of wholesale requirements customers served under cost-based rates, because Alabama Power does not provide wholesale requirements service at cost-based rates to any customers. Applicants state that the Proposed Transaction will not adversely affect the rates paid by Alabama Power’s customers supplied at market-based rates or under Southern Company’s cost-based rate tariff for opportunity sales of less than one year. Applicants state that Southern Company’s cost-based rate tariff includes a capacity cost component that is a fixed, stated rate and will not be impacted directly or indirectly as a result of the Proposed Transaction.⁷⁰

48. Applicants state that the Proposed Transaction falls into a certain type of category of transaction in which the applicant may not need to offer a hold harmless commitment.

⁶⁵ Application at 15.

⁶⁶ *Id.* (citing *NorAm Energy Servs., Inc.*, 80 FERC ¶ 61,120 at 61,382-83 (1997)).

⁶⁷ *Id.* (citing *Calpine Corp.*, 162 FERC ¶ 61,148, at P 32 (2018); *Bayou Cove Peaking Power, LLC*, 165 FERC ¶ 61,226, at P 105 (2018)).

⁶⁸ *Id.* at 16.

⁶⁹ *Id.* at n.41.

⁷⁰ *Id.* at 16.

Specifically, Applicants assert that Alabama Power is pursuing the Proposed Transaction to address a reliability need identified through its integrated resource plan process and is pursuing state regulatory certification for the Proposed Transaction in a public proceeding before the Alabama Commission.⁷¹

ii. **First Data Request and Response**

49. In the First Data Request, Commission staff requested that Applicants describe the reliability issue that the Proposed Transaction addresses, explain how the Proposed Transaction will resolve the reliability need, and clarify how Alabama Power's integrated resource plan relates to the Proposed Transaction.

50. In the First Data Response, Applicants state that the reliability issue the Proposed Transaction helps address is a projected deficit in Alabama Power's winter reserve margin, as reported in Alabama Power's integrated resource plan. Applicants state that Alabama Power's winter reserve margin is projected to be below both its diversified long-term and short-term winter target reserve margin. In addition, Applicants state that the integrated resource plan calls for more than 2,000 MW of generation additions through 2028. Further, Alabama Power states that a modest acceleration of resource additions will mitigate risks and better facilitate its statutory duty to make reasonable enlargements of its system to meet the demand of those customers for whom it holds a duty of service.⁷²

51. Applicants state that the Proposed Transaction relates to the integrated resource plan in that the Central Alabama Facility represents one of the resources identified by Alabama Power in its integrated resource plan as being a cost-effective solution for meeting its reliability needs. Applicants state that Alabama Power identified the Central Alabama Facility through the utilization of several competitive solicitations followed by an economic evaluation of the expected costs and benefits associated with each proposal.⁷³

⁷¹ *Id.* at 17.

⁷² First Data Response at 3-4 (citing *Request of Ala. Power Co. for a Certificate of Convenience and Necessity, Ala. Pub. Serv. Comm'n*, Docket No. 32953, at 37-92 (Sept. 6, 2019)).

⁷³ *Id.* at 4.

iii. Comments

52. SREA states that the Central Alabama Facility's net present value cost is \$433 million, and that therefore this facility represents a significant cause of a retail rate hike. In addition, SREA asserts that there will likely be no Alabama rate case and that Alabama has not had a formal rate case since the early 1980s.⁷⁴

53. SREA states that Alabama Power requested construction work in progress in an Alabama Commission filing for a natural gas combined cycle generation unit (Barry 8 Unit), which SREA states is also part of Alabama Power's Certificate of Convenience and Necessity proceeding at the Alabama Commission.⁷⁵ SREA states that Alabama Power did not file an application with this Commission regarding the construction work in progress request, and there was no opportunity provided for public or stakeholder involvement in the Alabama Commission docket, and the instant Application is the only known regulatory proceeding to flag these issues for scrutiny. SREA also argues that the instant Application is a component of Alabama Power's Certificate of Convenience and Necessity filing, and that same state filing includes the Barry 8 Unit. SREA states that if the Proposed Transaction is consummated or if the Barry 8 Unit is constructed, this will exacerbate effects on captive ratepayers. SREA states that the Application is deficient without analysis of the effects of the proposed Certificate of Convenience and Necessity (including the integrated resource plan) filed with the Alabama Commission.⁷⁶

54. In response to Applicants' assertion that certain types of transactions may not need to offer a hold harmless commitment, such as transactions needed to service the acquiring company's customers or forecasted load, in compliance with a resource planning process, or to meet specified North American Electric Reliability Corporation (NERC) standards, SREA argues that Alabama Power's integrated resource plan does not show a need for the Central Alabama Facility in the 2023-2024 timeframe. In addition, SREA argues that Alabama Power has not specified a specific NERC standard needing to be met.⁷⁷

55. SREA argues that the Application provides virtually no information regarding the impacts to ratepayers and requests that the Commission find the Application to be

⁷⁴ SREA Comments at 15.

⁷⁵ *Id.* at 17.

⁷⁶ *Id.* at 20.

⁷⁷ *Id.* at 20-21.

deficient.⁷⁸ SREA compares this Application with the Commission’s recent decision regarding Tri-State Generation and Transmission Association, Inc.’s (Tri-State) request to become a Commission-jurisdictional utility. SREA states that the Commission denied Tri-State’s filing due to lack of cost support, data, and expense balances. SREA argues that the Tri-State filing may have had more relevant data for a just and reasonable determination than this Application.⁷⁹

iv. Answers

56. Applicants respond that Alabama Power does not have cost-based, wholesale requirements customers and provides jurisdictional transmission services in accordance with the Southern Company Open Access Transmission Tariff.⁸⁰ Applicants also state that SREA’s attempt to frame an “effect on rates” argument fails because the Application shows that the Proposed Transaction will not involve any accounts that are cost-of-service inputs or would otherwise be imposed on captive customers by Alabama Power or its affiliates under any mechanism on file. Applicants state that any rate impacts of the Proposed Transaction will occur at the retail level and will be addressed as part of the Alabama Commission proceeding.⁸¹

57. Applicants state that, to the extent SREA raises concerns about Commission-jurisdictional market-based rates, Alabama Power and its affiliates are subject to active Commission oversight with respect to ownership and operation of transmission and generation facilities and participation in wholesale markets. Applicants state that Alabama Power and its affiliates are subject to market power mitigation measures, including cost-based rate caps and independent monitoring of its must-offer/auction protocols.⁸²

58. In response to Applicants, SREA asserts that Alabama Power failed to characterize its winter reserve margin as excessively high and failed to explain the Central Alabama Facility’s ability and role in meeting the winter reserve margin. SREA requests that Applicants file data showing how the Central Alabama Facility has been dispatched, on

⁷⁸ *Id.* at 26.

⁷⁹ *Id.* at 27 (citing *Tri-State Generation and Transmission*, 169 FERC ¶ 61,012 (2019)).

⁸⁰ Applicants Answer at 5.

⁸¹ *Id.* at 7.

⁸² *Id.* at 8.

an hourly basis, since its inception and the data should be compared against major winter events.⁸³

59. SREA also states that Alabama Power failed to explain that the Central Alabama Facility is the most expensive option selected in its integrated resource plan and questions Alabama Power's assertion that the Central Alabama Facility is a cost-effective solution for meeting its reliability needs.⁸⁴ SREA argues that the Alabama Commission does not have an integrated resource plan process and that Alabama Power should be required to file its integrated resource plan in this docket, discovery be allowed, and testimony to be filed, because the Commission's responsibility for evaluating, analyzing, and reviewing Alabama Power's integrated resource plan is the only means available to determine a reliability need.⁸⁵

v. **Commission Determination**

60. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on rates. As stated by Applicants, all wholesale sales of electric energy, capacity, and ancillary services by TAP II are made at market-based rates pursuant to the market-based rate tariff or at cost-based rates based on the revenue requirement set forth in the reactive rate schedule.⁸⁶ Applicants also represent that the Proposed Transaction will not have an adverse effect on Alabama Power's transmission service rates, because the Central Alabama Facility involves only generation and associated customer-owned interconnection facilities, and will not have an adverse effect on the rates of wholesale requirements customers served under cost-based rates, because Alabama Power does not provide wholesale requirements service at cost-based rates to any customers. Applicants also state the Proposed Transaction will not adversely affect the rates paid by Alabama Power's customers supplied at market-based rates or under Southern Company's cost-based rate tariff for opportunity sales of less than one year, and that Southern Company's cost-based rate tariff includes a capacity cost component that is a fixed, stated rate and will not be impacted directly or indirectly as a result of the Proposed Transaction. Therefore, we find the Proposed Transaction will have no adverse effect on any Commission-jurisdictional rate.

⁸³ SREA Answer at 5.

⁸⁴ *Id.* at 5-6.

⁸⁵ *Id.* at 6, 8.

⁸⁶ Application at 15.

61. We deny as outside the scope of this proceeding SREA's request to review the construction work in progress for the Barry 8 Unit, because it is part of an Alabama Commission filing and the Barry 8 Unit is not part of this Proposed Transaction. We also reject SREA's concerns regarding a potential retail rate increase. Arguments that the Proposed Transaction could have an effect on retail rates are outside the scope of this proceeding, because we do not have jurisdiction over Alabama Power's retail rates.⁸⁷ Additionally, as stated above, the sufficiency of Alabama Power's integrated resource plan and related proceedings are subject to the jurisdiction of the Alabama Commission, not the Commission. We therefore reject SREA's request that the Commission direct Alabama Power to provide its integrated resource plan in this docket. We also find that, in this case, it is not necessary that Applicants offer a hold harmless commitment to demonstrate that the Proposed Transaction will not have an adverse effect on rates, as the Proposed Transaction will have no effect on any Commission-jurisdictional rate.⁸⁸ For this reason, we also deny SREA's request to require Applicants to provide Central Alabama Facility's dispatch data on an hourly basis.

62. We also find SREA's comparison of the Application to a recent Tri-State proceeding is not applicable to the instant proceeding. In that proceeding, the Commission rejected Tri-State's filings as patently deficient because they failed to provide information required by the Commission's regulations. In this proceeding, Applicants have provided, in their Application and data responses, information sufficient to satisfy the Commission's regulatory requirements for applications under FPA section 203.

d. Effect on Regulation

i. Applicants' Analysis

63. Applicants state that the Proposed Transaction will not have an adverse effect on regulation. Applicants state that the Proposed Transaction does not create a regulatory gap between state and federal regulation. Applicants also state that the Proposed Transaction is subject to regulatory approval of the Alabama Commission. According to Applicants, following the consummation of the Proposed Transaction, Alabama Power will remain under the Commission's jurisdiction and the jurisdiction of the Alabama

⁸⁷ *Crius Energy Corp.*, 168 FERC ¶ 61,010, at P 29 (2019).

⁸⁸ *See supra* P 60.

Commission. In addition, Applicants state that Alabama Power will continue to be regulated in the same manner as before the consummation of the Proposed Transaction.⁸⁹

ii. Commission Determination

64. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.⁹⁰ As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.⁹¹ We find no evidence that either state or federal regulation will be affected by the Proposed Transaction. We note that the dissolution of TAP II following the Proposed Transaction will not result in a regulatory gap, as Alabama Power will hold TAP II's assets and will remain under the Commission's jurisdiction and the jurisdiction of the Alabama Commission.

e. Cross-Subsidization

i. Applicants' Analysis

65. Applicants state there is no risk of cross-subsidization issues because the Proposed Transaction does not involve a non-utility affiliate or associate company of Alabama Power or include the issuance of securities or the pledge or encumbrance of existing assets by Alabama Power for any affiliate. Applicants state that the Proposed Transaction falls under two of the three "safe harbor" transactions that the Commission has previously stated are unlikely to present cross-subsidization concerns. Applicants first state that there is no risk of cross-subsidization issues because the Proposed Transaction does not involve a non-utility affiliate or associate company of Alabama Power or include the issuance of securities or the pledge or encumbrance of existing assets by Alabama Power for any affiliate, since Alabama Power is proposing to acquire the Central Alabama Facility in an arm's length transaction with the Sellers, none of

⁸⁹ Application at 18.

⁹⁰ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

⁹¹ *Id.*

which is an affiliate of Alabama Power. Second, Applicants state that the Proposed Transaction is subject to review by a state commission.⁹²

66. Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.⁹³

ii. Comments

67. SREA argues that the Proposed Transaction has the strong potential to result in the cross-subsidization of several associate companies.⁹⁴ SREA states that it appears that Alabama Power's acquisition of excess capacity resources may end up providing capacity to Georgia Power customers.⁹⁵

68. In addition, SREA states that Alabama Power has been identified as "one of the most profitable[] electric utilities in the country" and has a significantly higher return on

⁹² Application at 19-20 (citing Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 16).

⁹³ *Id.* at Ex. M.

⁹⁴ SREA Comments at 1.

⁹⁵ *Id.* at 28.

equity than any other utility.⁹⁶ SREA argues that this high level of profitability leads SREA to believe some level of subsidization may already be occurring.⁹⁷

69. SREA asserts that the Commission investigated Southern Power Company and operations of the Southern Pool, and in a 2006 settlement order, required an audit of Southern Power Company and its regulated affiliates. SREA requests that the Commission require an audit to show that “prices and transmission service have not been manipulated by Alabama Power or Southern Company” to hasten acquisition of the Central Alabama Facility and that affiliates have not caused cross-subsidization to occur.⁹⁸

iii. Commission Determination

70. Based on Applicants’ representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. Applicants state that the Proposed Transaction falls within the scope of a safe harbor for transactions that are subject to review by state commission. Applicants also represent that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

71. We dismiss SREA’s concerns regarding cross-subsidization as speculative. We find SREA’s argument that Alabama Power’s “high level of profitability” suggests that “some level subsidization may already be occurring” has not been shown to be related to the Proposed Transaction. Further, the Proposed Transaction does not result in cross-subsidization of a non-utility associate company at this time, and any allegations that excess Alabama Power generation capacity will go to serve Georgia Power customers without compensation has not been shown by SREA. Additionally, we are not persuaded by SREA’s contention that a settlement order in an unrelated proceeding requiring an audit of the Southern Operating Companies justifies an audit in this proceeding to show that “prices and transmission service have not been manipulated.”

⁹⁶ *Id.* at 28-29.

⁹⁷ *Id.*

⁹⁸ *Id.* at 30 (citing Docket No. PA08-6-000).

f. Other Issues

i. Winter Peak Concerns

(a) Comments

72. SREA argues that “[e]ven if [Alabama Power] has a winter peak need in the future, which is highly questionable, its remedy of procuring the Central Alabama Facility does not inherently prove to be a solution.”⁹⁹ SREA states that it evaluated Central Alabama Facility’s performance during winter and summer seasons and asserts that Central Alabama Facility was mostly dispatched in July, August, and September between the years of 2013 to 2018. SREA also evaluated the past 10 and 15 years of Central Alabama Facility’s dispatch, and asserts that the highest levels were in June, July, and August. SREA argues that Alabama Power’s ownership of the Central Alabama Facility is unnecessary to maintain system reliability.¹⁰⁰

(b) Commission Determination

73. We dismiss, as outside the scope of this proceeding, SREA’s arguments as to whether Alabama Power has a winter peak need in the future and if so, whether the Central Alabama Facility is a solution.

ii. Carbon Goals

(a) Comments

74. SREA states that Alabama Power did not mention in the Application Southern Company’s corporate goal of low to no carbon operations by 2050. SREA argues that Alabama Power does not explain how adding an additional 915 MW natural gas power plant would achieve its goal.¹⁰¹ SREA requests that the Commission evaluate the Application’s impacts on greenhouse gas emissions. In addition, SREA argues that the Commission should hold Alabama Power responsible for its parent company’s corporate goals.¹⁰²

⁹⁹ *Id.* at 22.

¹⁰⁰ *Id.* at 23.

¹⁰¹ *Id.* at 24-25.

¹⁰² *Id.* at 26.

(b) Commission Determination

75. We dismiss SREA's arguments as outside the scope of this proceeding.

3. Accounting Analysis

a. Applicants' Analysis

76. Applicants provide proposed accounting entries for the Proposed Transaction. Applicants state that Alabama Power will account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Applicants state that Alabama Power will submit to the Commission final accounting entries within six months of the date the Proposed Transaction is consummated. Applicants state that the accounting submission will provide all the accounting entries and amounts related to the Proposed Transaction and the narrative explanations.¹⁰³

b. First Data Request and Response

77. In the First Data Request, Commission staff requested complete *pro forma* accounting entries with dollar amounts for Alabama Power. In addition, Commission staff requested Alabama Power to provide its accounting entries with sufficient detail to indicate the effects on all account balances (including amounts transferred on an interim basis).

78. In the First Data Response, Applicants provided detailed proposed accounting entries with a request for confidential treatment pursuant to sections 33.8, 388.107(d), and 388.112(b) of the Commission's regulations because the accounting entries include price information that is not public and is commercially sensitive.¹⁰⁴

c. Comments

79. SREA states that the Central Alabama Facility and another natural gas unit, the Barry 8 Unit, are linked together through the Certificate of Convenience and Necessity, integrated resource plan, and Alabama Power's 2018 Capacity RFP; therefore, SREA asserts that the Barry 8 Unit's costs and account information should also be included in the Application.¹⁰⁵

¹⁰³ Application Attachment 3.

¹⁰⁴ First Data Response at 5.

¹⁰⁵ SREA Comments at 19-20.

d. Commission Determination

80. We disagree with SREA's assertion that the Barry 8 Unit's costs and account information should be included in the Application. The Barry 8 Unit is not a part of the Proposed Transaction. The fact that both it and the Central Alabama Facility are included in Alabama Power's integrated resource plan and related Alabama Commission filings does not make the Barry 8 Unit a part of the Proposed Transaction. Therefore, we decline to require that Applicants include the Barry 8 Unit's costs and account information in the Application.

4. Other Considerations

81. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.¹⁰⁶ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

82. FPA section 301(c) gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to Public Utility Holding Company Act of 2005 (PUHCA 2005), 42 U.S.C. §§ 16451-63 (2018) are subject to the record-keeping and books and records requirements of PUHCA 2005.

83. Section 35.42 of the Commission's regulations requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁰⁷ To the extent that a transaction authorized under FPA

¹⁰⁶ 16 U.S.C. § 824o (2018).

¹⁰⁷ 18 C.F.R. § 35.42 (2019); *see also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

(H) Alabama Power shall account for the transaction in accordance with Electric Plant Instruction No. 5, and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Alabama Power shall submit proposed accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.