

94 FERC & 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Southern Company Services, Inc.

Docket No. ER01-668-000

ORDER ACCEPTING FOR FILING, AS MODIFIED, AMENDMENT TO OPEN ACCESS
TARIFF

(Issued February 12, 2001)

On December 14, 2000, Southern Company Services, on behalf of the Southern Operating Companies¹ (collectively, Southern Companies), submitted for filing amendments to Southern Companies' Open Access Transmission Tariff (Tariff) to incorporate creditworthiness criteria, interconnection procedures, and source and sink requirements for point-to-point service. We will accept the proposed amendments for filing, as modified below, effective February 13, 2001.²

Notice of Filings, Interventions and Protests

Notice of Southern Companies' filing was published in the Federal Register, 65 Fed. Reg. 81,522, (2000), with comments, protests and motions to intervene due on or before January 5, 2000. Aquila Energy Marketing Corporation (Aquila), Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia (Dalton),³ Enron Power Marketing, Inc., Oglethorpe Power Corporation,

¹Southern Operating Companies are Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savanna Electric and Power Company.

² Southern Companies has properly designated the rate schedule as Southern Operating Companies FERC Electric Tariff, Forth Revised Volume No.5 Original Sheet Nos. 1 - 158.

³Dalton also filed a Request for Documents.

Reliant Energy Power Generation, and Southeastern Power Administration filed motions to intervene. Aquila and Coral Power, LLC (collectively, Protestors) jointly filed a protest. Timely motions to intervene and protests were also filed by El Paso Merchant Energy, L.P. (El Paso), and Dynegy Power Marketing, Inc., and Tenaska Power Services, Inc. (Dynegy/Tenaska). Joint motion to intervene and protest was filed by Calpine Construction Finance Company, L.P., Competitive Power Ventures, Duke Energy North America, LLC, and GenPower, LLC (collectively, New Generators). Motions to intervene out of time and protest were filed by Virginia Electric and Power Company (VEPCO), and Carolina Power and Light Company (CP&L). Tenaska, Inc. (Tenaska), also filed a motion to intervene out of time and request for clarification.

On January 22, 2001, Southern Companies filed an answer to the intervenors' comments and protests to the amendment. On January 29, 2001, VEPCO and CP&L filed a reply to Southern Companies' answer, and on February 6, 2001, Southern Companies filed a further reply.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2000), the motions to intervene of Reliant and Rocky Road serve to make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.213(a)(2)(2000), prohibits the filing of answers to protests and answers unless otherwise ordered by the decisional authority. With the exceptions noted below, we are not persuaded to accept the various answers.

Creditworthiness

Under Section 11, Creditworthiness, of the pro forma tariff,⁴ for the purpose of determining the ability of the customer to pay for services under the Tariff, transmission providers may require reasonable credit review procedures in accordance with standard commercial practices. Under Southern Companies proposed revisions to Section 11, a customer will be considered creditworthy if it can satisfy Southern Companies' threshold requirement of a Standard and Poor's (S&P's) credit rating of BBB+ or better or a Moody's credit rating of Baa1 or better. Alternatively, a customer can procure a letter of credit from a bank equal to one year's charges for interconnection service, or the

⁴See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. & 31,036 at 31,937 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. & 31,048, order on reh'g Order No. 888-B, 81 FERC & 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC & 61046 (1998), aff'd in part, 225 F.3d 667 (D.C. Cir. 2000).

customer can satisfy the creditworthiness criteria by obtaining a letter of guaranty from its parent company if its parent company maintains the threshold credit ratings noted above. The last option is for the customer to make an advance payment, in full, for the amount of the requested service.

Tenaska, Protestors and New Generators object to Southern Companies proposed creditworthiness requirements. With respect to the threshold credit rating requirement, Tenaska asks Southern Companies to amend their proposal to provide that a mid-range rating of BBB or Baa2 by S&P or Moody's respectively, be acceptable, noting that this would be consistent with the creditworthy levels required by PJM Interconnection, L.L.C., and the New York Independent System Operator (BBB for Standard and Poor' and Baa2 for Moody's). Protestors claim that Southern Companies' proposed creditworthiness requirements are inconsistent with standard "investment grade" ratings, and are therefore not consistent with or superior to the pro forma tariff. Protestors believe that Southern Companies rating requirements should be lowered to an S&P rating of BBB- and a Moody's rating of Baa3.

New Generators seek clarification of what charges will be included in the calculation of the amount required for a letter of credit, asserting that it is unclear whether Southern Companies intends to include charges for operation and maintenance charges, administration fees, construction costs, etc. New Generators also question Southern Companies' requirement to post security when an interconnection agreement is executed, arguing that Southern Companies should be protected as long as they receive security in advance of commencing any work or incurring any costs.

New Generators object to the requirement that a letter of guaranty may only originate from a parent company, asserting that Southern Companies should also allow unaffiliated entities to provide letters of guaranty, so long as they meet Southern Companies credit rating requirements. Protestors also assert that, because letters of guaranty must be in a form acceptable only to the Transmission provider, rather than a form that is mutually acceptable to both parties, Southern Companies proposed requirements are not consistent with standard commercial practice or the pro forma tariff.

Southern Companies justify their credit rating standard as largely a codification of existing criteria they have used since the Tariff was originally adopted in 1996 to evaluate hundreds of service requests without complaint. Southern Companies also claim that their specific creditworthiness criteria are similar to credit provisions previously accepted by the Commission, citing, e.g., New York State Electric and Gas

Corp., 78 FERC & 61,114 (1997) (NYSEG). In response to the protests, Southern Companies justify their selection of credit ratings by analyzing historical payment default rates of companies over various levels of credit ratings, probabilities of credit downgrades, and specific examples in the marketplace⁵ which they assert demonstrate the reasonableness of their proposed standard. Southern Companies state that unlike a lender or a power marketer who could either refuse to deal or require a higher interest rate or price if it chose to deal with an entity having lower rate securities, Southern Companies would be obligated to provide service without compensation for accepting greater default/downgrade risk. Southern Companies also emphasizes that if a customer does not satisfy the threshold credit rating standard, it has other options that would enable it to receive service, such as a letter of credit or guaranty or prepayment. Southern Companies assert that time has demonstrated that their proposed standard is reasonable and consistent with commercial practices.

With respect to New Generators' request for clarification of what charges will be included in the calculation of the amount of a letter of credit, Southern Companies state that the amount will include administrative fees and the projected operation and maintenance charges, and will vary based upon the specifics of the interconnection.

As to New Generators' argument that Southern Companies should be adequately protected if they allow a generator to post security in advance of Southern Companies commencing any work or incurring any costs, Southern Companies state that the Commission rejected similar arguments in Virginia Electric and Power Company, 93 FERC & 61,307 (2000), finding that the pro forma tariff allows the transmission provider to require the customer "to provide and maintain in effect during the term of the Agreement, an unconditional and irrevocable letter of credit."

With respect to letters of guaranty from other than a parent company, Southern Companies explain that there is greater risk of sisters/subsidiaries being attacked and set aside as fraudulent conveyances because they would not receive enough direct economic benefit for guaranteeing the obligation to ensure that its guaranty would be enforceable. (Southern Companies also state that it is their experience and belief that standard commercial practice would require unaffiliated entities to have an S&P rating or Moody's rating of at least A, if not higher.)

Southern Companies argue that it is clearly standard commercial practice for a creditor to prescribe the form of guaranty so long as such guaranty is not manifestly unreasonable. Southern states that its form of guaranty is consistent with and well within the bounds of standard commercial practices. In any event, Southern references Section 11(f) of its Creditworthiness Criteria which provides that it will consider alternative forms of security proposed by the customer that are consistent with commercial practices.

⁵ Southern Companies also point to the recent change in credit ratings of Southern California Edison Company and Pacific Gas and Electric Company to demonstrate how fast credit ratings in the electric industry can deteriorate.

Discussion

We believe that Southern Companies have adequately justified their revised Section 11 as being consistent with, or superior to, the pro forma tariff.⁶ Although protestors argue for lower levels of credit quality within the BBB and Baa categories, we believe that Southern Companies' choice of the higher level within the same categories is reasonable in light of the options Southern Companies offers customers that fail to meet these standards. In this regard, we note that Southern Companies will still provide service to lower rated customers, although with additional assurance in the form of a letter of credit, letter of guaranty, prepayment or other form of security.

We believe that Southern Companies response concerning the composition of estimated interconnection charges for the letter of credit is acceptable when considered in conjunction with our finding that Southern Companies will be able to charge only those interconnection charges consistent with Commission policy. Further, the Commission finds that Southern Companies requirement that security be posted when an interconnection agreement is executed is in accordance with Section 11 of the pro forma tariff. We also believe that it is reasonable for Southern Companies to restrict letters of guaranty to parent companies as long as they are willing to consider alternative forms of security proposed by the customer that are consistent with commercial practices.

Interconnection Service

Southern Companies submitted for filing Attachment J, Procedures for Obtaining Interconnection Service. Southern Companies advise that their Interconnection Procedures (IPs) will apply under the Tariff to all new generating facilities requesting interconnection service and to material expansions of existing generating facilities. The IPs provide that interconnection service applications will be taken on a "first come, first serve" basis, and the date of submission of a completed application form will determine the applicant's priority in the queue. The application must also be accompanied by a \$25,000 fee and an executed Interconnection System Impact Study (ISIS) Agreement. After the application is complete, Southern Companies will perform an ISIS Study that will include analyses of limited load flows, plant stability, reactive capability, and various safety impacts, including whether existing transmission facilities are adequate to accommodate the requested interconnection service. The ISIS will include assumptions for the prior, active requests for interconnection service and transmission service that have priority over the interconnection request. Southern Companies advise that they will use due diligence to complete and provide the ISIS Report to the customer within 60 days from the completed application date. If the ISIS Study indicates the need for modifications or additions to

⁶The Commission's standard for analyzing changes to an open access transmission tariff is that the proposed change must be consistent with or superior to the pro forma tariff's non-rate terms and conditions. See Order No. 888, FERC Stats & Regs. At 31,770.

facilities, Southern will also perform an Interconnection Facilities Study (IFS) that will identify the recommended equipment and configuration, along with the estimated costs and time needed to complete construction of the interconnection facilities and to initiate service. An Interconnection Agreement (IA) will then be entered into with the customer who will be charged for the associated costs of the interconnection facilities, to the extent consistent with Commission policy.

New Generators raise numerous concerns over the scope of the ISIS and Southern Companies' implementation of their IPs including allegations that the IPs will, and have in the past, allowed Southern Companies to discriminate against them in favor of affiliated generating units and native load growth. Citing Wisconsin Public Power Inc. System v. Wisconsin Public Service Corp., 84 FERC & 61,120 (1998) (WPPI), New Generators contend that Southern Companies are not allowed to make transmission reservations for native load growth and include those reservations as "unknown future resources" in their base-case ISIS.⁷ New Generators further suggest that they should be allowed to use Southern Companies' transmission reservations for native load growth when New Generators intend to serve that native load. New Generators also request that Southern Companies be required to explain in detail what is included in the base case ISIS Study and the basis for the native load projections.

CP&L claims that language with respect to the scope of the ISIS is ambiguous and can be interpreted and applied to provide interconnection customers only "extension cord" service and not the right to the capacity of the transmission network at the point of interconnection. CP&L therefore requests that the Commission clarify that interconnection service includes the ongoing ability of the transmission network to accept the full output of the generator. CP&L contends that, without the right to inject power into the grid at the point of interconnection, CP&L would not learn until it requests transmission service that its generation is stranded and that it cannot deliver power anywhere on the grid.

In response to the protests, Southern Companies explain that intervenor concerns over the scope of the ISIS Study are misplaced. With respect to concerns over native load reservations, Southern Companies cite to SkyGen Energy LLC v. Southern Company Services, 92 FERC & 61,120 (2000) (SkyGen), where, according to Southern Companies, the Commission reviewed Southern Companies' native load priority reservations regarding an ISIS Study and found nothing wrong with them. Southern Companies also assert that reflecting the current status of reservations for transmission delivery service is critical so as to ensure, for example, that interconnection facilities are configured to have sufficient thermal capabilities.

With respect to New Generators using transmission reservations for Southern Companies' native load, Southern Companies cite to Consumers Energy Company, 93 FERC & 61,339 (2000) (Consumers), where, according to Southern Companies, the Commission disallowed the treatment of

⁷New Generators at 10 -11.

generators as if they were to be future reservations for native load, because no generator had requested such transmission delivery service.

Southern Companies commit to provide customers with the ISIS Study, along with all the assumptions, and further details regarding those studies, if so desired by the customer. Southern Companies also commit that the IPs along with the remainder of the Tariff will apply to Southern Companies.

Southern Companies also suggest that what CP&L wants is to provide interconnecting customers a priority right for transmission delivery service. Southern Companies cite Entergy Services, Inc., 91 FERC & 61,149 (2000), where, according to Southern Companies, the Commission clarified that: "there are no transmission delivery rights, beyond the receipt point, conveyed by an interconnection." Nevertheless, Southern Companies commit to perform a transmission delivery "screen" which would provide generators who have not requested transmission service with an "early warning" of transmission problems, with no guarantee of service availability.⁸

Discussion

Southern Companies' IPs are accepted for filing as modified herein. Except as discussed further below, we have determined that the procedures are consistent with or superior to the pro forma tariff and are reasonable for processing interconnection requests. We will not address protestor's concerns about possible implementation problems associated with the proposed procedures, as such concerns are beyond the scope of this proceeding. Any objections to the manner in which Southern Companies' choose to implement their IPs may be raised, as necessary, during future interconnection proceedings. We find that Southern Companies' explanations with regard to posting of pro forma interconnection agreements on their OASIS and providing customers with ISIS details are reasonable.

1. Interconnection Versus Transmission Service

The pro forma tariff generally envisions a process in which both interconnection and delivery components of a transmission service request are made at the same time.⁹ While interconnection by itself conveys no delivery service, consistent with CP&L's request, we clarify that, once secured, the interconnection component conveys an

⁸Southern Companies also note that their FERC Form No. 715 information and their OASIS transmission reservations are publicly available. With respect to analyses for transmission delivery service, Southern Companies suggest that interconnection customers could study their generators on their own in such fashion.

⁹Tennessee Power Company, 90 FERC & 61,238 at 61,761 (2000).

ongoing right to access the transmission provider's system at the receipt point, but interconnection by itself conveys no transmission delivery service beyond the receipt point.

2. Transmission Facilities and Upgrades

Section 5.2 of Southern Companies' IPs states that the interconnection customer will be charged for the construction cost of interconnection facilities and, in some cases, for other upgrades and modifications of the transmission system. Southern Companies' IPs also state that the interconnection customers will be charged for associated costs to the extent consistent with Commission policy.

New Generators, Protestors and Dynegy and Tenaska request that Southern Companies clarify that interconnection customers are not required to pay for transmission system upgrades as part of the interconnection request. New Generators also request that Southern Companies' IPs reflect that when an interconnection customer pays for a system upgrade which provides a system benefit, it should receive transmission credits in an equal amount.

Southern Companies respond that transmission service credits are transmission delivery issues that are outside the scope of the interconnection process. Southern Companies states that transmission system upgrades are referenced in Section 5.2 of the IPs only because they may be identified in the course of performing interconnection studies, in which case Southern Companies and the customer may agree to address such upgrades, including any resulting credits. Southern Companies assert that its IPs should incorporate the same concept as reflected in Section 27 of the pro forma tariff and reference only Commission policy rather than specific cost methodologies.

In Entergy, we directed Entergy to include in its compliance filing, a complete explanation of the crediting procedures it proposes for generators that do pay for optional system upgrades.¹⁰ In addition, we have found that the facilities necessary to physically and electrically interconnect the generating facility to the transmission system and the system upgrades that would not be necessary "but for" the interconnection must be paid for by the customer.¹¹ However, once transmission has been secured, the utility is limited to charging the higher of the expansion costs of the upgrades or an embedded cost rate with the expansion costs of the upgrades rolled in. Thus, it may be necessary for the utility to credit the interconnection customer for the costs of the upgrades once it begins taking transmission service. Consistent with Entergy and AEP, we will direct Southern Companies to provide

¹⁰91 FERC at 61,560.

¹¹E.g., American Electric Power Services, 91 FERC & 61,308 at 62,050-51 (2000) (AEP).

a complete explanation of its crediting procedures for generators that pay for such transmission system upgrades.

3. Agreed-To Revisions to Interconnection Procedures

Dynegy and Tenaska request clarification that, to the extent there is no town or street address for the proposed generating facility site (which may not exist), the interconnection customer should be able to designate the location of the facility in some other way or means. In their response, Southern Companies agree to revise Sections 1.2(b) and 1.2(c) to state that the town and address of the facility, and the description of the location of the proposed interconnection point, should be provided by the interconnection customer "to the extent reasonably possible." We will accept this modification to Sections 1.2(b) and 1.2(c).

Dynegy and Tenaska also request Southern Companies to specify that under Section 1.2(j), if "other information reasonably required" is not requested by Southern Companies prior to an interconnection customer's interconnection request, the interconnection customer will not lose its place in the queue for failure to provide such information. Southern Companies respond that they do not intend for interconnection customers to lose their place in the queue if they reasonably respond to the requests for information. They also agree to post any additional information they request on OASIS. Southern Companies further agree to amend Section 1.2(j) to allow the interconnection customer fifteen (15) days to respond to the request and agree to extend this period equal to the time it takes the interconnection customer to provide the requested information. We will also accept this modification to Section 1.2(j).

4. Rejected Change for Additional Studies

Under Sections 2.1 and 3.2 of the IPs, interconnection customers are required to pay for additional studies that are necessitated by higher-queued interconnection customers losing their priority or by changes in the configuration or operation of other transmission systems. The IPs do not indicate at what point a generator is no longer subject to additional studies. New Generators complain that there is no cost certainty under these provisions because of the ever-present possibility that an additional study may be required that could identify new or different facilities necessary to accommodate the interconnection. New Generators suggest that Southern Companies procedures include a clearly-defined point at which a generator knows it will no longer be subject to additional studies or the associated costs. Citing to Virginia Electric and Power Company, 93 FERC ¶61,307 (2000) (VEPCO), New Generators suggest that this point be the date of the execution of the Interconnection agreement or the filing of an unexecuted version with the Commission. In response, Southern Companies urge the Commission to deny New Generators suggestion, asserting that the Commission flatly rejected this request in Consumers.

We agree with New Generators that Southern Companies IP is not definitive as to when the generator will no longer be responsible for additional studies. Consistent with our findings in VEPCO, we will require Southern Companies to modify its IP to include the date of execution or the filing of an

unexecuted interconnection agreement as a cut-off point for generator cost responsibility for additional studies. We disagree with Southern Companies that our finding in Consumers Energy is controlling. In Consumers Energy, the Commission did not address whether interconnection customers would be responsible for additional studies after the interconnection agreement was executed. In VEPCO and here we make the determination that generators will not be responsible for additional study costs incurred after the execution or filing of an unexecuted interconnection agreement.

New Generators also ask the Commission to reconsider its decision in VEPCO to require interconnection customers to pay for study changes due to changes in the configuration or operation of other transmission systems. Southern Companies asserts that the rationale set forth in VEPCO is equally applicable to Southern Companies' system. We agree and consistent with VEPCO will require Southern Companies' interconnection customers to pay for studies necessitated by projects on other transmission systems, up to the cut-off point discussed above. Consistent with VEPCO, we will require Southern Companies to provide cost support for these charges at the time it files an interconnection agreement with the Commission.

5. Disclosure of Identities of Generators on OASIS

New Generators object to the posting of names of interconnection customers on OASIS under Section 1.5. They propose that names of generators not be posted on OASIS if the generator has not yet disclosed its project. New Generators claim that disclosure will place them at a competitive disadvantage. Southern Companies state that posting the identity of the generator at the time of interconnection request is consistent with their practice for transmission delivery service.

We will direct Southern Companies to revise Section 1.5 to ensure that the identities of interconnection customers are not disclosed until they execute an interconnection agreement. Interconnection service is not delivery service, and Southern Companies have acknowledged this distinction throughout their filing and pleadings. We have allowed the identity of generator to remain anonymous in AEP and Entergy, and we will do it here too.

Source and Sink Requirements

Southern Companies propose to add an Attachment L to their OATT that addresses Source and Sink Requirements for Point-to-Point Transmission Service. Attachment L establishes requirements for reserving and scheduling point-to-point transmission service over the Southern Companies' transmission system. Under the proposal, all transmission customers desiring point-to-point transmission service under the Southern Companies' tariff must submit OASIS reservations and transmission schedules that designate specific sources and sinks. Southern Companies state that these requirements are virtually identical (except for company name) to those approved by the Commission in Entergy Services, Inc., 91 FERC & 61,151 (2000), reh'g denied, 92 FERC & 61,108 (2000), appeal pending.

A number of protesters raise various issues concerning the need for source and sink information and whether it is unduly burdensome, adversely affects comparability, is discriminatory, etc. The Commission has addressed and rejected these same arguments in Entergy. For the same reasons discussed in Entergy, we believe that the source and sink requirements at issue here are consistent with or superior to the pro forma tariff and we will approve them.

Acceptance

Southern Companies' proposed amendments, as modified, are consistent with or superior to the pro forma tariff. Although Southern Companies requested waiver of the prior notice requirements to make its proposed amendments effective December 14, 2000, the date of filing, it has not shown good cause for waiving the 60 day prior notice requirement. We therefore accept Southern Companies' proposed amendments, as modified, without suspension and hearing, effective on February 13, 2001.

The Commission orders:

(A) The proposed amendments to the Southern Companies' Tariff, as modified, are accepted for filing, without suspension or hearing, to become effective on February 13, 2001, as discussed in the body of this order.

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

By the Commission. Commissioner Massey concurred with a separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,

Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc.

Docket No. ER01-668-000

(Issued February 12, 2001)

MASSEY, Commissioner, concurring:

I support this order because Southern's revisions to its open access tariff are consistent with our precedents on source and sink requirements regarding point-to-point service reservations. However, as I have stated in our Entergy Services orders, I am very concerned with a flaw in our open access tariff structure that gives a competitive advantage to load serving entities that is not available to others.¹ The Entergy rehearing order explains that load serving entities may combine point to point and network service to give them a degree of flexibility in arranging transactions that is not available with only point to point service and even contains an example of how this is done.² I would also note that the Commission staff's report on bulk power markets finds that this difference "places any NUG at a competitive disadvantage vis-a-vis the vertically integrated utilities."³

I once again call on my colleagues to explore ways of resolving this flaw in our tariff structure. We cannot ensure that power markets are robust and true if the Commission's tariff policies hand some market participants advantages that are denied to others. One solution is to place all market participants on a single tariff, such as the Capacity Reservation Tariff⁴ that the Commission proposed almost five years ago. With a CRT, all participants reserve transmission service on the same basis.

¹See concurrences at Entergy Services Inc, 91 FERC & 61,151 (2000) and 92 FERC & 61,108 (2000).

²Entergy Services Inc., 92 FERC & 61,108 at 61,397.

³Staff Investigation of Bulk Power Markets - Midwest Region, November 1, 2000 at 2-45.

⁴Capacity Reservation Open Access Transmission Tariffs, 75 FERC & 61,079 (1996).

In addition, I would hope that the RTO proposals will prove to be an even more promising venue for eliminating the inequities of dual tariff services. Innovative RTO tariff arrangements that place all market players under one set of rules would address the problem.

For these reasons, I concur with today's order.

William L. Massey