111FERC ¶ 61,423
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc. Docket Nos. ER03-1381-003
ER03-1381-004

ORDER DENYING REQUEST FOR REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued June 17, 2005)

1. This order denies Southern Company Services, Inc.'s (Southern) request for rehearing of the Commission's prior order on rehearing that addressed the reasonableness of our policy on the cost of network upgrades, and also accepts Southern's compliance filing. This order benefits customers by requiring that the interconnection customer receive transmission credits for payments it made for network upgrades, consistent with Commission policy.

Background

2. Southern, as agent for Georgia Power Company (Georgia Power), filed an unexecuted Interconnection Agreement (IA) between Georgia Power and Live Oaks, LLC (Live Oaks) that addressed cost responsibility for the facilities needed to interconnect Live Oaks' generating facility with Georgia Power's transmission system. Under the IA, Live Oaks would be responsible for all costs in connection with the construction, operation, and maintenance of the facilities. However, the Commission found that certain of the facilities at issue were "at or beyond" the point where the customer connects to the grid. The Commission stated that Commission policy

articulated in *Consumers Energy Company* and *Entergy Gulf States, Inc.*[1] required that the customer receive credits against its transmission rates to reflect its payment for these network facilities. Therefore, the Commission accepted the IA for filing, conditioned upon Georgia Power's refiling the IA consistent with Commission policy.[2]

3. The Commission also directed Georgia Power to revise the IA to provide that the transmission credits would include interest on the monies paid from the date of collection until the date the transmission service credit is reimbursed. In addition, the Commission found that the direct assignment of operating and maintenance (O&M) expenses for network upgrades was inappropriate and directed Georgia Power to limit assessment of the O&M costs to the interconnection facilities (which are directly assignable facilities on the generator's side of the point of interconnection with the grid). The Commission also rejected Georgia Power's argument that the cost allocation policy was inconsistent with the Energy Policy Act of 1992 and section 212 of the Federal Power Act (FPA), 16 U.S.C. § 824k (a) (2000). The Commission stated that section 212 only applies to interconnections ordered under section 210 and section 211 and did not apply to the facts presented here. Finally, the Commission rejected Georgia Power's attempt to assess transmission line outage costs, and directed Georgia Power to modify section 5.2 of the IA to be consistent with this finding.[3]

4. On September 10, 2004, the Commission addressed Southern's request for rehearing of the November Order.[4] In response to Southern's argument that the

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[1] *Consumers Energy Company*, 95 FERC ¶ 61,233, *reh'g denied*, 96 FERC ¶ 61,132 (2001) (*Consumers*); *Entergy Gulf States, Inc.*, 98 FERC ¶ 61,014, *reh'g denied*, 99 FERC ¶ 61,095 (2002), (*Entergy Gulf States*), *remanded*, *Entergy Services, Inc. v. FERC*, 391 F.3d 1240 (D.C. Cir. 2004) (*Court Remand Order*), *reh'g and reh'g en banc denied*, No. 02-1199 (D.C. Cir. February 11, 2005). In *Consumers*, the Commission rejected the direct assignment of improvements to integrated grid facilities (network upgrades), even if those facilities would not have been installed but for a particular request for service. In *Entergy Gulf States*, the Commission clarified that network facilities include all facilities "at or beyond" the point where the generator connects to the grid because these are facilities that provide system-wide benefits. *See also Entergy Services, Inc.*, 95 FERC ¶ 61,437, *reh'g denied*, 96 FERC ¶ 61,311 (2001), *aff'd*, *Entergy Services, Inc. v. FERC*, 319 F.3d 536 (D.C. Cir. 2003) (*Entergy*).

[2] *Southern Company Services, Inc.*, 105 FERC ¶ 61,221 (2003) (November Order).

[3] November Order at P 12-14.

[4] *Southern Company Services, Inc.*, 108 FERC ¶ 61,229 (2004) (September Order).

Commission's cost allocation policy improperly departed from longstanding Commission precedent, we stated that "[T]he Commission's policy regarding credits for network upgrades associated with the interconnection of a generation facility has been … that all network upgrades (*the cost of all facilities from the point where the generator connects to the grid*), … should be credited back to the customer that funded the upgrades once delivery service begins.[5] We stated that the idea that network upgrades consist of facilities "from the point where the generator connects to the grid" or alternatively, facilities "at or beyond" the point where the customer connects to the grid is inherent in the policy affirmed by the court in *Entergy*. Thus, we stated that the Commission properly applied in this proceeding the rule set out in *Consumers* with respect to who pays for which facilities.[6]

5. We also found that all of the arguments that Southern raised in its request for rehearing were fully addressed in Order No. 2003 and Order No. 2003-A.[7] We stated that those orders explained the flaws in Southern's arguments. Specifically, we noted that in Order No. 2003, the Commission discussed at length the appropriateness of its cost allocation policy. We also clarified that Southern could propose an incremental rate for the network upgrades at issue here, consistent with Order No. 2003-A,[8] if needed to protect its customers.

6. In addition, we disagreed with Southern's argument that the Commission's cost allocation policy would result in inefficient siting of new generation. We stated that since the interconnection customer must provide the up front funding for the facilities at issue, it has a strong incentive to make efficient siting decisions. We noted, moreover, that a number of factors that influence siting decisions are beyond the control of both the interconnection customer and the Commission, and most importantly, the approval and siting of new generating facilities is ultimately under the control of state authorities.[9]

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[5] *Consumers*, 95 FERC at 61,804 (emphasis added).

[6] September Order at P 15-16.

[7] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug.19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004) (Order No. 2003-B), *reh'g pending*.

[8] September Order at P 17-19.

[9] *Id.* at P 21.

7. We also rejected Southern's argument that the Commission's cost allocation policy violated section 722 of the Energy Policy Act of 1992, which amended section 212 of the FPA. We found that the section of the FPA on which Southern relied applied only to orders by which the Commission *compels* interconnection by a utility, and thus the section Southern cited was irrelevant to this proceeding, which involved no such order. We stated that we were acting under section 205, not section 211. Even if section 212 applied here the Commission policy would not violate section 212 because it promotes economic efficiency, is just and reasonable, and is needed to prevent transmission providers that have an incentive to discourage competitors from unduly discriminating against those competitors. We added that the legislative history of the Energy Policy Act of 1992 did not support a conclusion that section 212 was intended to require a particular type of transmission pricing.[10]

8. We also addressed Southern's contention that the Commission should reconsider its directive in the October Order that Georgia Power pay interest to the generator in connection with any required transmission credits. We stated that the interconnection customer is entitled to a refund for the costs of the network upgrades for which it paid, including a reasonable estimate of the carrying costs incurred in making the advance payments.[11]

9. Furthermore, we rejected Southern's argument that the November Order illegally discriminated against transmission providers and their customers who were not part of RTOs or ISOs. We stated that different treatment was fair because the two types of transmission providers -- independent and non-independent -- are not similarly situated. We explained that because RTOs and ISO are independent, and neither own nor have affiliates that own generating facilities, we had less concern that existing utility-owned generating facilities would be favored over new generating facilities or that the transmission provider would "gold plate" its system at the interconnection customer's expense.[12]

10. Southern also argued that the Commission inappropriately rejected the collection of line outage costs. We granted rehearing on this issue for the reasons discussed in Order No. 2003-A, and required Southern to specify the categories of line outage costs it is contractually authorized to recover so that the Commission could determine whether each item is properly recoverable. We stated that when Southern seeks to collect line outage

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[10] *Id.* at P 22.

[11] *Id.* at P 23.

[12] *Id.* at P 24.

costs under the IA, its bill must break out the costs into the specified categories ultimately approved by the Commission.[13]

11. Lastly, we accepted Southern's compliance filing, with one modification. Since we granted Southern's request for rehearing on line outage costs, we permitted Southern to make a compliance filing to restate the line outage cost language in section 5.2 of the IA. However, we directed Southern to specify the categories of line outage costs it is contractually authorized to recover so that the Commission can determine whether each item is properly recoverable. We stated that this compliance filing should be filed within 30 days of the date of this order.[14]

Southern's Request For Rehearing

12. On October 12, 2004, Southern filed a request for rehearing of the September Order. Southern argues that the Commission failed to provide adequate or consistent reasoning for the cost allocation policy set forth in the September Order, and that the "at or beyond" test will not provide system benefits. Southern also claims that the Commission's alleged reliance on Order Nos. 2003 and 2003-A to explain each of its decisions to grant or deny rehearing in the September Order is arbitrary and capricious and that the Commission has avoided meaningful explanation of its recent policy change. In addition, Southern claims that the Commission's clarification that transmission providers may propose an incremental rate for network upgrades is an illusory alternative.

13. Next, Southern maintains that the Commission wrongly concluded that the cost allocation policy is not subject to section 212 of the FPA. Southern also contends that the Commission's finding that the approval and siting of new generating facilities are beyond its and the interconnection customer's control is without merit, and that the Commission's "at or beyond" test will result in siting inefficiencies.

14. Southern also asserts that the Commission failed to provide sufficient reasoning or evidence to support its policy of requiring transmission providers to pay interest on credits for upgrades. In addition, Southern argues that the cost allocation policy unlawfully discriminates against the customers of transmission providers that are not in an RTO or ISO, and that the Commission's reasoning in the September order on this issue is nothing more than unsupported allegations that are not a legitimate justification for arbitrary discrimination.

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[13] *Id.* at P 26.

[14] *Id.* at P 29.

Discussion

15. We deny Southern's request for rehearing, as discussed below. Southern's arguments are essentially restatements of its prior arguments regarding the reasonableness of the Commission's cost allocation policy, and we addressed these arguments in the November Order and September Order.

16. First, Southern claims that the Commission failed to provide adequate or consistent reasoning for the cost allocation policy set forth in the September Order. Southern asserts that the Commission's conclusion in the September Order that it properly applied the rule set out in *Consumers* is inaccurate and inconsistent with the rationale of the November Order, which identified *Entergy Gulf States* as the origin of the "at or beyond" test. Southern also maintains that the "at or beyond" test will socialize the costs of facilities and will not provide system benefits.

17. We disagree with Southern that we improperly departed from our precedent. In the November Order we directed Georgia Power to revise the IA to be consistent with the Commission's policy, citing *Consumers* and *Entergy Gulf States*.[15] In the September Order, we stated that the idea that network upgrades consist of facilities "from the point where the generator connects to the grid" (citing *Consumers)* or alternatively, facilities "at or beyond" (citing *Entergy Gulf States*) the point where the customer connects to the grid is inherent in the policy affirmed by the court in *Entergy*. Thus, we stated that the Commission properly applied in this proceeding the rule set out in *Consumers* with respect to the appropriate designation of interconnection facilities.[16]

18. Moreover, in *Nevada Power Company* [17] we recently explained why the Commission's policy that network upgrades include all facilities "at" or beyond the point where the generator connects to the grid is reasonable. We explained that when the Commission first articulated the locational test for determining whether a facility is a network facility, we used the vague term "from" the point of interconnection instead of the more precise "at or beyond" the point of interconnection, but that our adoption of the clearer terminology was not a change in policy. We stated that the network begins *at* the point where the interconnection facilities connect to the transmission system, not somewhere *beyond* that point. We added that it would be irrational to treat a facility that is "from" the point of interconnection (*i.e.*, further *into* the network*)* as a network facility

[15] November Order at P 10.

[16] September Order at P 15-16.

[17] *Nevada Power Company*, 111 FERC ¶ 61,161 (2005) (*Nevada*) (addressing the *Court Remand Order; see supra* note 1).

but not to treat an upgrade that is "at" the point of interconnection, and thus squarely *on* the network.[18]

19. We also disagree with Southern that our cost allocation policy does not provide system benefits. We recently addressed similar concerns in *Entergy Services, Inc.*[19] The Commission stated in that case that the court in *Entergy* rejected the argument that our cost allocation policy imposes on all users of the grid costs that benefit only the new generator. We added that the court found reasonable the Commission's view that all customers benefit from a truly competitive market, which requires comparable access to transmission. Furthermore, we noted that in *Entergy*, the court found that system expansion is a "benefit" sufficient to support the Commission's pricing policy, which was reaffirmed in the *Court Remand Order*.[20]

20. Next, Southern claims that the Commission reliance on Order Nos. 2003 and 2003-A to explain each of its decisions in the September Order while conceding that the orders do not apply in this case is arbitrary and capricious. Southern also asserts that the reasoning the Commission uses from Order Nos. 2003 and 2003-A to justify the cost allocation policy is not supported by substantial evidence in the record. We deny Southern's request for rehearing. In the September Order we found that all of the arguments that Southern had raised in its request for rehearing were fully addressed in Order No. 2003 and 2003-A. While we recognized that Order No. 2003 did not apply to this case, we found that the arguments that Southern raised in this proceeding were raised by it and others in the rulemaking proceeding. Therefore, we concluded that we would apply the *reasoning* in Order No. 2003 to explain the flaws in Southern's arguments on rehearing.[21] Southern has not persuaded us to change our findings on these issues.

21. Southern again claims that the Commission wrongly concluded that our cost allocation policy under section 205 is not subject to section 212. Southern explains that the Commission based this assertion on two faulty premises: (1) that the Commission is not compelling interconnection and therefore not invoking the requirements of section 212 and; (2) that the cost allocation policy complies with section 212 because it promotes economic efficiency, is just and reasonable, and is needed to prevent undue discrimination against independent generators. In the November and September Orders we denied Southern's request for rehearing on this issue and discussed at length why we were acting under section 205, not section 211, and why even if section 212 applied here

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[18] *Nevada* at P 12-17.

[19] *Entergy Services, Inc.*, 111 FERC ¶ 61,181 (2005) (*Entergy Services, Inc.*).

[20] *Entergy Services, Inc.* at P 10-11.

[21] *See supra* note 8.

the Commission policy would not violate section 212.[22] Southern has not convinced us to change our findings on this issue, and we again deny Southern's request for rehearing.

22. Southern argues again that the Commission's policy of requiring providers to pay interest on credits for interconnection facilities and upgrades is arbitrary and capricious. In the September Order we addressed Southern's contention that the Commission should reconsider its directive that Georgia Power pay interest to the generator in connection with any required transmission credits. The Commission denied rehearing, stating that the interconnection customer is entitled to a refund for the costs of the network upgrades for which it paid, including a reasonable estimate of the carrying costs incurred in making the advance payments, citing to Order Nos. 2003 and 2003-A.[23] Southern has not convinced us to change our findings. Moreover, we note that in Order No. 2003-B the Commission continued to find that our crediting policy provides a reasonable balance between the objectives of promoting competition and infrastructure development, protecting the interests of interconnection customers, and protecting native load and other transmission customers.[24] For all these reasons, we deny Southern's request for rehearing.

23. Southern also claims that the Commission's clarification that transmission providers may propose an incremental rate for network upgrades is an illusory alternative. Southern asks the Commission to explain how an incremental rate calculation can be made in the context of interconnection even though: (1) there is no reasonable basis for projecting future delivery service from a generator when an interconnection agreement is executed and (2) the entities requesting interconnection service and transmission delivery service are different. In Order No. 2003-B, we addressed the same basic argument that Southern raises in this proceeding. We responded that with regard to the calculation of incremental rates, we were not prescribing generic rules at this time; rather we invited the transmission provider, in an actual interconnection agreement or transmission rate filing, to propose a calculation method that assigns appropriate cost responsibility to the interconnection customer and is consistent with Commission policy and precedent.[25] We respond likewise to Southern, and deny Southern's request for rehearing on this issue.

24. In addition, Southern contends that the Commission's alleged statement in the September Order that the siting of new generating facilities is beyond its and the interconnection customer's control is without merit because the Energy Policy Act

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[22] *See supra* notes 3 and 10.

[23] *See supra* note 11.

[24] Order No. 2003-B at P 33.

[25] *Id.* at P 57.

requires that the Commission's policies promote efficient siting. We already addressed Southern's concern in the September Order, and will deny Southern's request for rehearing. We reiterate that since the interconnection customer must provide the up front funding for network upgrades, it has a strong incentive to make efficient siting decisions. Thus, our policy does promote efficient siting. However, as we noted in the September Order, a number of factors that influence siting decisions are beyond the control of both the interconnection customer and the Commission, and most importantly, the approval and siting of new generating facilities is ultimately under the control of state authorities.[26]

25. Lastly, Southern repeats that the allegedly new cost allocation policy unlawfully discriminates against the customers of transmission providers that are not in an RTO or ISO. Southern challenges the Commission's response that different treatment is fair because the two types of transmission providers are not similarly situated. We have already addressed Southern's arguments at length in the September Order, where we rejected Southern's argument that the November Order illegally discriminated against transmission providers and their customers who were not part of an RTO or ISO.[27] Southern has not convinced us that our findings were incorrect, and we deny Southern's request for rehearing again on this issue.

Compliance Filing

26. On October 12, 2004, Southern, on behalf of Georgia Power, submitted a compliance filing in Docket No. ER03-1381-003, in accordance with the September Order.[28] Southern states that Section 5.2 has been revised to specify the categories of line outage costs Georgia Power seeks to recover under the agreement so that the Commission can determine whether each item is properly recoverable. Southern states that revised section 5.2 of the IA provides that the generator will reimburse Georgia Power for all costs and expenses incurred by Georgia Power that are caused by or reasonably related to scheduled transmission line outages associated with interconnecting Georgia Power's generating facility to the Georgia Power electric system. In addition, Southern specifies the categories of transmission line outage costs that it is contractually authorized to recover from Live Oaks in Appendix G of the IA, which are: (1) expenses associated with additional line losses; (2) refunds to transmission customers; and (3) redispatch costs.

[26] *See supra* note 9.

[27] *See supra* note 12.

[28] *See supra* notes 13 and 14.

27. Notice of Southern's compliance filing was published in the *Federal Register*, 69 Fed. Reg. 62,263 (2004), with comments, protests, and interventions on or before November 2, 2004. None were filed.

28. We find that the categories specified in Appendix G of the IA for transmission line outage costs are contractually recoverable. Therefore, we accept Southern's compliance filing submitted in Docket No. ER03-1381-003.

The Commission orders:

(A) Southern's request for rehearing is hereby denied.

(B) Southern's compliance filing is hereby accepted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.