

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket Nos. ER06-919-000 and
ER06-919-001

ORDER ACCEPTING FILING AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued December 21, 2006)

1. On May 1, 2006, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company (Georgia Power), Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Savannah Power), (collectively, Southern Companies) filed its 2005 True-Up Filing (2005 True-Up Filing) to update formula rates in accordance with the true-up procedures in Attachment N of Southern Companies' Open Access Transmission Tariff (OATT).¹ In this order, the Commission accepts the 2005 True-Up Filing, subject to potential additional refunds, and establishes hearing and settlement judge procedures.

Background

2. Southern Companies' formula rate was approved by the Commission in *Southern Company Services, Inc.*, 105 FERC ¶ 61,019 (2003) (Settlement Order).² The formula rate calculates Southern Companies' charges for services on its bulk transmission facilities (those above 44/46 kV) and its sub-transmission facilities (those at 44/46 kV).

3. As per the parties' settlement, the Settlement Order also prescribed procedures dictating that each year Southern Companies is to file (1) an Annual Informational Filing and

¹ A merger between Georgia Power and Savannah Power was approved in a letter order issued under delegated authority by the Director, Division of Tariffs and Market Development – West. *Georgia Power Company*, 114 FERC ¶ 62,329 (2006).

² Southern Companies' formula rate is codified in the Formula Rate Manual in Attachment M of Southern Companies' OATT, while Southern Companies' True-Up Procedures are described in Attachment N.

(2) a True-Up Filing.³ Southern Companies' annual informational filing is to be filed with the Commission on or before November 1st of each year and is to include Southern Companies' updated charges for transmission services provided under its OATT for the period of January 1 through December 31 of the next year (Rate Year) using projected data (Annual Informational Filing).⁴ Southern Companies' later True-Up Filing is intended to inform its customers and the Commission of charges calculated based on actual costs for the Rate Year.

4. In addition, as prescribed in the parties' settlement, Southern Companies' OATT provides that the filings do not constitute rate change filings under section 205 of the Federal Power Act. Rather, Southern Companies' OATT provides for specific dates and procedures for customers or Commission Trial Staff to challenge the Annual Informational and True-Up Filings. For example, section 2 of Attachment N of Southern Companies' OATT establishes an informal review period (*i.e.*, from May 1 through August 1) for resolving customer or Commission Trial Staff concerns regarding the True-Up Filing.⁵

Details of Southern Companies' 2005 True-Up Filing

5. Consistent with the terms of the Settlement Order, Southern Companies' OATT requires it to submit a True-Up Filing each year, to be filed on or before May 1 of the year immediately following the Rate Year. On May 1, 2006, Southern Companies filed its 2005 True-Up Filing. This filing sets forth Southern Companies' actual charges calculated in accordance with the formula rate for the 2005 calendar year. The True-Up Filing shows Southern Companies' calculation of charges for the Rate Year,⁶ "based on actual costs, loads, and other inputs for the Rate Year, in accordance with the [Attachment M Formula Rate] Manual." Southern Companies' True-Up Filing also calculates what refunds or surcharges are needed to correct any over or under collection of the actual charges to its long-term firm point-to-point, conditional long-term firm point-to point and its network transmission service

³ Attachment N of Southern Companies' OATT provides for so-called Formula Rate Data Input Updates and True-Up Procedures.

⁴ Southern Companies' Annual Informational Filing for the 2005 Rate Year was filed on November 1, 2004 in Docket No. ER05-126-000, and was accepted in an unpublished letter order issued under delegated authority by the Director, Division of Tariffs and Market Development – East on January 31, 2006.

⁵ The Commission also issued additional orders that clarified the level of detail that Southern Companies is to provide in its refund reports and required Southern Companies to file a Summary Report by August 31st of each year to inform the Commission of any changes to the billings under the formula rate that have been agreed to during the informal review process (Summary Report). *See Southern Company Services, Inc.*, 111 FERC ¶ 61,199, *order on reh'g*, 112 FERC ¶ 61,035 (2005).

⁶ As contrasted to the projected costs reported by Southern Companies in its Annual Informational Filing.

customers during the Rate Year, based on the differential between Southern Companies' actual recoverable costs and the charges to customers based on its projections of costs.⁷

6. On August 22, 2006, South Mississippi Electric Power Association, Alabama Electric Cooperative, Inc. and Southeastern Federal Power Customers (collectively, Customer Group) timely filed a Formal Challenge to the 2005 True-Up Filing.⁸

7. On September 22, 2006, Southern Companies filed its Summary Report in Docket No. ER06-919-001 that summarizes the changes under the formula rate that were agreed to during the course of the informal review process.⁹ On September 28, 2006, Southern Companies filed its answer to the Customer Group's Formal Challenge. On October 12, 2006, the Customer Group filed a reply to Southern Companies' answer. On October 26, 2006, Southern Companies filed a reply.

Customer Group's Formal Challenge

8. In its Formal Challenge, the Customer Group challenges the propriety of certain data inputs and certain discovery responses. The Customer Group claims, among other matters, that Southern Companies has improperly included hundreds of millions of dollars of prepaid pension balances in accounts which have an impact on rate base and the revenue requirement. The Customer Group also states that Southern Companies has refused to respond to a number of data requests on the pretext that the data request falls "outside the scope of the 2005 True-Up Filing" or that only "changes to accounting and ratemaking practices are appropriate."

9. Specifically, the Customer Group asserts that Southern Companies has improperly included prepaid pension assets in Account 165 (Prepayments) rather than Account 186 (Deferred Debits). The Customer Group states that, based on a ruling by the Commission's

⁷ Attachment N, section 2(b) of Southern Companies' OATT.

⁸ Attachment N, section 2(e) of Southern Companies' OATT provides that, absent an informal resolution, interested parties have until the end of the informal review period, which, in this instance, was extended until August 22, 2006 for the 2005 True-Up Filing, to make a Formal Challenge with the Commission on any unresolved issue that it has raised. Also, section 2(f) of Southern Companies' OATT provides that "unless accepted by the Commission for good cause shown, no reply, answer or other rebuttal by any party will be permitted" to Southern Companies' Answer to the Formal Challenge.

⁹ The Summary Report filed in Docket No. ER06-919-001 shows that the cumulative effect of the adjustments to the 2005 True-Up charges resulted in an increase in the bulk transmission rate from \$1.76284/kw-month to \$1.76378/kw-month and a decrease in the sub-transmission rate from \$1.27977/kw-month to \$1.27222/kw-month. Southern Companies states that the adjustments to customer billings at issue here are in addition to the refunds that were paid to the applicable customers on July 1, 2006.

Chief Accountant, the benefits associated with prepaid pension costs are long term in nature, and that Account 165 is not the preferred account to record such costs, because it is for current assets, and instead should be included in Account 186, which is a deferred credit account for all debits not elsewhere provided for.¹⁰ The Customer Group also states that Southern Companies' 2005 Form 10-K submitted to the Securities and Exchange Commission supports the use of Account 186 for prepaid pension costs. The Customer Group states that the prepaid pension assets in Southern Companies' 2005 Form 10-K are on its balance sheet under Deferred Charges and Other Assets, not Current Assets, which reinforces the fact that it is a long term and not a current asset. The Customer Group notes that the exclusion of prepaid pension costs from ratemaking is consistent with Commission precedent.¹¹ The Customer Group also states that, if Southern Companies properly recorded its prepaid pension costs in Account 186 and not Account 165, the 2005 True-Up Filing charges would be significantly reduced.

10. The Customer Group also claims that Southern Companies has failed to reply to several relevant data requests. The Customer Group states that Southern Companies has objected to several of its inquiries by explaining in an email that the "apparent implication that the costs may be improper, attempts to place the OATT Customers in the role of regulators, which is outside the scope of purpose of the OATT Informal Review Process." The Customer Group states that this is precisely the responsibility of the OATT customers during the review process, as pronounced by the Commission in the Settlement Order.¹² The Customer Group states that Southern Companies has declined to respond to questions in four general categories: storm damage expenses; incentive compensation expense; asset retirement obligations; and allocation of charges. The Customer Group asserts that all of these interrogatories are relevant to whether the data inputs in the 2005 True-Up Filing are correct.

¹⁰ The Customer Group has provided a copy of both the Florida Power and Light Company letter requesting guidance and the Chief Accountant's response concerning the proper accounting treatment for prepaid pension costs in Exhibit 2 of its Formal Challenge.

¹¹ Citing *New England Power Co.*, 61 FERC ¶ 61,331 at 62,214, n.45 (1992); *Southwestern Public Serv. Co.*, Opinion No. 337-A, 51 FERC ¶ 61,130 at 61,368-69 (1990).

¹² In this regard, the Settlement Order states that:

the Commission expects the parties to the settlement and the customers taking service under the rates to be vigilant in protecting their interests, and to take the lead in any informal and formal review procedures outlined in the settlement. It is not the intent of the Commission that its Trial Staff should have to commit substantial resources and time in place of the parties and the customers to review the Annual Informational Filings and True-Up Filings. [Settlement Order at P 25.]

Southern Companies' Answer

11. Southern Companies argues that the Customer Group has no valid basis for challenging the inclusion of the prepaid pension assets as a prepayment line item in the working capital component of rate base in the Southern Companies' OATT formula rate because such a challenge is forbidden by the OATT Attachment N procedures for reviewing and challenging the True-Up Filing, and the Customer Group's challenge is wrong on the merits for a number of reasons.

12. Specifically, Southern Companies states that it has consistently accounted for and included prepaid pension assets as a prepayment in Account 165 and the OATT formula rate has always included prepaid pension assets as one of its cost inputs. Southern Companies claims that its OATT processes and procedures for reviewing and challenging the 2005 True-Up Filing make clear that challenges to the Southern Companies' fundamental accounting policies and practices and its ratemaking practices must be predicated on a change in those practices, which has not occurred. Further, Southern Companies states that, in the event it is required to make such a change, the OATT formula rate must be modified to restore the intent of the rate as established at the time of the settlement. Southern Companies states that its inclusion of the prepaid pension assets in Account 165 is consistent with its understanding and application of well-established ratemaking and accounting principles.

13. In addition, Southern Companies asserts that the Customer Group's challenge is predicated entirely on a Commission guidance letter provided to another utility seeking guidance on Form No. 1 and is not directed to the Southern Companies' accounting practices. Southern Companies states that Commission precedent is clear that staff guidance letters of this nature have no precedential value for Commission ratemaking purposes.

14. Southern Companies states that the Customer Group's requests for data exceed the scope of inquiry permitted by its OATT process and procedures for reviewing and challenging the 2005 True-Up Filing. Southern Companies states that it has endeavored in good faith to respond to all of the Customer Group's requests. However, Southern Companies claims that the review procedures were designed to give customers a level of comfort that the formula rate was being implemented in accordance with the formula rate manual and not to facilitate a detailed audit of every accounting and business practice.

15. Southern Companies states that the Customer Group submitted 111 requests for information and data during the three and one-half month informal review period. Southern Companies claim that, under the formula rate procedures, requests for information during the informal review period are limited to questions relating to, in this instance, the 2005 True-Up Filing, regarding: (i) the actual data inputs; and/or (ii) changes to the fundamental predicates as they existed as of December 31, 2002. Southern Companies states that only twelve of the 111 requests remained unanswered at the time the Customer Group's Formal Challenge was filed at the Commission. Southern Companies states that these twelve requests sought data and information beyond the scope of the inquiry permitted by the procedures agreed upon in the parties' settlement.

Other Pleadings

16. On November 13, 2006, Customers Group and Southern Companies filed a joint motion requesting that the Commission withhold issuing an order in this proceeding until at least December 15, 2006, to give the parties an opportunity to reach settlement on an issue involving certain data requests made by the Customers Group during the Informal Review Period for the 2005 OATT True-Up Filing. On December 5, 2006, the Customers Group filed notice that it had reached agreement with Southern Companies on the data request issue and that the Commission no longer needed to decide this issue, but that the pre-paid pension issue remains unresolved and still requires Commission decision.

Discussion

17. As a preliminary matter, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Customer Group's reply and will, therefore, reject it.¹³

18. The Commission has three available options in responding to a Formal Challenge. Section 2(g) of Attachment N of Southern Companies' OATT provides that,

[a]ny order issued by the Commission in response to a Formal Challenge shall address the specific matters raised in the filings and shall either:
(i) decline to investigate some or all of the issues; (ii) summarily decide some or all of the issues on the merits; or (iii) set some or all the issues for an evidentiary hearing before an administrative law judge.

19. We will exercise option (iii) above and set the issues raised in the Customer Group's Formal Challenge for hearing, because our preliminary analysis indicates that the proposed 2005 True-Up Filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.¹⁴ Therefore, we will accept the 2005 True-Up Filing, subject to potential additional refunds, and set it for hearing and settlement judge procedures.

20. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are

¹³ We note that the procedures approved in the Settlement Order specifically provide for Southern Companies' to file answers to formal challenges and, accordingly, we will accept Southern Companies' answer to the Customer Group's Formal Challenge. *See supra* note 8.

¹⁴ As the parties have notified us that they have resolved the data request issue, this issue need not be addressed in the hearing procedures we are ordering here.

commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Southern Companies' 2005 True-Up Filing is hereby accepted for filing, subject to potential additional refunds and to the outcome of the hearing and settlement judge procedures established herein.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Southern Companies' 2005 True-Up Filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide

¹⁵ 18 C.F.R. § 385.603 (2006).

¹⁶ If the parties wish to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.