

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alabama Municipal Electric Authority

Docket No. EL06-93-000

v.

Alabama Power Company and Southern Company  
Services, Inc.

ORDER DENYING COMPLAINT

(Issued June 20, 2007)

1. On August 1, 2006, Alabama Municipal Electric Authority (AMEA) filed a complaint against Alabama Power Company (Alabama Power) and Southern Company Services, Inc.<sup>1</sup> (collectively, the Southern Companies) requesting a Commission determination that the rates and charges under the Southern Companies Open Access Transmission Tariff (OATT) are unjust, unreasonable and unduly discriminatory. AMEA further requests that the Commission determine the just and reasonable rates and charges. In this order, we will deny the complaint.

**I. AMEA's Complaint**

2. AMEA explains that it is a public corporation of Alabama created for the purpose of securing an adequate, dependable and economical power supply for its participating members. It explains that each of its eleven participating members owns and operates an electric distribution system and that AMEA sells power to each of them pursuant to long-term power sales contracts. AMEA adds that it owns or operates only one generating facility and purchases at wholesale the remaining power needed to supply its members' requirements. AMEA states that on January 1, 2006, it began purchasing its members' power and energy requirements, except for that provided by the Southeastern Power Administration (SEPA), AMEA's generator, and purchases of economy energy, from

---

<sup>1</sup> As agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Member Cities).

Alabama Power under a long-term, unbundled Power Supply Agreement (PSA).<sup>2</sup> AMEA further states that it owns no transmission facilities and relies upon the Alabama Power transmission system to deliver power to its participating members.<sup>3</sup>

3. AMEA states that it filed its complaint to raise the single most important transmission-service issue it faces: the rates and charges for network transmission service under Southern Companies' OATT do not meet the Commission's comparability standard.<sup>4</sup> It explains that Southern Companies' OATT requires AMEA to pay postage-stamp transmission rates based on Southern Companies' system-wide average costs. However, it complains, the transmission component of the bundled retail and wholesale rates of each of Southern Companies' transmission owners is, in contrast, based on each individual transmission owner's transmission costs alone.

4. AMEA argues that Southern Companies' system-wide pricing structure is unduly discriminatory because Southern Companies (and Alabama Power in particular) are not

---

<sup>2</sup> AMEA states that it is now receiving network service under Southern's OATT and that its designated resources are its generator and the long-term unbundled PSA with Alabama Power and its designated network loads include delivery points at all eleven of its member cities' electric systems.

<sup>3</sup> AMEA states that prior to January 1, 2006, AMEA and its member utilities purchased all of their electric power and energy (except for their allocation of power and energy from SEPA) from Alabama Power under bundled wholesale power contracts at rates based on Alabama Power's cost of service.

<sup>4</sup> AMEA explains that it has previously raised the issue of non-comparable transmission pricing under the system-wide, average-cost rates in Southern's OATT, and that the Commission provided that, if AMEA begins taking service under Southern's OATT in 2006 as expected and if the parties could not reach agreement on a rate, AMEA could employ the OATT's procedures and "file a Formal Challenge with the Commission concerning Southern's filing" and "may raise the issue of whether AMEA's transmission rates under the OATT should be developed based on Southern's system-wide average costs." AMEA Complaint at 10 (*citing Southern Companies Services, Inc.*, 105 FERC ¶ 61,019 (2003), *reh'g granted in part*, 108 FERC ¶ 61,295, at P 12 (2004)). The parties subsequently agreed that, in lieu of filing a Formal Challenge in an earlier informational filing proceeding, AMEA could raise the comparability of pricing issue in a separate proceeding under section 206 of the Federal Power Act. AMEA Complaint at 13-14. In accordance with that agreement, AMEA has filed the complaint at issue in this proceeding.

themselves subject to the same system-wide average pricing when serving their native-load customers. According to AMEA, Alabama Power and its native load customers continue to be responsible only for Alabama Power transmission costs, which have been generally lower than the average costs of Southern Companies. However, it asserts, AMEA and its members are forced under the OATT to pay the higher average transmission costs of the entire Southern Companies system. AMEA argues that this places it at a competitive disadvantage compared to Alabama Power.

5. AMEA asserts that this pricing structure violates the Commission's "golden rule" of comparability, which requires that a public utility must provide transmission service comparable to its use of its transmission system to serve its own customers – and at comparable prices.<sup>5</sup> In this regard, AMEA argues that the retail electricity consumers in AMEA's member cities pay higher transmission rates to Southern Companies than do the retail electricity consumers of Alabama Power, whose transmission costs have been generally lower than the average costs of Southern Companies.<sup>6</sup> AMEA maintains that being required to pay higher, system-wide, postage-stamp OATT rates places AMEA's

---

<sup>5</sup> *Citing American Electric Power Service Corp.*, 67 FERC ¶ 61,168 (1994); *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act: Policy Statement*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,005, at 31,139-43 (comparability of service applies to price as well as terms and conditions) 59 Fed. Reg. 55,031 at 55,035 (1994), *order on reconsideration*, 71 FERC ¶ 61,195 (1995) (Transmission Pricing Policy Statement); *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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (TAPS), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); and *Enron Power Mktg. Inc. v. FERC*, 296 F.3d 1148, 1152 (D.C. Cir. 2002).

<sup>6</sup> AMEA also argues that Alabama Power is subject to antitrust conditions under a nuclear plant license that are predicated on a finding that Alabama municipal electric systems are competitors of Alabama Power. *Citing Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2)*, 13 NRC 1027 (NRC Atomic Safety & Licensing App. Bd. 1981), *aff'd*, 692 F.2d 1362 (11th Cir. 1982).

member cities at an unjustified competitive disadvantage relative to their primary retail competitor, Alabama Power, and similarly places AMEA at an unjustified competitive disadvantage relative to Alabama Power, with which AMEA competes at wholesale. AMEA asserts that the relevant comparison is between the transmission costs embedded in the retail rates paid by bundled retail customers of AMEA's member cities and the transmission costs embedded in the retail rates paid by the bundled retail customers of Alabama Power. AMEA concludes that Southern Companies should be prohibited from charging network customers of each operating company on a pooled transmission basis until Southern Companies charges itself on a comparable basis. AMEA adds that Southern Companies bears the burden of proof in this proceeding to demonstrate that its OATT rates are just and reasonable and not unduly discriminatory or preferential.<sup>7</sup>

6. AMEA further argues that the Commission's prior orders finding that Southern Companies should employ a single-system, postage-stamp OATT rate are inapplicable to this proceeding.<sup>8</sup> It maintains that the Commission in those orders rejected Southern Companies' imposition of pancaked transmission rates for off-system sales undertaken jointly by Southern Companies, but that the issue in this complaint concerns network service to serve loads on Alabama Power's transmission system. According to AMEA, "[n]othing in the Commission's orders required that Southern Companies use a single-system, average-cost, postage-stamp OATT rate for that purpose."<sup>9</sup> Moreover, AMEA asserts, none of those decisions dealt with the issue of comparability of service. AMEA also claims that in the *Transmission Pricing Policy Statement* the Commission cited these orders as examples of precedent that was no longer binding.

7. AMEA asserts that the simplest and most direct remedy is to have Southern Companies adopt zonal, license-plate rates under their OATT, with a discrete zone for Alabama Power. Alternatively, it asserts that Southern Companies could: (1) unbundle their service to their retail and wholesale native-load customers and take OATT service and pay OATT rates in providing service to all native-load customers; (2) form an

---

<sup>7</sup> AMEA states that, because Southern bears the burden of proof in this proceeding, AMEA has not prepared a formal cost-of-service study, but did prepare a preliminary allocated cost-of-service analysis. Complaint at 23-26.

<sup>8</sup> *Citing Southern Companies Services, Inc.*, 55 FERC ¶ 61,173, *reh'g denied*, 57 FERC ¶ 61,093 (1991), *aff'd sub nom. Alabama Power Co. v. FERC*, 993 F.2d 1557 (D.C. Cir. 1993).

<sup>9</sup> Complaint at 21.

independent transmission company and unbundle their retail and wholesale native-load service; or (3) sell ownership rights in a portion of Alabama Power's transmission facilities to AMEA (and others that wish to participate).

## **II. Notice, Interventions, and Answers**

8. Notice of the complaint was published in the *Federal Register*, 71 Fed. Reg. 45,812 (2006), with the answer and interventions due on or before August 21, 2006. Timely motions to intervene were filed by: The Electric Power Supply Association; Shell Trading Gas and Power Company; and the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia (Dalton Utilities). Georgia Transmission Corporation (GTC) filed a motion to intervene with comments.<sup>10</sup> The Alabama Public Service Commission filed a notice of intervention.

9. On August 21, 2006, Southern Companies filed its answer to AMEA's complaint. On September 5, 2006, AMEA filed a motion for leave to answer and answer. On September 20, 2006 Southern Companies filed a motion for leave to respond and response to AMEA's answer.

10. On October 4, 2006, the Member Cities filed a motion to intervene out of time. On October 5, 2006, Southern Companies filed an answer to the motion for leave to respond, motion for leave to answer, and answer of the AMEA Member Cities. On October 5, 2006, AMEA filed a motion for leave to respond, motion for leave to answer, and answer.

11. On October 23, 2006, Southern Companies filed an Answer/Response and on November 7, 2006 AMEA filed an answer in opposition to Southern Companies' motion for leave to respond to AMEA.

### **Southern Companies' Answer**

12. Southern Companies opposes AMEA's complaint asserting that this proceeding involves yet another attempt by AMEA to circumvent the postage stamp, single-system rate structure long utilized under Southern Companies' OATT and replace it with a new zonal rate structure that would lower AMEA's OATT charges while raising those charges of other OATT customers. In the alternative, Southern Companies asserts, AMEA requests that the Commission adopt the extreme measures of actively regulating the

---

<sup>10</sup> In its comments in support of Southern Companies' rate structure, GTC provided historical information regarding the OATT and the current rate structure.

transmission component of bundled retail rates, mandating the formation of a Transco, or forcing some sort of co-ownership arrangement with respect to Alabama Power's transmission facilities. Southern Companies asserts that the Commission should deny the complaint and reaffirm its longstanding precedent regarding the use of single-system transmission pricing on the Southern Companies system.

13. Southern Companies explains that it adopted postage stamp, single-system pricing pursuant to a Commission order issued in 1991,<sup>11</sup> and continued to use such postage stamp pricing rate structure in its Order No. 888 OATT.<sup>12</sup> Southern Companies explains that in Order No. 888 the Commission required that a holding company system must provide transmission service at a single, system-wide price.<sup>13</sup> Southern Companies adds that the Commission has repeatedly accepted for filing Southern Companies' informational and true-up filings that update the actual OATT charges. Accordingly, Southern Companies asserts that its use of postage stamp, single-system pricing is just, reasonable and not unduly discriminatory and that it has satisfied its burden of proof in this proceeding.<sup>14</sup>

14. Southern Companies asserts that AMEA uses much more than Alabama Power's transmission facilities. It maintains that both the PSA under which AMEA receives power and the power it procures from other parties are supplied from resources located across, and even outside of, Southern Companies' network, and are not confined to

---

<sup>11</sup> Citing *Southern Companies Services, Inc.*, 55 FERC ¶ 61,173, at 61,557 (1991) (“We . . . direct Southern Companies to revise the transmission component of the formula rates to reflect system-wide costs”).

<sup>12</sup> Citing *Southern Companies Services, Inc.*, 105 FERC ¶ 61,019, at P 24 (2003), and *Southern Companies Services, Inc.*, 88 FERC ¶ 61,244 (1999).

<sup>13</sup> Citing Order No. 888 FERC Stats & Regs. ¶ 31,036, at 31,728.

<sup>14</sup> Southern notes that as a direct result of the *Transmission Pricing Policy Statement*, and contrary to AMEA's implication, Southern developed and filed a distance-sensitive zonal transmission tariff. It further explains that the Commission deemed the filing to be deficient. Southern also explains that the *Transmission Pricing Policy Statement* was entertaining proposals for distance-sensitive zonal rates, not the zonal, license plate rates that AMEA seeks in this proceeding.

Alabama Power's service territory.<sup>15</sup> Southern Companies points out that from time-to-time AMEA purchases energy from parties other than Alabama Power to serve its members' load requirements and must use transmission facilities of Southern Companies other than those of Alabama Power. Thus, according to Southern Companies, a transmission rate based on system-wide costs is appropriate for AMEA's transmission service.

15. Southern Companies asserts that the Commission has previously found that the standard is not for AMEA to be comparable with Southern Companies' retail customers for the provision of retail service, but instead the standard is for AMEA to be treated comparably with Southern Companies when Southern Companies makes wholesale sales.<sup>16</sup> Southern Companies argues that when it takes wholesale transmission service under the OATT it takes that service at a price comparable to AMEA and therefore AMEA's competition and comparability arguments should be rejected.

16. Southern Companies also argues that AMEA's retail competition arguments, even if they are relevant, are overstated and give a false impression regarding AMEA's ability to compete with Alabama Power for retail load. It asserts that the Nuclear Regulatory Commission licensing conditions referenced by AMEA contemplate a competitive retail scenario that no longer exists. Further, Southern Companies states that the Alabama Code only allows a municipality to compete for a new large industrial customer if that load is to be located outside of municipal limits but within the municipality's assigned service territory. Further, Southern Companies asserts that even if AMEA was granted its wish and were to bear an OATT rate solely predicated upon Alabama Power's transmission costs, it is by no means clear that such costs would actually be reflected in AMEA's municipalities' bundled retail rates.

17. Southern Companies further distinguishes the cases AMEA cites in support of its argument that the Commission supports using zonal, license-plate rates to achieve comparability of service. Southern Companies emphasizes that those cases were unique and/or approved a zonal rate structure for a very limited time period. Southern

---

<sup>15</sup> Southern notes that the power purchased by AMEA includes losses calculated pursuant to the "governing capacity (or other applicable) loss factor . . . as established in Southern Companies Open Access Transmission Tariff." *Citing* PSA Appendix A, section A1. Thus, Southern asserts, the parties specifically contemplated that the power being provided under the PSA was from Southern's entire system and, accordingly, that such power would be transmitted pursuant to Southern's OATT.

<sup>16</sup> *Citing Cleco Power LLC*, 103 FERC ¶ 61,272, at P 26-29 (2003).

Companies asserts that AMEA has cited no applicable precedent that could be considered relevant to imposing zonal rates on an existing, long-established holding company system that currently charges system-wide rates.

18. Finally, Southern Companies asserts that while AMEA might reap some benefit from receiving OATT service at Alabama Power zonal rates, other OATT customers would see an increase in their charges. It adds that AMEA's other alternative recommendations are patently unreasonable. Southern Companies asserts that AMEA's proposal that Alabama Power provide service to its retail customers through the OATT would result in a fire-storm of protest from State commissions, as well as legal challenges to the attempt to regulate bundled retail transmission. As to AMEA's other two recommendations (form a transco or force Alabama Power to enter into some sort of joint ownership arrangement with AMEA), Southern Companies asserts that they would mandate a particular corporate form, which is beyond the scope of the Commission's authority.

### **Subsequent Pleadings**

19. The parties subsequently filed a number of responsive pleadings that repeat much of what they initially presented to the Commission, with a few exceptions described in more detail below.

### **AMEA Answer**

20. AMEA responds to Southern Companies arguing that Southern Companies has failed to meet its burden of demonstrating that its rates and charges to AMEA under its OATT are just and reasonable and not unduly discriminatory or preferential. AMEA argues that the Commission has never required Southern Companies to charge system-wide, postage stamp rates to its network transmission customers. It maintains that the Commission order approving such rates predated Order No. 888 and was in an entirely different circumstance where Southern Companies together make off-system sales utilizing the multiple systems of their operating companies and the Commission sought to avoid rate pancaking. It claims that the Commission order has no bearing upon transmission rates to network service customers such as AMEA and cannot be said to have addressed the comparability requirement of Order No. 888.

21. AMEA also argues that the Commission's reference to "single price" in Order No. 888 does not mean system-wide average cost or postage stamp rate. Rather, AMEA argues, Southern Companies has provided no justification why the zonal rate structure advocated by AMEA would be anything other than a "single price." It claims that it seeks to take transmission service at a single price – the cost of transmission borne by Alabama Power in the Alabama Power zone.

22. AMEA asserts that Southern Companies' accusations serve as nothing more than an attempt to cloud the Commission's view of the true issue in this case – the non-comparable treatment of AMEA under Southern Companies' OATT.

23. AMEA argues that its limited use of more than just Alabama Power's transmission facilities does not justify Southern Companies' non-comparable charges for network service. In this regard, AMEA asserts that Southern Companies fails to understand and address the comparability issue. According to AMEA, the relevant inquiry is not whether AMEA is treated the same as other wholesale users, but whether it is treated the same as the transmission provider, in this case, Alabama Power. Moreover, it asserts, it is irrelevant where the generating resources are that Alabama Power uses to supply energy to AMEA under the PSA; Alabama Power alone is selling capacity and energy to AMEA, and it delivers that capacity and energy to AMEA at a defined point of receipt on the Alabama Power transmission system, not elsewhere on Southern Companies' system. AMEA also asserts that the fact that AMEA sometimes purchases energy from suppliers outside Southern Companies' control area does not support Southern Companies' argument that AMEA must pay a system-wide OATT rate for network service. It states that if Alabama Power purchases such energy from the exact same suppliers outside the Southern Companies' control area for the purpose of meeting the energy requirements of its bundled wholesale and retail native-load customers, Alabama Power would not have to pay Southern Companies' system-wide OATT transmission rate to get the power delivered across Southern Companies' transmission system.<sup>17</sup>

24. AMEA responds also that Alabama Power does compete with AMEA at wholesale and with AMEA's member cities at retail. It maintains that Alabama law allows for limited retail competition for large new industrial loads, as Southern Companies concedes. AMEA argues that municipalities and their retail customers and Alabama Power's retail customers compare the retail rates of AMEA's member cities with the retail rates of Alabama Power, for home or business location reasons, and where a city may have to decide whether to renew a retail franchise or whether to sell a municipal utility to Alabama Power or another entity. Further, AMEA asserts that Southern Companies' claim that a change to rates based on Alabama Power's transmission costs would not necessarily be reflected in AMEA's municipalities' bundled retail rates is a red herring. It states that the Commission has an independent statutory obligation to ensure that Southern Companies' transmission rates are just and reasonable and not unduly discriminatory or preferential.

---

<sup>17</sup> AMEA asserts that Southern Companies' reference to the loss factor contained in the PSA is also irrelevant for the same reasons.

25. AMEA also distinguishes the cases cited by Southern Companies and argues that, contrary to Southern Companies' assertions, the Commission has never held that AMEA's wholesale competition concerns are unfounded. AMEA further argues that this proceeding is unique and that the Commission, as it has done in the past, may utilize license plate zonal rates to achieve just and reasonable rates. AMEA next rejects what it describes as Southern Companies' apparent assumption that the comparability requirement is optional if its enforcement results in winners and losers. AMEA asserts that Commission precedent requires that AMEA receive transmission service on terms and conditions that are comparable to the transmission provider's own uses of its transmission facilities and at rates that are comparable to those the transmission provider charges itself for such uses. Finally, AMEA argues that Southern Companies fails to show why AMEA's alternative remedies for achieving comparability of transmission rates should be ruled out, and argues that the Commission should set the question of the appropriate remedy for hearing or reserve it for later decision in this proceeding.

#### **Southern Companies' Answer**

26. Southern Companies primarily takes issue with what it terms AMEA's misrepresentation that AMEA provides service to retail native load customers. It maintains that the nature of AMEA's business is as a wholesale power marketer and that AMEA is a separate and distinct entity from the municipalities to whom it sells wholesale power. Moreover, it emphasizes that AMEA is prohibited under Alabama law from serving retail customers and is only authorized to compete for, and sell power at wholesale to, independent municipal entities that purchase power in the wholesale market. Thus, it asserts, AMEA is no different from any other wholesale power marketer and it should continue to take service under the OATT at the same system-wide rate as all other wholesale suppliers.

27. Southern Companies responds to several other arguments in AMEA's answer. It argues that AMEA incorrectly asserts that the Commission's principles of comparability require wholesale electricity sellers to pay the same transmission rate as retail transmission customers. Southern Companies states that comparability principles are fulfilled so long as a transmission provider pays the same rate for transmission service when it engages in wholesale sales as non-affiliates pay when they engage in wholesale sales.

28. Southern Companies asserts that retail competition is not relevant in this case because AMEA does not compete with Alabama Power for retail customers. Thus, it argues, AMEA has no standing to assert a retail competition argument because those municipal customers are separate and distinct entities from AMEA and do not themselves take transmission service under the OATT.

29. Southern Companies asserts that, contrary to AMEA's assertions, AMEA procures wholesale power through off-system purchases and will likely continue to do so in the future. It also argues that AMEA mischaracterizes a Commission order, where the Commission found a transmission rate based upon system-wide costs appropriate because generating resources were located across the system. Finally, Southern Companies state that AMEA misrepresents the provisions of the Agreement for Transmission and Other Complementary Services (TCS Agreement) and that that agreement does not allow AMEA to avoid the Commission's requirement to take transmission service under the OATT.

### **AMEA's Answer**

30. As an initial point, AMEA concedes that it does not directly compete at retail with Alabama Power. AMEA adds, however, that its statement that "Alabama Power and AMEA each use network service to serve native load" is correct. AMEA further asserts that Southern Companies bears the burden of proof that the system-wide average cost transmission rate for network service meets the Commission's comparability standard and thus is just and reasonable and not unduly discriminatory.

31. AMEA also takes issue with Southern Companies' assertion that AMEA lacks standing to argue that the retail electricity consumers in AMEA's member cities pay higher transmission rates to Southern Companies than do Alabama Power's retail consumers. It asserts that its legal standing is not at issue because Southern Companies bears the burden of proof on the comparability issue in this proceeding. It further asserts that as a wholesale competitor of Alabama Power, AMEA has a direct stake in the comparability of transmission service and rates. In any event, it asserts, AMEA is acting on behalf of its member cities and their retail customers – AMEA's native load – in seeking transmission service meeting the Commission's comparability requirements.

32. AMEA opposes Southern Companies' argument that the only comparability issue is "whether the transmission service AMEA receives under the OATT is comparable to the service that Alabama Power receives when it serves wholesale customers." To the contrary, AMEA maintains that the "Commission's 'golden rule' of comparability requires more – that a public utility must provide transmission service comparable to its use of its transmission system to serve its own native-load customers – both wholesale and retail – and at comparable prices."<sup>18</sup> With respect to grandfathered wholesale customers, AMEA asserts that the Commission has made an exception to the unbundling requirement for existing wholesale requirements contracts, but those grandfathered

---

<sup>18</sup> Answer at 6.

contracts do not create an exception to the comparability requirement for OATT service. Thus, according to AMEA, a transmission provider must provide OATT service that is comparable to its use of its transmission system to serve its bundled wholesale native-load customers.

33. AMEA also asserts that Southern Companies has provided no case cites for its assertion that the Commission has a policy of requiring a system-wide average transmission price for a multiple-company, integrated holding company system. Finally, with respect to the TCS Agreement, AMEA states that its only point is that transmission service under that agreement might provide an alternative means of providing comparable transmission service to AMEA.

### **III. Discussion**

#### **Procedural Matters**

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.14 (2006), the timely, unopposed motions to intervene and the notice of intervention serve to make the entities that filed them parties to this proceeding. We will grant AMEA Member Cities' motion to intervene out of time given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay.

35. 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 will accept the answers filed by Southern Companies and AMEA because they have provided information that assisted us in our decision-making process.

#### **Commission Determination**

36. AMEA's complaint, as AMEA itself recognizes, hinges on one important question – the scope of the Commission's comparability standard.<sup>19</sup> AMEA contends that the comparability standard requires that Southern Companies must provide transmission service to AMEA at rates and terms comparable to those that Alabama Power provides to its *bundled* (wholesale and retail) customers. Southern Companies counters that

---

<sup>19</sup> AMEA argues that the Commission's comparability standard requires that a public utility must provide transmission service comparable to its use of its transmission system to serve its own customers.

comparability is more limited and requires simply that Southern Companies must provide transmission service to AMEA at rates and terms comparable to those that Southern Companies provides to itself or other wholesale customers for *unbundled* (wholesale and retail) transmission service. We agree with Southern Companies and, accordingly, deny AMEA's complaint.

37. In Order No. 888, the Commission concluded that functional unbundling of wholesale power sales services was necessary to implement non-discriminatory open access wholesale transmission services, *i.e.*, it required public utilities to separate the transmission component of wholesale sales from the energy component of wholesale sales. It also found that it had jurisdiction over unbundled retail transmission service where states elect to allow retail choice of power suppliers. The Commission explicitly chose not to require unbundling of existing long-term firm wholesale agreements (grandfathered agreements) and not to assert jurisdiction over the transmission component of bundled retail sales.<sup>20</sup> Thus, a transmission provider must take transmission service under its own OATT only for unbundled wholesale sales and purchases of electric energy and for unbundled retail sales of electric energy. It does not have to take transmission service under the OATT for power purchased on behalf of its bundled retail customers because such transmission remains subject to state authority as part of the bundled retail sales services. Comparability, accordingly, only encompasses a comparison of the transmission components of unbundled wholesale and unbundled retail rates. Because, in Order No. 888, the Commission did not require the unbundling of existing bundled wholesale sales or assert jurisdiction over the transmission component of bundled retail sales, comparability was never extended to require a comparison of unbundled transmission service with the transmission components of bundled grandfathered wholesale sales and bundled retail sales, as AMEA would have it. Thus, as Southern Companies correctly recognizes, comparability, as set forth in Order No. 888 and followed in Order No. 890, requires only that AMEA receive transmission service that is comparable to the transmission service that Southern Companies receives when it makes unbundled wholesale sales or purchases or unbundled retail sales of electric energy.

38. Moreover, recognizing that comparability is more limited than AMEA would wish, its argument that Southern Companies' system-wide, postage-stamp rate methodology is no longer just and reasonable becomes unavailing. AMEA's argument rests on its claim that Southern Companies' system-wide, postage stamp rates cannot be just and reasonable because comparability requires that AMEA receive the same rate for

---

<sup>20</sup> Order No. 888, FERC Stats & Regs. ¶ 31,036 at 31,664; *TAPS*, 225 F.3d at 694.

its unbundled wholesale transmission service as Alabama Power provides for its bundled retail sales. Because we find AMEA's interpretation of comparability to be wrong, AMEA's argument built on that claim is also wrong. Southern Companies' system-wide, postage stamp rates are, as relevant here, not unduly discriminatory. AMEA will pay the same transmission rate as any unbundled transmission customer on the Southern Companies' system, including Southern Companies' itself.

39. Further, AMEA's argument would have us lower Southern Companies' wholesale transmission rate to match the transmission component of Alabama Power's bundled retail rate. However, this option would effectively require the Commission to use state-set rates as the Commission-jurisdictional rate, and would turn a long-standing Congressionally-established and judicially-sanctioned regulatory scheme on its head.<sup>21</sup> Moreover, in the context of multi-state holding companies (as is the case here), where the Commission has determined that a system-wide wholesale transmission rate for members of the holding company is necessary to achieve a just and reasonable rate for use of transmission across the holding company,<sup>22</sup> lowering the wholesale transmission rate for only one of the holding company's transmission provider utilities would mean that that utility either under-recovers its transmission costs or that that utility's costs would be shifted to customers served by other transmission provider utilities of the holding company. Neither result is permissible or acceptable.

---

<sup>21</sup> *E.g.*, *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1372 (D.C. Cir. 2004) (“states are prevented from taking regulatory authority in derogation of federal regulatory objectives”); *Barton Village Inc.*, 100 FERC ¶ 61,244, at P12 (2002) (“Under the Federal Power Act ... the Commission has exclusive jurisdiction over [] wholesale power sales rates ... [t]hus, we have no legal obligation to review, much less rely on, the findings of the [state]”), *aff'd sub nom. on other grounds, Barton Village Inc. v. FERC*, No. 02-4693 (2d Cir. June 17, 2004) (unpublished); *Progress Energy*, 97 FERC ¶ 61,141, at 61,628 (2001) (“in light of this Commission's exclusive jurisdiction under the [FPA] over the rates, terms and conditions of sales for resale of electric energy in interstate commerce...”); *Louisiana Public Service Commission v. Entergy Services, Inc.*, 76 FERC ¶ 61,168, at 61,955 (1996) (“a ratemaking methodology proposed at the retail level ... does not govern the Commission's determination of the appropriate ratemaking methodologies to be used in developing wholesale rates”) (citations omitted), *reh'g denied*, 80 FERC 61,282 (1997), *rev'd on other grounds*, 184 F.3d 892 (1999)).

<sup>22</sup> Order No. 888, FERC Stats & Regs. ¶ 31,036 at 31,728.

40. If all transmission, including the transmission component of bundled retail sales, were subject to the Commission's comparability requirement and the full scope of the Commission's jurisdiction, the Commission might be able to redress AMEA's complaint. However, under the current regulatory construct and division of statutory authorities, AMEA has not shown that comparability has been violated or that existing transmission rates are unjust, unreasonable, unduly discriminatory or preferential.

The Commission orders:

AMEA's complaint is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.