

123 FERC ¶ 61,030
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 No. OA07-38-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued April 14, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company, (collectively, Southern Companies) submitted their compliance filing as required by Order No. 890.² In this order, we will accept Southern Companies' filing, as modified, as in compliance with Order No. 890, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission

¹ 16 U.S.C. § 824e (2000 & Supp. V. 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007). In addition to the compliance filing in this proceeding, Southern Companies have made separate compliance filings under section 206 in Docket No. OA07-92-000 adopting a methodology to assess available transfer capability, in Docket No. OA08-37-000 with respect to their local and regional transmission planning processes and in Docket No. OA08-79-000 to comply with directives of Order No. 890-A. Those filings will be addressed in future orders.

providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

II. Compliance Filing

4. In their compliance filing, Southern Companies provide revised tariff sheets adopting the modifications required by Order No. 890. The compliance filing also provides a report of various implementation matters regarding Order No. 890 that do not require actual revisions to the OATT. The filing discusses Southern Companies' proposed approach to, among other things: unreserved use penalties; late study and an unreserved use penalty revenue distribution mechanism; imbalance penalty revenue distribution; transmission reassignment; transfer and resale provisions; clustering; processing of pre-confirmed requests; study metrics; creditworthiness; development of Open Access Same-Time Information System (OASIS) functionality for temporary and indefinite termination of designated network resources; verification of firm transmission; system firm sales and the revised *pro forma* OATT's definition of non-firm sales; rollover rights; and simultaneous submission windows. Southern Companies request an effective date of July 13, 2007 for their proposed tariff revisions.

III. Notice of Filing and Responsive Pleadings

5. Notice of Southern Companies' compliance filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. See *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

August 3, 2007. Alabama Municipal Electric Authority (AMEA) filed a timely motion to intervene. On August 6, 2007, Alabama Electric Cooperative, Inc. (AEC) filed a motion to intervene out of time. On September 10, 2007, Georgia Transmission Corporation (GTC) filed a motion to intervene out of time and protest. On September 25, 2007, Southern Companies filed a motion for leave to answer, an answer to GTC's motion for leave to intervene out of time and an answer to GTC's protest.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), AMEA's timely, unopposed motion to intervene serves to make it a party to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Southern Companies' answer because it has provided information that assisted us in our decision-making process.

8. Southern Companies challenge GTC's untimely motion to intervene and protest. They argue that GTC had sufficient notice of Southern Companies' filing (specifically the creditworthiness provisions protested by GTC) in light of the notice provided as to the compliance filing and Southern Companies' July 30, 2007 Order No. 890-related filing under FPA section 205 in Docket No. ER07-1219. Southern Companies further argue that the untimely motion to intervene imposes additional burdens and requires duplicative efforts by Southern Companies and the Commission to respond. Moreover, Southern Companies argue that these requirements are particularly onerous given the pressing deadlines for Southern Companies' Order No. 890 implementation efforts as well as other pending Commission matters. Southern Companies ask the Commission to reject GTC's motion to intervene out of time.

9. Despite the opposition of Southern Companies, we find that GTC has demonstrated that it has an interest in this proceeding and that its participation will not delay the proceeding or prejudice the rights of any other party. While Southern Companies assert that there is an additional burden to respond to the untimely motion and protest, we note that GTC raises the same concerns filed in response to Southern Companies' July 30, 2007 filing in Docket No. ER07-1219. Southern Companies have already answered GTC's concerns in that proceeding; in fact, their answer here is nearly identical to their response in Docket No. ER07-1219. Accordingly, for good cause

shown, we will grant the opposed, late-filed motion to intervene of GTC.⁴ We will also grant AEC's unopposed,⁵ late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Southern Companies' Compliance Filing

10. As discussed below, we will accept Southern Companies' proposed tariff sheets, as modified, to be effective July 13, 2007. We also direct Southern Companies to file, within 30 days of the date of this order, a further compliance filing, as discussed below.⁶

1. Unreserved Use Penalties

a. Order No. 890

11. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.⁷

⁴ 18 C.F.R. § 385.214(d) (2007).

⁵ Southern Companies do not challenge AEC's untimely motion to intervene. AEC Motion to Intervene at 3, n.2

⁶ As part of their compliance filing, Southern Companies raise a number of non-tariff interpretations, that is, "various implementation activities that they felt ought to be brought to the Commission's attention so that if Southern Companies' interpretation of Order No. 890 on a relevant matter should differ from that of the Commission, the Commission can readily inform Southern Companies so that they can take appropriate action." Compliance Filing at 23. We do not address the requested clarifications because this compliance proceeding is focused on ensuring the revised non-rate terms and conditions of the *pro forma* OATT are reflected in Southern Companies' OATT. If Southern Companies wishes to obtain formal guidance from the Commission on these questions, to the extent they have not already been addressed in Order No. 890-A, Southern Companies should file a request for declaratory order. Southern Companies should not interpret our decision not to provide the requested clarifications in this order as agreement with Southern Companies as to any of the proposed interpretations.

⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 843, 848.

b. Compliance Filing

12. Southern Companies propose a penalty of 200 percent for unreserved use of firm and non-firm point-to-point service. They agree with the Commission that “transmission customers must face an appropriate incentive to reserve the appropriate amount of service” and state that the 200 percent penalty provides a better incentive than their existing 125 percent penalty.⁸

c. Commission Determination

13. In Order No. 890, the Commission stated that unreserved use penalties up to twice the relevant firm point-to-point rate are just and reasonable.⁹ Therefore, we accept Southern Companies’ proposed 200 percent unreserved use penalty for firm point-to-point service.

14. However, we find that Southern Companies’ language regarding the imposition of a 200 percent penalty for unreserved use of non-firm point-to-point service is unclear and may be inconsistent with Order No. 890. The Commission stated in Order No. 890 that the transmission customer must face a penalty in excess of the firm point-to-point transmission service charge it avoids through unreserved use of transmission service, or it will have no incentive to reserve the appropriate amount of service.¹⁰ Section 14.5 of Southern Companies’ OATT could be read to allow Southern Companies to base the unreserved use penalty for non-firm point-to-point service on the non-firm point-to-point rate. Such a reading is inconsistent with the Commission’s finding that the unreserved use penalty for non-firm point-to-point service must exceed the firm point-to-point transmission service charge.¹¹

15. Further, with regard to network service customers, Southern Companies propose in sections 28.6 and 30.4 that the unreserved use penalty shall be 200 percent of the

⁸ Compliance Filing at 4. Southern Companies argue that adoption of the 200 percent penalty is appropriate as part of their section 206 compliance filing. If this understanding is incorrect, they seek waiver of any requirement that might otherwise apply so as to allow the 200 percent penalty to be effective as of July 13, 2007. *Id.* at 4-5.

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 848.

¹⁰ *Id.*

¹¹ See *Puget Sound Energy, Inc.*, 121 FERC ¶ 61,230, at P 12-13 (2007).

applicable firm point-to-point service rate. Although Southern Companies use the correct penalty service rate, section 13.4 of the *pro forma* OATT provides that a customer using unreserved service shall be deemed to have executed a service agreement to govern that service.¹² This means that all unreserved uses of the transmission provider's system are to be considered uses of firm point-to-point transmission service, even if the customer is taking network service or non-firm point-to-point service for the reserved portion of its service. Accordingly, the proposed modifications to include penalty language in sections 28.6 and 30.4 of Southern Companies' OATT are unnecessary.

16. We direct Southern Companies to file, within 30 days of the date of this order, a further compliance filing removing these modifications to sections 28.6 and 30.4 and modifying section 13.4 to clarify that the unreserved use penalty is based on the firm point-to-point rate and that penalties will be assessed based on the specific period of unreserved use.

2. Late Study and Unreserved Use Penalty Revenue Distribution Mechanism

a. Order No. 890

17. In Order No. 890, the Commission required transmission providers to make annual compliance filings and to propose in those filings a mechanism through which they would identify non-offending transmission customers and a method by which they would distribute the unreserved use penalties revenue they receive to the identified transmission customers. The Commission also directed transmission providers to indicate in their compliance filings how they would distribute late study penalties to unaffiliated transmission customers. In addition, the Commission required transmission providers to make annual filings that provide information regarding the penalty revenue that they have received and distributed.¹³

b. Compliance Filing

18. Southern Companies state that they believe Order No. 890 does not require transmission providers to submit their mechanisms for distributing these penalty revenues until they file their first annual compliance filing for those penalties (due March 15,

¹² See *Arizona Pub. Serv. Co.*, 121 FERC ¶ 61,246, at P 62-63 (2007).

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 861.

2008). If this understanding is incorrect, Southern Companies seek waiver of this requirement.

c. Commission Determination

19. We acknowledge that the discussion of the process for distributing operational penalties in Order No. 890 is somewhat unclear. However, in Order No. 890-A, the Commission clarified that “each transmission provider . . . must submit a one-time compliance filing under FPA section 206 proposing the transmission provider’s methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties.”¹⁴ The Commission stated that the one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties. The Commission also found that transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if it is altered on Commission review. Finally, the Commission clarified that it requires “all operational penalty revenues to be distributed, with no exception. In the case of unreserved use penalties, we require penalty revenues to be distributed to non-offending customers and, in the case of late study penalties, we require penalty revenues to be distributed to all non-affiliates of the transmission provider.”¹⁵

20. In addition, under Order No. 890, transmission providers are required to make annual filings providing a summary of penalty revenue credits by transmission customer, total penalty revenues collected from affiliates, total penalty revenues collected from non-affiliates, a description of the costs incurred as a result of the offending behavior, and a summary of the portion of the unreserved penalty revenue kept by the transmission provider.¹⁶ The Commission clarified in Order No. 890-A that the annual compliance report must be submitted by the deadline for submitting the FERC Form-1, as established by the Commission’s Office of Enforcement each year.¹⁷ We expect Southern Companies to file their mechanisms for distributing unreserved use penalty revenues and late study penalty revenues in accordance with these clarifications.

¹⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

¹⁵ *Id.* P 475.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 864.

¹⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

3. Imbalance Penalty Revenue Distribution

a. Order No. 890

21. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.¹⁸

b. Compliance Filing

22. Southern Companies provide Generator Imbalance Service to their transmission customers under proposed Schedule 10 of their OATT.¹⁹ Southern Companies contend that, as stated in their request for rehearing of Order No. 890, in many instances, the generator responsible for a generator imbalance is not the transmission customer under the OATT. Accordingly, they ask the Commission to clarify that interconnection customers may take service under their proposed Schedule 10. Southern Companies note that their existing interconnection agreements, including those filed after the adoption of Order No. 2003, require that interconnection customers demonstrate that they have appropriate arrangements for their respective generators' imbalances. They also note that, currently, interconnection customers have the option to satisfy this requirement by taking service under Southern Companies' Generator Balancing Service Tariff. Southern Companies state that, should an interconnection customer want to satisfy its generator balancing requirement by taking service under proposed Schedule 10, Southern Companies intend to allow it to take service under the revised OATT's proposed Schedule 10 and then they would file such a form of service agreement with the Commission.

23. Further, Southern Companies state that they believe Order No. 890 does not require transmission providers to submit their mechanisms for distributing revenues for these different types of penalties until they file their first annual compliance filing for

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

¹⁹ Schedule 9 of the *pro forma* OATT is found at Schedule 10 in Southern Companies' OATT. See Compliance Filing at 5.

those penalties (due March 15, 2008). If this understanding is incorrect, Southern Companies seek waiver of this requirement.

c. Commission Determination

24. In Order No. 890-A, the Commission granted Southern Companies' request for rehearing regarding Generator Imbalance Service. The Commission agreed with Southern Companies that, in certain circumstances, "it may be appropriate for the transmission provider to allow a generator located within its control area to execute a service agreement for generator imbalance service, even if the generator is not otherwise a transmission customer."²⁰ Thus, the Commission revised Schedule 9 of the *pro forma* OATT to require the transmission provider to offer generator imbalance service to any generator in its control area, subject to certain limitations. In addition, in their Order No. 890-related filing under section 205 in Docket No. ER07-1219, Southern Companies proposed to add a form of service agreement for Generator Imbalance Service, and the Commission accepted this proposal.²¹

25. However, Southern Companies have not responded to the Commission's directive in Order No. 890 to provide their mechanism for distributing revenues from these different types of penalties.²² We direct Southern Companies to file, within 30 days of the date of this order, a further compliance filing that proposes a mechanism to credit revenues above the transmission provider's incremental costs to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

4. Transmission Reassignment, Transfer and Resale Provisions

a. Order No. 890

26. In Order No. 890, the Commission required that all sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date on which the reassignment commences. The Commission determined that assignees of transmission capacity must execute a service agreement prior to the date on which the reassigned service commences. The transmission

²⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 288.

²¹ *Southern Co. Servs., Inc.*, 120 FERC ¶ 61,288, at P 17 (2007).

²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727.

provider's OATT would govern the reassigned service, with the assignee paying the transmission provider for service at the negotiated rate and the transmission provider billing or crediting the reseller with any difference between the negotiated rate and the reseller's original rate. Further, the Commission determined that all the non-rate terms and conditions that otherwise would apply to the transmission provider's sale of transmission capacity would continue to apply in the case of a reassignment. The Commission also revised section 23 of the *pro forma* OATT to address reassignments of transmission capacity and added a *pro forma* service agreement for reassignments in a new Attachment A-1.²³

b. Compliance Filing

27. Southern Companies note several ambiguities and complications with the revised provisions of section 23 (Sale or Assignment of Transmission Service) and new Form A-1 (Form of Service Agreement for the Resale, Reassignment or Transfer of Long-Term Firm Point-to-Point Transmission Service) of the *pro forma* OATT.

28. First, Southern Companies argue that the Order No. 890 preamble and revised section 23.1 of the *pro forma* OATT require that the assignee execute a service agreement with the transmission provider prior to the date on which the reassigned service commences, but that this only applies to resales, reassignments and transfers that are done on a long-term basis. Therefore, Southern Companies argue that we should allow existing umbrella service agreements for short-term point-to-point service and non-firm point-to-point service to govern short-term transmission capacity resales, reassignments, and transfers. Southern Companies maintain that requiring them to enter into separate agreements prior to each short-term resale, reassignment and transfer "would effectively kill the currently vibrant resale market."²⁴ They contend that "the administrative burden of having to negotiate (including appropriate creditworthiness reviews/obtaining of securities) and execute such short-term arrangements would likely make them impractical, which would be inconsistent with the Commission's stated goal of facilitating such transactions."²⁵

29. Second, Southern Companies state that they intend to provide to the reseller any transmission credits that it might be entitled to for a reassignment, resale, or transfer once

²³ *Id.* P 815-16, 819, section 23.1, and Att. A-1.

²⁴ Compliance Filing at 8.

²⁵ *Id.*

Southern Companies receive payment from the assignee, unless the reseller has been released from its obligations under section 23.2 of the *pro forma* OATT.²⁶ Southern Companies argue that this is reasonable because, under section 23.2, the reseller remains liable for the amount of transmission service owed under the service agreement, and because it insulates the transmission provider's customers against the risk of loss if the assignee does not pay for the service.

c. Commission Determination

30. We reject Southern Companies' proposal to use their existing umbrella service agreements for short-term point-to-point service and non-firm point-to-point service to make short-term transmission capacity resales, reassignments, and transfers. In Order No. 890-A, the Commission clarified that "[i]nclusion of the words 'Long-Term Firm' in both the title of the form of service agreement and the attached specifications in the new Attachment A-1 to the *pro forma* OATT adopted in Order No. 890 may have added to the confusion by potentially implying that use of the service agreement is limited to long-term firm point-to-point transactions instead of also applying to short-term firm point-to-point and non-firm point-to-point reassignments, as intended by the Commission."²⁷ The Commission revised section 23.1 and Attachment A-1 accordingly. Therefore, we reject Southern Companies' proposed Attachment A-1 and direct Southern Companies to file a revised Attachment A-1 for transmission capacity resales, reassignments, and transfers as part of their Order No. 890-A compliance filing in Docket No. OA08-79-000.

31. We disagree that requiring Southern Companies to enter into a separate agreement prior to each short-term resale, reassignment, and transfer would "effectively kill the currently vibrant resale market."²⁸ In Order No. 890-A, the Commission explained that it "would not be appropriate to relieve assignees of the obligation to execute a service agreement with the transmission provider since such agreements establish the necessary contractual relationship between the assignee and the transmission provider. . . . [S]ales of reassigned capacity now take place under the transmission provider's OATT and, thus,

²⁶ Section 23.2 of the *pro forma* OATT states: "The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Transmission Provider and the Reseller through an amendment to the Service Agreement." Order No. 890, FERC Stats. & Regs. ¶ 31,241 at App. C, Original Sheet No. 90.

²⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 424.

²⁸ Compliance Filing at 8.

there must be a contractual relationship between these parties.”²⁹ However, the Commission explained that it would be sufficient for an assignee to execute a service agreement governing its reassignments of capacity generally and to complete a particular assignment using OASIS. The Commission further stated that not all of the terms and conditions of a particular assignment must be stated in the service agreement. The transmission provider and assignee may use OASIS to provide information regarding the reseller, quantity, and price associated with a particular reassignment of service, which would then become part of the binding agreement between the transmission provider and assignee governing the assignment.³⁰

32. We will, however, accept Southern Companies’ proposal to provide to the reseller transmission credits to which it is entitled for a reassignment, resale, or transfer once Southern Companies receive payment from the assignee, unless the reseller has been released from its obligations under section 23.2 of the *pro forma* OATT. We find Southern Companies’ proposal to be reasonable because under section 23.2 of the *pro forma* OATT, the reseller remains liable for the performance of all obligations under the service agreement, except as specifically agreed to by the transmission provider and the reseller through an amendment to the service agreement.

5. Clustering

a. Order No. 890

33. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers’ obligations when they have joined a cluster.³¹

²⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 423.

³⁰ *Id.*

³¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

b. Compliance Filing

34. Southern Companies propose to cluster studies under new sections 19.5 and 32.5 of their OATT. They state that their proposal “combines the general two-step OATT transmission study process (of having a System Impact Study . . . followed by a separate Facilities Study . . .) into a single cluster study that identifies both the system impacts and the needed transmission upgrades.”³² Southern Companies argue that combining the study process in this way should facilitate the performance of a cluster study that will prove much more involved than the standard System Impact Study or Facilities Study. They propose to allow the transmission provider 120 days to perform a cluster study.

35. Southern Companies state that revised sections 19.5 and 32.5 will add identical cluster study provisions to Part II and Part III of the OATT. They state that the revised tariff provisions would allocate the costs of a cluster study on an equal basis among all participating eligible customers. They state that the cost responsibility for any upgrades identified in the clustering responsibility would be allocated to participating eligible customers on the basis of the MW-years of each customer’s service request.

36. While Southern Companies’ proposal does not preclude a transmission customer from opting out of the clustering study, they state the proposal “seeks to create significant disincentives for a transmission customer, who would have already agreed to participate in the cluster study, to be able to subsequently opt out of the process” by providing that a customer that opts out (1) shall have its service request deemed withdrawn and (2) remains liable for its *pro rata* share of the transmission provider’s costs in performing the cluster study.³³ Moreover, Southern Companies propose that the transmission provider will evaluate the impact of the customer’s opting out and allow for additional time, if necessary, for the transmission provider to finalize the study.

c. Commission Determination

37. We reject without prejudice Southern Companies’ clustering study proposal in sections 19.5 and 32.5 as beyond the scope of this compliance filing, as discussed below. Order No. 890 provides transmission providers the opportunity to submit FPA section 205 filings proposing non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are consistent with or superior to the *pro forma*

³² Compliance Filing at 9.

³³ *Id.*

OATT.³⁴ Southern Companies did not submit these changes in a filing under section 205 of the FPA nor did they explain in the instant proceeding why their proposed non-conforming tariff provisions are consistent with or superior to the *pro forma* OATT. If Southern Companies wish to revise these provisions, they must file the proposed revisions in a separate FPA section 205 filing.

38. We reject Southern Companies' proposal to combine the System Impact Study and Facilities Study into one study when clustering multiple transmission service requests.³⁵ The *pro forma* OATT provides for a separate System Impact Study and Facilities Study with separate procedures.³⁶ Southern Companies do not adequately support combining the System Impact Study and the Facilities Study into one study. Furthermore, the proposal creates variations in Southern Companies' posting study metrics, which are not explained. In addition, we reject Southern Companies' proposal to extend the required completion date of the cluster study to 120 days before being subject to late study penalties, as inconsistent with the requirements of Order No. 890. Order No. 890 allows transmission providers 60 days to complete a System Impact Study and 60 days to complete a Facilities Study.³⁷ Therefore, when clustering studies for transmission service requests, Southern Companies must abide by the requirements of Order No. 890 and complete a separate System Impact Study and Facilities Study for each cluster. Furthermore, Southern Companies state that cluster study costs will be allocated on an "equal" basis, but the proposed tariff provisions also state that a customer opting out of the study remains liable for its *pro rata* share of study costs. Southern Companies do not explain whether, and if so how, the cost distribution changes from equal to *pro rata* when a customer drops out of a cluster study. Therefore, we direct Southern Companies to make a compliance filing, within 30 days of the date of this order, reflecting the removal of these changes to bring their OATT in compliance with the Order No. 890 *pro forma* OATT.

³⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

³⁵ We reject Southern Companies proposed definition of Cluster Study in section 1.5 as well.

³⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT at §§ 19.3 and 19.4.

³⁷ *Id.*

6. Creditworthiness**a. Order No. 890**

39. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.³⁸

b. Compliance Filing

40. Southern Companies state that, as required by item (1) of the Commission's *pro forma* Attachment L, section II of Southern Companies' Attachment Q provides a summary of the procedure for determining the level of secured and unsecured credit.³⁹ Southern Companies propose lowering the lowest Credit Rating with respect to which they will extend any unsecured credit from BBB+ to BBB-. Under their proposal, Southern Companies state that they will not be required to independently assess quantitative or qualitative factors for any entity with a Credit Rating because such Credit Rating already includes a professional, expert assessment of quantitative and qualitative factors. For entities without a Credit Rating (Unrated), Southern Companies' credit evaluation process will include calculating a Credit Score (as defined in Southern Companies' Attachment Q). In addition, Southern Companies believe that, since market participants benefit from transmission providers' extending unsecured credit, such

³⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61. Attachment L must also contain the following elements: (1) a summary of the procedure for determining the level of secured and unsecured credit; (2) a list of the acceptable types of collateral/security; (3) a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (4) a procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements; (5) a reasonable opportunity to contest determinations of credit levels or collateral requirements; and (6) a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.

³⁹ While creditworthiness provisions are found at Attachment L in the *pro forma* OATT, they are found at Attachment Q in Southern Companies' OATT. *See* Compliance Filing at 3.

participants should share in the associated risks. Accordingly, Southern Companies are incorporating in Attachment Q a mechanism for sharing losses incurred in extending unsecured credit consistent with Commission policy. Specifically, Southern Companies' Credit Policy permits losses to be recovered from Southern Companies' OATT Customers on a *pro rata* basis. Southern Companies also propose requiring each Unrated Applicant and Customer to pay a non-refundable annual fee of \$750.00 for each entity whose credit is being evaluated/re-evaluated.

41. Furthermore, Southern Companies state that, as required by item (2) of the Commission's *pro forma* Attachment L, section VI of Southern Companies' Attachment Q provides that acceptable forms of Eligible Collateral include Irrevocable Letters of Credit and Parent Guaranties in the forms posted on Southern Companies' OASIS and may be revised periodically, subject to additional requirements in the Credit Policy.

42. In addition, Southern Companies state that, as required by item (3) of the Commission's *pro forma* Attachment L, section IV.B of Southern Companies' Attachment Q provides that Southern Companies will perform ongoing credit evaluations on at least an annual basis and will inform each Applicant and Customer who has submitted a current Application of the results thereof and will notify each Applicant and Customer of any change in their Credit Score and Unsecured Credit Line and any need for additional Eligible Collateral. Additionally, section IV.D. of Southern Companies' Attachment Q provides that Eligible Collateral requirements and/or Total Credit Limits may be changed by posting such changes on OASIS and/or by notifying Applicants and Customers directly, and section VII of Southern Companies' Attachment Q provides a cure period for any failure by Applicant or Customer to comply with such Eligible Collateral requirements.

43. Southern Companies further state that, as required by item (4) of the Commission's *pro forma* Attachment L, section IV.B of Southern Companies' Attachment Q provides that Applicants or Customers desiring an explanation from Southern Companies regarding any change in their Credit Score, Unsecured Credit Line and/or the need for additional Eligible Collateral must request from Southern Companies such an explanation in writing within five business days of receipt of Southern Companies' notice. Southern Companies will respond within fifteen business days of receipt of the Applicant's or Customer's request for an explanation.

44. Additionally, Southern Companies state that, as required by item (5) of the Commission's *pro forma* Attachment L, section IV.C of Southern Companies' Attachment Q provides that an Applicant or Customer who wishes to dispute Southern Companies' credit or collateral decision will have the opportunity to do so. An Applicant or Customer must notify Southern Companies in writing within five business days of receipt of Southern Companies' original decision that it wishes to dispute Southern

Companies' decision. Within five business days of so notifying Southern Companies, the Applicant or Customer must submit to Southern Companies a written explanation of why it is disputing Southern Companies' decision and what it believes the result should be. Southern Companies will respond to the dispute within fifteen business days of receipt of the Applicant's or Customer's explanation.

45. Southern Companies also state that, as required by item (6) of the Commission's *pro forma* Attachment L, section VII of Southern Companies' Attachment Q provides a cure period for any failure to comply with the Credit Policy, including the requirement to post Eligible Collateral or otherwise cure a Total Credit Limit violation. In particular, any failure by any Applicant or Customer to comply with the Credit Policy shall be considered a default if any such failure is not cured within five business days after its initial occurrence, whereupon Southern Companies may immediately suspend, limit or terminate any and all Service(s) to Applicant or Customer under the OATT and/or any or all related agreement(s).

c. GTC Protest

46. GTC states that Southern Companies have not provided a reasonable justification for changing their existing tariff provisions regarding the recovery of monetary losses. GTC notes that it protested these changes when filed as part of the Southern Companies' July 31, 2007 section 205 filing in Docket No. ER07-1219.

d. Southern Companies Answer

47. Southern Companies' filed an answer similar to their answer to protests in Docket No. ER07-1219. Southern Companies argue that GTC's protest includes, and is based on, incomplete information and analysis, and therefore should be rejected. Southern Companies argue that GTC's request for Southern Companies to consider certain credit clearing mechanisms (including netting and other suggestions) is inconsistent with the *Creditworthiness Policy Statement*,⁴⁰ which found several of those strategies to be inadequate. In addition, Southern Companies defend their reliance on Order No. 890 as a basis for changes to their creditworthiness provisions. Southern Companies assert that GTC's arguments that responsible OATT customers derive no benefits from defaults or from Southern Companies permitting defaults to occur misses the point. Further,

⁴⁰ Southern Companies Answer at 5-6 (*citing Policy Statement on Credit-Related Issues for Electric OATT Transmission Providers, Independent System Operators and Regional Transmission Organizations*, 109 FERC ¶ 61,186, at P 27 n.26 (2004) (*Creditworthiness Policy Statement*)).

Southern Companies argue that if OATT customers do not pay their proportionate share of losses, such losses will be borne by Southern Companies' retail customers. Southern Companies also dispute protesters' implication that Southern Companies are permitting or causing any default or that, under the loss recovery mechanism, Southern Companies would not have an incentive to prevent losses and diligently pursue defaulting parties.

e. **Commission Determination**

48. As noted above, Southern Companies previously filed several aspects of their creditworthiness proposal in a section 205 filing in Docket No. ER07-1219. In the Commission's September 27, 2007 Order in Docket No. ER07-1219,⁴¹ the Commission acted on several aspects of Southern Companies' creditworthiness proposal. Specifically, the Commission: (1) rejected the provisions of the loss recovery mechanism;⁴² (2) accepted Southern Companies' proposal to lower the lowest credit rating with respect to which they will extend any unsecured credit from BBB+ to BBB-;⁴³ and (3) conditionally accepted Southern Companies' proposed annual credit evaluation fee.⁴⁴ For the reasons articulated in the September 27, 2007 Order, the Commission will accept, as modified, Southern Companies' proposed tariff sheets.⁴⁵

⁴¹ *Southern Co. Servs., Inc.*, 120 FERC ¶ 61,288 (2007) (September 27, 2007 Order).

⁴² *Id.* P 42-43.

⁴³ *Id.* P 41.

⁴⁴ *Id.*

⁴⁵ As noted above, the Commission rejected specific portions of Southern Companies' creditworthiness proposal. While the Commission agreed with Southern Companies that it is just and reasonable for applicants and customers to bear the cost of the annual credit evaluation, the Commission found that, where an applicant or customer provides or maintains an Irrevocable Letter of Credit and agrees that its Unsecured Credit Line is zero, Southern Companies would not undertake any work to perform a credit evaluation. Accordingly, the Commission directed Southern Companies to file revised tariff sheets to ensure there is no annual credit evaluation fee to such applicants or customers. *Id.* The Commission also rejected Southern Companies' proposed loss recovery mechanism because Southern Companies did not demonstrate that it is reasonable for losses incurred by virtue of Southern Companies extending unsecured

(continued)

49. In a delegated letter order issued February 25, 2008, the Commission accepted Southern Companies' revised tariff sheets filed to comply with the September 27, 2007 Order.⁴⁶ Accordingly, certain tariff sheets submitted in Southern Companies' compliance filing in the instant docket have been made moot by or superseded by the tariff sheets filed in the ER07-1219 proceeding. Therefore, we will accept, as modified, proposed tariff sheets filed in this docket that contain items that were rejected in the September 27, 2007 Order,⁴⁷ in light of the related compliance sheets accepted by delegated letter order. These sheets should be refiled with an effective date of July 13, 2007 consistent with the directives of the September 27, 2007 Order in Docket No. ER07-1219.⁴⁸

50. In addition, we find that Southern Companies' creditworthiness proposal does not comply with item (6) of Order No. 890's directives for creditworthiness procedures.⁴⁹ Specifically, if an applicant or customer is required to provide additional eligible collateral as a result of the Southern Companies' review, Southern Companies' proposal requires the applicant or customer to provide such additional eligible collateral *immediately* upon such notice, all in amount and form approved by Southern Companies.⁵⁰ We find that this does not provide a reasonable opportunity for a customer

credit to be charged, on a *pro rata* basis, to OATT customers via separate surcharges to the OATT. *Id* P 42.

⁴⁶ *Southern Co. Servs., Inc.*, Docket No. ER07-1219-001 (Feb. 25, 2008) (unpublished letter order).

⁴⁷ These include: proposed Fourth Revised Sheet No. 108, proposed First Revised Sheet No. 109A, proposed Third Revised Sheet No. 110; proposed Original Sheet No. 113b, proposed Second Revised Sheet No. 140; proposed Original Sheet No. 206; proposed Original Sheet No. 216; and proposed Original Sheet No. 217.

⁴⁸ We note that proposed Fifth Revised Sheet No. 7A and proposed First Revised Sheet No. 52 are superseded by the sheets accepted in the delegated letter order in Docket No. ER07-1219-001. These superseded sheets are rejected as moot and do not need to be refiled.

⁴⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1657. Order No. 890 requires "a reasonable opportunity to post additional collateral, including curing any non-creditworthy determination."

⁵⁰ Compliance Filing at Att. Q, Original Sheet No. 209.

to post additional collateral following a non-creditworthy determination. We direct Southern Companies to file, within 30 days of the date of this order, a further compliance filing that addresses their creditworthiness standards consistent with Order No. 890, as discussed above.

7. Rollover Rights Effective Date

a. Order No. 890

51. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.⁵¹

b. Commission Determination

52. Southern Companies have included the rollover reforms in section 2.2 of their revised tariff sheets, with a requested effective date of July 13, 2007. However, Southern Companies' Attachment K, setting forth their transmission planning process, which was filed December 7, 2007 in Docket No. OA08-37-000, has not yet been accepted by the Commission. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct Southern Companies to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. Southern Companies should refile the rollover reform language established in Order No. 890 within 30 days after acceptance of their Attachment K, requesting an effective date commensurate with the date of that filing.

The Commission orders:

(A) Southern Companies' compliance filing is hereby accepted, as modified, effective July 13, 2007, as discussed in the body of this order.

⁵¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.