

124 FERC ¶ 61,009  
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. OA07-42-001  
OA07-42-002

ORDER ON COMPLIANCE FILING AND REQUEST FOR REHEARING

(Issued July 2, 2008)

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, under protest, to the Commission's letter order issued in this proceeding on September 11, 2007.<sup>1</sup> Southern Companies also requested rehearing of the September Order. Because the filings raise similar issues, we address both in this order. We conditionally accept the compliance filing, but direct Southern Companies to file a further compliance filing within 30 days of this order. We also deny the request for rehearing.

**I. Background**

**A. Order No. 890**

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

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<sup>1</sup> *Southern Company Services, Inc.*, 120 FERC ¶ 61,229 (2007) (September Order).

<sup>2</sup> *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).

3. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM) set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM.<sup>3</sup> The Commission directed transmission providers to submit redesigned transmission charges through limited issue Federal Power Act section 205 rate filings<sup>4</sup> within 120 days after the publication of the final rule in the *Federal Register* (i.e., July 13, 2007).<sup>5</sup>

**B. Southern Companies' CBM filing**

4. Consistent with Order No. 890, Southern Companies filed a proposal regarding the set-aside of CBM. Southern Companies filed revised tariff sheets to provide that “in the periods during which point-to-point transmission customers do not benefit from the transmission capacity reserved as [CBM], then the transmission provider or network customer that uses the [CBM] set aside by scheduling energy to meet capacity emergencies over that capacity shall bear the applicable firm point-to-point transmission charge for that use.”<sup>6</sup>

5. To implement this revision to charges under their OATT, Southern Companies proposed three tariff revisions. First, they proposed a new section 34.6 providing that network customers will bear a charge for their actual, emergency use of CBM, based on the firm point-to-point rate. Second, Southern Companies proposed revising Schedule 7A to clarify that actual use of the CBM set-aside capacity will result in a firm point-to-point charge. It would require load serving entities that schedule energy to meet capacity emergencies using energy over transmission capacity set-aside as CBM to bear the applicable charge for daily short-term firm point-to-point transmission service provided on the bulk transmission facilities for the amount of CBM capacity scheduled for that use. Third, Southern Companies proposed a revision to section 2.2.17 of their OATT Formula Rate in Attachment M (Formula Rate Manual) to provide that the actual use of CBM by either Southern Companies or a network customer would result in that entity bearing a point-to-point charge for that CBM use and accordingly reducing the charges to point-to-point transmission customers. They proposed adding a Revenue Credit, described as revenues received from a network customer or the equivalent revenue amount determined for the transmission provider in accordance with section 34.6.

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<sup>3</sup> CBM is the amount of firm transmission transfer capability preserved by the transmission provider for load serving entities, to enable them to access generation from interconnected systems to meet generation reliability requirements.

<sup>4</sup> 16 U.S.C. § 824d (2000 & Supp. V 2005).

<sup>5</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

<sup>6</sup> *Id.* at 6.

6. In the September Order, the Commission rejected Southern Companies' proposed methodology regarding the CBM set-aside. In Order No. 890, the Commission required transmission providers to "design their transmission charges to ensure that the class of customers not benefiting from the [CBM] set aside, i.e., point-to-point customers, do not pay a transmission charge that includes the cost of the [CBM] set-aside."<sup>7</sup> The Commission found that Southern Companies' filing did not include a rate change to reflect the CBM set-aside, as required by Order No. 890.<sup>8</sup> Moreover, in Order No. 890, the Commission found that the CBM set-aside benefits network and native load customers in meeting their generation reliability criteria and thereby avoids the cost of generation resource additions. The Commission found that those customers receive the benefit of CBM at all times, because CBM provides reserves to meet reliability requirements, not just when load serving entities schedule energy to meet capacity emergencies using energy over transmission capacity set aside as CBM. Thus, the Commission required Southern Companies to file a rate change that accounts for CBM based on the amount of CBM set aside, not based on use.<sup>9</sup>

**C. Compliance Filing Under Protest and Request for Rehearing**

7. The request for rehearing specifies the following errors:

- a. The Commission erred in holding that Southern Companies must submit redesigned transmission charges based upon Order No. 890's conclusion that transmission providers are required "to design their transmission charges to ensure that the class of customers not benefiting from the [CBM] set-aside, i.e., point-to-point customers, do not pay a transmission charge that includes the cost of the [CBM] set-aside." Moreover, this holding inexplicably deviated from Order No. 888.<sup>10</sup>

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<sup>7</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

<sup>8</sup> *Southern Company Services, Inc.*, 120 FERC ¶ 61,229 at P 11. As noted by Southern Companies, the Commission did not require cost of service data or a revision to the transmission provider's revenue requirement, but did require redesigned transmission charges.

<sup>9</sup> *Id.*

<sup>10</sup> *Citing Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on Reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at ¶ 30,220, *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), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

- b. The Commission erred in holding that point-to-point transmission customers do not benefit from the CBM set-aside, even though non-firm point-to-point customers actually use that same transmission capacity and should bear the costs under Commission precedent.
- c. The Commission created an internal inconsistency in the OATT by requiring the transmission provider and network customers to bear cost responsibility for their designated network resources based upon their load ratio shares while requiring them to also bear an incremental cost for one type of resource – the use of CBM.
- d. The Commission’s conclusion will result in a windfall for point-to-point customers, who will benefit from CBM but not bear the costs, while native load and network customers must bear the costs of CBM multiple times. They will bear these costs through their payment of their load ratio share, again by removing them from the point-to-point rates, and at least a portion of them again by having to share with point-to-point customers the non-firm revenues from the non-firm use of the capacity set aside as CBM.

8. Additionally, in the compliance filing and request for rehearing, Southern Companies argue that the Commission incorrectly assumed in its September Order that point-to-point transmission customers bear the costs of CBM. Further, Southern Companies assert that this erroneous assumption conflicts with the conclusion in Order No. 888-A that network customers and native load bear all costs of the transmission system not borne by point-to-point transmission customers.

9. Southern Companies also assert that since network customers pay for their transmission usage based on load ratio shares, they should be able to use the interfaces for both external designated network resources and off-system opportunity purchases without additional charge. Southern Companies state that the Commission acted arbitrarily and capriciously by inconsistently requiring incremental cost responsibility for network customers to use CBM.

10. In addition, Southern Companies argue that non-firm point-to-point customers benefit from transmission capacity reserved as CBM, and therefore should bear some of the costs. Long-term firm point-to-point transmission customers also benefit from capacity reserved as CBM. For this reason, Southern Companies contend that the Commission acted arbitrarily and capriciously in finding in the September Order that point-to-point transmission customers are not benefiting from CBM. In addition, Southern Companies argue that the Commission should recognize CBM as a component of network service that is already paid for by network customers and native load through their bearing of load-ratio share responsibility for the costs of the transmission system.

## II. Notice of Filing

11. Notice of the compliance filing was published in the *Federal Register*, 72 Fed. Reg. 59,282 (2007), with interventions and protests due on or before November 1, 2007. The Alabama Municipal Electric Authority (AMEA) filed a motion to intervene.

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make the entity that filed it party to this proceeding.

## III. Discussion

### A. Request for Rehearing

13. We deny Southern Companies' request for rehearing. As noted above, Southern Companies challenge our holding that Southern Companies must submit redesigned transmission charges based upon the Order No. 890 requirement that transmission providers design their transmission charges to ensure that point-to-point customers do not pay a transmission charge that includes the cost of the CBM set-aside. However, in Order No. 890-A, the Commission affirmed its decision to require transmission providers to design their transmission charges in this manner.<sup>11</sup> Specifically, the Commission found that "only network customers and the transmission provider on behalf of its native load may request that transmission capacity be set aside as CBM and, therefore, only those users of the system should bear its costs."<sup>12</sup> Further, when network customers set aside CBM, the amount of transmission capacity available to point-to-point customers decreases, which causes the cost of point-to-point transactions to increase because less capacity is available.

14. We also disagree with Southern Companies that Order No. 890 is inconsistent with Order No. 888.<sup>13</sup> In Order No. 890-A, the Commission disagreed with Southern Companies' assertion that, because CBM is used by network customers, all the costs associated with CBM are already borne by network customers through their load ratio share responsibility. The Commission found, and Southern Companies acknowledged, that the rates for point-to-point service are based on a share of total transmission system costs, and not a portion of CBM. The costs of CBM must be excluded from costs allocated to all point-to-point customers.<sup>14</sup> Therefore, in keeping with our finding in

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<sup>11</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 86.

<sup>12</sup> *Id.*

<sup>13</sup> Request for Rehearing at 5.

<sup>14</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 86.

Order No. 890-A, we reaffirm that this rate design ruling is consistent with the directive in Order No. 888-A for network and native load customers to bear the cost of capacity not used by point-to-point customers.<sup>15</sup>

15. Southern Companies also challenge the Commission's holding that point-to-point customers do not benefit from CBM. In Order No. 890-A, the Commission acknowledged that point-to-point customers do reap some indirect benefits from the CBM set-aside, in that related unused capacity is made available on a non-firm basis. However, the Commission found that this indirect benefit does not justify charging all point-to-point customers for the cost of the CBM set-aside.<sup>16</sup> The benefits of the CBM set-aside to point-to-point customers are minimal compared to the benefits received by network customers and native load customers. Since only network customers and native load customers directly and significantly benefit from the CBM set-aside, they should bear the cost responsibility.<sup>17</sup>

16. In addition, we disagree with Southern Companies' assertion that there is an internal inconsistency in the OATT because the transmission provider and network customers bear cost responsibility for their designated network resources based upon their load ratio shares while also paying an incremental cost for the use of CBM. There are fundamental differences between transmission capacity associated with designated network resources and transmission capacity set aside as CBM. Transmission committed to designated network resources is associated with generation resources owned or purchased under contract by the network customer that are designated to serve network load. This generation is under contract specifically to serve network and native load. Transmission set aside as CBM is similarly used to meet resource adequacy requirements and can be called upon only in emergency situations to maintain the reliability of the system. However, unlike transmission associated with designated network resources, CBM is not associated with a firm contract from the seller in order to obtain transmission.

17. Finally, Southern Companies contend that the Commission's conclusion will result in a windfall for point-to-point customers, because point-to-point customers will benefit from CBM but not bear the costs, while native load and network customers must bear the costs of CBM multiple times. We disagree. As mentioned above, point-to-point customers only receive an indirect benefit from the transmission set aside as CBM by being able to reserve non-firm point-to-point service. The non-firm sales also provide revenue credits from non-firm transmission sales resulting from unused CBM set-aside, but these credits would likely not offset the higher rates that firm point-to-point customers may pay as a result of the CBM set-aside. The CBM is set aside by network customers or the transmission provider on behalf of its native load. In Order No. 890-A,

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<sup>15</sup> See Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,220.

<sup>16</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 87.

<sup>17</sup> *Id.*

we found that CBM set-aside costs must be allocated to the entities that have exclusive rights to request the set-aside.<sup>18</sup> Furthermore, as discussed by the Commission in Order 890-A, transmission providers can address in their rate design filings the possibility that particular customers could receive an inappropriate credit for non-firm use of capacity set aside for CBM. We note that Southern Companies proposed a crediting method to address this issue in their compliance filing by not giving revenue credits associated with the non-firm sales from transmission set aside as CBM to firm point-to-point customers. Thus we do not agree that Southern Companies will have to bear the costs of CBM multiple times or that point-to-point customers benefit from the credits associated with these non-firm sales.

### **B. Compliance Filing**

18. In Order 890-A, the Commission acknowledged Southern Companies' claim that point-to-point customers reap some indirect benefits from the transmission capacity set aside as CBM. Further, the Commission stated that it expected transmission providers to address in their rate design filing the possibility that particular customers could receive an inappropriate credit for non-firm use of capacity set aside for CBM.<sup>19</sup>

19. In their compliance filing, Southern Companies calculate their firm point-to-point rate by adding the amount of CBM set aside (kW) to the denominator, and removing the firm point-to-point rate revenue credits earned from non-firm revenues received for use of the CBM set-aside from the numerator, which is calculated in dollars. We find that Southern Companies' proposal to remove all costs and revenue credits from the firm point-to-point rate associated with non-firm sales from transmission capacity set aside as CBM is reasonable. Southern Companies indicates that on average 26 percent of the non-firm sales in 2005 and 2006 were associated with the CBM set-aside. However, they do not fully explain or support how they determined which non-firm point-to-point transmission sales are associated with the use of CBM for the purpose of providing revenue credits. Therefore, we direct Southern Companies to more thoroughly explain how non-firm point-to-point transmission sales associated with the use of CBM for the purpose of providing revenue credits were identified.

20. Southern Companies propose two separate transmission service charges: i) firm point-to-point transmission service; and ii) non-firm point-to-point transmission service and network transmission service. We find the proposal unreasonable in that it could require customers to pay a higher rate for on-peak non-firm point-to-point transmission service than for on-peak firm point-to-point transmission service. The Commission explained in Order No. 890-A that the unused transmission capacity set aside as CBM is only available to point-to-point customers as a lower priority, non-firm transmission

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<sup>18</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 87.

<sup>19</sup> *Id.*

service.<sup>20</sup> Although Southern Companies correctly state that the transmission capacity associated with the CBM set-aside is available as non-firm capacity except during rare emergencies, their proposal could result in charging a higher rate to customers for lower priority non-firm transmission service than for a higher priority firm transmission service. We find that the potential for customers to pay a higher rate for non-firm point-to-point transmission service than for firm point-to-point transmission service is not just and reasonable. Accordingly, we will require Southern Companies to modify its rate proposal to include a cap on charges for peak hourly non-firm point-to-point service to ensure the charges do not exceed the rate for daily on-peak firm point-to-point service.

21. Therefore, the Commission conditionally accepts the compliance filing as explained above. However, Southern Companies must file another compliance filing within 30 days of the date of this order. The compliance filing must respond to the issues raised above: i) explain how Southern Companies intend to determine which non-firm point-to-point transmission sales are associated with the use of CBM for the purpose of providing revenue credits; and ii) provide a rate design that will provide a rate for on-peak non-firm point-to-point transmission service that does not exceed the rate for on-peak firm point-to-point transmission service.

The Commission orders:

- (A) The compliance filing is hereby conditionally accepted as discussed above.
- (B) The request for rehearing is hereby denied.
- (C) Southern Companies are hereby directed to file a compliance filing within 30 days of the date of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>20</sup> *Id.*