125 FERC ¶ 61,393
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc. Docket No. ER09-92-000

ORDER CONDITIONALLY ACCEPTING PROPOSED
COST-BASED RATE TARIFF

(Issued December 31, 2008)

1. In this order, we conditionally accept for filing Southern Company Services, Inc.'s (Southern)[1] proposed cost-based rate tariff (Tariff), providing for "up to" cost-based rates applicable to short-term (less than one year) wholesale sales of electric energy and capacity, to be effective January 1, 2009, as requested. In addition, we direct Southern to submit a compliance filing.

Background

2. Southern's proposed Tariff seeks to establish an "up to" cost-based rate platform for short-term wholesale power sales of less than one year. Although Southern has market-based rate authority for all geographic markets in which it participates, the proposed Tariff is separate and distinct, and allows flexibility for engaging in short-term wholesale transactions for capacity and energy at cost-based rates.[2] Southern explains that the Commission has held that sellers have flexibility in designing ceiling rates under cost-based tariffs.

3. Southern states that the proposed Tariff ceiling rate consists of: (1) a capacity (demand) charge component calculated using the Commission's well-established stacking methodology to determine the units most likely to participate; (2) an energy charge

[1] Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (collectively, Southern Companies).

[2] Southern's October 17, 2008 cover letter at 2.

component based on the anticipated variable cost; and (3) any transmission charge pursuant to an Open Access Transmission Tariff (OATT) (or verified charge by an entity not subject to the Commission's jurisdiction) agreed to be borne by the seller.

4. Southern explains that the proposed capacity charge is based on the weighted cost of the Southern generating units that are deemed likely to participate in the service.[3] Southern states that it performed a "stacking analysis" under which it stacked its generating units in ascending order based on their fuel costs. Southern then selected units by analyzing their minimum and maximum monthly peak demands.[4] Southern calculated the annual cost (in $/kW) of each unit using a fixed charge rate on the installed costs of each unit, plus its actual fixed operation and maintenance expenses. Southern weighted the annual cost of each resource based on its available capacity compared to the total capacity of all the resources used in the calculation.[5] Southern determined the weighted annual cost of each participating unit by multiplying its total annual cost per kW by the unit's available capacity, and dividing by the unit's equivalent availability factor. Southern then added together these weighted annual costs to derive the overall annual cost.[6]

5. Southern states that the proposed energy charge is equal to the anticipated out-of-pocket variable cost of energy that would not have otherwise been incurred, plus a ten percent adder for difficult to quantify costs. As discussed above, the transmission component reflects a pass-through of transmission service charges directly incurred by Southern Companies in connection with a given transaction.

6. Finally, the proposed Tariff requires a party to a transaction under the Tariff to execute a Service Agreement. A *pro forma* Service Agreement is attached to the Tariff. Southern requests an effective date of January 1, 2009.

Notice of Filing and Responsive Pleadings

7. Notice of Southern's October 17, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 64,312 (2008), with interventions and protests due on or before

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[3] *Id.* at 2-3.

[4] *Id.* at 4.

[5] *Id.*

[6] *Id.*

November 17, 2008. Dalton Utilities, Alabama Municipal Electric Authority, and Sawnee and Coweta-Fayette Electric Membership Corporations filed timely motions to intervene. Shell Energy North American (US), L.P. (Shell) filed a timely motion to intervene, protest, and request to consolidate proceedings. Southeast Electricity Consumers Association (Southeast Consumers) filed a timely motion to intervene and comments. On November 26, 2008, J.P. Morgan Ventures Energy Corp., BE Alabama LLC, BE Colquitt LLC, BE Rayle LLC, BE Satilla LLC, and BE Walton LLC (collectively, J.P. Morgan Entities) filed a late motion to intervene and comments.

8. On November 21, 2008, Southern filed an answer in opposition to Shell's motion to consolidate proceedings. On December 2, 2008, Southern filed an answer to the comments of J.P. Morgan Entities. On December 17, 2008, J.P. Morgan Entities moved to withdraw their late motion to intervene and comments.

9. Shell argues that Southern has not provided enough information as to how the proposed Tariff functions, or its potential impact on wholesale markets within the Southern Balancing Area Authority. Shell states that although Southern asserts that this Tariff filing is separate and distinct from its market-based rate authority, the proposal may still have market power mitigation implications. Shell argues that, at a minimum, the Commission should consider whether a cost-based rate for the services covered by the Tariff proposal provides market power mitigation in the Southern Balancing Authority Area.

10. Shell also states that while Southern notes that its cost-based rate cap of $21.43/MWh demand charge is consistent with some previously approved cost-based rate tariff filings, e.g., *Mid-American* ($22.36/MWh)[7] and *Duke* ($24.66/MWh),[8] it is much higher than others that have been approved, e.g., *AEP* ($6.45/MWh)[9] and *CP&L*

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[7] *MidAmerican Energy Co.,* 117 FERC ¶ 61,178 (2006) (*MidAmerican*).

[8] *Duke Power*, Docket No. ER96-110-016, *et al.*, Offer of Settlement (filed Feb. 3, 2006), approved in *Duke Power,* 115 FERC ¶ 61,042 (2006) (*Duke*).

[9] *See AEP Power Marketing, Inc.,* Docket No. ER96-2495-026, *et al.,* Settlement Agreements and Offer of Settlement (filed Oct. 28, 2005), approved in *AEP Power Marketing, Inc.,* Docket No. ER96-2495-026, *et al.,* Letter Order issued Jan. 13, 2006 (unreported) (*AEP*).

($10.52/MWh).[10] Shell urges the Commission to undertake a detailed factual inquiry before rendering a decision on the proposed Tariff. Alternatively, if the Commission approves the Tariff as proposed, without further inquiry, Shell maintains that it is critical for the Commission to explicitly state that it is not relying on the Tariff as a market power mitigation measure, since the mere acceptance of the Tariff as a "cost-based" rate would not preclude the Southern Companies from exercising market power. Shell requests that the Commission set this proceeding for hearing pursuant to section 205 of the Federal Power Act (FPA).

11. Shell also contends that although Southern asserts that its market-based authority is separate and distinct from the proposed Tariff, market power issues cut across the Commission's consideration of Southern's filings here and in Docket Nos. ER09-88-000 and ER96-780-020.[11] Shell contends that the proposed demand charge in this filing forms part of the Auction Proposal's Seller Offer Price mechanism in Docket No. ER09-88-000, which is offered as a mitigation measure for any generation market power that Southern Companies might be found to possess in Docket No. ER96-780-020. Therefore Shell requests that this proceeding be consolidated with Southern's's Auction Proposal in Docket No. ER09-88-000 and the market power proceeding in Docket No. ER96-780-020.

12. Southeast Consumers notes that it has several concerns about the potential impact of the proposed Tariff rates and incorporates by reference its comments in Docket No. ER09-88-000. In those comments, Southeast Consumers argues that Southern's proposed

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[10] *Carolina Power & Light Co.,* Docket No. ER05-1082-000, Cost-Based Wholesale Power Sales Tariff, FERC Electric Tariff, Original Vol. No. 6, Original Sheet No. 34, Attachment C, Pricing Exhibit (filed June 6, 2005), approved in *Carolina Power & Light Co.,* 113 FERC ¶ 61,130 (2005) (*CP&L*).

[11] In Docket No. ER09-88-000, Southern proposed to amend its market-based rate tariff to institute an auction process for certain transactions into the Southern Balancing Authority Area. On December 18, 2008, the Commission accepted the proposal conditioned on revisions to clarify the authority of the Independent Auction Monitor and to open up the auction to other sellers within twelve months. *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008). In Docket No. ER96-780-020, the Commission addressed the updated market power analysis filed by Southern on August 29, 2008. The Commission found that the auction proposal conditionally adopted in Docket ER09-88-000, once revised, would adequately mitigate any horizontal market power Southern Companies may have in the Southern Balancing Authority Area. *Southern Company Services, Inc.*, 125 FERC ¶ 61,317 (2008).

auction design will lead to substantially higher wholesale electricity prices that could adversely affect retail rates, which Southeast Consumers states is possible given that the proposed cap includes a demand charge component. Also, Southeast Consumers is concerned that the auction will result in much higher wholesale market prices within Southern Balancing Authority Area.

13. Southern addresses the substance of Shell's protest in opposing Shell's motions to consolidate this proceeding with Southern's Auction Proposal in Docket No. ER09-88-000 and the market power proceeding in Docket No. ER96-780-020. Southern argues that its proposed Tariff is a separate, stand-alone tariff that is not tendered for the purpose of mitigating potential or alleged market power and is not dependent upon the resolution of the issues in Docket Nos. ER09-88-000 and ER96-780-020. Moreover, Southern asserts, Shell has not raised any genuine issue of material fact or identified any common questions of law or policy between this proceeding and Docket Nos. ER09-88-000 and ER96-780-020. Finally, Southern asserts that there would not be any administrative efficiencies or procedural benefits achieved through consolidation.

Discussion

Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), Dalton Utilities, Sawnee and Coweta-Fayette Electric Membership Corporations, Southeast Consumers, Shell, and Alabama Municipal Electric Authority's timely, unopposed motions to intervene serve to make them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Southern's November 21 Answer because it has provided information that assisted us in our decision-making process.

16. We will grant J.P. Morgan Entities' request to withdraw their late-filed motion to intervene and comments and, accordingly, reject Southern's December 2 Answer as moot.

Proposed Tariff

17. We find that Southern's proposed Tariff as modified below is just and reasonable. Accordingly, we conditionally accept Southern's proposed Tariff, as modified, to be effective January 1, 2009, subject to Southern submitting the compliance filing ordered below.

18. We find that the methods employed by Southern to develop the proposed demand charge are consistent with Commission precedent, which provides that a seller may include in its cost-based rate cap a contribution to fixed costs based on the embedded costs of its units that are most likely to be used to provide the service at issue.[12] The fact that others with cost-based rate caps may have demand charges that are higher or lower than that proposed by Southern is irrelevant to our determination here. Based on the facts of this case, we conclude that Southern's proposed "up to" demand charge is just and reasonable.[13]

19. Southern's proposed energy charge is based on 110 percent of the anticipated variable cost of a transaction.[14] Southern's Anticipated Variable Cost calculation provides for Southern to measure variable cost for a transaction based on either (1) a projection of system energy related costs after Southern serves all of its native load and wholesale obligations or (2) the projected variable cost of specific resource(s) reasonably expected to support the transaction.[15] While we find this approach to determining

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[12] *See, e.g., Carolina Power & Light Co.*, 113 FERC ¶ 61,130, at P 23 (2005).

[13] *See, e.g., Illinois Power Co.,* 57 FERC ¶ 61,213, at 61,699-700 (1991) (Commission accepted ceiling rates that would not exceed the sum of the incremental costs incurred to provide the service plus a cost-based, "up to" demand charge.).

[14] *See, e.g., MidAmerican Energy Co.*, 114 FERC ¶ 61,280, at P 37 & n. 36 (2006) (allowing a 10 percent adder to provide "recovery of difficult-to-quantify costs for services provided on an intermittent basis.").

[15] The Proposed Tariff defines Anticipated Variable Cost as:

> The variable cost, measured in dollars per megawatt hour ("$/MWh"), reasonably expected to be incurred by the Seller, on the basis of the projected system cost after serving native load requirements (including operating reserves) and all wholesale obligations. Such cost shall include, but is not limited to: marginal replacement fuel cost; variable operating and maintenance expenses; in-plant fuel handling costs; emissions allowance replacement costs and other environmental compliance expenses; compensation for transmission losses and other such energy related costs that would otherwise not have been incurred; the costs of starting and shutting down generating units (including costs incurred due to minimum runtimes or loading levels); and purchase

(continued…)

Southern's proposed energy charge reasonable, we find that Southern has not fully explained or provided objective criteria that will be used to determine which variable cost calculation will apply for a given transaction and the method for determining which resources are expected to support a transaction under the alternative variable cost calculation. Accordingly, we will require Southern to provide further explanation regarding its method for determining which variable cost calculation will apply for a given transaction and the method for determining which resources are expected to support a transaction under the alternative variable cost calculation.

20. Shell raises a variety of concerns with respect to the effect of the proposed Tariff on Southern's market power within its Balancing Authority Area, and the relationship of the Tariff to Southern's filings in Docket Nos. ER96-780-020 and ER09-88-000. We find that these concerns do not relate to our determination as to whether the proposed Tariff is just and reasonable, and are therefore outside the scope of this proceeding. As Southern explains, its proposed Tariff is separate and distinct from its market-based rate authority. We agree. Southern says that the proposed Tariff is tendered to afford Southern additional flexibility by establishing a separate platform for engaging in short-term wholesale transactions for capacity at cost based-rates.[16] Southern's use of the proposed Tariff as part of its Auction filing in Docket No. ER09-88-000 is not relevant to our determination here, and any issues with respect to the design of the Auction are more appropriately addressed in the proceeding in Docket No. ER09-88-000. Our decision here is limited to a determination of whether the proposed Tariff is just and reasonable, and market power issues are beyond the scope of this proceeding.

21. We also find that Southeast Consumers's concerns related to the impact of these Tariff rates on the proposed auction in Docket No. ER09-88-000 are outside the scope of this proceeding.

> and interchange power costs. Alternatively, AVC may be based upon the projected variable cost of specific resources(s) reasonably expected to support the Transaction. In all cases, AVC shall include applicable taxes or assessments based on the revenues received or quantities sold under the Transaction.

[16] Southern's October 17, 2008 cover letter at 2.

22. The Commission typically consolidates proceedings only for purposes of hearing and decision.[17] As we are deciding this matter without a hearing, there is no need for consolidation with the other proceedings in Docket Nos. ER96-780-020 and ER09-88-000. We therefore deny Shell's motion for consolidation.

The Commission orders:

(A) Southern's proposed Tariff is hereby conditionally accepted for filing, effective January 1, 2009, as requested, as discussed in the body of this order.

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

(C) Shell's request to consolidate and set this proceeding for hearing is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[17] *See, e.g.*, *New York Independent System Operator, Inc.*, 105 FERC ¶ 61,108, at P 14 (2003) (citing *Arizona Public Service Co.*, 90 FERC ¶ 61,197, at 61,139 (2000)).