

126 FERC ¶ 61,274  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket No. ER09-88-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued March 25, 2009)

1. On October 17, 2008, 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), submitted revised and new tariff sheets to Southern Companies' market-based rate tariff (Amended Tariff Sheets).<sup>1</sup> Southern Companies filed the Amended Tariff Sheets to establish Day-Ahead and Hour-Ahead energy auctions (Proposed Auctions) in the Southern Balancing Authority Area.

2. In a December 2008 order,<sup>2</sup> the Commission conditionally accepted the Amended Tariff Sheets and required Southern Companies to revise them to provide the Independent Auction Monitor for the Proposed Auctions with greater oversight authority.<sup>3</sup> On January 21, 2009, Southern Companies submitted the requisite compliance filing,

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<sup>1</sup> Southern Company Services, Inc., Proposed Amendment to Southern Companies' Market-Based Rate Tariff, Docket No. ER09-88-000 (filed October 17, 2008) (Proposed Auctions Filing).

<sup>2</sup> *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008) (December 2008 Order).

<sup>3</sup> December 2008 Order, 125 FERC ¶ 61,316 at P 53. Southern Companies were also instructed to submit the name of the Independent Auction Monitor and the contract with the Independent Auction Monitor for approval.

including revised Amended Tariff Sheets (Revised Amended Tariff Sheets), as directed.<sup>4</sup> In this order, the Commission accepts the January 2009 Compliance Filing for filing, requires Southern Companies to submit corrected tariff sheets, and directs Southern Companies to initiate the Proposed Auctions within 30 days of the issuance of this order.

## **I. Background**

3. In the Proposed Auctions Filing, Southern Companies proposed to institute an auction process for certain short-term energy products in the Southern Balancing Authority Area.<sup>5</sup> Southern Companies explained that the Proposed Auctions would act as a mechanism through which Southern Companies would make standardized cost-based wholesale offers to the existing marketplace. Southern Companies represented that the proposed auction structure reflects the implementation of the Commission's open access policies, the implementation of state retail regulation, and integrated resource planning. According to Southern Companies, adding a standard, cost-based short-term auction to the market would enhance the options available to present and future market participants. Southern Companies noted that although market participants would likely prefer a broader auction process, a limited auction would demonstrate the potential viability of a broader platform and would enhance market options upon implementation without prejudicing further developments.

4. Southern Companies requested that the Commission accept the Amended Tariff Sheets for filing without suspension, modification, condition, or hearing. Although Southern Companies asserted that they do not currently possess horizontal market power, Southern Companies claimed that if the Commission found that they do possess horizontal market power in the Southern Balancing Authority Area, then the Proposed Auctions would be an adequate means to mitigate that market power. Southern Companies contended that the Proposed Auctions would mitigate any perceived horizontal market power in the Southern Balancing Authority Area and that even if the Commission found that Southern Companies lack horizontal market power, the Commission should nonetheless approve the Proposed Auctions as a positive step towards enhancing transparency in southeastern wholesale electricity markets.

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<sup>4</sup> Southern Company Services, Inc., Compliance Filing Accepting Conditions Established in December 2008 Order, Docket No. ER09-88-001 (filed January 21, 2009) (January 2009 Compliance Filing).

<sup>5</sup> Southern Companies' proposal included a commitment to refrain from filing changes that would have the effect of terminating the Day-Ahead Energy Auction and the Hour-Ahead Energy Auction during an initial three-year period commencing on the date of the first auction. We accepted that commitment. December 2008 Order, 125 FERC ¶ 61,316 at n.25.

5. In the December 2008 Order, the Commission found that the basic structure of the Proposed Auctions appeared sound. The Commission noted that the Proposed Auctions include a must offer obligation for any Available Capacity,<sup>6</sup> the requirement to make offer bids at cost, a single market clearing price mechanism and an Independent Auction Monitor that would ensure that all Available Capacity would be offered into the auctions and verify that the auctions were conducted properly.

6. The Commission stated that if Southern Companies implemented the Proposed Auctions subject to two conditions, the Proposed Auctions, as revised, would sufficiently mitigate any potential that Southern Companies might have to exercise market power in the Southern Balancing Authority Area. The first condition, which must be implemented by the commencement of the Proposed Auctions, was to further develop the role and responsibilities of the Independent Auction Monitor. The Commission explained that, among other things, the Auction Administrator and the Independent Auction Monitor must have confidential access to each other to ensure a free exchange of information. The Commission required Southern Companies to ensure that the Independent Auction Monitor was authorized to: (1) verify Southern Companies' Available Capacity calculations, including the companies' inputs into those calculations; (2) confirm that any transmission service necessary to accommodate a purchase under the auctions is not unreasonably withheld; and (3) independently file reports with the Commission regarding the auction process. Southern Companies were also required to file the contract governing the relationship between them and the Independent Auction Monitor with the Commission.

7. The second condition the Commission imposed on its acceptance of the Proposed Auctions was that the auctions be expanded to include sellers other than Southern Companies within one year of the date of issuance of the December 2008 Order. The Commission established the one year deadline in recognition of the fact that including third-party sellers in the auction process would take additional time.<sup>7</sup> In the Proposed Auctions Filing, Southern Companies had stated that they were amenable to: "(a) expanding the Proposed Auctions to include sellers other than Southern Companies; (b) work with market participants to move the Auction to an independent administrator so

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<sup>6</sup> Capitalized terms not otherwise defined have the meanings ascribed to them in the Amended Tariff Sheets, as revised by the January 2009 Compliance Filing.

<sup>7</sup> In the December 2008 Order, the Commission directed Southern Companies to submit a separate compliance filing no later than 60 days prior to the expansion of the Proposed Auctions to allow third-party sellers to participate.

other sellers could be added more easily; and/or (c) expanding the Auction to include products other than those proposed herein.”<sup>8</sup>

8. In the January 2009 Compliance Filing, Southern Companies explicitly accept the conditions imposed by the Commission in the December 2008 Order, submit revised Amended Tariff Sheets reflecting the conditions, and include the contract between Southern Companies and the Independent Auction Monitor.<sup>9</sup> Southern Companies request that the Commission accept the filing in compliance with the December 2008 Order.

## **II. Notice of Filing and Responsive Pleadings**

9. Notice of the January 2009 Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 6148 (2009), with comments and protests due on or before February 11, 2009. Notice of the Supplemental Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 7882 (2009), with comments and protests due on or before February 23, 2009.

10. Georgia Transmission Corporation (Georgia Transmission) filed a timely motion to intervene with no substantive comments. On February 11, 2009, Southern Companies filed a letter with the Commission clarifying two issues which Georgia Transmission, a Southern Companies network customer, brought to Southern Companies’ attention (Letter of Clarification).<sup>10</sup> In the letter, Southern Companies explain that Georgia Transmission raised two issues which Georgia Transmission believed might be unclear or confusing to potential participants in the Proposed Auctions. According to Southern Companies, the Letter of Clarification addresses these two matters and resolves them. Southern Companies state that the Letter of Clarification does not alter or change any aspect of the Amended Tariff Sheets as accepted by the Commission in the December 2008 Order.

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<sup>8</sup> Proposed Auctions Filing at 19.

<sup>9</sup> Southern Companies have selected the Brattle Group, Inc. (Brattle Group), as the Independent Auction Monitor. Southern Companies subsequently filed an executed version of the contract with the Brattle Group. Supplemental Compliance Filing, Docket No. ER09-88-001 (filed February 2, 2009) (Supplemental Compliance Filing).

<sup>10</sup> Letter of Clarification, Southern Company Services, Inc., Docket No. ER09-88-000, -001 (Feb. 11, 2009).

11. Also on February 11, 2009, Energy Consulting Group, LLC (Energy Consulting) filed a motion for an extension of time to file comments and comments on Southern Companies' "proposed Market-Based Rate Tariff" in this proceeding.<sup>11</sup>

12. On February 18, 2009, Southern Companies filed an answer to and motion to strike the Energy Consulting Motion.<sup>12</sup>

### **III. Discussion**

#### **A. Procedural Matters**

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

14. We reject Energy Consulting's motion for an extension of time to file comments. As an initial matter, it is unclear whether Energy Consulting is requesting an extension of time to file comments on the Amended Tariff Sheets, which were filed on October 17, 2008, or the January 2009 Compliance Filing. In either case, Energy Consulting's motion is denied. First, the Proposed Auctions Filing, which includes the Amended Tariff Sheets, was submitted on October 17, 2008, nearly four months prior to the Energy Consulting Motion. Since that time, the Commission has issued a dispositive order, the December 18 Order, and the deadline for filing a request for rehearing of that order, January 21, 2009, has passed.<sup>13</sup> Further, the January 2009 Compliance Filing was properly noticed and the Commission provided sufficient time for comments on that filing. Although Energy Consulting points to the Southern Companies' February 13, 2009 webcast as justification for an extension of time, that webcast was for informational purposes and did not change the Amended or Revised Amended Tariff Sheets. An extension of time to take into account the webcast is unnecessary, particularly since the

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<sup>11</sup> Motion for an Extension of Time to File Comments and Comments on Southern Company's Proposed Market-Based Rate Tariff of the Energy Consulting Group, LLC at 1, Docket No. ER09-88-001 (filed February 11, 2009) (Energy Consulting Motion).

<sup>12</sup> Answer in Opposition to Motion for Extension of Time and Motion to Strike Pleading, Docket No. ER09-88-001 (filed February 18, 2009) (Southern Companies Answer).

<sup>13</sup> 16 U.S.C. § 8251 (2006) (parties may file for rehearing of a Commission order within 30 days after issuance of the order). Rule 713(b) of the Commission's Rules of Practice and Procedure requires parties to file requests for rehearing no later than 30 days after issuance of a final decision or order. 18 C.F.R. § 385.713(b) (2008).

Commission had already accepted the Amended Tariff Sheets implementing the auction process at the time of the webcast.

15. The Commission also rejects Energy Consulting's comments. In its comments, Energy Consulting raises issues which were addressed in the December 18 Order. In that order the Commission found that the Proposed Auctions, as conditioned, would sufficiently mitigate any potential Southern Companies might have to exercise market power in the Southern Balancing Authority. Energy Consulting previously had two opportunities to present its issues with the Proposed Auctions before the Commission, once in comments on the Proposed Auctions filing and subsequently through a request for rehearing. Energy Consulting pursued neither. At this late stage in the proceeding, Energy Consulting's comments are untimely.

16. Since we reject Energy Consulting's motion and comments, Southern Companies' motion to strike is dismissed as moot.

#### **B. January 2009 Compliance Filing**

17. We find that the January 2009 Compliance Filing, as supplemented, complies with the December 2008 Order. Accordingly, we accept the filing to be effective the date the Proposed Auctions commence operation, consistent with the effective date set forth on the Amended Tariff Sheets and Revised Amended Tariff Sheets, and accept the Amended and Revised Tariff Sheets, subject to correction, as discussed below.<sup>14</sup> In addition, the Commission accepts Southern Companies' choice of the Brattle Group as the Independent Auction Monitor for the Proposed Auctions.

18. The Commission reiterates its belief that the Proposed Auctions represent an innovative proposal to advance the goals of increasing price discovery, transparency and liquidity in Southeastern wholesale electricity markets. The Commission continues to be encouraged by the positive aspects of the Proposed Auctions and looks forward to the start of the Proposed Auctions, which, as directed in the December 2008 Order, will be initiated by Southern Companies within 30 days of the date of issuance of this order.

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<sup>14</sup> FERC Electric Tariff, Second Revised Volume No. 4, Third Revised Sheet No. 1 (superseding Substitute Second Revised Sheet No. 1), Second Revised Sheet No. 2 (superseding First Revised Sheet No. 2), Original Sheet Nos. 9, 11-13, First Revised Sheet No. 14 (superseding Original Sheet No. 14), Original Sheet Nos. 15-27. The Commission reminds Southern Companies that once the Proposed Auctions have commenced, Southern Companies must amend their tariff to include the appropriate effective date corresponding to the date the auctions begin.

**C. Corrections to Revised Amended Tariff Sheets**

19. Prior to starting the Proposed Auctions, Southern Companies must correct two mistakes in the Amended and the Revised Amended Tariff Sheets. First, section 2.24 of Original Sheet No. 10 of the Amended Tariff Sheets must be corrected. In that provision, Southern Companies define the Gas Index Price by referring to the Henry Hub Midpoint gas price published in Platts Megawatt Daily. Platts Megawatt Daily, however, does not publish gas prices. Southern Companies must correct the reference to “Platts Megawatt Daily” to “Platts Gas Daily” in section 2.24.

20. Second, Southern Companies must correct a numbering mistake in the Revised Amended Tariff Sheets. Southern Companies have inadvertently numbered two separate tariff provisions with the same number – section “4.3.4” appears once on Superseding Original Sheet No. 14 and once on Original Sheet No. 14A. Following the numbering convention adopted by Southern Companies in the Revised Amended Tariff Sheets, the “4.3.4” designation on Original Sheet No. 14A should properly read “4.3.6.” Southern Companies must correct both of these errors within 10 days of this order, prior to start-up of the Proposed Auctions.

The Commission orders:

(A) The January 2009 Compliance Filing is accepted for filing, as discussed in the body of this order.

(B) Southern Companies must file corrected versions of Original Sheet Nos. 10 and 14A, as discussed in the body of this order, within 10 days of the date of issuance of this order.

(C) Southern Companies must commence the Proposed Auctions within 30 days of the date of issuance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.