

132 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Southern Company Energy Marketing, Inc.
Southern Company Services, Inc.

Docket No. EL04-124-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 13, 2010)

1. On March 2, 2010, 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 an explanatory statement and joint offer of settlement (Settlement) of Southern Companies and Commission Trial Staff (Settling Parties) resolving all issues in this proceeding, which concerns Southern Companies' market-based rate authorization. According to the Settling Parties, the other active participants in the proceeding, Shell Energy North America (US), L.P., and the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, do not oppose the Settlement or the termination of this proceeding.¹
2. On March 22, 2010, Commission Trial Staff filed initial comments in support of the Settlement. No reply comments were filed.
3. This Settlement arose out of the Commission's investigation under section 206 of the Federal Power Act (FPA)² to determine whether Southern Companies could continue

¹ See March 2, 2010 letter transmitting Settlement to the Secretary of the Commission at 1.

² 16 U.S.C. § 824e (2006).

to charge market-based rates in the Southern Companies balancing authority area.³ On July 8, 2005, the Commission issued an order establishing a trial-type evidentiary hearing to resolve issues of material fact regarding Southern Companies' Delivered Price Test, which Southern Companies submitted to rebut the presumption of market power in the Southern Companies balancing authority area.⁴

4. As noted in the explanatory statement, in a separate proceeding (Docket No. ER09-88-000), on December 18, 2008, the Commission conditionally approved a proposal filed by Southern Companies to establish Day-Ahead and Hour-Ahead energy auctions (Auction) in the Southern Companies balancing authority area. The Commission found that Southern Companies' proposed Auction, implemented under the conditions set forth in the December 2008 Order, would sufficiently mitigate any potential that Southern Companies may have to exercise market power in the Southern Companies balancing authority area.⁵

5. The Settling Parties state that the Commission's approval of the Auction and recognition of its mitigating effect on any potential exercise of generation market power have rendered Docket No. EL04-124-000 moot on a prospective basis. They explain that they entered into settlement discussions in an effort to explore whether a reasonable resolution of the locked-in 15-month refund period could be reached in lieu of further litigation, thereby avoiding the associated expenditure of additional time and resources.

6. The Settlement provides that Southern Companies will donate a total of \$1.7 million to non-profit organizations in the four principal states served by them (i.e., Alabama, Georgia, Mississippi, and Florida) for the purpose of offsetting the electricity bills of low-income customers in their retail service areas.

7. The Settlement is fair, reasonable, and in the public interest and is hereby approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

³ *Southern Company Energy Marketing, Inc.*, 109 FERC ¶ 61,275 (2004) (instituting a proceeding pursuant to 206 of the FPA and establishing a refund effective date).

⁴ *Southern Company Energy Marketing, Inc.*, 112 FERC ¶ 61,054 (2005), *initial decision issued*, 121 FERC ¶ 63,011 (2007). The Commission's approval of the Settlement herein obviates the need for further orders or litigation in this proceeding.

⁵ *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008) (December 2008 Order).

8. This order terminates Docket No. EL04-124-000.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.