

108 FERC ¶ 61,013
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Mississippi Power Company	Docket No. ER04-117-000
Southern Company Services, Inc.	Docket Nos. ER04-118-000 ER04-118-001
Georgia Power Company	Docket No. ER04-119-000
Alabama Power Company	Docket No. ER04-120-000
Gulf Power Company	Docket No. ER04-169-000

ORDER ON INFORMATIONAL FILINGS

(Issued July 7, 2004)

1. This proceeding concerns informational filings submitted by Southern Company Services, Inc., on behalf of Mississippi Power Company, Georgia Power Company, Alabama Power Company, Savannah Electric and Power Company, and Gulf Power Company (collectively, Southern Companies or Southern), pursuant to prior settlement agreements regarding Southern's formula rates for a variety of generation (both bundled and unbundled) and transmission services.¹ On March 31, 2004, in the above dockets the Commission's Trial Staff (Trial Staff) filed a motion requesting an order setting for hearing the input data and cost projections for formula rates.
2. On June 15, 2004 Southern filed an answer to the Trial Staff motion that contains commitments that it represents, if implemented, will resolve the concerns of Trial Staff. We will accept those commitments, and, as a result, not initiate an investigation and hearing.

¹ See Southern Company Services, Inc., 86 FERC ¶ 61,057, *clarified*, 86 FERC ¶ 61,302 (1999); Southern Company Services, Inc., 105 FERC ¶ 61,019 (2003), *reh'g pending*.

Background

3. Southern submits annual informational filings to the Commission, redetermining charges for services under certain formula rate contracts. Pursuant to provisions in a 1981 settlement agreement in Docket No. ER80-58, and other subsequent settlements, Trial Staff has the right to request, at three-year intervals, that the Commission examine, under section 205 of the Federal Power Act (FPA),² the justness and reasonableness of the formula rates themselves.³ In other years Southern submits informational filings, like those at issue in this proceeding, and Trial Staff limits its review to Southern's input data and cost projections for the formula rates. The 1981 settlement agreement states that, in the event Trial Staff requests a hearing on the reasonableness of the projections of cost and other information forming an input component of the formula rates, Southern will not oppose the request.

4. On October 30, 2003 and November 6, 2003, as revised on December 19, 2003, Southern submitted its annual 1981 settlement informational filings.

5. Upon review of the informational filings in the 1981 settlement informational filing dockets (*i.e.*, the captioned dockets listed above), Trial Staff filed a motion for hearing on March 31, 2004. In its motion, Trial Staff argues that the input data (including the associated accounting methods) and cost projections for the formula rates may be unjust and unreasonable. Thus, it requests a section 205 hearing to examine the input data and cost projections in the 1981 settlement informational filing dockets.

6. Trial Staff's motion further claims that Southern may have improperly accounted for, and recovered in its formula rates, costs associated with RTO development activities.

7. On April 27, 2004, the Commission granted a Southern motion to hold the proceeding in abeyance to allow Southern and Trial Staff an opportunity to reach a settlement.⁴ The Commission explained that RTO development costs cannot be recovered through formula rates without Commission authorization and advised that any settlement agreement should address the proper regulatory treatment for RTO costs on the Southern system.⁵

² 16 U.S.C. § 824d (2000).

³ Trial Staff explains that Southern's informational filing submitted for 2004 will be the next point in its triennial review cycle when the formula rates and the components thereof (including return on equity) will be subject to review and modification by the Commission under section 205 of the FPA.

⁴ Mississippi Power Co., *et al.*, 107 FERC ¶ 61,086 (2004) (April 27 Order).

⁵ *Id.* at P 5.

8. On June 15, 2004, Southern answered Trial Staff's motion. Southern requests that the Commission not take the action requested in Trial Staff's motion because the concerns raised by Trial Staff have been resolved in commitments Southern is making, and that these proceedings should thus be terminated. The answer contains an Appendix A detailing actions to be undertaken by Southern.⁶ Southern further explains that it has been authorized to state that Trial Staff concurs that, once the actions detailed in Appendix A have been undertaken, the concerns raised by Trial Staff in its motion will have been resolved in accordance with the Commission's April 27 Order.

9. Appendix A includes four measures and commitments that Southern states it is willing to adopt: (1) within one month of the termination of these proceedings, Southern will make a one-time billing adjustment in the amount of \$100,699 for calendar year 2002, and a one-time billing adjustment in the amount of \$149,301 for calendar year 2003, which amounts represent "the portion of revenues recovered under the Affected Agreements that were deemed to have been associated with RTO-related activities undertaken" during these years; (2) beginning on July 1, 2004, with respect to the Affected Agreements, Southern will treat RTO development as unrecoverable through formula rates unless a Commission order explicitly provides for the recovery of such costs; (3) within one month of the termination of these proceedings, Southern will make a one-time billing adjustment, including interest calculated in accordance with the Commission's regulations, for the revenues received under the Affected Agreements for projected costs related to RTO development activities that were recovered from customers under the Affected Agreements during the period of January 1, 2004 to June 30, 2004; and (4) within one month of the termination of these proceedings, Southern will submit to Trial Staff appropriate documentary support demonstrating their compliance with the above-described actions.

10. The measures are conditioned upon the acceptance of all provisions by the Commission, and Southern states that its offer of these measures should not be considered an admission of wrongdoing. Southern also reserves the right to seek Commission approval for the recovery of costs related to RTO development activities.

11. Therefore, Southern requests that the Commission not take the action requested in Trial Staff's motion, and that these proceedings be terminated.

⁶ The formula rates addressed by the Southern answer are those at issue in Docket Nos. ER04-117, ER04-118, ER04-119, ER04-120, and ER04-169 (Affected Agreements).

12. On June 15, 2004, Trial Staff filed a response in support of Southern's answer, explaining that Trial Staff believes that Southern's commitments satisfy concerns as to recovery of RTO development costs in rates under the Affected Agreements. Trial Staff therefore supports termination of these proceedings.

Discussion

13. The Commission declines to initiate an investigation and hearing pursuant to section 205 of the Federal Power Act into the specific contracts at issue in the Docket Nos. ER04-118, ER04-120, ER04-119, ER04-169 and ER04-117 proceedings, and will terminate these proceedings with prejudice. This action is without prejudice to any action the Commission may take as to the recovery of RTO costs in tariffs or other contracts apart from the contracts at issue in these proceedings.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.