

120 FERC 61,229
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 11, 2007

In Reply Refer To:
Southern Company Services, Inc.
Docket No. OA07-42-000

Balch & Bingham LLP
P.O. Box 306
Birmingham, AL 35201

Attention: Kevin A. McNamee
Attorney for Southern Company Services, Inc.

Reference: Southern Company Services, Inc.'s Capacity Benefit Margin Filing

Dear Mr. McNamee:

1. On July 13, 2007, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies) filed, under protest, a Federal Power Act (FPA) section 205 filing¹ regarding the Capacity Benefit Margin set-aside requirements in Order No. 890² (Capacity Benefit Margin Filing).

¹ 16 U.S.C. § 824d (2000).

² *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). Capacity Benefit Margin is the amount of total transfer capability preserved by the transmission provider for load-serving entities whose loads are on the transmission provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

As discussed below, the Commission rejects Southern Companies' Capacity Benefit Margin Filing.³

2. In Order No. 890, the Commission reformed the *pro forma* 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.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (*i.e.*, July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.⁴

4. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin set-aside to ensure that customers not benefiting from the Capacity Benefit Margin set-aside (*i.e.*, point-to-point customers) do not pay for Capacity Benefit Margin. We directed transmission providers to submit redesigned transmission charges through a limited issue

³ Also on July 13, 2007, in Docket No. OA07-38-000, Southern Companies filed under FPA section 206 a compliance filing providing revised tariff sheets to their Open Access Transmission Tariff (OATT) to comply with the *pro forma* OATT as modified in Order No. 890. 16 U.S.C. § 824e (2000). In addition, on July 31, 2007, in Docket No. ER07-1219-000, Southern Companies filed a FPA section 205 filing to further amend their OATT to address some outstanding issues that they identified in their implementation of Order No. 890 and to address additional errors in the OATT. Those filings will be addressed in separate Commission orders.

⁴ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007) (Order Extending Compliance Deadlines).

FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁵

5. Consistent with Order No. 890,⁶ Southern Companies filed a proposal regarding the set-aside of Capacity Benefit Margin. 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 [Capacity Benefit Margin], then the transmission provider or network customer that uses the [Capacity Benefit Margin] 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.”⁷

6. To implement this revision to Southern Companies’ charges under their OATT, Southern Companies propose three tariff revisions. First, they propose adding a new section 34.6 to provide that Network Customers will bear a charge for their actual, emergency use of Capacity Benefit Margin. That charge would be based on the firm point-to-point rate. Second, to clarify that the actual use of the Capacity Benefit Margin set-aside capacity will result in firm point-to-point charge, Southern Companies propose revising Schedule 7A (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service) to state:

In addition, load serving entities that schedule energy to meet capacity emergencies utilizing energy over transmission capacity set-aside as Capacity Benefit Margin shall, in accordance with section 34.6 of the Tariff, bear the applicable charge(s) for daily short-term firm point-to-point transmission service provided on the Bulk Transmission Facilities for the

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

⁶ Southern Companies sought rehearing of this issue in the Order No. 890 proceeding. They state that “the assumption contained in Order No. 890 that point-to-point transmission customers are bearing the costs of [Capacity Benefit Margin] is incorrect because network customers and native load, not point-to-point transmission customers, appropriately bear these costs. Moreover, the Commission’s conclusion that point-to-point transmission customers are bearing the costs of [Capacity Benefit Margin] conflicts with, and is an unexplained departure from, the Commission’s recognition in Order 888-A that network customers and native load bear all costs of the transmission system not reserved by point-to-point transmission customers.” Southern Companies’ Capacity Benefit Margin Filing at 2-3 (internal citation omitted). Accordingly, Southern Companies made this filing under protest.

⁷ *Id.* at 6.

amount of Capacity Benefit Margin capacity scheduled for that use.[⁸]

7. Third, Southern Companies propose 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 Southern Companies' or a Network Customer's facilities will result in their bearing a point-to-point charge for that use and reducing the charges to point-to-point transmission customers. Specifically, Southern Companies proposes adding the following item, to be considered as a Revenue Credit:

(v) revenues received from a Network Customer or the equivalent revenue amount determined for the Transmission Provider in accordance with section 34.6 for Capacity Benefit Margin use (*i.e.*, for the scheduling by a Network Customer or the Transmission Provider of energy to meet capacity emergencies utilizing transmission capacity set aside as Capacity Benefit Margin).[⁹]

8. Southern Companies explain that they make this filing in accordance with the Commission's directive in Order No. 890 that transmission providers are to make "a limited issue FPA section 205 rate filing" and that these filings "may be limited to the rate design change only, *i.e.*, they will not require the submission of cost of service data or a revision to the transmission provider's revenue requirement."¹⁰ Southern Companies also seek a waiver if the Commission decides that other regulatory requirements might apply. Southern Companies state that, in accordance with Order No. 890 and the Order Extending Compliance Deadlines, they believe this filing will be made effective as of July 13, 2007.

9. Notice of Southern Companies' Capacity Benefit Margin Filing was published in the *Federal Register*, 72 Fed. Reg. 41,427 (2007), with comments, protests or interventions due on or before August 3, 2007. Georgia Transmission Corporation filed a motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

10. The Commission rejects Southern Companies' proposed methodology to implement the Commission's requirement in Order No. 890 to redesign transmission

⁸ *Id.* at 7.

⁹ *Id.* at 8.

¹⁰ *Id.* (*citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263).

charges to reflect the Capacity Benefit Margin 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 [Capacity Benefit Margin] set-aside, *i.e.*, point-to-point customers, do not pay a transmission charge that includes the cost of the [Capacity Benefit Margin] set-aside.”¹¹ Therefore, as noted above, we required transmission providers to submit redesigned transmission charges that reflect the Capacity Benefit Margin set-aside.¹²

11. We find Southern Companies’ filing does not comply with Order No. 890. Southern Companies filed tariff revisions for charges regarding use of the Capacity Benefit Margin, but did not file a rate change to reflect the Capacity Benefit Margin set-aside, as required by Order No. 890.¹³ Order No. 890 explicitly required transmission providers to submit redesigned transmission charges that reflect the Capacity Benefit Margin set-aside. Southern Companies only apply Capacity Benefit Margin charges based on specific *use* of the set-aside. However, in Order No. 890 we found that the Capacity Benefit Margin set-aside benefits network and native load customers in meeting their generation reliability criteria and thereby avoid the cost of generation resource additions. Therefore, network and native load customers receive the benefit of Capacity Benefit Margin at all times, by providing 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 Capacity Benefit Margin. Thus, Southern Companies must file a rate change that accounts for Capacity Benefit Margin based on the amount of Capacity Benefit Margin set-aside, not based on use. Accordingly, Southern Companies are directed to refile their redesigned transmission charges, consistent with the guidance provided above, within 30 days of the date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹¹ Order 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

¹² The Capacity Benefit Margin is presently pending rehearing in the Order No. 890 proceeding in Docket Nos. RM05-17-001 and RM05-25-001.

¹³ 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.