

125 FERC ¶ 61,093
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 24, 2008

In Reply Refer To:
Southern Company Services, Inc.
Docket Nos. OA08-96-000
OA08-96-001

Southern Company Services, Inc.
P.O. Box 306
Birmingham, AL 35201

Attention: Andrew W. Tunnell
Attorney for Southern Company Services, Inc.

Reference: Penalty Distribution Compliance Filing and Annual Report of Penalty
Assessments and Distributions

Dear Mr. Tunnell:

1. On April 1, 2008, in accordance with Order Nos. 890 and 890-A¹ you submitted, on behalf of Southern Company Services, Inc.² methodologies for distributing penalty revenues for imbalance penalties, operational penalties for unreserved use and operational penalties for late studies (April 1 Filing). In addition, on April 18, 2008, you submitted Southern Companies' annual report of penalty assessments and penalty revenue distribution (April 18 Filing). We accept Southern Companies' filings, as modified, to be effective April 1, 2008, subject to refund, as discussed below.

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

² Acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies).

2. Notice of the April 1 Filing was published in the *Federal Register*, 73 Fed. Reg. 19,204 (2008), with interventions and protests due on or before April 22, 2008. Timely motions to intervene were filed by Alabama Municipal Electric Authority and Georgia Transmission Corporation (GTC). Notice of the April 18 Filing was published in the *Federal Register*, 73 Fed. Reg. 24,066 (2008), with comments due on or before May 9, 2008. GTC filed a timely motion to intervene and comments.

3. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

4. GTC states that Southern Companies' Annual Report notes several network operating agreements (NOA) that pre-date the issuance of Order No. 890 and that also include energy imbalance and unreserved use-related provisions differing from those adopted in Order No. 890. GTC states that it and Southern Companies are parties to such a pre-Order No. 890 NOA and a related network integration and transmission service agreement (NITSA). Due to GTC's unique pre-Order No. 890 arrangements, GTC contends that there is not perfect symmetry when applying Order No. 890 definitions post-hoc to provisions in the GTC NOA and NITSA. According to GTC, this lack of symmetry is especially prominent with provisions in Order No. 890 regarding "unreserved use." GTC states that it submits its comments to clarify the record in order to identify certain inconsistencies between Order No. 890 provisions and the existing agreements, but does not request or seek any Commission action on the facts or issues discussed herein.

5. In Order No. 890-A, the Commission required each transmission provider to submit a one-time compliance filing under FPA section 206 proposing the transmission provider's methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties. The Commission explained that the one-time compliance filing could be submitted at any time prior to the first distribution of operational penalties.³ The Commission stated that transmission providers should request an effective date that is commensurate with the date of their filing and that transmission providers may begin implementing their stated methodology immediately; however, penalty methodologies are subject to refund where the Commission alters the distribution mechanism on review. We accept Southern Companies' methodologies for distributing penalty revenues for imbalance penalties and operational penalties for unreserved use and find that these methodologies generally comply with the requirements of Order Nos. 890 and 890-A.

³ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

6. However, Southern Companies propose a provision in their methodology for distribution of operational penalties for late studies that requires a transmission customer to have a valid tariff transmission delivery service agreement that is in effect on the last day of the calendar year to be eligible to receive any refund. We find this proposed provision to be unjust and unreasonable. Under Southern Companies' proposal, a transmission customer could have a transmission delivery service agreement with Southern Companies at any point in a calendar year (i.e., during a period when a late study penalty occurs) but would not be eligible for any refund from the late study penalty because the transmission customer did not have a transmission delivery service agreement in effect on the last day of the calendar year. Therefore, we accept, subject to refund, Southern Companies compliance filing, to be effective April 1, 2008, and we will require Southern Companies to submit, within 30 days of the date of this order, a compliance filing that removes the language limiting eligibility for late study penalty refunds to transmission customers that have a valid tariff transmission delivery service agreement that is in effect on the last day of the calendar year.

7. We accept Southern Companies annual report of penalty assessments and distribution, as modified. To the extent that Southern Companies' revised methodology to distribute operational penalties for late studies causes the amount of refunds to change, Southern Companies must report this to the Commission in a compliance filing to be filed within 30 days of the date of this order.

8. Finally, we find that the issues presented by GTC regarding existing pre-Order No. 890 transmission service agreements between GTC and Southern Companies are beyond the scope of this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.