

125 FERC ¶ 61,349
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket Nos. ER09-153-000
ER09-154-000
ER09-155-000
ER09-156-000

ORDER ACCEPTING AND SUSPENDING DEPRECIATION RATES,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND
CONSOLIDATING PROCEEDINGS

(Issued December 22, 2008)

1. In this order, we accept for filing Southern Company Services, Inc.'s (Southern) proposed depreciation rates, suspend the rates for a nominal period, and make them effective January 1, 2009, subject to refund. We also establish hearing and settlement judge procedures, and consolidate the proceedings.

I. Description of the Filings

2. On October 29, 2008, Southern, acting as an agent for Alabama Power Company (Alabama Power), Georgia Power Company (Georgia Power), and Southern Electric Generating Company (SEGCO),¹ submitted in four separate filings requests for authorization to update its depreciation rates based on a depreciation study of the properties of Alabama Power and SEGCO.² The same depreciation study was submitted

¹ SEGCO is a wholly owned subsidiary of Alabama Power and Georgia Power, each of which owns an equal share of SEGCO's stock. SEGCO does not develop annual billing rates, and instead passes its costs on to Alabama Power and Georgia Power.

² The depreciation study covers all depreciable and amortizable property, including plant additions and retirements through December 31, 2007. Southern's October 29, 2008 filing, Docket No. ER09-153-000, Ex. DSR-3 at 2; Southern's October 29, 2008 filing, Docket No. ER09-154-000, Ex. DSR-3 at 2; Southern's October 29, 2008 filing, Docket No. ER09-155-000, Ex. DSR-3 at 2; Southern's October 29, 2008 filing, Docket No. ER09-156-000, Ex. DSR-3 at 2.

in each docket to support the proposed changes to Southern's depreciation rates. Southern also submitted testimony by the author of the depreciation study in each docket in support of its proposed depreciation rates.

3. Southern explains that its updated depreciation rates will affect the calculation of charges for services provided under certain jurisdictional contracts and rate schedules.³ It requests authorization to implement the updated depreciation rates for billing purposes beginning January 1, 2009. It also states that each filing is being submitted in accordance with Order No. 618⁴ and section 205 of the Federal Power Act (FPA).⁵

4. The proposed changes in depreciation rates are summarized as follows:⁶

| <u>Function</u> | <u>Existing Rate</u> | <u>New Rate</u> |
|----------------------------|----------------------|-----------------|
| Steam Production | 3.11 | 4.20 |
| Nuclear Production | 1.78 | 1.49 |
| Hydraulic Production | 1.82 | 1.88 |
| Other Production | 3.08 | 3.63 |
| Transmission Plant | 2.98 | 3.83 |
| Distribution Plant | 3.83 | 3.41 |
| General Plant | 4.20 | 3.39 |
| Total Alabama Power | 3.09 | 3.33 |
| | | |
| Steam Production | 3.34 | 4.54 |
| Other Production | 5.39 | 2.60 |

³ The proposed changes in depreciation rates affect rate schedules in the following dockets: Docket No. ER09-153-000, Southern Operating Companies, Rate Schedule FERC No. 66, Rate Schedule FERC No. 67, and Rate Schedule FERC No. 68; Docket No. ER09-154-000, Georgia Power Company, First Revised Rate Schedule No. 825, First Revised Rate Schedule No. 826; Docket No. ER09-155-000, Southern Electric Generating Company, First Revised Rate Schedule SEGCO No. 1; and Docket No. ER09-156-000, Southern Open Access Transmission Tariff (OATT), FERC Electric Tariff, Fourth Revised Volume No. 5.

⁴ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 & n.25 (2000).

⁵ 16 U.S.C. § 824d (2006).

⁶ Southern October 29, 2008 Filing, Docket No. ER09-153-000, Testimony of Donald S. Roff at 2; Southern October 29, 2008 Filing, Docket No. ER09-154-000, Testimony of Donald S. Roff at 2; Southern October 29, 2008 Filing, Docket No. ER09-155-000, Testimony of Donald S. Roff at 2; Southern October 29, 2008 Filing, Docket No. ER09-156-000, Testimony of Donald S. Roff at 2.

| | | |
|--------------------|-------------|-------------|
| Transmission Plant | 2.59 | 4.00 |
| General Plant | 3.25 | 2.41 |
| Total SEGCO | 3.30 | 4.38 |

5. Southern explains that there are two primary elements that account for the increase in annual depreciation expenses: (1) the effect on annual depreciation from interim additions and interim retirements; and (2) the effect of negative net salvage, (when the costs of removal of a facility exceeds its salvage value).⁷ As shown in the list of rate changes above, production and transmission plant depreciation rates have all generally increased, with the exception of depreciation rates for nuclear production, while distribution and general plant depreciation rates have decreased.

II. Notice of Filing and Responsive Pleading

6. Notices of Southern's October 29, 2008 filings in Docket Nos. ER09-153-000, ER09-154-000, ER09-155-000, ER09-156-000 were published in the *Federal Register*, 73 Fed. Reg. 65,845 (2008), with interventions and protests due on or before November 19, 2008. Alabama Municipal Electric Authority (Alabama Municipal) filed a timely motion to intervene in Docket No. ER09-156-000. Southern filed an answer to Alabama Municipal's motion to intervene.

7. Alabama Municipal states that it has not had the opportunity to determine to its satisfaction whether or not Southern's filing is just and reasonable. Alabama Municipal requests that the Commission suspend the effective date of the filing subject to refund, as permitted by the FPA, and set Southern's filing for a full evidentiary hearing and discovery.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Southern's answer and will, therefore, reject it.

⁷ *Id.* at 2-3.

B. Hearing and Settlement Judge Procedures

9. Southern's amended depreciation rates raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

10. Our preliminary analysis indicates that Southern's proposed depreciation rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. While Southern submitted a depreciation study, the study lacks the details, explanations, and supporting documentation necessary to justify the proposed depreciation rates. The depreciation study and the assumptions made in that study dictate many of the proposed depreciation rate changes that affect the revised rates submitted in each docket. Therefore, we will accept Southern's amended depreciation rates for filing, suspend them for a nominal period, make them effective January 1, 2009, subject to refund, and set them for hearing and settlement judge procedures.

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

12. Because Docket Nos. ER09-153-000, ER09-154-000, ER09-155-000, and ER09-156-000 raise common issues of law and fact, we will consolidate them for the purposes of settlement, hearing and decision.

⁸ 18 C.F.R. § 385.603 (2008).

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) The amended depreciation rates of Alabama Power and SEGCO are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2009, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the amended depreciation rates of Alabama Power and SEGCO. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Docket Nos. ER09-153-000, ER09-154-000, ER09-155-000, and ER09-156-000 are hereby consolidated for purposes of settlement, hearing and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.