

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

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

In re Southern Company Services, Inc.

Docket No. IN09-22-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued July 8, 2009)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Southern Company Services, Inc. (SCS). This order is in the public interest because it resolves the investigation into self-reported violations by SCS of the Commission's open access transportation program, specifically violations of the prohibition on buy/sell transactions and the shipper-must-have-title requirement. SCS has agreed to pay a civil penalty of \$350,000. In addition, SCS has agreed to submit compliance monitoring reports.

**Background**

2. SCS is a service company organized under the Public Utility Holding Company Act of 1935 that provides various services to its affiliated operating electric companies at cost. SCS' affiliated operating electric companies are Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively the Operating Companies). With the exception of Southern Power Company (Southern Power), the Operating Companies serve both retail and wholesale customers within specified franchise electric service territories in portions of Alabama, Florida, Georgia and Mississippi. Southern Power only serves wholesale customers.

3. SCS serves as the centralized purchasing agent for all of the electric Operating Companies and enters into natural gas purchase, transportation, and storage contracts as SCS, acting as agent for the Operating Companies, which are individually named in the contracts. The Operating Companies function as a single integrated public utility system through the Southern Company Intercompany Interchange Contract (IIC), which has been filed with the Commission. The IIC provides for a pool that aggregates both the resources and the obligations of the Operating Companies (pool participants). In

addition, SCS purchased gas for Southern Company Gas (Southern Gas), an SCS affiliate which was neither an Operating Company nor a pool participant, but was a certificated marketer in the Georgia retail choice program, until Southern Gas ceased operations on August 31, 2006.

4. In March 2008, following a self-report by SCS, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into possible violations of the Commission's open access transportation program between January 1, 2005 and December 31, 2007. SCS self-reported that it may have violated the prohibition on buy/sell transactions and the shipper-must-have-title requirement.

## **Violations**

### **A. Prohibited Buy/Sell Transactions**

5. The Commission has prohibited certain buy/sell transactions. A prohibited buy/sell transaction is a commercial arrangement where a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (e.g., an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. *See Williams Energy Marketing & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (2000). By prohibiting buy/sell transactions, the Commission prevents a capacity holder with priority to pipeline capacity from acting as a broker of transportation capacity or assigning transportation capacity to end-use customers. Such practices, if permitted, would be a barrier to open access transportation on interstate pipelines.

6. SCS engaged in 128 buy/sell transactions in which it agreed to purchase a counter-party's gas supply at a pipeline receipt point, took title to the gas at that point, transported the gas using SCS' firm transportation capacity, and then re-sold the gas on a delivered basis to the counter-party at a pipeline delivery point, at which point the counter-party took title. The 128 transactions occurred between January 1, 2005 and December 31, 2007, and resulted in the transportation and sale of 7.3 Bcf in violation of the Commission's prohibition on buy/sell transactions. As a result of these transactions, SCS netted \$1.6 million, all of which was credited to the customers of SCS' retail Operating Companies.

7. SCS' buy/sell transactions circumvented and frustrated the Commission's open access transportation policies requiring releases of capacity from one shipper to another to be subject to certain posting and competitive bidding requirements.

## **B. Shipper-Must-Have-Title Requirement Violations**

8. The shipper-must have title requirement provides that the holder of title to the gas must be the capacity holder for the transportation as well. Without the shipper-must-have-title requirement, it is unlikely that shippers would need to use capacity release, since capacity holders could simply transport gas over the pipeline for another entity. Thus, transactions would not be subject to any of the capacity release requirements, such as the reporting requirements or the allocation through competitive bidding. Without the shipper-must-have-title requirement, the identity of the true users of the pipeline's transportation and the conditions under which they moved gas would not be known.<sup>1</sup> The shipper-must-have-title requirement is reflected in the FERC gas tariffs of interstate pipelines providing open-access transportation and storage service.<sup>2</sup>

9. From January 2005 through December 2007, SCS (on behalf of its affiliates) transported 8 Bcf of natural gas on two interstate pipelines in violation of the Commission's shipper-must-have-title requirement. On 572 occasions, SCS primarily either shipped gas owned by one of the Operating Companies using transportation capacity held by Southern Gas or SCS shipped gas owned by Southern Gas using transportation capacity held by one of the Operating Companies. SCS did not receive unjust profits from these transactions. Nevertheless, violations of the shipper-must-have-title requirement interfere with the Commission's oversight of natural gas markets and with the Commission's goal of market transparency.

### **Stipulation and Consent Agreement**

10. Enforcement and SCS resolved Enforcement's investigation of SCS' self-reported violations by means of the attached Agreement. The Agreement requires SCS to pay a \$350,000 civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement. SCS also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert staff to any additional violations of the capacity release requirements that may occur.

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<sup>1</sup> Matching ownership of the gas with the capacity used to transport the gas assures that capacity holders will not engage in capacity assignment, but will instead use the capacity release mechanism when another party wishes to transport its gas, and thus increases transparency in the transportation market.

<sup>2</sup> Although the specific language of pipeline tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage. *See Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

**Determination of the Appropriate Civil Penalty**

11. Pursuant to section 22(a) of the Natural Gas Act (NGA), the Commission may assess a civil penalty up to \$1 million per day per violation for as long as the violation continues.<sup>3</sup> In approving the Agreement and the \$350,000 civil penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and the Revised Policy Statement on Enforcement.<sup>4</sup> We conclude that the penalty determination in the instant matter is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and scope of SCS' violations while recognizing that SCS took the initiative both to report and to remedy the violations. We also took into account that SCS discovered the violations through an internal investigation and that it provided exemplary cooperation throughout Enforcement's investigation. Further, there were no unjust profits for SCS to disgorge.

12. We conclude that the civil penalty and compliance monitoring reports specified in the Agreement are fair and equitable, and in the public interest.

**The Commission orders:**

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> 15 U.S.C. § 717t-1(a) (*added by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 314 (b)(1)(B), 119 Stat. 594, 691 (2005) (authorizing the Commission to impose civil penalties "of not more than \$1,000,000 per day per violation for as long as the violation continues"*).

<sup>4</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 - 71 (2008).



which was neither an Operating Company nor a pool participant, but was a certificated marketer in the Georgia retail choice program, until Southern Gas ceased operations on August 31, 2006.

3. Beginning in October 2007, in response to the Commission's approval of an Enforcement settlement with BP Energy Company (*In re BP Energy Company*, 121 FERC ¶ 61,088 (2007)) (*BP Energy*), resolving violations of the SMHT requirement and the Commission's capacity release rules, SCS initiated an internal review of approximately 10,000 transportation transactions covering 700 Bcf of total volume. SCS completed its review in February 2008 and submitted a self-report to Enforcement staff shortly thereafter. Enforcement opened an investigation into the self-reported violations pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008). SCS' cooperation throughout the investigation was exemplary.

## **B. Summary of Violations**

### **1. Buy/Sell Transactions**

4. Commission policies prohibit buy-sell transactions. A buy-sell transaction is a commercial arrangement where a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (*e.g.*, an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. *See Williams Energy Mktg. & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (2000).

5. SCS engaged in 128 buy/sell transactions in which it agreed to purchase a counter-party's gas supply at a pipeline receipt point, took title to the gas at that point on behalf of an SCS affiliate, transported the gas using SCS' firm transportation capacity, and then re-sold the gas on a delivered basis to that counter-party at a pipeline delivery point, at which point the counter-party took title. SCS identified 128 transactions between January 1, 2005 and December 31, 2007 totaling 7.3 Bcf which violated the Commission's prohibition on buy/sell transactions. As a result of these transactions, SCS netted \$1.6 million, all of which was credited to the customers of SCS' retail Operating Companies.

### **2. SMHT Violations**

6. A central requirement of the Commission's open access transportation program is that all shippers must have title to the gas at the time the gas is tendered to the pipeline or storage transporter and while it is being transported or held in storage by the transporter. Interstate pipeline tariffs include provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline. Although the specific language of each interstate pipeline's tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the

course of the transportation or the duration of storage on any pipeline. *See Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

7. From January 2005 through December 2007, SCS (on behalf of its affiliates) transported 8 Bcf of natural gas on two interstate pipelines in violation of the Commission's SMHT requirement. On 571 occasions in 2005 or 2006, either SCS shipped gas owned by the Operating Companies using transportation capacity held by Southern Gas or SCS shipped gas owned by Southern Gas using transportation capacity held by the Operating Companies. On one occasion in 2007, SCS shipped 0.004 Bcf of gas owned by Southern Power to an electric wholesale generator subsidiary, DeSoto County Generating Company, using the Operating Companies' transportation capacity. SCS did not receive unjust profits from these transactions.

### **C. Self-Corrective Action**

8. SCS stopped engaging in buy/sell transactions as a result of the Commission's October 2007 issuance of *BP Energy*. SCS also conducted a comprehensive review of SCS' interstate pipeline transportation transactions from the beginning of 2005 through the end of 2007. Senior management initiated and fully supported SCS' review and did not attempt to conceal the violations. SCS self-reported to the Commission and SCS voluntarily developed improvements to avoid buy/sell transactions and to ensure future compliance with the SMHT requirement when it transports gas on interstate pipelines. SCS also conducted employee training that addresses compliance with open access transportation requirements generally.

## **III. REMEDIES AND SANCTIONS**

9. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the self-reported capacity release violations, SCS agrees to take the following actions.

### **A. Civil Penalty**

10. SCS shall pay a civil penalty of \$350,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below. SCS shall not pass through the civil penalty, either directly or indirectly, to any present or future customers or ratepayers of SCS or of SCS' affiliates.

### **B. Compliance Monitoring**

11. SCS shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report, covering the time period from the end of the self-report period (December 31, 2007) until six months after the Effective Date of this Agreement, shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective

Date of this Agreement falls, except that in the event the Effective Date falls within the ten-day period preceding the end of a calendar quarter, SCS shall submit the first semi-annual report no later than fifteen days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. With respect to all of SCS' wholesale natural gas business, each compliance report shall: (1) advise staff whether additional violations of the capacity release requirements have occurred; (2) provide a detailed update of all compliance training administered and compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning the Commission's capacity release requirements, and a statement of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of SCS that the compliance reports are true and accurate. Upon request by staff, SCS shall provide to staff all backup documentation supporting its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require SCS to submit semi-annual reports for one additional year.

#### **IV. TERMS**

12. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed in the self-report as to SCS and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to SCS.

13. Commission approval of this Agreement without material modification shall release SCS and forever bar the Commission from holding SCS and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to SCS, liable for any and all administrative or civil claims arising out of, related to, or connected with the violations addressed in this Agreement.

14. In connection with the payment of the civil penalty provided for herein, SCS agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). SCS waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

15. Failure to make a timely civil penalty payment agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), and may subject SCS to additional action under the enforcement and penalty provisions of the NGA.

16. If SCS does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) (2008) from the date that payment is due, in addition to the penalty specified above.

17. The Agreement binds SCS and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on SCS, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

18. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or SCS has been made to induce the signatories or any other party to enter into the Agreement.

19. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor SCS shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and SCS.

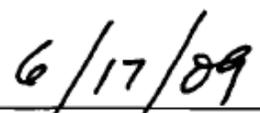
20. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

21. The undersigned representatives of SCS affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

22. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original. The Agreement may be signed in counterparts.

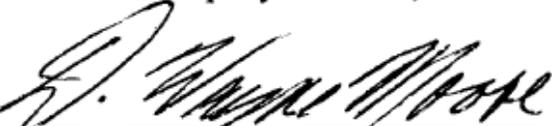
Agreed to and accepted:

  
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Susan Court  
Director  
Office of Enforcement  
Federal Energy Regulatory Commission

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeffrey L. Wallace  
Vice President, Fuel Services  
Southern Company Services, Inc.

6.16.09  
Date

  
\_\_\_\_\_  
D. Wayne Moore  
Generation Compliance Officer  
Southern Company Services, Inc.

6/15/09  
Date