145 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Mississippi Power Company | Docket No. ES14-1-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued December 17, 2013)

1. On October 10, 2013, Mississippi Power Company (Mississippi Power) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] (Application) seeking Commission authorization to issue various equity and long-term debt securities[2] in an aggregate amount not to exceed $2.4 billion and short-term debt securities[3] in an aggregate amount not to exceed $1 billion outstanding at any one time. We will grant the authorizations, as discussed below.

I. Background

2. Mississippi Power is a public utility incorporated under the laws of Mississippi and is also admitted to do business in Alabama.[4] Its parent company is The Southern Company (Southern).[5]

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[1] 16 U.S.C. § 824c (2012).

[2] Mississippi Power states that the long-term debt will be in the form of senior notes, junior subordinated notes, term loan notes and tax-exempt bonds or other long-term debt and equity securities in the form of common stock, preferred stock, depositary preferred stock and preference stock in any combination thereof. Application at 1.

[3] Mississippi Power states that the short-term debt will be in the form of: (1) short-term notes; (2) commercial paper issued to or through dealers; and/or (3) non-negotiable promissory notes issued to public entities for their revenue anticipation notes. *Id.* at 5.

[4] *Id.* at 2.

[5] *Id.* at 3.

3. Mississippi Power states that it is currently undertaking a first of its kind lignite gasification and carbon recapture electric power generating plant located in Kemper County, Mississippi (Kemper Facility). The Kemper Facility will be fueled by lignite, an abundant, lower heating value coal, from a mine owned by Mississippi Power and located adjacent to the Kemper Facility. In connection with the Kemper Facility, Mississippi Power is also constructing and will operate approximately 61 miles of carbon dioxide pipeline infrastructure. The Kemper Facility is designed to capture and sequester at least 65 percent of the carbon dioxide produced by the Kemper Facility during operations. Construction at the Kemper Facility is over 75 percent complete and start-up activities are underway.[6]

4. Mississippi Power states that the certified cost estimate of the Kemper Facility included in the Mississippi Public Service Commission's (Mississippi Commission) order authorizing the Kemper Facility in 2012 was $2.4 billion, net of certain grants received from the U.S. Department of Energy and excluding any permitted exceptions. The Mississippi Commission approved a construction cap of up to $2.88 billion, net of certain grants received from the U.S. Department of Energy and any permitted exceptions, with recovery of prudently-incurred costs subject to approval by the Mississippi Commission. Mississippi Power states that, in its Quarterly Report Form 10-Q for the quarter ended June 30, 2013, it reported that the cost estimate for the Kemper Facility has been updated and exceeds the cost cap established by the Mississippi Commission by approximately $990 million on a pre-tax basis.[7]

5. Mississippi Power states that it does not intend to seek any joint owner contributions or rate recovery from its retail customers or wholesale requirements customers for any costs related to the construction of the Kemper Facility that exceed the $2.88 billion cost cap. Thus, Mississippi Power has recorded charges to income for estimated losses on the Kemper Facility in an amount totaling $990 million on a pre-tax basis (Kemper Charges). Mississippi Power also states that it is revising its construction schedule for the Kemper Facility as a result of abnormally wet weather and lower-than-planned construction labor productivity, and currently expects that the Kemper Facility will be placed in service later in 2014 than the originally scheduled in-service date of May 2014. Mississippi Power states that specific revisions to the schedule and the resulting changes to the construction cost estimate are expected to be completed in late October 2013. However, Mississippi Power's analysis of the estimated cost and schedule to complete the Kemper Facility will be ongoing throughout the construction period.

[6] *Id.* at 7-8.

[7] *Id.* Mississippi Power states that, after tax, the amount that exceeds the cost cap is $612 million. *Id.*

II. Application

6. Mississippi Power states that the proceeds from the issuance of the long-term debt, equity securities and short-term debt will be used to facilitate Mississippi Power's activities as a public utility engaged in the generation, transmission and distribution of electricity both for sale to end users in Mississippi and for resale in interstate commerce, including financing electric power system construction, operations and maintenance activities and refinancing certain outstanding securities issued for like purposes. Specifically, Mississippi Power states that it will use the proceeds from the sale of the long-term debt, equity securities and short-term debt: (1) to redeem or otherwise retire its outstanding senior notes, junior subordinated notes, term loan notes, obligations in connection with revenue bonds, preference stock and/or preferred stock or other securities or to repay amounts of short-term debt; (2) to pay a portion of its cash requirement to carry on its electric utility operations; and (3) for general corporate purposes, including capital expenditures, such as the construction of the Kemper Facility and the financing of Mississippi Power's liquidity needs such as the payment of taxes, dividends, and fuel costs.[8]

A. Equity Securities and Long-Term Debt

1. Common Stock

7. Mississippi Power seeks Commission approval to issue its common stock, no par value, directly to its parent company, Southern. Mississippi Power states that Southern will not pay less than the appropriate consideration required by applicable Mississippi law for the common stock, in such amount as determined by Mississippi Power's board of directors. It explains that the common stock would be entitled to such dividends as may be legally declared by Mississippi Power's board of directors.[9]

2. Preferred Stock

8. Mississippi Power proposes to issue shares of preferred stock (including depositary shares representing a fractional share of preferred stock) in such series and with such dividend rates, redemption provisions, liquidation preferences, sinking fund provisions, voting rights, and other rights, preferences, limitations and restrictions as may be established at the time of issuance based on market conditions.[10]

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[8] *Id.* at 16-17.

[9] *Id.* at 3.

[10] *Id.* at 3-4.

3. **Preference Stock**

9. Mississippi Power proposes to issue shares of preference stock (including depositary shares representing a fractional share of preference stock) in such series and with such dividend rates, redemption, provisions, liquidation preferences, sinking fund provisions, voting rights, and other rights, preferences, limitations and restrictions as may be established at the time of issuance based on market conditions.[11]

4. **Long-Term Debt**

10. Mississippi Power seeks Commission approval to issue and sell secured or unsecured long-term debt (Long-Term Debt) in the form of senior or subordinated notes, bonds, debentures, guarantees or other debt instruments, including, but not limited to, term loan notes[12] with one or more commercial lending institutions or Southern.[13]

5. **Tax-Exempt Bonds**

11. Mississippi Power seeks Commission approval to enter into arrangements with one or more governmental authorities for the issuance and sale from time to time of pollution control revenue bonds for the benefit of Mississippi Power to finance or refinance the costs of certain air or water pollution control, sewage and solid waste disposal facilities at Mississippi Power's generating facilities located in various counties.[14]

B. **Short-Term Debt**

12. Mississippi Power requests Commission approval to issue and sell the following: (1) short-term notes;[15] (2) commercial paper issued to or through dealers and/or (3) non-negotiable promissory notes issued to public entities for their revenue anticipation notes (together, Short-Term Debt). Mississippi Power proposes to effect short-term note borrowings from one or more commercial lending institutions or from Southern or

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[11] *Id.* at 4.

[12] Mississippi Power states that a "term loan note" involves a promissory note with a term of more than one year. The maturity of any term loan note shall not be greater than seven years from the date of issuance. *Id*. at 4 & n.2.

[13] *Id.*

[14] *Id.*

[15] Mississippi defines "short-term note" as a promissory note with a term of one year or less. *Id*. at 5 & n.3.

Southern Company Funding Corporation (or any other similar financing entity formed by Southern or any of its affiliates).[16]

13. Mississippi Power states that the Short-Term Debt will be evidenced by short-term notes to mature not more than one year after the date of issuance, or "grid" short-term notes, evidencing all outstanding borrowings from each lender to mature not more than one year after the date of issuance. Mississippi Power proposes to issue commercial paper to or through dealers in the form of promissory notes with varying maturities not to exceed one year. Mississippi Power also proposes to issue Short-Term Debt in connection with the financing of certain pollution control and sewage and solid waste facilities through the issuance by public entities of their revenue bond anticipation notes with maturities not exceeding one year from the date of issue. Actual maturities will be determined by market conditions, effective interest cost and Mississippi Power's anticipated cash flow, including the proceeds of other borrowings, at the time of issuance.[17]

C. Amount of Securities

14. Mississippi Power is requesting authorization to issue: (1) up to $2.4 billion additional aggregate amount of equity securities and long-term debt; and (2) up to $1 billion of Short-Term Debt at any one time outstanding.[18]

D. Interest Rates

15. Mississippi Power states that the preferred stock, preference stock, long-term notes and bonds, and tax-exempt bonds may be issued at fixed or floating interest or dividend rates not to exceed, at the time of issuance, a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, but in no event will: (1) the interest or dividend rate for securities issued at a fixed rate exceed 500 basis points over a U.S. treasury security having a remaining term comparable to the term of such securities; or (2) the interest or dividend rate for securities issued at a floating rate exceed 500 basis points over the one-month, three-month, or six-month London Interbank Offered Rate (LIBOR). Mississippi Power states that to reduce overall borrowing costs, the payment of principal of and interest on any Long-Term Debt may be

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[16] *Id.* at 5.

[17] *Id.*

[18] *Id.* at 6.

covered by a financial guaranty insurance policy issued by one or more insurers or by one or more letters of credit from one or more commercial lending institutions.[19]

With respect to the Short-Term Debt, Mississippi Power states that the interest rate will be at the prevailing market rate at the time of issuance, provided that the interest rate on the Short-Term Debt will not exceed the greater of: (1) 500 basis points over the one-month, three-month, or six-month LIBOR; (2) 500 basis points over the Federal Funds Rate as published in the Wall Street Journal; and (3) 200 basis points over the applicable prime rate as published in the Wall Street Journal.[20]

E. **Waiver Request**

16. With respect to the Long-Term Debt, Mississippi Power requests waiver from the Commission's competitive bidding and negotiated placement requirements found at 18 C.F.R. § 34.2(a) (2013).[21]

III. **Notices of Filing, Interventions, and Protests**

17. Notice of the Application was published in the *Federal Register*, 78 Fed. Reg. 62,613 (2013), with interventions and protests due on or before October 31, 2013. None was filed.

IV. **Analysis Under FPA Section 204**

18. FPA section 204(a) provides that requests for authorization to issue securities or to assume obligations or liabilities shall be granted if the Commission finds that the issuance: "(a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (b) is reasonably necessary or appropriate for such purposes."[22]

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[19] *Id.* at 6-7.

[20] *Id.* at 7.

[21] Section 34.2 sets forth the Commission's method of issuance requirements. It states, in part, that the utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2013).

[22] 16 U.S.C. § 824c(a) (2012).

19. In *Westar*, the Commission explained that in reviewing filings under FPA section 204, "the Commission evaluates a utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio. An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments."[23] The interest coverage ratio is the sum of income before interest and income taxes divided by total interest expense.[24] The Commission generally requires that FPA section 204 applicants demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice total interest expense. This is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[25] Nevertheless, the Commission has stated that whether or not an applicant meets this interest coverage screen does not by itself determine whether the Commission will authorize or deny the application,[26] and the Commission has approved section 204 applications that have not met this threshold.[27]

20. Mississippi Power has filed, as Exhibits C, D and E to the Application, actual and *pro forma* financial statements for the 12-month period ended June 30, 2013. Mississippi Power also provided a three-year financial forecast.[28] Exhibit E of the Application shows that Mississippi Power has a *pro forma* interest coverage ratio of negative 0.94, which is below the Commission's 2.0 times interest coverage test.[29] Mississippi Power states that its net loss for the period ended June 30, 2013 resulted primarily from the Kemper Charges. It states that the impact of the Kemper Charges and the related loss caused Mississippi Power's debt to capitalization ratio to increase from 50.8 percent at

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[23] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15, *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

[24] *Id.* n.15.

[25] *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (*Montana Alberta*) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008)).

[26] *Id.* n.7.

[27] *See, e.g.*, *Westar*, 102 FERC ¶ 61,186 at P 15; *Aquila, Inc.*, 107 FERC ¶ 61,044, at P 15 (2004) (*Aquila*).

[28] Application at Exhibit 4.

[29] Mississippi Power states that the interest coverage calculation provided in Exhibits C, D and E to the Application assumes interest for Long-Term Debt at a rate of 500 basis points over a recent 30-year treasury rate of 3.886 percent and for Short-Term Debt at a six-month LIBOR rate of 0.392 percent plus 500 basis points. *Id.* at 7.

December 31, 2012 to 58.2 percent at June 30, 2013. However, Mississippi Power argues that the proposed issuance of securities will not impair Mississippi Power's ability to perform service as a public utility because it does not expect a level of overruns similar to the Kemper Charges to occur again, although it does not rule out that possibility.

21. Mississippi Power also states that it continues to maintain investment grade ratings by Moody's Investors Service (Moody's), Standard and Poor's (S&P), and Fitch Ratings (Fitch), and that these credit ratings were reaffirmed by Moody's and Fitch on August 6, 2013, and by S&P on May 24, 2013.[30] Mississippi Power states that the ratings of its securities are as follows:

	Moody's	S&P	Fitch
Commercial Paper	P-2	A-1	F1
Senior Unsecured Debt	Baa1	A	A
Preferred Stock	Baa3	BBB+	BBB+
Junior Unsecured Debt	Baa2	N/A	N/A

22. Mississippi Power explains that it has ongoing discussions with the rating agencies regarding the construction of the Kemper Facility, including the Kemper Charges. It states that on August 6, 2013, Moody's downgraded Mississippi Power's senior unsecured rating to Baa1 from A3 and its preferred stock rating to Baa3 from Baa2 and changed the outlook from negative to stable. Mississippi Power further states that Moody's affirmed Mississippi Power's short-term rating of P-2/VMIG2 with stable outlook. Additionally, Mississippi Power states that on May 24, 2013, S&P published an update of Southern, affirming Mississippi Power's A/BBB+/A-1 senior unsecured, preferred and short-term ratings, respectively. However, the outlook was changed to negative. With respect to Fitch, Mississippi Power states that on August 6, 2013, Mississippi Power's ratings were affirmed as A/BBB+/F1 senior secured, preferred and short-term ratings, respectively, and revised the outlook on Mississippi Power to negative.[31]

23. Mississippi Power states that it expects to receive equity contributions from Southern of $725 million from June 30, 2013 through the authorization period requested by the Application. It states that it expects these equity contributions to significantly

[30] *Id.* at 15-16.

[31] *Id.*

offset the impact of the Kemper Charges. It states further that Southern has made equity contributions over the last three fiscal years ($200 million in 2011, $700 million in 2012, and $350 million through June 30, 2013). Mississippi Power states that Southern has publicly-affirmed its intention to maintain the financial integrity of its regulated utility subsidiaries, including maintaining a debt to capitalization ratio at Mississippi Power of approximately 50 percent net of any securitized debt obligations. Mississippi Power states that the first of the equity contributions since the end of June occurred in August 2013 and was in the amount of $100 million. In September 2013, Southern made an additional equity contribution of $150 million.[32]

24. Mississippi Power further states that it projects its operating cash flows over the period covered by the Application will continue to be sufficient to support its debt service obligations and to perform its service as a public utility. It states that on March 5, 2013, the Mississippi Commission issued an order approving Mississippi Power's request for an increase in retail rates which allows Mississippi Power an annual rate designed to collect $125 million for 2013, with such amounts to be recorded as a regulatory liability that is expected to be used to mitigate rate impacts beginning in May 2014, increasing to $156 million in 2014.[33] Mississippi Power also explains that in compliance with the Kemper Facility Order, it filed a revised proposed seven-year rate plan with the Mississippi Commission for the Kemper Facility for 2014 through 2020, the first seven years of operation of the Kemper Facility.[34]

25. Additionally, Mississippi Power states that the requested Long-Term Debt authority includes additional contingent amounts to provide flexibility in the event that Mississippi Power does not incur securitized debt obligations, as authorized by the Mississippi legislature, during the period covered by the Application. It explains that legislation to provide for alternate financing through securitization was passed in the Mississippi legislature on February 26, 2013. Mississippi Power further states that it contemplates using securitization as provided in the legislation as its form of alternate financing for prudently-incurred Kemper Facility costs, including financing costs and plant costs above the $2.4 billion certificated cost estimate, not otherwise recovered in any Mississippi Commission rate proceeding. It states that it anticipates it will incur securitized debt obligations up to approximately $700 million to $800 million.[35]

[32] *Id.* at 10-11.

[33] *Id.* at Exhibit 2, *Mississippi Power Company*, Docket No. 2013-UN-14 (Mississippi Commission Mar. 5, 2013) (Kemper Facility Order).

[34] *Id.* at 12 and Exhibit 3, Proposed Seven-Year Rate Plan.

[35] *Id.* at 14.

26. Although Mississippi Power does not meet the Commission's benchmark ratio, Mississippi Power has cited other factors that provide the Commission with an alternative basis upon which the Commission may conclude that the company has reasonable prospects for being able to service the proposed new debt securities, and thus continue to be able to provide service as a public utility. Specifically, Mississippi Power states that Southern has provided it with equity contributions during the past three years and that it anticipates additional equity contributions of $725 million from Southern. Mississippi Power also notes the mitigating effects of the Mississippi Commission's Kemper Facility Order providing for retail rate increases and the legislation passed by the Mississippi legislature to provide alternative financing for a portion of the Kemper Facility costs. Additionally, Mississippi Power has also provided information on its investment grade ratings. We also reviewed Mississippi Power's three-year financial forecast. These five factors, taken together, specifically Southern's record of equity infusions, Southern's commitment to continue to make equity contributions through the time period covered by the Application, the mitigating factors at the state level, the ratings from the three agencies, and the projected financials,[36] support a finding that the proposed issuances will not impair Mississippi Power's ability to provide public utility service.

27. We find that the facts, representations, and commitments set forth in the Application demonstrate that the proposed issuances of securities sought in this Application: (1) will be for lawful objects within the corporate purposes of Mississippi Power and compatible with the public interest, is necessary or appropriate for or consistent with the proper performances by Mississippi Power of service as a public utility, and will not impair Mississippi Power's ability to perform that service; and (2) remain reasonably necessary or appropriate for such purposes.

28. Accordingly, we authorize the following:

a. Mississippi Power is authorized to issue equity securities and long-term debt securities in an aggregate amount not to exceed $2.4 billion.

b. The interest rate for the preferred stock, preference stock, long-term notes and bonds, and tax-exempt bonds may be issued at fixed or floating interest or dividend rates not to exceed, at the time of issuance, a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies, but in no event will: (1) the interest or dividend rate for securities issued at a fixed rate exceed 500 basis points over a U.S. treasury security having a remaining term comparable to the term of such securities; or (2) the interest or dividend rate for securities

[36] *See Aquila*, 107 FERC ¶ 61,044 at PP 16-17; *Montana Alberta*, 128 FERC ¶ 61,217 at P 17.

issued at a floating rate exceed 500 basis points over the one-month, three-month, or six-month LIBOR.

c. Mississippi Power is authorized to issue Short-Term Debt in an aggregate amount not to exceed $1 billion outstanding at any one time.

d. The interest rate for Short-Term Debt will not exceed the greater of: (1) 500 basis points over the one-month, three-month, or six-month LIBOR; (2) 500 basis points over the Federal Funds Rate as published in the Wall Street Journal; and (3) 200 basis points over the applicable prime rate as published in the Wall Street Journal.[37]

29. We grant the requested authorizations effective December 31, 2013, as requested, and they terminate on December 31, 2015. We will grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

30. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[38] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on Mississippi Power abiding by these restrictions.

The Commission orders:

(A) Mississippi Power is hereby authorized to issue equity securities and long-term debt securities in an aggregate amount not to exceed $2.4 billion, at the interest rates stated in the body of this order.

(B) Mississippi Power is hereby authorized to issue Short-Term Debt in an aggregate amount not to exceed $1 billion outstanding at any one time, at the interest rates stated in the body of this order.

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[37] Application at 7.

[38] *Westar*, 102 FERC ¶ 61,186 at P 21.

(C) The authorization is granted effective December 31, 2013 and terminates on December 31, 2015.

(D) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(E) The requested waiver of the Commission's competitive bidding or negotiated placement requirements under 18 C.F.R. § 34.2(a) (2013) is hereby granted.

(F) Mississippi Power must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9 and 131.43 and 131.50 (2013), no later than 30 days after the sale or placement of long-term debt securities or the entry into guarantees or assumption of liabilities.

(G) The authorizations granted in Ordering Paragraphs (A) and (B) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(H) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.