

151 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Alabama Power Company	Docket Nos. ER10-2881-014
	ER10-2881-002
Southern Power Company	ER10-2882-014
	ER10-2882-002
Mississippi Power Company	ER10-2883-014
	ER10-2883-002
Georgia Power Company	ER10-2884-014
	ER10-2884-002
Gulf Power Company	ER10-2885-014
	ER10-2885-002
Oleander Power Project, Limited Partnership	ER10-2641-014
	ER10-2641-002
Southern Company - Florida LLC	ER10-2663-014
	ER10-2663-002
Southern Turner Cimarron I, LLC	ER10-2886-014
	ER10-2886-002
Spectrum Nevada Solar, LLC	ER13-1101-009
Campo Verde Solar, LLC	ER13-1541-008
Macho Springs Solar, LLC	ER14-787-002
	EL15-39-000

ORDER ON UPDATED MARKET POWER ANALYSIS, INSTITUTING SECTION
206 PROCEEDING, AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued April 27, 2015)

1. On June 30, 2014, as amended on September 23, 2014 and on March 20, 2015, Southern Companies¹ filed an updated market power analysis for the Southeast region² in compliance with the regional reporting schedule adopted in Order No. 697.³ We find that Southern Companies satisfy the Commission's standards for market-based rate authority in the Duke Energy Carolinas, Entergy Services Inc. (Entergy),⁴ Florida Power & Light Co. (FPL), Jacksonville Electric Authority (Jacksonville), Progress Energy Florida, South Mississippi Electric Power Association (SMEPA), and Tennessee Valley Authority (TVA) balancing authority areas. Southern Companies' failure to satisfy the wholesale market share screens in the Southern Company Services, Inc. (Southern); PowerSouth Energy Cooperative (PowerSouth); South Carolina Public Service Authority (Santee Cooper); South Carolina Electric & Gas Company (SCEG); and City of Tallahassee (Tallahassee) balancing authority areas establishes a rebuttable presumption of horizontal

¹ Southern Companies include Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, LP, Southern Company – Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, and Macho Springs Solar, LLC.

² We note that Southern Companies, with the exception of Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, and Macho Springs Solar, LLC, filed a previous updated market power analysis in 2011. In light of the Commission's action herein, the 2011 triennial has been overtaken by events and, accordingly, the Commission will terminate Docket Nos. ER10-2881-002, ER10-2882-002, ER10-2883-002, ER10-2884-002, ER10-2885-002, ER10-2641-002, ER10-2663-002, and ER10-2886-002.

³ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

⁴ Southern Companies note that the Entergy and SMEPA balancing authority areas are now part of the Midcontinent Independent System Operator, Inc. market but were stand-alone balancing authority areas during the relevant study period. June 30, 2014 Filing, Frame Aff. at 8 n.21.

market power. As described below, we find that Southern Companies' existing tailored mitigation may not effectively mitigate Southern Companies' potential to exert market power, which provides the basis for instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)⁵ to determine whether Southern Companies' market-based rate authority in the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas is just and reasonable and for establishing a refund effective date.

2. Accordingly, we direct Southern Companies, within 60 days of the date of issuance of this order, to: (1) show cause as to why the Commission should not revoke their market-based rate authority in the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas; (2) file a mitigation proposal tailored to their particular circumstances that would eliminate their ability to exercise market power; or (3) inform the Commission that they will adopt the default mitigation set forth in the Commission's regulations or propose other cost-based rates and submit cost support for such rates.⁶

I. Background

3. Southern Companies have authorization to make sales of energy, capacity and ancillary services at market-based rates. They also have tailored mitigation intended to mitigate Southern Companies' potential market power in the Southern balancing authority area and its first-tier markets. The Commission conditionally accepted Southern Companies' mitigation proposal on December 18, 2008, under which Southern Companies established day-ahead and hour-ahead energy auctions (Auction).⁷ Specifically, Southern Companies proposed to institute the Auction for at least a three-year period, to offer into the Auction all Southern Companies' uncommitted thermal resources at cost-capped offer prices and to contract with an Independent Auction Monitor to oversee the Auction. The Commission's acceptance of Southern Companies' Auction proposal included, among other things, the condition that the Auction be expanded to allow sellers other than Southern Companies to offer supply.⁸ The

⁵ 16 U.S.C. § 824e (2012).

⁶ 18 C.F.R. § 35.38 (2014).

⁷ *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008) (December 2008 Order).

⁸ On January 21, 2009, as supplemented on February 2, 2009, Southern Companies submitted a compliance filing accepting conditions imposed by the Commission in the December 2008 Order and providing tariff revisions reflecting that the

(continued...)

Commission found that the Auction serves to mitigate Southern Companies' potential to exercise market power in the Southern balancing authority area and its first-tier markets.⁹

4. In their 2014 updated market power analysis, Southern Companies state that they pass the pivotal supplier screen for the Southern balancing authority area and for all first-tier balancing authority areas. Southern Companies state that their wholesale market share screens indicate failures in each of the four seasons for the Southern, Santee Cooper, and SCEG balancing authority areas; failures in the winter and spring seasons in the PowerSouth balancing authority area; and failures in the spring and fall seasons in the Tallahassee balancing authority area. Southern Companies contend that any potential market power concerns arising from the screen failures are eliminated by Southern Companies' continued operation of the Auction.

5. Southern Companies explain that the Auction includes a must-offer requirement, requiring Southern Companies to offer through the Auction all available capacity from thermal resources at cost-capped prices. They state that they offer the capacity for sale in: (1) firm and recallable 50 megawatt (MW) blocks as part of the day-ahead auction, which runs every business day of the year excluding holidays recognized by the North American Electric Reliability Corporation (NERC); and (2) non-firm 1 MW blocks as part of the hour-ahead auction which runs every hour of every day of the year. Potential buyers may submit bids to buy the offered capacity. If there is a match between an offer and a bid, then the Auction clears pursuant to the established Auction clearing process and the matched parties are expected to consummate their transaction through a bilateral contract. In addition, under the Auction rules, Southern Companies are

role and responsibilities of the Independent Auction Monitor were further developed and the auctions were expanded to include sellers other than Southern Companies. On March 25, 2009, the Commission accepted Southern Companies' compliance filing. *Southern Company Services, Inc.*, 126 FERC ¶ 61,274 (2009) (March 2009 Order). On May 29, 2009, the Director, Division of Tariffs and Market Development – West, acting pursuant to delegated authority, issued an order accepting tariff revisions filed on April 3, 2009 and April 23, 2009 in compliance with the March 25, 2009 Order. *Southern Company Services, Inc.*, Docket No. ER09-88-002 (May 29, 2009) (delegated letter order). The Commission also conditionally accepted tariff revisions pertaining to the Auction in *Southern Company Services, Inc.*, 129 FERC ¶ 61,253 (2009) and *Southern Company Services, Inc.*, 134 FERC ¶ 61,226 (2011).

⁹ See, e.g., *Southern Company Services, Inc., et al.*, 128 FERC ¶ 61,056, at PP 36-37 (2009) (finding that Southern Companies' Auction eliminated the opportunity for Southern Companies to exercise market power in first-tier markets).

prohibited from making sales in the Southern balancing authority area during the bid periods associated with the day-ahead and hour-ahead auctions, other than through the Auction.¹⁰

6. Southern Companies state that their offers into the Auction are capped at “shall not exceed” or “up-to” prices. Each offer price cap includes components that are described in appendices to the Auction rules, including an energy charge based on the incremental variable costs of the offered unit from the supply curve, a 10 percent adder for incremental variable costs, and a demand charge of \$21.43/megawatt hour (MWh) determined through the application of Commission accepted methods.¹¹ Southern Companies explain that administration of the Auction is handled by Southern Companies’ in-house Auction Administrator as well as a third-party Independent Auction Administrator, TranServ International. Additionally, the Brattle Group serves as the Independent Auction Monitor for the Auction. As the Independent Auction Monitor, the Brattle Group is responsible for confirming that the Auction is being properly administered in accordance with the rules of the Auction.¹²

7. Southern Companies contend that the efficacy of the Auction as tailored mitigation is based on its available capacity must-offer and cost-capped pricing requirements detailed in their market-based rate tariff, and not in a match quota or mandatory sales obligation on the part of Southern Companies.¹³ Southern Companies

¹⁰ The bid period for the day-ahead Auction begins at 12:00 noon Central Prevailing Time (CPT) two NERC business days prior to the day of physical delivery and ends at 6:30 a.m. CPT one day prior to the Delivery Day. The bid period for the hour-ahead Auction begins 60 minutes prior to the top of the delivery hour and ends 45 minutes prior to the top of the delivery hour.

¹¹ See June 30, 2014 Filing at 5-6 (citing *Southern Company Services, Inc.*, 125 FERC ¶ 61,393 (2008)). In that order, the Commission found that “the methods employed by Southern to develop the proposed demand charge are consistent with Commission precedent, which provides that a seller may include in its cost-based rate cap a contribution to fixed costs based on the embedded costs of its units that are most likely to be used to provide the service at issue.”) *Southern Company Services, Inc.*, 125 FERC ¶ 61,393 at P 18.

¹² June 30, 2014 Filing at 5.

¹³ June 30, 2014 Filing at 4 and 8. The parameters of the must-offer requirement and applicable cost cap of the Auction are detailed in Southern Companies’ market-based rate tariff, Alabama Power Company, FERC FPA Electric Tariff, [Market Based Rate Tariff, Southern’s Tariff Volume No. 4, 0.0.0.](#)

report that in its first year, the Auction had one day-ahead match and nine hour-ahead cleared transactions. In the second through fifth years, the cleared transactions were as follows: eight day-ahead/five hour-ahead; six day-ahead/no hour-ahead; one day-ahead/no hour-ahead; eight day-ahead/no hour-ahead.¹⁴ Southern Companies state that they have researched and identified actions and enhancements to encourage more activity in the Auction and that they intend to implement these features before the end of August 2014.¹⁵

8. First, Southern Companies plan to discount all of their Auction offers (i.e., offers into the day-ahead and hour-ahead auctions) by at least an amount equivalent to the demand charge component of the cost-based cap. They state that while they have discounted their offers by varying amounts, Auction participants may be encouraged to submit more bids into the Auction if they know with certainty that Southern Companies' offers will include a minimum discount of \$21.43/MWh from the cap.¹⁶

9. Second, Southern Companies state that they will institute additional controls to restrict the ability of their Auction Administrator to access the confidential bid and offer information regarding other Auction participants.¹⁷ At present, the Auction Administrator only may access such data through the Energy Auction platform when necessary to respond to a question or complaint about an auction or to comply with certain tariff posting requirements. When this occurs, the Auction Administrator is required to notify both the Independent Auction Monitor and the Independent Auction Administrator. Notwithstanding these restrictions, the technical access rights of the Southern Auction Administrator are such that it remains possible to access such information at any time. Although they are not aware of any concern in this regard on the part of Auction participants, in an effort to bolster current restrictions, Southern Companies state that they will remove their Auction Administrator's default technical access rights.¹⁸

10. Southern Companies also state that they will modify the webMarket platform to make participants' interface with the Auction more streamlined and informative. These

¹⁴ June 30, 2014 Filing at n.19.

¹⁵ *Id.* at 9.

¹⁶ *Id.*

¹⁷ The Auction Administrator is comprised of Southern Companies employees.

¹⁸ June 30, 2014 Filing at 9-10.

technical enhancements consist of: (i) implementing a queuing option for the hour-ahead auctions; and (ii) posting of certain bid-offer spreads. With the queuing option, participants will have the option to enter bids and offers into the webMarket system for multiple hour-ahead auctions during a single webMarket session. In addition, through the bid offer spread enhancement, Southern Companies hope to provide a feature to the Auction that will increase the information available to participants and, as a result, increase activity levels. Specifically, Southern Companies will begin posting on webMarket the absolute difference in \$/MWh between the highest bid and lowest offer from participants that came the closest to, but did not produce, a match.¹⁹

11. Next, Southern Companies state that they will convene an Auction forum to inform participants about these new features. Lastly, Southern Companies commit to have the Independent Auction Monitor perform its annual reporting function to the Commission for as long as the Auction remains in place.²⁰

II. Notice of Filings

12. Notice of Southern Companies' June 30, 2014 filing, as amended on September 23, 2014 and on March 20, 2015, was published in the *Federal Register*,²¹ with interventions and comments due on or before April 10, 2015. None were filed.

III. Discussion

A. Market-Based Rate Authorization

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.²² As discussed below, we conclude that Southern Companies satisfy the Commission's standards for market-based rate authority with the exception of the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas. We conclude that Southern Companies have failed to rebut the presumption of horizontal market power in the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas created by the failure of the indicative screens. In particular,

¹⁹ *Id.* at 10-11.

²⁰ *Id.* at 11-12.

²¹ 79 Fed. Reg. 38,877 (2014); 79 Fed. Reg. 59,261 (2014); 80 Fed. Reg. 17,038 (2015).

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

given the limited number of transactions cleared in the Auction, the limited number of participants in the Auction, and Southern Companies' high prices for sales relative to other sellers' prices in the Southern balancing authority area, we question whether the Auction is effectively mitigating Southern Companies' presumed market power.

1. Horizontal Market Power

14. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.²³ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.²⁴

15. In their updated market power analysis, Southern Companies prepared the pivotal supplier and wholesale market share screens for the Duke Energy Carolinas, Entergy, FPL, Jacksonville, PowerSouth, Progress Energy Florida, Santee Cooper, SCEG, Southern, SMEPA, Tallahassee and TVA balancing authority areas, consistent with the requirements of Order No. 697.²⁵

16. We have reviewed Southern Companies' pivotal supplier and wholesale market share screens for the relevant geographic markets. We find that Southern Companies pass the pivotal supplier and wholesale market share screens for the Duke Energy Carolinas, Entergy, FPL, Jacksonville, Progress Energy Florida, SMEPA and TVA balancing authority areas with market shares ranging as follows: for the Duke Energy Carolinas balancing authority area, 6.9 to 12.0 percent; for the Entergy balancing authority area, 2.1 to 3.5 percent; for the FPL balancing authority area, 0.7 to 5.7 percent; for the Jacksonville balancing authority area, 0 to 12.1 percent; for the Progress Energy Florida balancing authority area, 0 to 3.2 percent; for the SMEPA balancing authority area, 0 percent; and for the TVA balancing authority area, 2.3 to 4.2 percent.

17. We find that Southern Companies pass the pivotal supplier screen but fail the wholesale market share screens for the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas with market shares ranging as follows: for the Southern balancing authority area, 53.1 to 58.0 percent; for the PowerSouth balancing

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

²⁴ *Id.* PP 33, 62-63.

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 231-232.

authority area, 0 to 32.2 percent; for the Santee Cooper balancing authority area, 22.5 to 31.8 percent; for the SCEG balancing authority area, 21.9 to 27.5 percent; and for the Tallahassee balancing authority area, 7.1 to 24.7 percent. Such failures establish a rebuttable presumption of horizontal market power.²⁶

18. Although the Auction is intended to serve as tailored mitigation, we are not persuaded that the Auction, even with the proposed enhancements, provides adequate mitigation of Southern Companies' presumed potential to exercise market power, particularly given the paucity of cleared transactions since the start of the Auction and the low level of third-party participation. The dearth of participation in the Auction could be an indication that it is ineffective because there are few suppliers willing to sell in the Auction, and few buyers interested in purchasing what is being offered. A robust Auction is one in which there are a large number of buyers and sellers, of which this Auction has neither. The most recent Informational Report for The Southern Companies' Energy Auction states that only Southern Companies offered hour-ahead energy in the hour-ahead auction, and two participants, including Southern Companies, offered Firm Energy in at least one day-ahead auction. Only Southern Companies offered Recallable Energy.²⁷ Southern Companies acknowledge that the day-ahead and hour-ahead auction matches have not attained a level of frequency sufficient in the view of index developers to produce a price index for the products sold in the Auction.²⁸ The scarcity of transactions in both the day-ahead and hour-ahead auctions has been consistent since the commencement of the Auction, and we are not persuaded that the enhancements described above will result in a robust Auction.²⁹

²⁶ *Id.* PP 33, 62-63.

²⁷ *See* Informational Report for The Southern Companies' Energy Auction, Docket No. ER09-88-000 (filed June 27, 2014).

²⁸ June 30, 2014 Filing at 8.

²⁹ We question whether the proposed enhancements will significantly improve Auction participation, particularly in light of Southern Companies' statement that "[s]ince participants in these markets are finding the traditional means of transacting (e.g., telephone calls, instant messages) to be fully and fairly meeting their needs and those of their customers, they have seen no reason to turn to the [Auction] in order to achieve their trading objectives. This sentiment has prevailed since the onset of the [Auction], and was confirmed by responses from participants to polling questions posed in connection with the second [Auction] forum, hosted by Southern Companies in 2010." June 30, 2014 Filing at 8.

19. Southern Companies state that “when one examines the Commission’s [Electric Quarterly Reports (EQR)] database and records regarding wholesale sales of the . . . Auction’s “Into Southern” products in the Southern [balancing authority area] between April 2009 and June 2013, the results indicate that Southern Companies comprised less than [five] percent of the total day-ahead product sales activity and approximately [five] percent of the hour-ahead product sales activity.”³⁰ Southern Companies did not submit their analysis in the record, and thus the Commission has no information on the record with which to test the reasonableness of Southern Companies’ claimed results. For example, the Commission is unable to determine using record evidence whether Southern Companies’ claim of making only five percent of the sales during this period is correct.³¹

20. In addition, because Southern Companies introduced the use of EQR data, we reviewed EQR data during the relevant study period for the 2014 triennial (December 1, 2011 - November 30, 2012) to examine volume weighted hour-ahead and day-ahead prices for energy and booked out power in the Southern balancing authority area during hours when both Southern Companies and at least one other seller were making sales.³² This review indicates that Southern Companies’ volume weighted hour-ahead and day-ahead prices are consistently higher than their competitors’ prices. These factors suggest that the Auction may not be effective at mitigating Southern Companies’ presumed market power.

21. We note that Southern Companies’ reported market shares have increased since their 2008 triennial. In the 2008 triennial, Southern Companies reported market shares in the Southern balancing authority area ranging from 29.8 to 42.9 percent; in the 2011 triennial, market shares rose to between 42.1 and 45 percent; and in the latest triennial, market shares are now between 53.1 and 58.0 percent. Similarly, Southern Companies’ reported market shares in the Santee Cooper and SCEG balancing authority areas have risen in every season from the 2008 triennial to the 2011 triennial and further increased in the 2014 triennial. In the Tallahassee balancing authority area, Southern Companies

³⁰ *Id.*

³¹ In Order No. 770 the Commission established criteria to use in analyzing EQR data that could be applied to identify and possibly correct for outlier information on volumes of sales. *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012).

³² We use these hours because they reflect the same system load, weather conditions, natural gas spot prices and transmission system configuration for Southern Companies and all other sellers.

failed the market share screen in 2008 during the fall season and did not report any failures in the 2011 triennial. However, Southern Companies' 2014 triennial shows failures in the spring and fall seasons in the Tallahassee balancing authority area. Finally, Southern Companies' market shares in the PowerSouth balancing authority area fell in the winter and spring seasons since the 2011 triennial, but increased to 56.7 percent during the summer season, and continue to exceed 20 percent in the spring season.

22. The foregoing factors provide the basis for the Commission to institute the instant proceeding in Docket No. EL15-39-000, pursuant to section 206 of the FPA, to determine whether Southern Companies may continue to make sales of energy and capacity at market-based rates in the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas.

23. Under the section 206 proceeding established herein, Southern Companies must show cause, within 60 days of the date of issuance of this order, as to why the Commission should not revoke their market-based rate authority in the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas. In this regard, Southern Companies may present alternative evidence such as delivered price test studies or historical sales and transmission data to rebut the Commission's finding that it has market power in these balancing authority areas.³³ In the alternative, Southern Companies may: (1) file a mitigation proposal tailored to their particular circumstances that would eliminate the ability to exercise market power; or (2) inform the Commission that they will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

24. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, the Commission is required to establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. In order to give maximum protection to customers, and consistent with our precedent,³⁴ we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of our investigation in this proceeding is published in the *Federal Register*.

25. In addition, section 206 requires that, if no final decision has been rendered by the earlier of the refund effective date or the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it failed

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 75.

³⁴ See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

to do so and shall state its best estimate as to when it reasonably expects to make such a decision. We expect that we should be able to render a decision within six months of the date that Southern Companies submit the filing ordered below, or November 30, 2015.

2. Vertical Market Power

26. The Commission requires, in cases where a public utility or any of its affiliates owns, operates, or controls transmission facilities, that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.³⁵

27. Southern Companies state that Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company have an OATT on file with the Commission.³⁶

28. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.³⁷ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of, or control over, who may access transportation of coal supplies (collectively, inputs to electric power production).³⁸ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.³⁹ In Order No. 697, the Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.⁴⁰

³⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

³⁶ Alabama Power Company, FERC FPA Electric Tariff, [OATT and Associated Service Agreements](#), [Tariff Volume No. 5, Southern Companies OATT, 0.0.0.](#)

³⁷ *Id.* P 440.

³⁸ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

³⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

⁴⁰ *Id.* P 446.

29. Southern Companies state that they and their affiliates do not own or control, directly or through affiliates, intrastate natural gas transportation, storage or distribution facilities. They state that they do not operate coal mines, but own recoverable coal reserves and recoverable lignite reserves. They state that they have 10 active lease agreements that allow third parties to drill for coal bed methane gas located on property owned by Alabama Power Company and Southern Electric Generating Company. They state that they own or control through lease a fleet of coal railcars for private use in connection with their coal-fired generation and that on occasion, they will sublease a small quantity of railcars to third parties for short-term use. They state that they own plant-specific, dedicated short-haul rail lines used for private local transport of coal and materials. They state that they own or have options on 19 sites for generation capacity development, other than at existing generation locations.

30. Southern Companies affirmatively state that they and their affiliates have not erected barriers to entry into the Southern balancing authority area or the balancing authority areas that are first-tier to the Southern balancing authority area, and will not erect any such barriers to entry.

31. Based on Southern Companies' representations, we find that Southern Companies satisfy the Commission's requirements for market-based rate authority regarding vertical market power in the Southeast region.

B. Reporting Requirements

32. An entity with market-based rate authorization must file an EQR with the Commission, consistent with Order Nos. 2001⁴¹ and 768,⁴² to fulfill its responsibility under FPA section 205(c)⁴³ to have rates on file in a convenient form and place.⁴⁴

⁴¹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

⁴² *Electricity Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

Southern Companies must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴⁵ Failure to timely and accurately file an EQR is a violation of the Commission's regulations for which Southern Companies may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁴⁶

33. Southern Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁴⁷

34. Additionally, Southern Companies must file an updated market power analysis for all regions in which they are designated as Category 2 sellers in compliance with the regional reporting schedule adopted in Order No. 697.⁴⁸ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Southern Companies' 2014 updated market power analyses for the Duke Energy Carolinas, Entergy, FPL, Jacksonville, Progress Energy Florida, SMEPA and TVA balancing authority areas are hereby accepted for filing, as discussed in the body of this order.

⁴³ 16 U.S.C. § 824d(c) (2012).

⁴⁴ *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

⁴⁵ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

⁴⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁴⁷ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).

⁴⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-850.

(B) Southern Companies are hereby directed to file updated market power analyses according to the regional reporting schedule adopted in Order No. 697, as discussed in the body of this order.

(C) Docket Nos. ER10-2881-002, ER10-2882-002, ER10-2883-002, ER10-2884-002, ER10-2885-002, ER10-2641-002, ER10-2663-002, and ER10-2886-002 are hereby terminated, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL15-39-000 concerning the justness and reasonableness of Southern Companies' market-based rates in the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas, as discussed in the body of this order.

(E) Any interested persons desiring to be heard in Docket No. EL15-39-000 should file a notice of intervention or motion, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) within 30 days of the date of this order.

(F) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL15-39-000.

(G) The refund effective date in Docket No. EL15-39-000, established pursuant to section 206(b) of the FPA, shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

(H) For the Southern, PowerSouth, Santee Cooper, SCEG, and Tallahassee balancing authority areas, Southern Companies are directed, within 60 days from the date of issuance of this order, to (1) show cause as to why the Commission should not revoke their market-based rate authority; (2) file a mitigation proposal tailored to their particular circumstances that would eliminate the ability to exercise market power; or (3) inform the

Commission that they will adopt the Commission's default cost-based rates or propose other cost-based rates and submit cost support for such rates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.