

108 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Georgia Power Company

Docket No. ER04-939-000

ORDER REJECTING FILING

(Issued August 17, 2004)

1. In this order, the Commission rejects a filing submitted by Georgia Power Company (Georgia Power), which seeks to extend the term of the Revised and Restated Coordination Services Agreement (RCSA) whereby Georgia Power provides certain control area services to Oglethorpe Power Corporation (Oglethorpe) and Georgia System Operations Corporation (GSOC). We base our decision to reject this filing on the fact that GSOC has properly exercised its right to terminate the RCSA and that the RCSA is no longer necessary because GSOC will begin operation as a North American Electric Reliability Council (NERC) and Southeastern Electric Reliability Council (SERC) certified control area after termination of the RCSA.
2. We are aware that creation of additional control areas could raise, in other circumstances, important concerns about reliability. In the present case, however, no evidence has been presented demonstrating that the termination of the RCSA will adversely impact reliability. On the record before us, we have no reason to doubt GSOC's ability to operate as a control area or its ability to maintain its NERC/SERC certification given that it has operated as a "pseudo control area" for the past six years. In this regard, upon termination of the RCSA, Generation Control and Performance—regulation and operating reserves—is the only NERC function that RCSA termination will affect and that GSOC will be assuming.
3. This order benefits customers insofar as it will reduce operating costs to GSOC and its customers.

Background

4. On June 18, 2004, as corrected on June 30, 2004, Georgia Power filed a proposed amendment (June 18 Filing) to Article 18 of the RCSA between and among Georgia Power, Oglethorpe and GSOC. Under the RCSA, Georgia Power provides control area

services to Oglethorpe and GSOC. The purpose of Georgia Power's proposed revision of Article 18 is to maintain the RCSA in effect through at least 2005 subject to earlier termination in the event Oglethorpe and Georgia Power reach mutual agreement on a successor arrangement to the RCSA for Oglethorpe's transitioning to a separate control area.

5. As currently written, Article 18.2(a) specifies that, following December 31, 1998, the RCSA would continue in effect under successive one-year renewals unless terminated by one of the parties upon six months' prior written notice to the other parties. On January 22, 2004, GSOC submitted a notice of termination to Georgia Power pursuant to Article 18.2(a) of the RCSA.¹ Georgia Power contends that, in response, it is authorized and required by Article 18.2(b) of the RCSA to make a unilateral filing with the Commission to address future control area services that it believes are necessary or appropriate in recognition of and to accommodate the interrelated nature of the parties' transmission systems and control area functions, unless the parties are able to reach an agreement concerning an amendment to the RCSA within 150 days after the receipt of a notice of termination. The parties have attempted without success to negotiate a successor arrangement, and the 150-day period expired on June 21, 2004.

6. Proposed revised Article 18.1 would redefine the initial term of the RCSA to run through December 31, 2005. Georgia Power states that during this time it will negotiate in good faith with Oglethorpe and GSOC over a proposed successor arrangement. Georgia Power states that upon successful completion of such negotiations, Georgia Power would then file with the Commission a successor arrangement that is agreeable to Georgia Power, Oglethorpe, and GSOC.

7. As in the current Article 18.2, Georgia Power's proposed revised Article 18.2 provides for renewal of the RCSA through successive one-year terms, unless terminated by one of the parties upon six months' prior written notice. Georgia Power proposes, however, that after a party has submitted a termination notice, the parties will meet and confer to evaluate any successor arrangement to the RCSA for a period of 60 days after the notice of termination. Further, Georgia Power proposes that within 90 days of a notice of termination being issued, Georgia Power may either (a) file a Notice of Cancellation with the Commission proposing to cancel the RCSA or (b) file a proposed extension of the RCSA, with or without further amendment, predicated solely upon Georgia Power's determination and assertion that continuation of the RCSA "is in the

¹ As discussed below, GSOC plans to begin operating its control area on October 1, 2004. The termination of the RCSA would be effective as of September 30, 2004.

public interest”. If Georgia Power files a Notice of Cancellation, the RCSA would remain in effect until the Commission issues an order accepting Georgia Power’s filing or otherwise permitting it to take effect.

8. Georgia Power requests the Commission waive the 60-day prior notice requirement to permit an effective date for the proposed amendment to the RCSA of June 18, 2004.

Notice, Interventions, and Protests

9. Notice of Georgia Power’s filing was published in the *Federal Register*, 69 Fed. Reg. 45,032 (2004), with interventions and protests due on or before July 9, 2004. On July 8, 2004, GSOC filed a motion to intervene and protest. Oglethorpe also filed a timely motion to intervene and protest.

10. GSOC argues that Georgia Power’s June 18 Filing is unjust and unreasonable and urges the Commission to reject it. GSOC states that Georgia Power’s June 18 Filing would retroactively abrogate the notice of termination that GSOC filed on January 22, 2004.² GSOC argues that, under Georgia Power’s proposed revision of Article 18, it would also lose the right it currently has to terminate the RCSA unilaterally before December 31, 2005. Thereafter, any attempt to terminate the RCSA would be subject to Georgia Power’s veto as Georgia Power arrogates to itself (rather than the Commission) the sole discretion to determine whether cancellation or a proposed successor arrangement “is in the public interest”.

11. GSOC explains that the RCSA is no longer necessary now that GSOC has formed its own control area and obtained all required NERC and SERC certifications. Thus, GSOC can now self-supply all the control area services provided by Georgia Power under the RCSA. GSOC notes that it has been self-supplying most of the RCSA services, and thus operating as a “pseudo control area” pursuant to its rights under the RCSA, for more than six years, and it has invested significant resources to obtain NERC/SERC certification to operate as a separate control area.

12. GSOC argues that termination of the RCSA will not adversely affect reliability or create any gaps in its ability to meet NERC requirements. Generation Control and Performance—regulation and operating reserves—is the only NERC function that

² GSOC notes that in the June 18 Filing Georgia Power does not contest the validity or sufficiency of the termination notice that GSOC filed, nor does Georgia Power challenge GSOC’s right to have submitted the notice.

termination of the RCSA will affect,³ so there will be no change in how the NERC control area functions related to transmission and reliability are handled. Reliability functions will not be affected as Southern will remain the Security Coordinator and operation of the transmission system is covered under separate agreements with Georgia Power.

13. GSOC states further that any attempt by Georgia Power to delay implementation of GSOC's control area beyond the planned start date of October 1, 2004 would cause GSOC and its members significant economic harm. First, GSOC will have to continue to pay RCSA charges of \$7 to \$8 million annually. Second, GSOC states that the delay caused by Commission acceptance of Georgia Power's June 18 Filing will jeopardize continued NERC/SERC certification of its control area; GSOC has notified SERC of its projected October 1, 2004 start-up, and GSOC must begin operation of the control area by January 1, 2005 to avoid seeking re-certification.

14. GSOC states that the only issues that remain to be resolved are control area to control area operational and data exchange matters. GSOC argues that such matters can be resolved by the control areas themselves and that they do not need to be addressed in a section 205 filing. GSOC states that the control areas have ample time before October 1, 2004 to work out these matters. GSOC states that GSOC, Georgia Power, and Southern have had meetings since GSOC filed the notice of termination on January 22, 2004, and that technical teams are making progress in resolving these matters.

15. GSOC rejects Georgia Power's assertion in the June 18 Filing that the RCSA must remain in effect to give the parties a chance to continue working on a successor arrangement. GSOC asserts that Georgia Power does not acknowledge the many opportunities Georgia Power and Southern had to raise concerns during the NERC/SERC certification process. GSOC states that Georgia Power and Southern participated in GSOC's NERC/SERC certification process and thus have had formal notice for five years that GSOC was developing a control area.

³ GSOC notes with regard to Generation Control and Performance that it will take on three additional responsibilities upon start-up of the separate GSOC control area. First, GSOC will continue to operate regulating capacity but will directly contribute to support of the Eastern Interconnection frequency. Second, GSOC will continue to operate its own operating reserves but be measured in accord with NERC procedures for Disturbance Control Standard compliance. Third, GSOC will have its own inadvertent account with the Eastern Interconnection.

16. Oglethorpe states that GSOC, pursuant to the terms of the RCSA, is acting as its agent and that the statements in GSOC's protest to the June 18 Filing were both on its own behalf and on Oglethorpe's behalf.

17. On July 23, 2004, Georgia Power filed an answer in opposition to GSOC's motion for expedited consideration. Georgia Power requested the Commission to deny GSOC's motion, stating that GSOC had failed to provide a legally sound and factually substantiated basis for its request. Georgia Power briefly asserts that there are a number of erroneous statements in GSOC's motion, but does not identify the allegedly erroneous statements or provide any support for its assertions.

Discussion

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene of GSOC and Oglethorpe serve to make them parties to this proceeding.

19. The Commission rejects Georgia Power's proposed revision of Article 18 of the RCSA as submitted in the June 18 Filing. We find that the RCSA will no longer be required after GSOC begins operating its control area on October 1, 2004.⁴ We base our decision on the following considerations.

20. First, GSOC has exercised its right to terminate the RCSA by submitting a notice of termination in accordance with Article 18.2(a) of the RCSA.. As described above, Article 18.2(a) allows parties to the RCSA to terminate upon six months' written notice of termination. On January 22, 2004, GSOC gave Georgia Power written notice of termination.⁵

⁴ As the RCSA will terminate effective September 30, 2004, we remind Georgia Power of its obligation to file a notice of termination pursuant to the Commission's regulations. 18 C.F.R. § 35.15 (2004).

⁵ Georgia Power's June 18 Filing emphasizes the fact that GSOC did not provide Georgia Power notice of any pending coordination agreement with a third party. Under Article 18.2(b) of the RCSA, GSOC would only be obligated to provide such notice if it had requested Georgia Power to file a proposed amendment to the RCSA, which it did not.

21. We also note that GSOC has received NERC/SERC certification to operate as a control area, and all of its 18 operators are NERC/SERC certified. In addition, GSOC has operated as a “pseudo control area” under the RCSA for over six years and has self-supplied most of the services covered by the RCSA. GSOC has invested significant time and resources over several years to acquire the expertise and equipment required to operate as NERC/SERC-certified control area. We also note that Georgia Power in its June 18 Filing and in its July 23 answer to GSOC’s filing did not provide any data or arguments that persuade us that GSOC is not qualified to operate as a control area.

22. No one has provided support for a finding that termination of the RCSA will adversely affect reliability or create any gaps in GSOC’s ability to meet NERC/SERC requirements. As noted above, GSOC has been operating as a “pseudo control area” for several years, self-supplying many of the services covered by the RCSA. Due to the termination of the RCSA, Generation Control and Performance—regulation and operating reserves—is the only NERC function that RCSA termination will affect and that GSOC will be assuming, and, on the record before us, we have no reason to doubt GSOC’s ability and willingness to fulfill that function.

23. Finally, we also reject Georgia Power’s June 18 Filing because we are concerned that proposed revised Article 18.2(a) effectively grants Georgia Power a unilateral veto over attempts by GSOC (and Oglethorpe) to terminate the RCSA, which it is currently entitled to do under the RCSA. Furthermore, after December 31, 2005, revised Article 18.2(a) provides that, upon receipt of a notice of termination, Georgia Power may either accept the notice of termination and cancel the RCSA, or alternately file an extension, “predicated upon Georgia Power’s determination and assertion that continuation of the [RCSA] ... is in the public interest”. Under the Federal Power Act, the authority to make such determinations regarding the public interest is entrusted to the Commission, rather than private parties.

24. Both parties state in their filings that they are continuing negotiations, and the Commission encourages both sides to proceed expeditiously with their negotiations to work out before October 1, 2004 any control area to control area technical issues that may remain and that may hinder reliability.

The Commission orders:

Georgia Power's June 18 Filing is hereby rejected.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.