

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket No. ER06-1249-000

ORDER ACCEPTING TRANSMISSION SERVICE AGREEMENT,  
DENYING WAIVER, AND REQUIRING REFUNDS

(Issued September 11, 2006)

1. On July 13, 2006, Southern Company Services, Inc. (Southern), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies), submitted for filing First Revised Service Agreement No. 477<sup>1</sup> (Service Agreement) between Southern Companies and Exelon Generation Company, LLC, (Exelon), dated May 30, 2006. We accept the Service Agreement for filing, to be effective September 12, 2006, deny Southern's request for waiver of the Commission's sixty-day prior notice requirement, and require time value refunds. The time value calculation must be computed from the date of actual collection until the date refunds are made.<sup>2</sup>

**Background**

2. From June 1, 2003 until May 31, 2006, Southern provided firm point-to-point transmission service to Exelon. According to Southern, Exelon timely requested to roll over that service for a one-year term, with service commencing on June 1, 2006.

3. Southern explains that it has submitted the instant Service Agreement to the Commission because it is a non-conforming agreement. Specifically, a provision in section 5.0 grants Southern the ability to limit Exelon's rollover rights in the future if the Commission's rollover policy in effect at the time of the rollover request so allows.

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<sup>1</sup> Southern Operating Companies, FERC Electric Tariff Fourth Revised Volume No. 5, First Revised Service Agreement No. 477.

<sup>2</sup> *Northeast Utilities Service Company*, 76 FERC ¶ 61,237 at 62,151 (1996) (*Northeast Utilities*).

4. Southern requests that the Commission allow the Service Agreement to become effective on June 1, 2006, the date on which service commenced. However, Southern acknowledges that it filed the Service Agreement more than 30 days after the commencement of service. It blames its tardiness on an “oversight” and changes in “key personnel.” Southern states that it takes the Commission’s filing guidelines “very seriously” and that it is establishing additional procedures to ensure that “this situation does not recur.” Finally, Southern states that it will refund the time value of any revenues collected for service provided from the date of commencement to the date of filing.<sup>3</sup>

### **Notice, Interventions and Protests**

5. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 42375 (2006), with protests and interventions due on or before August 3, 2006. No interventions or protests were filed.

### **Commission Decision**

6. We accept the Service Agreement for filing. The non-conforming rollover provision is consistent with language we have previously accepted.<sup>4</sup> As we did when we last reviewed such language, however, we again emphasize that we do not view this language as creating any substantive rights vis-à-vis future proposals to limit a transmission customer’s rollover.<sup>5</sup> Rather this language merely makes explicit that Southern may, in the future, propose to the Commission, for Commission consideration, rollover limits that are consistent with then-effective Commission policy. This language thus gives Southern no additional rights beyond those it already has by virtue of Federal Power Act section 205, 16 U.S.C. § 824d (2000), to make a filing with the Commission proposing restrictions on a transmission customer’s rollover.<sup>6</sup>

7. However, we will deny Southern’s request for waiver of the Commission’s prior notice requirement. Under the Commission’s policy on waiver of the prior notice requirement,<sup>7</sup> service agreements under umbrella tariffs may be filed up to 30 days after

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<sup>3</sup> Southern Transmittal Letter at 3.

<sup>4</sup> See *Southern Company Services, Inc.*, 114 FERC ¶ 61,139 at P 3,7 (2006).

<sup>5</sup> See *Id.*

<sup>6</sup> Additionally, we note that the transmission customer would, of course, have the right to object to any such Southern proposal, just as the Commission would have the right to evaluate any such Southern proposal and accept it, modify it or reject it.

<sup>7</sup> See *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *order on reh’g*, 65 FERC ¶ 61,081 (1993).

service commences. That was not the case, here, however. The filing was not made within 30 days of the date upon which service commenced, due to administrative oversight. As the Commission has stated in the past, however, administrative oversight does not constitute extraordinary circumstances that would justify waiver.<sup>8</sup> Therefore, we deny Southern's request for waiver and will accept the filing, to be effective after 60 days from the date of filing or September 12, 2006.

8. Consistent with our precedent, Southern is directed to refund the time value of the revenues collected from the date of actual collection until the date refunds are made.<sup>9</sup> Further, we will order Southern to file a refund report with the Commission within 30 days thereafter.

The Commission orders:

(A) Southern's First Revised Service Agreement No. 477 is hereby accepted for filing, effective September 12, 2006.

(B) Southern's request for waiver of the Commission's prior notice requirement is hereby denied, as discussed in the body of this order.

(C) Southern is hereby directed to make time value refunds for the time period prescribed herein, within 30 days of the date of this order, and to file a refund report with the Commission within 30 days thereafter.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>8</sup> *Mississippi Power Co.*, 96 FERC ¶ 61,021 at 61,061 (2001).

<sup>9</sup> *Northeast Utilities*, 76 FERC at 62,151.