

129 FERC ¶ 61,222  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

December 15, 2009

In Reply Refer To:  
Southern Company Services, Inc.  
Alabama Power Company  
Georgia Power Company  
Gulf Power Company  
Mississippi Power Company  
Southern Power Company  
Docket No. ER96-780-024

Southern Company-Florida, LLC  
Docket No. ER01-1633-010

Oleander Power Project, LP  
Docket No. ER00-3240-013

DeSoto County Generating Company, LLC  
Docket No. ER03-1383-013

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Attention: Lyle D. Larson  
Attorney for Southern Companies

Reference: Request Concerning Applicability of Commission Orders on Market-Based  
Rate Triennial Updates

Dear Mr. Larson:

1. On October 20, 2009, Southern Company Services, Inc.<sup>1</sup> submitted under section 385.207(a)(5) of the Commission's regulations<sup>2</sup> a request that the Commission confirm

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<sup>1</sup> Acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Power Company, DeSoto County Generating Company, LLC, Oleander Power Project LP, and Southern Company-Florida, LLC.

the applicability of two Commission orders concerning market-based rate triennial updates.

2. On September 2, 2008, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (collectively, Southern Companies) submitted for filing Southern Companies' triennial market power study (2008 Triennial Filing). According to Southern Companies, the 2008 Triennial Filing was submitted on behalf of Southern Companies, including the following market-based rate holding subsidiaries of Southern Power Company: Oleander Power Project LP; Southern Company-Florida, LLC; and DeSoto County Generating Company, LLC (collectively, Southern Power Subsidiaries). However, Southern Companies explain that the caption on the 2008 Triennial Filing did not include the Commission docket under which each of the Southern Power Subsidiaries were granted market-based rate authorization.<sup>3</sup>

3. Southern Companies further state that on December 18, 2008, the Commission issued an order accepting certain tariff revisions establishing energy auctions in the Southern Companies' balancing authority area, subject to certain conditions,<sup>4</sup> and a companion order addressing the horizontal market power issues relating to the Southern Companies' balancing authority area and Southern Companies' vertical market power.<sup>5</sup> On July 16, 2009, the Commission accepted Southern Companies' updated market power analysis for the remaining balancing authority areas studied and concluded that Southern Companies continue to satisfy the Commission's standards for market-based rate authority in their first-tier balancing authority areas, and accepted several notices of change in status filed by Southern Company Services, Inc. on behalf of Southern

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<sup>2</sup> 18 C.F.R. § 385.207(a)(5) (2009).

<sup>3</sup> Each of the Southern Power Subsidiaries have separate market-based rate dockets and separate tariff designations. The separate dockets for the Southern Power Subsidiaries are as follows: Oleander Power Project LP, Docket No. ER00-3240; Southern Company-Florida, LLC, Docket No. ER01-1633; and DeSoto County Generating Company, LLC, Docket No. ER03-1383. We note that Southern Companies' October 20, 2009 filing incorrectly identifies the docket numbers associated with Oleander Power Project, LP and Southern Company-Florida, LLC. *See* Southern Companies' October 20, 2009 Filing at 1, 2, 3.

<sup>4</sup> *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008) (December 18 Energy Auction Order).

<sup>5</sup> *Southern Company Services, Inc.*, 125 FERC ¶ 61,317 (2008) (December 18 Triennial Order).

Companies and the Southern Power Subsidiaries, as well as revisions to Southern Companies' and the Southern Power Subsidiaries' market-based rate tariffs.<sup>6</sup>

4. Southern Companies state that confusion has arisen concerning whether the Commission's review and disposition of Southern Companies' 2008 Triennial Filing included consideration of each of the Southern Power Subsidiaries' continuing satisfaction of the Commission's requirements for market-based rate authorization. Southern Companies explain that this confusion arises because the caption on the 2008 Triennial Filing did not include the docket numbers under which each of the Southern Power Subsidiaries were granted market-based rate authorization. Southern Companies state that although the Southern Power Subsidiaries were included and addressed in the updated market power analysis, the filing was submitted with the Commission and processed under a single lead docket, Docket No. ER96-780-020. Southern Companies asserts that the 2008 Triennial Filing was evaluated by the Commission as including all of Southern Companies' generation holdings, whether by contract or directly owned, including that of each of the Southern Power Subsidiaries.

5. Due to this confusion, Southern Companies request that the Commission confirm that the Commission's December 18 Triennial Order and its July 16 Order also applied to the specific dockets under which the Southern Power Subsidiaries have and retain market-based rate authority: Docket No. ER00-3240 (Oleander Power Project, LP); Docket No. ER01-1633 (Southern Company-Florida, LLC); and Docket No. ER03-1383 (DeSoto Generating Company, LLC).<sup>7</sup> Southern Companies also seek confirmation that the Southern Power Subsidiaries have complied with the Commission's triennial update requirements and remain eligible to transact under their market-based rate tariffs.

6. Notice of Southern Companies' filing was published in the *Federal Register*, 74 Fed. Reg. 64,064 (2009), with interventions and comments due on or before November 30, 2009. None was filed.

7. Because the Southern Power Subsidiaries were included in and addressed in Southern Companies' updated market power analysis submitted in the 2008 Triennial Filing,<sup>8</sup> which was evaluated by the Commission in the December 18 Triennial Order and

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<sup>6</sup> *Southern Company Services, Inc.*, 128 FERC ¶ 61,056 (2009) (July 16 Order).

<sup>7</sup> Southern also states that its request for confirmation is completely unrelated to the October 19, 2009 filing of Southern Companies submitted in Docket No. ER09-88 with respect to revisions to their market-based rate tariff to reflect implementation of an expanded energy auction.

<sup>8</sup> Southern Companies September 2, 2008 Filing, Frame Aff. ¶ 14; Frame Aff. at Attachment 3, pp. 10-11.

the July 16 Order, we confirm that these two orders also apply to the specific dockets under which the Southern Power Subsidiaries have been granted market-based rate authorization, and we confirm that the Southern Power Subsidiaries have complied with the Commission's triennial update requirements. We also confirm that our previous findings that Southern Companies continue to satisfy the Commission's standards for market-based rate authority in their first-tier balancing authority areas,<sup>9</sup> and that the Commission-approved auctions adequately mitigate any market power Southern Companies might have in the Southern balancing authority area<sup>10</sup> apply to the Southern Power Subsidiaries as well. Thus, we confirm that the December 18 Triennial Order and the July 16 Order apply to the following docket numbers: (1) Docket No. ER00-3240 (Oleander Power Project, LP); (2) Docket No. ER01-1633 (Southern Company-Florida, LLC); and (3) Docket No. ER03-1383 (DeSoto Generating Company, LLC).

8. In addition, we note that in the December 18 Energy Auction Order, the Commission accepted proposed tariff provisions that prohibit Southern Companies from making certain market-based rate sales of energy in the Southern balancing authority area outside of the Energy Auction.<sup>11</sup> As affiliates of Southern Companies, Southern Power Subsidiaries are subject to these same restrictions.<sup>12</sup> Therefore, we direct Southern

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<sup>9</sup> July 16 Order, 128 FERC ¶ 61,056 at P 1, 21, 36.

<sup>10</sup> December 18 Triennial Order, 125 FERC ¶ 61,317 at P 18.

<sup>11</sup> Section 4.1.1 of Southern Companies' tariff states that "[d]uring the Bid Period of a DAE Auction for a Delivery Day that is not a weekend day or NERC holiday, Seller shall not make, other than through such DAE Auction, any Energy sale of 16 hours in duration and 50 MW or more in quantity to be delivered at a point in the Southern BAA (other than a delivery point located at a metered boundary with a balancing authority area adjacent to the Southern BAA) from 6 am CPT until 10 pm CPT on the Delivery Day applicable to such Bid Period." Southern Company Services, Inc. FERC Electric Tariff, Second Revised Vol. No. 4, First Revised Sheet No. 13. Similarly, section 4.1.2 states that "[d]uring the Bid Period of a HAE Auction, Seller shall not make, other than through such HAE Auction, any Energy sale to be delivered at a point in the Southern BAA (other than a delivery point located at a metered boundary with a balancing authority adjacent to the Southern BAA) for delivery during the Delivery Hour applicable to such Bid Period." *Id.* Although Southern Companies made an October 19, 2009 compliance filing in Docket No. ER09-88-003, which proposes minor changes to this provision as well as others, the substance of the restriction remains unchanged. This request is currently pending at the Commission.

<sup>12</sup> See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 335 (explaining that mitigation applies to both the mitigated seller and its affiliates), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. &

Power Subsidiaries to make a compliance filing within 30 days of the date of this order revising their market-based rates tariffs to reference the restrictions previously approved in the December 18 Energy Auction Order restricting market-based Energy sales for delivery into the Southern balancing authority area during the Auction periods.<sup>13</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

<sup>13</sup> The reference should be included under the tariff section titled “Limitations and Exemptions Regarding Market-Based Rate Authority.” The tariff should cite to the relevant Commission order(s) imposing such restrictions. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 916 (2007); Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 384.