

131 FERC ¶ 61,101  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Alabama Municipal Electric Authority

Docket No. EL06-93-001

v.

Alabama Power Company and  
Southern Company Services, Inc.

ORDER DENYING REHEARING

(Issued May 4, 2010)

1. Alabama Municipal Electric Authority (AMEA) filed a request for rehearing of the Commission's initial order in this proceeding,<sup>1</sup> which denied the relief requested in AMEA's complaint against Alabama Power Company (Alabama Power) and Southern Company Services, Inc.<sup>2</sup> (collectively, Respondents). In its complaint, AMEA requested a Commission determination that the rates and charges under the Southern Open Access Transmission Tariff (OATT) are unjust, unreasonable, and unduly discriminatory because they do not meet the Commission's comparability standard.
2. In the June 20 Order, the Commission found that Southern's OATT is consistent with the requirements of Order No. 888.<sup>3</sup> The Commission rejected, as unsupported by

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<sup>1</sup> *Alabama Municipal Electric Authority v. Alabama Power Co.*, 119 FERC ¶ 61,286 (2007) (June 20 Order).

<sup>2</sup> As agent for the four Southern operating companies: Alabama Power, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern).

<sup>3</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No.

(continued...)

either precedent or policy, AMEA's proposed broader interpretation of the Commission's comparability standard as set forth in Order No. 888. The Commission also rejected AMEA's proposed remedies, including its proposal that the Commission direct Southern to replace its postage-stamp OATT rates, which reflect Southern's system-wide transmission costs, in favor of zonal rates under which AMEA would be charged only Alabama Power's transmission costs, which would be set at (capped by) the level of the transmission component of Alabama Power's bundled sales.

3. AMEA seeks rehearing of the June 20 Order concerning: (1) the scope of the Commission's comparability requirement, as defined by Commission precedent; (2) the use of a lower Alabama Power zonal rate for transmission service; (3) which party bears the burden of proof in the complaint proceeding; and (4) whether to set for hearing the issue of whether zonal rates are appropriate for Southern. In this order, we deny AMEA's request for rehearing, as discussed below.

### **I. Background**

4. AMEA alleged in its complaint that Southern's OATT rates did not meet the Commission's comparability standard. AMEA specifically objected to Southern's use of OATT rates that reflect Southern's system-average transmission costs (the average of all four operating companies). AMEA asserted that the transmission component of Alabama Power's bundled retail and wholesale rates is, in contrast, based on Alabama Power's individual transmission costs. AMEA indicated (and Southern did not disagree) that Alabama Power's transmission costs are lower than the Southern system average. AMEA further argued that charging AMEA system-average rates under the Southern OATT is unduly discriminatory, because Alabama Power (with whom AMEA's members compete for retail load) is not subject to system-average pricing when providing *bundled* services, and this enables it to reflect its lower-than-system-average transmission costs in the transmission component of its bundled services. AMEA contended that this discrepancy violates the Commission's comparability standard, which, AMEA contended, requires a comparison between Southern's system-average OATT rates and the transmission component of Alabama Power's *bundled* rates. (The latter reflects Alabama Power's own, lower-than-system-average, transmission costs.) AMEA proposed, among other things, that Southern be required to adopt zonal rates for its OATT, with AMEA paying only an Alabama Power-zone rate based on Alabama

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888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

Power's transmission costs alone and capped by the transmission component of Alabama Power's bundled rates.

5. In the June 20 Order, the Commission denied the relief requested in AMEA's complaint, primarily relying on Order No. 888 to disagree with AMEA's interpretation of the Commission's comparability standard. The Commission found that the comparability standard requires a transmission provider to provide transmission service that is comparable to the transmission service that the transmission provider receives when it makes *unbundled* wholesale sales or purchases, or *unbundled* retail sales of electric energy. The Commission found that Southern's OATT is consistent with Order No. 888 and that AMEA's arguments to the contrary were not supported by Commission precedent or policy.

## **II. Request for Rehearing**

6. AMEA makes a variety of arguments, but in essence, seeks rehearing of the Commission's findings in the June 20 Order that: (1) comparability does not encompass a comparison of unbundled transmission (OATT) rates with the transmission components of bundled grandfathered wholesale sales or bundled retail sales of electric energy; and (2) requiring Southern to replace its system-average OATT rates with zonal rates set at the level of the transmission component of Alabama Power's bundled retail rates<sup>4</sup> would require the Commission to adopt a state-set transmission rate component over which it has no jurisdiction for use as a Commission-jurisdictional transmission rate and also would result in unjust and unreasonable cost shifting to other customers.

7. AMEA also argues that the Commission shifted the burden of proof from Respondents to AMEA, contrary to prior Commission orders that specifically allocated the burden of proof. It further requests that the Commission set for hearing the issue of the appropriateness of zonal rates for Southern.

## **III. Discussion**

8. Upon further consideration, we conclude that our initial analysis in the June 20 Order was unnecessary to resolve the matter before us. While we explained at some length our interpretation of the Commission's comparability standard and its application to AMEA, that explanation was a digression from the matter at issue: Was it appropriate for AMEA to bear a Southern-wide system average rate under Southern's OATT or an

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<sup>4</sup> Under AMEA's proposal, a transmission customer would be charged only the zonal rate where the power sinks, regardless of the number of zones between source and sink.

Alabama Power-specific transmission rate under the OATT?<sup>5</sup> The answer turns on whether or not Southern's OATT, which includes a system-wide, system average<sup>6</sup> transmission rate complies with the comparability standard as set forth in Order No. 888.<sup>7</sup> The simple answer, as discussed further below, is that Southern's system-average rate meets the requirement of the Commission's rate comparability standard.

**A. Southern's System-Wide Rate Meets the Commission's Rate Comparability Standard**

9. On rehearing, AMEA contends that the June 20 Order improperly denied its complaint contrary to Order No. 888, Order No. 890,<sup>8</sup> the Transmission Pricing Policy Statement,<sup>9</sup> and Commission precedent.<sup>10</sup> AMEA contends that its view of the

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<sup>5</sup> Southern and AMEA previously agreed that, if AMEA were to file a section 206 complaint on what they term the "AMEA Issue," Southern would bear the burden of proof on that issue and that that issue would be the only issue in such a proceeding. Southern Company Services, Inc., Offer of Settlement, Docket No. ER06-132-001, at n.1 (filed Feb. 16, 2006). This settlement was approved by the Commission in *Southern Company Services, Inc.*, 116 FERC ¶ 61,212 (2006).

<sup>6</sup> Southern's system-wide tariff includes a system average rate. In 1991, the Commission directed Southern to revise the transmission component of its formula rate to reflect system-wide costs. *Southern Company Services, Inc.*, 55 FERC ¶ 61,173, *order on reh'g*, 57 FERC ¶ 61,093 (1991), *aff'd sub nom. Alabama Power Company*, 993 F.2d 1557 (D.C. Cir. 1993); *see also Southern Company Services, Inc.*, 105 FERC ¶ 61,019 (2003) (order approving settlement with Southern's OATT structure). Southern has used system average costs for pricing its single system-wide OATT service since then.

<sup>7</sup> As explained further below, Order No. 888 contemplated that, for a multi-utility system like Southern, a compliant OATT would include just one, single-system transmission rate. In this order, we use the term "rate" to refer to the single system-wide rate that Order No. 888 requires certain public utility holding companies to provide for in a *pro forma* tariff.

<sup>8</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 489-95 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>9</sup> *Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Policy Statement*, FERC

(continued...)

Commission's comparability requirement, which would require comparing Southern's OATT rates to the transmission component of Alabama Power's bundled rates, is consistent with pre-Order No. 888 precedent. AMEA further argues that both Order No. 888 and Order No. 890 make clear that comparability requires a comparison of unbundled transmission service to third parties with the transmission provider's use of its system to provide bundled (either retail and wholesale) service to native-load customers.<sup>11</sup>

10. AMEA's arguments do not persuade us to grant rehearing and the relief AMEA requests. While Order No. 888 discussed comparability at length, it primarily discussed comparability with respect to non-rate terms and conditions. Order No. 888 only discussed comparability with respect to rates in the context of public utility holding companies. It specifically provided that certain public utility holding companies must file a single system-wide rate:

Public utility members of registered and exempt holding companies that are also members of tight or loose pools are subject to the tight and loose pool requirements set forth above. The remaining holding company public utility members ... are required to file a single system-wide Final Rule pro forma tariff permitting transmission service across the entire holding company system at a single price....<sup>12</sup>

The Commission found that, for certain public utility holding companies such as Southern, the filing of a system-wide rate would meet the comparability requirement. As Southern argued in its answer to AMEA's complaint, because it

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Stats. & Regs. ¶ 31,005 (1994) (Transmission Pricing Policy Statement).

<sup>10</sup> *American Electric Power Service Corp.*, 67 FERC ¶ 61,168 (1994).

<sup>11</sup> By the phrase, "the transmission provider's use of its system to provide bundled (either retail or wholesale) service to native-load customers," AMEA is referring to the cost, or rate, that the transmission provider (here, Alabama Power) is deemed to charge itself to serve its native load customers and which it then passes on to those customers in the transmission component of its bundled rates to those customers. It is AMEA's position that it should not be required to pay Southern's OATT rates because they are higher than the transmission component of Alabama Power's bundled rates; in other words, Alabama Power's charge for use of the system, as set in bundled rates, should not be lower than the unbundled transmission rates that its competitors (that is, AMEA and its member cities) pay under the Southern OATT.

<sup>12</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,728.

is a public utility holding company that is not a member of a tight or loose pool, it was required to have a single system-wide transmission rate on file with the Commission.<sup>13</sup> All of the arguments raised by AMEA in this proceeding concerned either prior Commission pronouncements concerning comparability with respect to non-rate terms and conditions or companies in different circumstances from Southern (companies that are not public utility holding company members that are also members of tight or loose pools). Accordingly, we find that Southern's "single system-wide [open access transmission] tariff permitting transmission service across the entire holding company system at a single price" is just and reasonable insofar as it satisfies the comparability requirement in Order No. 888,<sup>14</sup> and we reject AMEA's argument that zonal rates are appropriate for Southern's system.

## **B. Burden of Proof**

11. AMEA acknowledges that the June 20 Order repeatedly refers to AMEA's contention that Southern bear the burden of proof.<sup>15</sup> However, it states that, in the final paragraph of the June 20 Order, the Commission states that "AMEA has not shown that comparability has been violated or that existing transmission rates are unjust, unreasonable, unduly discriminatory or preferential."<sup>16</sup> AMEA contends that the Commission therefore shifted the burden of proof without explaining why it is departing from prior orders or the terms of the parties' settlement.

12. In the June 20 Order, the Commission recognized that Southern had agreed that it would bear the burden of proof in a proceeding like this one;<sup>17</sup> Southern agreed in settlement to bear the burden of proof on this issue and permitted AMEA to raise the

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<sup>13</sup> Southern, earlier in this proceeding, explained that Order No. 888 requires holding company systems, such as Southern, to file a tariff that uses a single, system-wide price, and therefore, Southern's use of single system pricing is just, reasonable, and not unduly discriminatory. Southern Company Services, Inc., Answer to Complaint, Docket No. EL06-93-000, at 11 (filed August 21, 2006).

<sup>14</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,728.

<sup>15</sup> AMEA's Request for Rehearing at 10 (citing June 20 Order, 119 FERC ¶ 61,286 at P 5, 20, 30 and 31).

<sup>16</sup> *Id.* (quoting June 20 Order, 119 FERC ¶ 61,286 at P 40).

<sup>17</sup> While the Commission did not directly address the burden of proof issue, the Commission was aware that Southern bore the burden of proof. *See* June 20 Order, 119 FERC ¶ 61,286 at P 13.

comparability issue by filing a separate section 206 complaint.<sup>18</sup> The statement AMEA cites was not intended to indicate that AMEA had failed to meet an FPA section 206 burden of proof which, we agree, it does not bear in this proceeding due to the prior settlement agreement. Rather, the intent of the statement was merely to reiterate the Commission's determination that AMEA's arguments with respect to comparability were not supported by Commission precedent and were otherwise unpersuasive; the Commission did not intend to imply that Southern did not bear a section 206 burden of proof.<sup>19</sup> The fact is that Southern, as it argued below, was required by Order No. 888 to use a system-wide rate and that its use of its system-wide, system-average rate was just, reasonable and not unduly discriminatory.<sup>20</sup> Thus, Southern met its burden of proof in this proceeding and AMEA has not shown otherwise.

### C. Request for Hearing

13. On rehearing, AMEA argues that its complaint raised the issue of the use of zonal rates to achieve comparability, but that the Commission summarily dismissed the complaint without reaching that issue. AMEA argues that, as it explained in its complaint, Commission precedent supports the use of zonal rates to achieve comparability of service and that Southern's adoption of zonal rates would be the simplest, most direct route to meeting the comparability standard. AMEA points out that the United States Supreme Court has recognized the Commission's responsibility to consider the anticompetitive effects of regulated aspects of utility operations under the FPA,<sup>21</sup> and that Order No. 890 has reaffirmed this responsibility to remedy undue discrimination.<sup>22</sup> Accordingly, AMEA requests that the Commission set the complaint for hearing on the issue of whether zonal OATT rates are appropriate for the Southern system.

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<sup>18</sup> *Southern Company Services, Inc.*, 105 FERC ¶ 61,019 (2003), *order on reh'g*, 108 FERC ¶ 61,295 (2004).

<sup>19</sup> June 20 Order, 119 FERC ¶ 61,286 at P 38.

<sup>20</sup> *Id.* P 13. "AMEA will pay the same transmission rate as any unbundled transmission customer on the Southern Companies' system, including Southern Companies itself." *Id.* P 38. As discussed above, this is all that Order No. 888 required Southern to do, i.e., "file a single system-wide Final Rule pro forma tariff permitting transmission service across the entire holding company system at a single price...." Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,728.

<sup>21</sup> *Gulf States Utilities Co. v. FPC*, 411 U.S. 747, 758-59 (1973).

<sup>22</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 425.

14. We deny AMEA's request for a hearing. Southern's OATT is consistent with Order No. 888's requirement that, as a holding company system that is not a member of a power pool, Southern must offer system-wide transmission service at a single rate.<sup>23</sup> As discussed above, Southern has met its burden of demonstrating that its use of a system-wide, system-average transmission rate is just and reasonable. AMEA has not shown otherwise and thus a hearing on another possible rate methodology is not warranted.

The Commission orders:

AMEA's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>23</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,728.