

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket No. ER05-518-000

ORDER ACCEPTING TRANSMISSION SERVICE AGREEMENT,  
AS MODIFIED

(Issued March 29, 2005)

1. On January 31, 2004, Southern Company Services Inc. (Southern)<sup>1</sup> filed an unexecuted service agreement (Agreement) for point-to-point transmission service with Morgan Stanley Capitol Group (Morgan Stanley) under the Open Access Transmission Tariff (OATT) of the Southern Companies.<sup>2</sup> In this order the Commission accepts the Agreement for filing, as modified below, to become effective January 1, 2005, and directs Southern to make a compliance filing removing section 5.0, which conditions Morgan Stanley's future rollover rights. This order benefits customers because it provides certainty regarding transmission service customers' rollover rights consistent with Commission policy.

**I. Description**

2. Southern and Morgan Stanley have three previously approved transmission agreements for 450 MW with Entergy Interface the receipt point and Georgia Transmission Corporation (GTC) the delivery point, for 12 months of service beginning on January 1, 2005.<sup>3</sup> In March 2004, Morgan Stanley requested to modify its delivery

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<sup>1</sup> Southern Company Services, Inc. acts as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric Power Company (collectively, Southern Companies).

<sup>2</sup> FERC Electric Tariff, Fourth Revised Volume No. 5, Service Agreement No. 472.

<sup>3</sup> Accepted by delegated authority in Docket No. ER02-1917-000 on July 3, 2002.

point, seeking to redirect 250 MW of the 450 MWs to Duke Interface instead of GTC. Southern states that since Morgan Stanley has requested to modify the delivery point for firm service, section 2.22 of its tariff applies.<sup>4</sup> This section provides that a modification request to change the delivery point allows Southern to treat the modification request as a request for new service. Consequently, Southern states that Morgan Stanley's modification request is to be treated as a new request for service. Southern states that it has conducted the necessary impact study as required under its OATT, based on the new path.

3. Proposed section 5.0 of the Agreement states that “[t]he Transmission Provider has performed an analysis that indicates that, after December 31, 2005, insufficient capacity exists to accommodate both the future rollover of this Service Agreement by the Transmission Customer and to provide service to Transmission Customers having an earlier priority for transmission service.” It then provides that Morgan Stanley's rollover rights are expressly conditioned on the availability of sufficient transmission capacity after a specified list of transmission customers (identified by Open Access Same-time Information System (OASIS) Reference Numbers) exercise their rights to transmission service or to roll over their respective service agreements. The section further states that “the Transmission Provider has determined that 7500 MW of transmission capacity is required to meet forecasted native load growth through 2011.” It further provides that Morgan Stanley's rollover rights are expressly conditioned upon the availability of sufficient transmission capacity after the requests for transmission service on the Georgia Integrated Transmission System, which it states have an earlier priority, have been accommodated.

4. Southern argues that the study indicated that due to “other reservations for service (including point to point and native load) that have a higher priority” it could lack sufficient capacity to accommodate a rollover of this 250 MW along the new path. Southern argues that its study clearly establishes that Southern cannot accommodate Morgan Stanley's rollover rights if Southern's pre-existing customers exercise their rollover rights. Consequently, Southern included a restriction limiting Morgan Stanley's ability to roll over this 250 MW of service in the Agreement for the redirection request. Southern argues that the restriction is consistent with Commission policy<sup>5</sup> and similar to other Commission accepted agreements.<sup>6</sup>

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<sup>4</sup> Section 2.22 of Southern's tariff states that “[a]ny request by a transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service....”

<sup>5</sup> Southern at 3 citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded* (continued....)

5. Southern argues that Commission policy allows transmission providers to restrict rollover rights based on previously-confirmed transmission requests and that this should include the rollover portion of that previous request.<sup>7</sup> Southern contends that the rollover rights of existing customers have priority over new service requests and that its section 5.0, which restricts rollover rights by conditioning new requests for service's rollover rights on these other customers, appropriately recognizes those higher-priority rights. Finally Southern argues that due to the Commission's prior inconsistent treatment of rollover rights it must now allow Southern to condition its rollover rights since to do otherwise would result in arbitrary treatment amounting to abuse of discretion.<sup>8</sup>

6. Southern argues that if, as the Commission has previously ordered, it is required to remove the rollover restriction and is directed to either build additional capacity or curtail transactions, it will be required to curtail transmission because Southern asserts that building additional capacity is not a viable option. Southern argues that since Morgan Stanley is only required to give 60 days notice of its intent to roll over its capacity, Southern does not have sufficient time to build additional capacity to deal with system constraints resulting from the rollover. Furthermore, Southern argues that building additional capacity on the speculation that Morgan Stanley could roll over its agreement would be imprudent, inconsistent with industry practices and could result in system disturbances migrating from one area to another.

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*Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,760-61, *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1997), *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).

<sup>6</sup> Southern at 4 *citing* *Southern Company Services, Inc.*, 100 FERC ¶ 61,237 (2002); and *Southern Company Services, Inc.* (Docket No. ER02-2217-000, August 30, 2002) (unpublished letter order issued pursuant to delegated authority which accepted a transmission service agreement with a similar rollover provision).

<sup>7</sup> Southern at 12 *citing*, *Southern Company Services, Inc.*, 102 FERC ¶ 61,200 at P 17 (2003).

<sup>8</sup> Southern at 13 *citing* *Idaho Power Company v. FERC*, 312 F.3d 461 (D.C. Cir. 2003), *Crosthwait v. FCC*, 584 F.2d 550, 556 (D.C. Cir. 1978).

7. Southern requests that the Commission waive its notice requirement and permit the Agreement to be effective January 1, 2005, the date upon which service commenced under the Agreement. Southern asserts that this waiver request is consistent with Commission's policy of accepting umbrella service agreements filed within 30 days of service commencing.

## **II. Notice, Intervention and Protest**

8. Notice of Southern's filing was published in the *Federal Register*, 70 Fed. Reg. 7,098 (2005), with interventions and protests due on or before February 22, 2005. Morgan Stanley filed a timely motion to intervene and protest and Southern filed an answer.

9. Morgan Stanley argues that Southern is improperly restricting its rollover rights contrary to Commission policy. Morgan Stanley argues that Commission policy provides that long-term transmission service customers have the right to roll over the transmission service upon expiration of the service contract. Morgan Stanley asserts that Commission precedent establishes that it is the transmission provider's responsibility to plan its system to accommodate rollover rights, or curtail transmission service as provided for in its OATT.

10. Morgan Stanley points out that the section 5.0 limitation on its rollover rights that Southern has proposed is similar to conditions that the Commission has previously ordered Southern to remove from other transmission service agreements.

## **III. Discussion**

11. Pursuant to Rule 214 of the Commission's rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely unopposed motion to intervene serves to make Morgan Stanley a party to this proceeding. Rule 213(a)(2) of the Commission's rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Southern's answer and will, therefore, reject it.

12. For the reasons discussed below, we will accept Southern's filing, as modified below to remove section 5.0, to be effective January 1, 2005.

13. The Commission has consistently stated that a transmission provider can deny a customer the ability to roll over its long-term firm service contract only if the transmission provider includes in the original service agreement a specific limitation

based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term.<sup>9</sup> The Commission has further stated that a transmission provider may limit the terms under which a new long-term agreement may be rolled over if it has a pre-existing contract obligation that commences in the future. For example, if the transmission provider knows at the time of the execution of the original service agreement that available transfer capability to serve the customer will only be available for a particular time period, after which it is already committed to another transmission customer under a previously-confirmed transmission request (*i.e.*, an agreement under which service would commence at some time in the future), the transmission provider can reflect those obligations in the long-term contract and thereby limit the prospective transmission customer's rollover rights.<sup>10</sup> In order to make this demonstration, a transmission provider must identify the pre-existing contracts that commence in the future or show that native load growth projections are sufficiently specific and provide support in the record at the time of the original transmission service agreement.<sup>11</sup>

14. The Agreement submitted by Southern includes section 5.0 which, as described above would limit the rollover rights of the transmission customer, Morgan Stanley, to continue to receive long-term firm point-to-point transmission service. We find that Southern has failed to demonstrate that native load growth or pre-existing contract obligations that commence sometime in the future will constrain Southern's transmission system such that it cannot provide transmission service to Morgan Stanley beyond the end of its Agreement. In its filing, rather than indicate that it was making such a demonstration, Southern stated that its study "identified that there was insufficient capacity for the system to accommodate both the service being offered to [Morgan Stanley] for another term after it expired on December 31, 2005, and other reservations for service (including point-to-point and native load) that have a higher priority than [Morgan Stanley's] redirect Requests." Similarly, section 5.0 of the Agreement, states

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<sup>9</sup> *E.g.*, *Southern Company Services, Inc.*, 108 FERC ¶ 61,093 at P 10-11 (2004); *accord Southwest Power Pool, Inc.*, 109 FERC ¶ 61,041 at P 6-7 (2004).

<sup>10</sup> Once a transmission provider evaluates the impact on its system of serving a customer, Commission policy requires the transmission provider to plan and operate its transmission system with the expectation that it will continue to provide service to the customer should the customer request rollover. *See Southern Company Services, Inc.*, 103 FERC ¶ 61,117 at P 5 (2003).

<sup>11</sup> *See Nevada Power Co., et al.*, 97 FERC ¶ 61,324 (2001); *American Electric Power Service Corp.*, 101 FERC ¶ 61,384 (2002).

that “insufficient capacity exists to accommodate both the future rollover of this Service Agreement by the Transmission Customer and to provide service to Transmission customers having an earlier priority for transmission service.” In this regard, Southern listed in section 5.0 of the Agreement a number of pre-existing firm point-to-point transmission service agreements that it maintains have a higher priority to transmission capacity than Morgan Stanley’s Agreement.<sup>12</sup> It claims that, if these agreements are rolled over in the future or are still valid at the time Morgan Stanley seeks to roll over its Agreement, they would have rights to the transmission capacity that are superior to the rights reflected in Morgan Stanley’s Agreement. We disagree. As we have previously stated, once a transmission provider evaluates the impacts on its system of providing transmission service to a customer and decides to grant such a request, as it has here, the Commission’s rollover rights policy obligates the transmission provider to plan and operate its system with the expectation that it will continue to provide service to that customer should the customer request rollover of its contract term.<sup>13</sup> If the transmission system becomes constrained (for reasons other than those initially identified, *i.e.*, reasonably forecasted native load growth or pre-existing contract obligations that commence in the future) such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider to either curtail service to all affected customers (not just the later accepted firm customers) pursuant to provisions of its OATT or to build more capacity to relieve the constraint.<sup>14</sup> Restricting rollover rights based on the potential exercise of other customers’ rollover rights is not an option. Indeed, nowhere does Southern assert that the agreements listed in section 5.0 are pre-existing contract obligations (prior to the date of the agreement at issue) that commence sometime in the future. Thus, Southern itself does not claim that native load

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<sup>12</sup> Section 5.0 of the Agreement bases Morgan Stanley’s right to roll over its transmission service on the “availability of sufficient transmission capacity after the following Transmission Customers *exercise their rights to transmission service*” (emphasis added).

<sup>13</sup> *Southern Company Services, Inc.*, 104 FERC ¶ 61,140 (2003).

<sup>14</sup> Southern’s argument that reliability will be threatened if Morgan Stanley’s rollover rights are not conditioned to reflect higher priority commitments is unavailing. As discussed above, Southern has not demonstrated that it cannot provide Morgan Stanley rollover rights because of native load growth or pre-existing contracts that commence in the future. Rather, it appears that Southern may not be able to provide the rollover rights because of its failure to follow the requirements of Order No. 888. As discussed above, Southern must either build additional transmission facilities to relieve the constraint or implement the curtailment procedures set forth in its OATT.

growth or pre-existing contract obligations that commence sometime in the future alone are what is preventing it from providing rollover rights to Morgan Stanley.

15. Furthermore, Southern's assertion of native load needs is unavailing. The projections of native load growth must be sufficiently specific and supported in the record. We have suggested, for example, reliance on a resource plan submitted to and accepted by a state commission including projections of the transmission provider's need for additional transmission capacity in the future to serve native load.<sup>15</sup> Southern has only made general assertions as to its future native load growth, and has failed to provide specific projections of native load growth or supporting evidence of such native load growth. Therefore, we will reject Southern's limiting of Morgan Stanley's rollover rights based on its unsubstantiated native load growth.

16. Therefore, we direct Southern to make a compliance filing, within 30 days of the date of this order, removing section 5.0 from the Agreement as inconsistent with Commission policy.

17. The Commission will grant waiver of the Commission's 60-day prior notice requirement and accept Southern's filing, as modified, to be effective January 1, 2005.<sup>16</sup>

The Commission orders:

(A) Southern's Agreement with Morgan Stanley is hereby accepted for filing, as modified, to be effective January 1, 2005.

(B) Southern is hereby directed to submit a revised Agreement, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>15</sup> *Supra* note 11; *Southern Company Services, Inc.*, 108 FERC ¶ 61,093 (2004).

<sup>16</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) (providing for certain agreements to be filed up to 30 days after service commences); *accord Southern*, 102 FERC ¶ 61,319 at P 12.