

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southern Company Services, Inc.

Docket Nos. ER05-413-001
ER05-413-002

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued July 26, 2005)

1. On March 30, 2005, Southern Company Services, Inc. (SCS)¹ filed a request for rehearing of the Commission's February 28, 2005 Order,² in which the Commission accepted for filing, as modified, a transmission service agreement (TSA) under the Southern Companies' Open Access Transmission Tariff (OATT). The Commission's modifications deleted a section of the agreement limiting the transmission customer's rollover rights in a manner contrary to our policy, and included language in a section of the agreement that was omitted. In its rehearing request, SCS asks that the Commission accept the executed rollover service agreement as originally filed. We will deny the request for rehearing, and accept SCS's compliance filing revising the TSA.

Background

2. As explained in the February 28 Order, the TSA in this proceeding is between SCS and Progress Ventures, Inc. (Progress Ventures). The February 28 Order summarily rejected section 5.0 of the TSA, which conditioned Progress Ventures future rollover rights, in accordance with prior Commission orders addressing similar transmission

¹ Southern Company Services, Inc. is acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies).

² *Southern Company Services, Inc.*, 110 FERC ¶ 61,191 (2005) (February 28 Order).

service agreements filed by SCS which had substantially similar language.³ The February 28 Order also revised section 4.0 of the TSA to include language that SCS omitted, but stated the TSA contained.

3. On March 30, 2005, SCS filed a request for rehearing of the February 28 Order, raising the following issues: (1) the Commission modified its rules and policies on rollover service after Southern Companies executed the original agreement that was a predecessor to the Progress Ventures TSA; (2) the February 28 Order applied the new rule retroactively to Southern Companies' detriment; (3) the Commission's rules, policies, and expectations concerning rollover have been unclear since the issuance of Order No. 888; (4) those rules and policies have been formulated on an incremental basis in a manner that has denied transmission providers fair notice of the conduct expected of them; and (5) these rules and policies are likely to degrade the ability of transmission providers to safely and reliably operate their systems for all customers.

4. Progress Ventures filed an answer to SCS's request for rehearing. SCS, in turn, filed an answer to Progress Ventures's answer.

5. Also on March 30, 2005, SCS submitted a compliance filing in which it removed section 5.0 and revised section 4.0 of the TSA, in accord with the directives of the Commission's February 28 Order. SCS submitted the compliance filing under protest, in view of its request for rehearing.

6. Notice of SCS's compliance filing was published in the *Federal Register* 70 Fed. Reg. 19,751 (2005), with interventions, comments, and protests due on or before April 20, 2005. None were filed.

Discussion

A. Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2005), prohibits an answer to a request for rehearing. We will, therefore, reject Progress Ventures's answer along with SCS's answer thereto.

³ February 28 Order at P 11,14 & n.5, *citing, 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).

B. Analysis

8. The section 5.0 issue and arguments raised by SCS in its rehearing request here are virtually identical to the issue and arguments the Commission has addressed in prior orders concerning SCS's rollover agreements.⁴ Therefore, for the reasons stated in those decisions, the Commission denies rehearing in this proceeding.

9. With regard to section 4.0 of the TSA, the Commission simply corrected an omission in the TSA that SCS, itself, stated had been included but was not.⁵ Therefore, we deny rehearing of this issue as well.

10. The February 28 Order directed SCS to remove section 5.0 from the TSA and revise section 4. Our review of SCS's compliance filing indicates that SCS has complied with the Commission's directive. We therefore accept the compliance filing, effective December 1, 2004, the date service commenced.

The Commission orders:

(A) SCS's request for rehearing is hereby denied, as discussed in the body of this order.

⁴ See, e.g., *Southern Company Services, Inc.*, 108 FERC ¶ 61,174 (2004) (*Oglethorpe Rollover Order*); *Southern Company Services, Inc.*, 104 FERC ¶ 61,140 (2003) (*Williams Rollover Order*).

⁵ SCS stated in its transmittal letter that the TSA was a "nearly identical" service agreement to a service agreement it had previously entered into with Oglethorpe Power Corporation with the only difference being the name of the entity to take and pay for the transmission service. See SCS's Transmittal Letter at 3. However, the Oglethorpe agreement contained the following italicized language, which was omitted without explanation from the agreement SCS filed:

This Rollover Service Agreement will allow the Transmission Customer to continue taking service under the Transmission Provider's Tariff *based on the same terms and conditions (except as provided herein)*

(B) SCS's compliance filing is hereby accepted, to be effective December 1, 2004.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.