

104 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Southern Company Services, Inc.

Docket Nos. ER03-379-001 and
ER03-379-002

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued July 28, 2003)

1. On March 27, 2003, Southern Company Services, Inc. (Southern)¹ filed a request for rehearing of the Commission's February 25, 2003 order,² in which the Commission accepted for filing an unexecuted rollover service agreement for firm, long-term, point-to-point transmission service with Williams Energy Marketing and Trading Company (Williams) under the Open Access Transmission Tariff of Southern (OATT),³ as modified, to remove Sections 5.0 and 6.0, that conditioned Williams' future rollover rights. In addition, on March 27, 2003, Southern filed a compliance filing under protest referencing its contemporaneous request for rehearing. Southern asks that the Commission accept the unexecuted rollover service agreement with Williams as originally filed. This order denies Southern's request for rehearing of the February 25, 2003 order and accepts the compliance filing.

BACKGROUND

¹Southern 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).

²Southern Company Services, Inc., 102 FERC ¶ 61,201 (2003).

³FERC Electric Tariff, Fourth Revised Volume No. 5, First Revised Service Agreement No. 451 under the OATT. The Rollover Agreement was filed as an addendum (Addendum 1) to the original Service Agreement For Firm Point-To-Point Transmission Service between Southern and Williams.

2. On September 6, 2001, Williams requested 50 MW of firm point-to-point transmission service to move power from the Tenaska Billingsley Generation facility in Autauga County, Alabama to the transmission interface with Georgia Transmission Corp. for delivery to Oglethorpe Power Corp. for a term of one year, commencing on January 1, 2002 and terminating on December 31, 2002. On May 28, 2002, Southern filed the executed service agreement, and it was accepted by the Commission on July 3, 2002.⁴

3. On October 31, 2002, Williams requested Southern to rollover this service for another year beginning January 1, 2003 and terminating on December 31, 2003. Southern subsequently filed an unexecuted Rollover Agreement with limitations on future rollovers. Under Section 5.0 of the Rollover Agreement, Southern conditioned Williams' right to continue to take service after December 31, 2003 upon the availability of sufficient transmission capacity after specified transmission customers, whom Southern states submitted requests for transmission service before Williams' September 6, 2001 initial request for transmission service, exercise their rights to transmission service or rollover. Section 6.0 would have required the Commission's acceptance of the rollover agreement without condition or modification. On February 25, 2003, the Commission accepted the Rollover Agreement for filing, but directed Southern to remove Sections 5.0 and 6.0.

COMPLIANCE FILING AND REQUEST FOR REHEARING

4. On March 27, 2003, Southern made a compliance filing in which it removed Sections 5.0 and 6.0 of the Rollover Agreement, in response to the directives of the Commission's February 25, 2003 order. Southern submitted the compliance filing under protest, referencing its concurrent request for rehearing of the February 25, 2003 order.

5. On March 27, 2003, Southern filed a request for rehearing, and asked the Commission to reconsider its rollover policies, vacate its February 25, 2003 order, and accept Southern's original Rollover Agreement for filing without modification.

⁴Delegated Letter Order, Docket No. ER02-1917-000 (July 3, 2002).

DISCUSSION

Procedural Matters

6. Notice of Southern's compliance filing was published in the Federal Register, with interventions, comments, and protests due on or before April 17, 2003. No protests or comments were filed.

7. Southern raises the following issues on rehearing that were raised in Southern's request for rehearing in Docket No. ER02-2220-001⁵: (1) the Commission's rollover policies are confusing, unclear and unlawfully developed;⁶ (2) policy requiring rollover limitations to be included in original agreements has been unclear;⁷ (3) the Commission failed to provide notice of its policies, the February 25, 2003 order is arbitrary and capricious, and the rollover policy violates due process requirements;⁸ (4) placing Williams ahead in the queue is inconsistent with the tariff;⁹ and (5) the rollover policy results in operating problems, can lead to industry-wide reliability problems, and will hamper Southern's reliability.¹⁰

8. Southern also raised for the first time in this proceeding the following issues: (1) the Commission has been unclear on competing requests for transmission capacity;¹¹ (2) the Commission's concern with OASIS conditions is unfounded;¹² and (3) the imposed effective date makes the rollover agreement a new agreement. This agreement, Southern argues, may therefore contain limitations on new rollovers.

ISSUES FIRST CONSIDERED IN DOCKET NO. ER02-2220-000

⁵Southern Company Services, Inc., 102 FERC ¶ 61,200 (2003) (Dynergy rollover case).

⁶Southern Rehearing at 5.

⁷Southern Rehearing at 10.

⁸Southern Rehearing at 14-17.

⁹Southern Rehearing at 18.

¹⁰Southern Rehearing at 22-28.

¹¹Southern Rehearing at 13.

¹²Southern Rehearing at 19.

A. Commission Rollover Policy

9. Southern argues that the Commission's rollover policy and procedures have been unclear and confused. Moreover, Southern claims that the Commission has clarified its rollover policies and improperly applied such clarifications retroactively. Southern questions the Commission's rollover policies in general, and asks at a minimum that new clarifications be applied on a prospective basis. Specifically, Southern asserts that the Commission's rollover policy addressed in Nevada Power Company,¹³ requiring rollover limitations to be specified in the original service agreement is a new policy.¹⁴ Therefore, Southern asks the Commission to vacate the February 25, 2003 order and accept for filing without modification its Rollover Agreement with Williams.

Commission Response

10. As discussed in greater detail below, Southern's claim that the February 25, 2003 order is based on a change in the Commission's rollover policy that did not exist at the time Southern executed its original service agreement with Williams is in error.¹⁵ Southern's request for rehearing of the February 25, 2003 order is basically a collateral attack on the Commission's rollover rights policy as established in Order No. 888.¹⁶ In that order, the Commission concluded that all firm transmission customers with contracts for a term of one-year or more should have the right to continue to take transmission service from their existing transmission provider upon the expiration of their contracts or at the time their

¹³Nevada Power Company, 97 FERC ¶ 61,324 (December 20, 2001) (Nevada Power).

¹⁴Southern Rehearing at 11.

¹⁵Southern's original agreement with Williams was executed on May 2, 2002, some months after the decision in Nevada Power Company on December 20, 2001.

¹⁶See 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 at 31,694 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, 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 (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), 122 S. Ct. 1012 (2002); see also, Commonwealth Edison Co., 95 FERC ¶ 61,252 at 61,874, reh'g denied, 96 FERC ¶ 61,158 at 61,690 (2001).

contracts become subject to renewal or rollover.¹⁷ In other words, the transmission provider is expected to plan its system to accommodate transmission customers' rollover rights. If the transmission system becomes constrained such that the transmission provider cannot satisfy existing customers, then the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.

11. Many of the issues raised by Southern on rehearing (e.g., the benefits versus the burdens of rollover rights; the one-year minimum term; the impact of the Commission's rollover policies on the reliability of transmission systems) go to the heart of the Commission's rollover rights policy established in Order No. 888. On this basis, they are issues that should have been raised on rehearing of Order No. 888. The Commission will not revisit in this order its prior determinations in Order No. 888, which have been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Supreme Court.

B. Reservations in Initial Service Agreement

12. Southern argues that the Commission's rollover policy and procedures in general have been unclear and confused and that the Commission erred in its requirement that the limits on rollovers be contained in the original service agreement.¹⁸ According to Southern, the Commission has recently acknowledged in its Notice of Proposed Rulemaking on Standard Market Design that its policies on rollover have been unclear.¹⁹

Commission Response

13. We disagree with Southern that the Commission's statement in its SMD NOPR, that three clarifications on rollover policy have "significant impact" and should be codified, amounts to a Commission acknowledgment that its rollover policies in general are

¹⁷Order No. 888 at 31,665; Order No. 888-A at 30,195.

¹⁸Southern Rehearing at 2-4.

¹⁹Southern Rehearing at 2, 5, 6, 12, citing Remedying Undue Discrimination Through Open Access Transmission Service and Standard Market Design, Notice of Proposed Rulemaking, Docket No. RM01-12-000, 100 FERC ¶ 61,138 at P. 121-122 (July 31, 2002) (SMD NOPR).

unclear.²⁰ Two of the clarifications in the SMD NOPR (the 60-day notice requirement and requests for alternate receipt/delivery point(s) are not relevant to the present proceeding. Nevertheless, when the Commission recognized that its right of first refusal (ROFR) provisions of the pro forma tariff regarding the 60-day notice requirement "are not sufficiently clear," it applied this policy prospectively.²¹ Further, the clarification that a long-term firm customer requesting alternate receipt or delivery point(s) retains its right of first refusal for service at the time the current service agreement expires was implied from the intent of Section 22.2 of the pro forma tariff in order to "provide flexibility to transmission customers to permit them to react in a competitive market."²²

14. Regarding the third clarification in the SMD NOPR, we disagree with Southern's argument that the Commission's action in Nevada Power constitutes a change in its policy with regard to rollover rights. Our action in the February 25, 2003 order and the other cases²³ cited by Southern is fully consistent with the rollover rights policy that we established in Order No. 888. In announcing the rollover rights policy in Order No. 888, we explained that there are circumstances under which a transmission provider can restrict a transmission customer's rollover rights under Section 2.2. For example, the Commission determined that public utilities may reserve existing transmission capacity needed for native load growth reasonably forecasted within the public utility's current planning

²⁰Southern Rehearing at 5-6, citing Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 100 FERC ¶ 61,138 at P. 122-3 (2002) (SMD NOPR).

²¹Entergy Power Marketing Corp. v. Southwest Power Pool, 91 FERC ¶ 61,276 at 61,933 and 61,937 (2000).

²²Commonwealth Edison Co., 95 FERC ¶ 61,027 at 61,083 (2000).

²³Southern Rehearing at 6-12, citing, e.g., Entergy Power Marketing Corp. v. Southwest Power Pool, Inc., 91 FERC ¶ 61,276 (2000), reh'g denied, 100 FERC ¶ 61,104 (2002); Commonwealth Edison Co., 95 FERC ¶ 61,027 (2001); American Electric Power Service Corp., 97 FERC ¶ 61,207 (2001); Idaho Power Co., 94 FERC ¶ 61,311 (2001), order denying reh'g and clarifying prior order, 95 FERC ¶ 61,224 (2001); Exelon Generating Co., LLC v. Southwest Power Pool, Inc., 99 FERC ¶ 61,235 (2002); Tenaska Power Service Co. v. Southwest Power Pool, Inc., 99 FERC ¶ 61,344 (2002); Public Service Co. of New Mexico v. Arizona Public Service Co., 99 FERC ¶ 61,162 (2002); Constellation Power Source, Inc. v. American Electric Power Service Corp., 100 FERC ¶ 61,157 (2002), order denying reh'g; 102 FERC ¶ 61,142 (2003), Southwest Power Pool, Inc., 100 FERC ¶ 61,239 (2002).

horizon.²⁴ In Order No. 888-A, the Commission stated that "if a utility provides firm transmission service to a third party for a time until native load needs the capacity, it should specify in the contract that the right of first refusal does not apply to that firm service due to a reasonably forecasted need at the time the contract is executed."²⁵

C. The Commission's Policies Meet Due Process Requirements

15. Southern argues that the Commission failed to provide notice of its policies, the February 25, 2003 order is arbitrary and capricious, and the rollover policy violates due process requirements.

Commission Response

16. Since the issuance of Order Nos. 888 and 888-A, the Commission has consistently reaffirmed this policy, stating that a transmission provider can deny a customer the ability to rollover its long-term firm service contract 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.²⁶

17. Similarly, a transmission provider may limit the terms under which a new long-term agreement may be rolled over based on 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 time 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

²⁴Order No. 888 at 31,694.

²⁵Order No. 888-A at 30,198.

²⁶See, e.g., Public Service Co. of New Mexico v. Arizona Public Service Co., 85 FERC ¶ 61,240 at 62,066 (1998) (1998 PSNM Order) (discussing the requirement to state expressly in post-Order No. 888 transmission contracts if the right of first refusal does not apply due to a need for the capacity that is reasonably forecasted at the time of the contract's execution); Public Service Co. of New Mexico v. Arizona Public Service Co., 99 FERC ¶ 61,162 at 61,667 (2002) (PSNM); Nevada Power, 97 FERC at 62,493.

limit the prospective transmission customer's rollover rights.²⁷ However, such facts do not exist in the present circumstances because Southern failed to include such limiting language in its original service contract with Williams.

18. The industry was on adequate notice with the issuance of Order Nos. 888 and 888-A of the Commission's policy regarding restrictions on rollover rights. To the extent that, after the issuance of those orders, Southern was uncertain as to the Commission's policy in this regard, Southern could have sought clarification at that time. In any event, because the February 25, 2003 order, and the other orders cited by Southern, were fully consistent with the Commission's rollover rights policy as established in the rulemaking proceeding, none of those orders provided a changed interpretation of Section 2.2, as Southern contends.²⁸ Although such a factual scenario is presented in the instant case (i.e., Southern states that specified transmission customers have reservations for service to commence after the expiration of the rollover agreement and were submitted prior to Williams' initial request for service).²⁹ Southern did not include this information in the original service agreement with Williams. Instead, it sought to add language in this regard upon the first rollover of the Williams service agreement. However, as we explained in the February 25, 2003 order, any such restrictions on rollover rights must be included in the original service agreement. For the Commission to have held otherwise would have been to ignore the very basis of the rollover rights policy as established in Order No. 888.

19. As explained above, 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 Southern did in the case of Williams), 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. Recognizing this obligation, to the extent that the transmission provider is already committed to another transmission customer under a previously-confirmed transmission request, it is incumbent upon the transmission provider to reflect that fact in any initial service agreements that it subsequently enters into with other transmission customers. Otherwise, consistent with the rollover policy as laid out in Order No. 888, the

²⁷See Section 19.7 of the Order No. 888 pro forma tariff (concerning partial interim service); see also Morgan Stanley Capital Group v. Illinois Power Company, 93 FERC ¶ 61,081 at 61,220 (2000) ("[H]ad Morgan Stanley requested, for example, long-term service for a two-year period, but only one year was available, Illinois Power would have been obligated to offer service for that one available year").

²⁸Southern Rehearing at 14.

²⁹Affidavit of Rebecca Martin at P 6.

transmission provider is obligated to be in a position to grant rollover of all long-term contracts. If the transmission system becomes constrained such that the transmission provider cannot satisfy all existing long-term customers, then the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.

20. Thus, Southern's argument on rehearing that the February 25, 2003 order contains the Commission's first indication that its rollover limitation policy is applicable to such situations (*i.e.*, where the conditions to the existing customer's ability to roll over its reservation are based on previously queued transmission requests) is inaccurate and appears to be an attempt to reargue the parameters of the rollover rights policy set forth in Order No. 888.

21. Based on the foregoing, we also will reject Southern's request that the Commission apply its policy prospectively only to service agreements entered into after the date of the Commission's rehearing order in this proceeding or at least as of the date of the February 25, 2003 order. Commission precedent is clear that such limitations must be clearly stated in the customer's original service agreement.³⁰

D. Placing Williams Ahead in the Queue

22. Southern argues that the directive in the February 25, 2003 order to remove Section 5.0 of the Rollover Agreement violates its tariff provisions on queue priority. Southern states that the transmission customers specified in Section 5.0 submitted reservations before Williams' original request for service on September 6, 2001. Accordingly, removing Section 5.0 from the Rollover Agreement, which subordinates Williams' rollover rights to these specified customers, violates Section 13.2 of its tariff, which requires long-term, firm point-to-point transmission service to be made available on a first-come, first-served basis, *i.e.*, in the chronological sequence in which each transmission customer has reserved service.

Commission Response

³⁰See, *e.g.*, Order No. 888-A at 30,198; 1998 PSNM, 85 FERC at 62,008; Nevada Power, 97 FERC at 62,493; PSNM, 99 FERC at 61,667; Exelon Generation Company, LLC v. Southwest Power Pool, Inc., 101 FERC ¶ 61, 226 (2002).

23. The February 25, 2003 order is not inconsistent with Southern's Tariff provisions on queue priority. Although Section 13.2 of the Southern OATT provides that long-term, firm point-to-point transmission service shall be available on a first-come, first-served basis, Section 13.2 also states that reservation priorities for existing firm service customers are provided in Section 2.2. According to Section 2.2, existing firm service customers have the right to continue to take transmission service when the contract expires, rolls over, or is renewed. Since Williams, an existing firm service customer, properly complied with the requirements to exercise its rollover right, and no limitations were contained in the original service agreement, Southern cannot now limit that right. The February 25, 2003 order does not allow Williams to "jump ahead" of the higher-queued customers listed in proposed Section 5.0 of the Rollover Agreement. Rather, all existing firm service customers, those listed in proposed Section 5.0 as well as Williams, have rollover rights under Section 2.2 unless specific limitations are specified in the original service agreements. If Southern doesn't have enough capacity it must build the necessary transmission facilities or impose curtailments according to the terms of its OATT.

E. Operational and Reliability Issues

24. Southern raises three issues with regard to the operation and reliability of the system as affected by the requirement for rollover of contracts. These are the ability to forecast capacity availability; anticompetitive conduct; and the absolute right to capacity.

1. Ability to Predict All Factors That Could Limit Capacity

25. Southern argues that the Commission's rollover policies in general fail to protect customers since they impede the ability of transmission providers to reliably operate their systems. Southern states that the "speculative nature" of rollover rights impede transmission providers' ability to protect customers from the effects associated with system overloads, constraints, and other operational problems.³¹ Further, Southern argues that rollover rights abrogate transmission customers' need to request service for more than one year, which inhibits the ability of transmission providers to engage in long-term planning. Finally, Southern states that extreme uncertainty surrounds the issue of studies.

Commission Response

26. Southern's argument that the Commission's rollover policies fail to protect customers because they impede the ability of transmission providers to reliably operate

³¹Southern Rehearing at 22-29.

their system is mistaken. To the contrary, any reliability issues that Southern might face would instead be the result of its failure to follow the requirements of Order No. 888. As noted above, once a transmission provider evaluates the impacts on its system of providing transmission service to a customer and decides to grant such a request, the 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. Thus, under Section 2.2 of its OATT, Southern is responsible for maintaining available transmission capacity for existing long-term transmission customers with rollover rights, such as Williams, until the time expires for those customers to exercise their rollover rights. In providing for Williams' rollover rights in Section 2.2, Southern is responsible for evaluating the impact of the exercise of these rights on its system.

27. Notwithstanding Southern's attempt to portray rollover rights as detrimental to reliability, rollover rights are intended to promote system planning and reliability, not to undermine it. Rollover rights should facilitate a transmission provider's orderly planning and operation, *i.e.*, provide for available capacity, which is essential to Southern's obligation of preserving system reliability. A transmission provider is expected to include all long-term transmission customers (*i.e.*, those with rollover rights) in its long-term planning. While it may be the case, as Southern suggests, that subsequent circumstances may negatively impact a transmission provider's available transmission capacity, the presence of such constraints does not give a transmission provider the right to deny a rollover request. Under Section 2.2 of its OATT, Southern is responsible for maintaining available transmission capacity for existing long-term transmission customers with rollover rights, such as Williams, until the time expires for those customers to exercise their rollover rights. Thus, the constraints that Southern cites are not sufficient to override Williams' rollover rights. If constraints arise after a transmission provider enters into a long-term agreement with a transmission customer (and that agreement contains no restrictions on the transmission customer's rollover rights), the obligation is on the transmission provider to either build additional transmission facilities to relieve the constraint or to implement the curtailment procedures set forth in its OATT.

28. It was the intent of the Commission in establishing the rollover policy that long-term customers have the right to continue to take service and, accordingly, that the transmission provider be in the position of continuing to provide it. Again, to the extent that Southern disagrees with the Commission's policy call in this regard, it should have sought rehearing and/or clarification at the time that the Commission established the rollover rights policy.

2. Anticompetitive Conduct

29. Southern further contends that the February 25, 2003 order removes any incentives for customers to request service for more than a year, which will inhibit the ability of transmission providers and transmission owners to engage in long-term planning, further harming reliability. Southern argues that rollover rights enable customers to engage in anticompetitive conduct and market abuses: "Because an existing customer can hold its capacity up to sixty days before its contract ends, rollover rights amount to little more than a license for an existing customer to hold that capacity hostage in order to foreclose its competitors from getting power to the market."³²

Commission Response

30. As discussed below, an existing customer does not hold capacity "hostage" since, for example, competitors may supplant such service if the existing customer declines to match the requested term length. The Commission has consistently found that Section 2.2 of the pro forma OATT requires a transmission provider to allow a customer with a one-year firm reservation to roll over that service for a longer period of time, subject to matching competing requests for that service. Order No. 888 contemplated such an arrangement,³³ and the policy took effect at the time Order No. 888 was issued. On this basis, we will not reexamine our decision that the rollover rights provisions of Section 2.2 apply to contracts with terms of one year or more. Likewise, the Commission has previously justified its 60-day notice requirement for existing customers to roll over transmission service against similar anticompetition arguments, and will not reexamine our past decisions here.³⁴

3. Absolute Right to Capacity

31. Southern argues that the February 25, 2003 order grants transmission customers an absolute right to capacity based on a one-year long-term contract since "existing customers

³²Southern Rehearing at 24-25.

³³See Order No. 888 at 31,655; see also, Order No. 888-A at 30,195 and 30,197-98.

³⁴See Entergy Power Marketing Corp. v. Southwest Power Pool, 91 FERC ¶ 61,276 (2000), reh'g denied, 100 FERC ¶ 61,104 at P 19-22 (2002).

could rollover their reservations into perpetuity.³⁵ Consequently, Southern claims that the February 25, 2003 order requires transmission providers to accept transactions regardless of whether sufficient capacity exists. As a result, according to Southern, transmission providers could overload their systems and have to curtail service, which increases the costs to all users of the transmission facility.³⁶

32. Southern further contends that because construction times are usually longer than the 60-day renewal period provided to customers, the Commission's policy could force transmission providers to build new capacity based on the possibility that a customer will roll over its service. Southern states that this is infeasible and contrary to the Commission's prior statements that transmission owners are not obligated to build new capacity to serve a rollover request.³⁷ Finally, Southern argues that there is no clear indication as to when a third-party request becomes a competing request within the context of Section 2.2.³⁸

Commission Response

33. All long-term firm transmission customers have the right to roll over their service, but the potential that a transmission customer will choose to do so does not require Southern to remove the associated capacity from its OASIS forever and restore it only if the customer declines to exercise its option at some future period. As the Commission has explained, Southern may post the associated capacity on its OASIS and accept competing reservations until the time that the existing customer chooses to roll over its contract by exercising its right of first refusal.³⁹ If the existing customer does so and agrees to match the rate and term offered by another potential customer seeking the same transmission capacity (up to the transmission provider's filed rate), it then takes priority over the competing reservation. If the existing customer declines to exercise its right of first

³⁵Southern Rehearing at 26.

³⁶Southern Rehearing at 24.

³⁷Southern Rehearing at 27, citing Idaho Power Co., 95 FERC ¶ 61,224 at 61,759 (2001).

³⁸Southern Rehearing at 27.

³⁹Commonwealth Edison Co., 96 FERC ¶ 61,252 at 61,690 (2001).

refusal, the transmission provider may accept the next competing reservation.⁴⁰ In any event, Williams has not been granted service in perpetuity to the extent that competing service requests may: (1) replace service to Williams absent a rollover of its request; or (2) supplant such service if Williams declines to match a competing request with a longer term.

34. Furthermore, Southern has misconstrued our statement that "the right of first refusal provision applies to existing capacity and does not require a transmission provider to build additional capacity in response to a request to rollover a transmission service."⁴¹ By this statement, the Commission did not intend, as Southern seems to suggest, that a transmission provider could deny a customer's rollover request to the extent that the transmission provider did not have sufficient available capacity to meet the request and could only grant the request if it were to build additional capacity. Implicit in this statement was the expectation that the transmission provider had already studied the impacts on its existing system of providing the transmission service and determined that it could provide that service (including any rollover if requested) using its existing system. Because a determination to grant the initial service request carried with it the obligation to assume that the customer would continue to take service, the Commission expected that the transmission provider would have sufficient existing capacity to serve a rollover request and not then need to build additional capacity to serve that rollover request.

35. In evaluating Williams' original request for long-term firm transmission service, Southern was obligated to determine whether or not it had available existing capacity to serve Williams, taking into account Williams' right to renew or roll over its transmission service. As we have indicated above, if constraints arise after a transmission provider enters into a long-term agreement with a transmission customer (and that agreement contains no restrictions on the transmission customer's rollover rights), the obligation is on the transmission provider to determine whether or not to build additional facilities to accommodate new transmission customers. If the transmission system is constrained to the extent that the transmission provider cannot satisfy its existing transmission customers' contracts, then the transmission provider has the choice of either implementing the curtailment procedures set forth in its OATT or building additional transmission facilities to relieve the constraint.

ISSUES RAISED FOR THE FIRST TIME IN THIS DOCKET

⁴⁰Id.

⁴¹Idaho Power, 95 FERC ¶ 61,224 at 61,759.

36. Southern has in this proceeding raised for the first time these issues: (1) the Commission has been unclear on competing requests for transmission capacity;⁴² (2) the Commission's concern with OASIS conditions is unfounded;⁴³ and (3) the imposed effective date makes the rollover agreement a new agreement. This agreement, Southern argues, may contain limitations on new rollovers.⁴⁴

A. Commission Policy on Competing Requests

37. Southern argues that the Commission has been unclear on competing requests for transmission capacity. Southern asserts that the Commission's policy of requiring it to rollover long-term contracts will preempt customers with higher priorities for the service. Southern refers to its tariff Section 13.2, which directs it to accommodate service requests based on the date upon which requests are submitted with higher-queued reservations being accommodated first. If the transmission provider cannot accommodate all requests, the existing customer must either match the terms of the competing request or forego executing a subsequent contract. Southern claims that there is no answer to how it expected to deal with these situations.

Commission Response

38. The Commission rejects these arguments because, *inter alia*, there has been no showing of any actual conflict in demands for capacity at this point on Southern's system. Southern specifically refers to these situations as potential conflicts in demands for capacity.⁴⁵ We decline to make a ruling on a hypothetical set of circumstances. In addition, we have held that where there is a competitive situation, Southern is obligated to determine whether or not it had available existing capacity to serve, taking into account customers' right to renew or roll over its transmission service. If constraints arise after a transmission provider enters into a long-term agreement with a transmission customer (and that agreement contains no restrictions on the transmission customer's rollover rights), the obligation is on the transmission provider to determine whether or not to build additional facilities to accommodate new transmission customers. If the transmission system is constrained to the extent that the transmission provider cannot satisfy its existing transmission customers' contracts, then the transmission provider has the choice of either

⁴²Southern Rehearing at 13.

⁴³Southern Rehearing at 19.

⁴⁴Southern Rehearing at 30.

⁴⁵Southern Rehearing at 22 n.15.

implementing the curtailment procedures set forth in its OATT or building additional transmission facilities to relieve the constraint.

B. The Commission's Concern With OASIS Data

39. Southern argues that the Commission's concern with the OASIS reservations data filed with its Rollover Agreement, as capacity demands ahead of Williams, were unfounded. The Commission found that these data did not accurately reflect the actual capacity demands on its system and were not satisfactorily explained as having an impact on the Williams' request.⁴⁶ Southern asserts on rehearing that the Commission assumed that these capacity requests were static when in fact they are always in flux and that when the rollover agreement was presented to Williams in November, all the OASIS reservations listed were in fact active requests. For example, Southern claims that between November 22, 2002 and February 6, 2003, reservations which had been categorized as study reservations, were moved to withdrawn, refused or declined, and were no longer active requests.⁴⁷ In response to the Commission's concern with a specific reservation, which appears to have minimal, if any, effect on Williams' ability for service, Southern argues that the ability to accommodate any requests sourcing from a plant in that region is highly dependent on the source and sink of the request.

Commission Response

40. We accept the clarification in Southern's rehearing. Regardless, the status of these OASIS reservations is not dispositive of the issue in this proceeding. We addressed the rollover issue based on our policy that any rollover limitations must be in the original service agreement. Here, Williams exercised its rollover rights appropriately and Southern may not later insert limitations on those rights.

C. The Effective Date of the Agreement

41. Southern argues in the form of a request for clarification that, because the Commission rejected Southern's proposed effective date of April 27, 2002 and imposed an effective date of January 1, 2003, the Rollover Agreement is a "new" agreement. Southern then argues that as the Rollover Agreement is a "new" agreement, it is entitled to have its

⁴⁶102 FERC ¶ 61,201 at P 13 and 14.

⁴⁷Affidavit of Rebecca Martin at P 7-8.

future rollover obligations to Williams circumscribed by the newly-added provisions in Section 5.0 of the rollover agreement.⁴⁸

Commission Response

42. Southern has misinterpreted our February 25, 2003 order in this proceeding regarding this matter. We did not rule that the Rollover Agreement was a "new" or original agreement within the meaning of Order No. 888-A into which Southern could insert restrictions on future rollovers.⁴⁹ Rather, we held simply that the effective date of the Rollover Agreement was the day following the day on which service under the original agreement concluded, *i.e.*, December 31, 2002. This ruling is consistent with our decisions in other proceedings, where we held that the effective date of an agreement is the date on which service takes effect.⁵⁰ Accordingly, Southern's request is denied.

COMPLIANCE FILING

43. The Commission's February 25, 2003 order directed Southern to remove Sections 5.0 and 6.0 of the Rollover Agreement, conditioning Williams' rollover rights beyond the one year term of the Rollover Agreement. Southern submitted the compliance filing under protest, referencing its concurrent request for rehearing of the February 25, 2003 order.

44. Our review of the compliance filing indicates that Southern has complied with the Commission's directive. Consistent with the discussion above, we dismiss Southern's protest and accept the compliance filing effective January 1, 2003, the effective date previously granted for the Rollover Agreement, as modified.

The Commission orders:

(A) Southern's request for rehearing is hereby denied.

⁴⁸Southern Rehearing at 30.

⁴⁹Order No. 888-A at 30,198.

⁵⁰See, e.g., Southwestern Public Service Co., 82 FERC ¶ 61,083 at 61,311 (1998); Carolina Power & Light Co., 59 FERC ¶ 61,119 at 61,465 (1992).

(B) Southern's compliance filing removing Sections 5.0 and 6.0 from the Rollover Agreement is hereby accepted, to be effective January 1, 2003.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.