

104 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Williams Energy Marketing & Trading Company

v.

Southern Company Services, Inc.

Docket No. EL02-91-001

ORDER DENYING REHEARING

(Issued July 28, 2003)

1. In this order, we deny a request by Williams Energy Marketing & Trading Company (Williams) for rehearing of the Commission's denial of Williams' complaint against Southern Company Services, Inc. (Southern). Williams Energy Marketing & Trading Company v. Southern Company Services, Inc., 101 FERC ¶ 61,144 (2002) (November 2002 Order).

BACKGROUND

Williams' Complaint

2. As explained in the November 2002 Order,¹ Williams and Southern have a 10-year contract, which commenced on April 1, 2002, under which Southern provides Williams with 300 MW of firm point-to-point transmission service from the Tenaska Billingsley Facility (the point of receipt, "POR") to the Entergy Electric System (EES) (the point of delivery, "POD"). This agreement, with the particular POR and POD, was concluded only after completion of a system impact study showed no stability restrictions would result from granting the request.

3. On January 11, 2002, Williams requested that the POD be changed from EES to the Georgia Transmission Corporation beginning April 2005. Southern accepted this redirect request on the same day the request was made. Williams confirmed Southern's acceptance on January 14, 2002. On January 24, 2002, Southern informed Williams by telephone that

¹November 2002 Order, 101 FERC ¶ 61,144 at P 2-3.

its acceptance of the redirect request was based on a clerical error, and formally annulled the acceptance through a posting on its OASIS site on February 4, 2002.

4. On May 24, 2002, Williams filed a complaint against Southern contending that: (1) Southern's annulment of Williams' accepted request to redirect transmission service was unjust and unreasonable; (2) Southern's interpretation of the effect of the exercise of rollover rights was unjust and unreasonable; and (3) Southern's failure to identify an alleged stability limitation in generation interconnection studies, along with continued construction and interconnection of generation facilities within the affected control area, precludes Southern from raising a stability limitation in a subsequent evaluation of a transmission service request.

5. Based on these allegations, Williams' complaint requested that the Commission direct Southern to: (1) reinstate Williams' redirect request; (2) reinstate Southern's offer for transmission service; (3) incorporate the Commission's interpretation of the queue priority for customers exercising OATT Section 2.2 rollover rights and post this on Southern's OASIS; and (4) modify the criteria and methodology used by Southern to perform generation interconnection studies, and especially to include an assessment of stability limitations in such studies.

Findings in November 2002 Order

6. The November 2002 Order accepted Southern's assertion that its acceptance of Williams' redirect request (changing the POD for the last seven years of an agreement for Southern to deliver 300 MW of firm transmission for Williams) was based on a clerical error and denied Williams' complaint that objected to Southern's annulment of the redirect request upon discovery of the error. The Commission found that Southern's actions upon discovery of the error were timely and that Southern need not revise its policies on queue priority. Finally, the Commission denied Williams' request to preclude Southern from raising stability limitations as a bar to requests for transmission service based on the results of prior studies.

Williams' Rehearing Request

7. On rehearing, Williams questions our acceptance of Southern's assertion that Southern's acceptance of the redirect request was based on a clerical error. In addition, Williams questions our statement² that the circumstances of Southern's acceptance of Williams' redirect request were unclear, and requests that we hold Southern's feet to the

²Id. at P 16.

fire and allow Williams to reap the benefits of Southern's error. Williams argues that it has no burden to demonstrate that Southern's reason for accepting the redirect request was based on something other than error and that we should allow it to conduct discovery to adduce the material facts. Williams further argues that the Commission erred by finding that, with the exception of the unilateral annulment, "there is no indication that Southern has treated Williams differently from any customer, or participated in other discriminatory or unfair practices that violate the Commission's requirements." Williams also objects to our finding that "Southern's notice to Williams within ten days after confirmation, and subsequent annulment, corrected the mistakenly-accepted redirect request within a reasonable time period after discovery of the error." Finally, Williams argues that the Commission erred by rejecting its request to "prohibit Southern from raising stability limitations as [a] bar to transmission service requests when a prior generation interconnection study has not disclosed such a limitation." In this regard, Williams argues that, on June 27, 2001, Southern confirmed a request from its own merchant affiliate for transmission service, thus showing that Southern's system faced no stability concerns at the time it annulled its acceptance of Williams' redirect request.

Southern's Answer and Other Pleadings

8. Southern filed an answer to Williams' rehearing request stating that its merchant affiliate made no request for transmission on June 27, 2001 and that, if Williams' was intending to refer to June 27, 2002, its affiliate did make a request for transmission on this date, but that request was never confirmed and subsequently was withdrawn.³

9. On January 22, 2002, Williams submitted a letter stating that its reference in its rehearing request to the date June 27, 2001 needed correction and that the correct date on which Southern's merchant affiliate made its request for transmission was June 27, 2002. On February 19, 2003, Southern submitted a letter reiterating its position that Williams' claim was false, that this transmission request was never accepted, and was later withdrawn.

DISCUSSION

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a request for rehearing unless otherwise

³Southern Answer at 3 & n.3.

ordered by the decisional authority. We will accept Southern's answer because it has assisted us in our decision-making process.

**Circumstances Surrounding Southern's Acceptance of Williams'
Redirect Request**

11. Williams takes issue with the Commission's statement that the "record is unclear as to the circumstances under which the redirect request was accepted, and it is thus unclear why the alleged error occurred."⁴ Williams maintains that the record is clear – Southern accepted the redirect request on January 11, 2002, representatives of Williams and Southern discussed Southern's acceptance at a January 16, 2002 meeting, and Williams submitted its redirect request pursuant to the express instructions of a Southern employee.

12. Williams further asserts that because Southern relies on the alleged error as justification for the unilateral annulment of the redirect request, Williams is entitled to discover the personnel responsible, how the alleged error was discovered and why Southern waited ten days to notify Williams, whether Southern's transmission positions changed between the January 14 confirmation date and the January 24 notice to Williams of the alleged error, and Southern's actions or inactions during the ten days after the confirmation.

13. Thus, Williams submits that Southern's reliance on human error as the basis for the unilateral annulment of Williams' redirect request constituted prima facie evidence of unjust, unreasonable and unduly discriminatory action, and Williams is entitled to conduct discovery on the circumstances under which the violation occurred.

Commission Finding

14. We disagree with Williams' arguments. Under Section 15.2 of the pro forma tariff, if sufficient transmission capability may not exist to accommodate a service request, a transmission provider is to respond to a request for transmission service by performing a system impact study to explore the possible consequences that granting the request might have on system stability and reliability.

15. Here, Williams' redirect request involved the provision of 300 MW of firm transmission service for seven years. Moreover, Southern had approximately 300 other transmission service requests in the queue⁵ ahead of Williams' redirect request. Despite this, a Southern OASIS operator accepted Williams' redirect request on the same day it was

⁴November 2002 Order at P 16.

⁵Id. at Attachment 1.

submitted. As Southern explained, the OASIS operator who accepted Williams' redirect request did so under the mistaken belief that the request was only for short-term service because it appeared on an OASIS screen with numerous short-term requests.⁶ Further, the Commission would expect Southern to review or, if needed, update an existing system impact study before confirming a request of this magnitude. Thus, the Commission properly concluded that Southern's OASIS operator acted in error and that Southern acted in a reasonable period of time in notifying Williams of the error, and we reject Williams' arguments to the contrary.

Burden of Proof

16. Williams takes issue with the Commission's statement that "Williams has not demonstrated that Southern's reason for accepting the redirect request was something other than error."⁷ It maintains that no such demonstration is required. It further asserts that the Commission in Order No. 889-A expressly held that transmission providers were liable for errors. Williams concludes that the Commission cannot charge that Williams failed to demonstrate that Southern's acceptance of the redirect was due to something other than error, but deny Williams the discovery necessary to make such determination.

Commission Finding

17. Williams misinterprets our statements in the November 2002 Order. The Commission did not require any "demonstration" by Williams and did not shift the burden of proof from Southern to Williams. To the contrary, as discussed above, the Commission found in the November 2002 Order that Southern's explanation that it committed a clerical error was convincing and was merely pointing out that Williams' arguments had not persuaded us otherwise.

18. We also reject Williams' contention⁸ that Order No. 889-A dictates that Southern bear liability for its error in accepting Williams' redirect request. Here, a Southern OASIS operator mistakenly accepted a long-term redirect request when there were approximately 300 other requests in the queue ahead of Williams because the operator thought the request was for short-term transmission service. The accuracy of estimates of available transmission capability (ATC) and total transmission capability (TTC) is not material to the matter at issue here. In Order No. 889-A, the Commission declined to find that

⁶Southern's Answer to Complaint at 3-4.

⁷November 2002 Order at P 7.

⁸Williams Rehearing Request at 6.

transmission providers should not be liable for the accuracy of good faith estimates of ATC and TTC.⁹

Southern's Treatment of Williams as Compared to Other Customers

19. Williams asserts that the Commission erred in summarily finding that, with the exception of "the unilateral annulment of Southern's acceptance, there is no indication that Southern has treated Williams differently from any customer, or participated in other discriminatory or unfair practices that violate the Commission's requirements."¹⁰ It argues that Southern's unilateral annulment violated the Standards & Communications Protocols requirement that any such annulment must be based on a mutual agreement with the customer. Williams maintains that this constitutes *prima facie* evidence of unjust, unreasonable and unduly discriminatory action. It further maintains that given Southern's violation, Williams is entitled to discovery to determine whether, in addition to being unjust and unreasonable, the protocol violation caused Southern to unnecessarily discriminate against Williams.

Commission Finding

20. We find no merit to Williams' arguments that Southern may have treated Williams differently from other customers or participated in other discriminatory or unfair practices, or that Williams should be entitled to discovery on this matter. In support of its position, Williams asserts that Southern's actions violated the OASIS Standards & Communications Protocols requirement that an annulment must be based on a mutual agreement with the customer. We disagree. As we have previously explained, Southern merely corrected an error by one of its OASIS operators. Mutual agreement is not needed to correct such an error under these circumstances. Moreover, we note that Southern corrected its error in a manner that preserves Williams' position in the queue and does not disadvantage any of Southern's other customers. Williams has not shown that Southern has treated other transmission customers in similar situations any differently. Mere allegations of possible unduly discriminatory behavior are not sufficient to support a complaint.¹¹

⁹See Order No. 889-A, Regulations Preambles 1996-2000, ¶ 31,049 at 30,572 (1997).

¹⁰November 2002 Order at P 16.

¹¹See, e.g., *New Energy Ventures, Inc. v. Southern California Edison Company and Edison Source*, 82 FERC ¶ 61,335 at 62,325 (1998); *Cajun Electric Power Cooperative v.*

(continued...)

Southern's Notice to Williams

21. Williams disagrees with the Commission's construction of the effect of Southern's notice. In particular, Williams asserts that, under the Commission's construction, transmission providers would be permitted to annul unilaterally any previously accepted and confirmed service request upon a simple and untested declaration that the prior acceptance was due to human or clerical error. It maintains that this is inconsistent with the establishment of a reliable, efficient and cost-effective transmission system.

22. Williams also argues that the Commission's reliance on Powerex Corporation v. Department of Energy, 95 FERC ¶ 61,241 (2001) (Powerex) is misplaced because the Commission's summary action effectively denied Williams discovery, and there is no indication of when Southern learned of the error and whether Southern took immediate action upon discovery of the error.

Commission Finding

23. As we have explained, we continue to conclude that a Southern OASIS operator mistakenly accepted Williams' redirect request and that Southern discovered and corrected the problem in a reasonable period of time. We reached this conclusion not solely on Southern's declaration, but on the totality of the circumstances of this case. We also disagree with Williams' contention that our reliance in the November 2002 Order on Powerex was mistaken. In Powerex, the error was corrected promptly upon discovery. The error here was corrected promptly upon discovery as well. As the facts show, Southern took approximately 10 days to discover the error, evaluate its significance, and act to correct it.

Stability Limitation

24. While Williams acknowledges that interconnection agreements do not provide delivery rights beyond the interconnection point, it asserts that Southern engaged in an opportunistic interpretation and application of the stability studies and, thus, unjustly, unreasonably and unduly discriminated against Williams. Specifically, Williams asserts that while the stability problem was initially identified in April of 2001, stability was not an issue when Southern signed an interconnection agreement with an affiliate on June 25, 2001 nor when Southern was attempting to secure transmission for Southern facilities per the Southern OASIS and allowed the affiliated transmission requests to be confirmed on

¹¹(...continued)

FERC, 28 F.3d 173 (D.C. Cir. 1994).

June 27, 2001. (In its January 22 letter, Williams indicated that it learned that the transmission service confirmation date was incorrectly stated and that the correct date is June 27, 2002.)

25. Williams further asserts that the interconnection list on Southern's web-site confirms that Southern permitted five generators, two of which are Southern affiliates, to connect to the Southern transmission system subsequent to April of 2001.¹²

26. In its February Response, Southern declares that Williams is wrong in maintaining that Southern's affiliate's redirect requests were confirmed on June 27, 2002.¹³ It explains, with attachments from its OASIS, that those requests were never confirmed, but were ultimately withdrawn. Accordingly, Southern requests that Williams' rehearing request be rejected, because Williams has repeatedly based its arguments on errors and false statements, and Southern has not acted in a discriminatory manner.

Commission Finding

27. Williams merely reiterates arguments that were previously addressed in the November 2002 Order. As we stated there, given that new stability limitations may arise over time, the Commission's precedent does not bar a transmission provider from raising stability limitations as a bar to transmission service requests when a prior generation interconnection study has not disclosed such a limitation.¹⁴ Moreover, contrary to Williams' intimations, there is no evidence that Southern has granted other requests for transmission between the POR and POD at issue after Williams made its redirect request.

The Commission orders:

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

By the Commission.

(S E A L)

Linda Mitry,

¹²Williams Rehearing Request at 10.

¹³Southern February 19, 2003 letter at 2.

¹⁴See November 2002 Order at P 20.

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Acting Secretary.