

108 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket Nos. ER04-554-001
ER03-386-002
ER03-386-005

ORDER DENYING REHEARING

(Issued August 4, 2004)

1. On April 26, 2004, Southern Company Services, Inc. (Southern) requested rehearing of the Commission's order in this proceeding dated March 25, 2004.¹ In that order the Commission accepted Southern's Notice of Cancellation of an Interconnection Agreement (IA), on behalf of Georgia Power Company (Georgia Power), between Georgia Power and Athens Development Company, LLC (Athens). The March 25, 2004 Order also dismissed as moot Southern's pending rehearing and compliance filings. For the reasons discussed below, the Commission denies Southern's request for rehearing. Our action benefits customers by assuring that the Commission does not waste its resources addressing issues that are moot, while still assuring that Southern has an opportunity to challenge the policies to which it objects.

Background

2. By order issued on June 4, 2003, the Commission accepted an interconnection agreement between Georgia Power and Athens subject to certain modifications.² As relevant here, that order directed Georgia Power to provide transmission credits for all facilities at or beyond the point where the customer connects to the grid, consistent with Commission policy.³

¹ Southern Company Services, Inc., 106 FERC ¶ 61,292 (2004) (March 25, 2004 Order).

² Southern Company Services, Inc., 103 FERC ¶ 61,279 (2003) (June 4, 2003 Order).

³ *Id.* at P 7-8.

3. Municipal Entities⁴ and Calpine Corporation filed motions to intervene out of time, or, in the alternative, to request rehearing of the June 4, 2003 Order. These entities objected to the Commission's apparent acceptance of participant funding in the region and asked for the removal of paragraph 11 of the June 4, 2003 Order. On July 7, 2003, Southern filed for rehearing requesting the Commission to retract the policies and directives in the June 4, 2003 Order.

4. On February 13, 2004, Southern filed with the Commission a Notice of Cancellation of the IA between Georgia Power and Athens Development. Athens had requested the cancellation. The Commission accepted Southern's Notice of Cancellation of the IA on March 25, 2004, noting that the action moots the pending rehearings filed in Docket No. ER03-386-002, as well as the compliance filing made by Southern in Docket No. ER03-386-004.⁵

5. Southern then filed this request for rehearing of the March 25, 2004 Order.

Discussion

Request for Rehearing

6. Southern argues that its July 7, 2003 request for rehearing is not moot because Southern not only challenged the specific application of the "at or beyond" policy to the IA, but also the policy itself. Therefore, Southern contends that the termination of this single IA does not moot the general challenge to the Commission's policy. Furthermore, Southern avers that since the issues raised in the June 4, 2003 Order are capable of repetition yet evading review, such issues are excepted from the mootness doctrine. Accordingly, Southern requests that the Commission grant rehearing of the March 25, 2004 Order and retract the "at or beyond" policy.

Commission Ruling

7. We will deny rehearing. In this proceeding Southern terminated the IA, thereby ending its case before the Commission and making moot its challenge to the Commission's policy as applied in this case. The exception to the mootness doctrine that Southern raises does not apply in this case because, although it is possible that the disputed issue will come up again in future agreements, Southern fails to demonstrate that the issue could not be reviewed then, should that be necessary. Whether the instant

⁴ Municipal Entities are Louisiana Energy and Power Authority, Lafayette Utilities System, Electricities of North Carolina, Inc., Piedmont Municipal Power Agency, Municipal Energy Agency of Mississippi, and Cities of Orangeburg and Seneca, South Carolina.

⁵ Docket No. ER03-386-003 was assigned in error and was subsequently cancelled.

contract will evade review is not at issue, for that will always be the case when a mootness challenge is presented. Instead, the relevant inquiry is whether a *future contract* approved in a subsequent Commission action "lasts for so short a time that it inevitably expires before review is possible." *ITT Rayonier Inc. v. U.S.*, 651 F.2d 343, 346 (5th Cir. 1981). While Southern may have found it necessary to move to terminate the IA early, Southern has not demonstrated that future agreements will follow a similar course. Consequently, it has not been shown that "any further dispute over [the] issue will [] evade review." *U.S. v. Weston*, 194 F.3d 145, 148 (D.C. Cir. 1999). For this reason, the exception to the mootness doctrine does not apply.

8. By requesting that the Commission accept its Notice of Cancellation of the IA, Southern effectively withdrew its policy challenge in this proceeding. The Commission does not adjudicate policy questions outside of concrete cases, with limited exceptions.⁶ If a party alleges particular harm from a Commission policy, that party has standing to challenge that policy before the Commission.⁷ However, if the party alleges harm without sufficient particularity or later withdraws from any potential harm, then that party lacks standing in the first place or the party's challenge has become moot.⁸ Southern's alleged potential injury from the Commission's "at or beyond" policy as applied in this IA was terminated by Southern's cancellation of the IA; therefore, Southern's challenge is moot.

9. Moreover, Southern can challenge the Commission's interconnection pricing policy on a generic basis in the Commission's interconnection rulemaking proceeding,⁹ as well as in individual proceedings.¹⁰ The issue is not "evading review" as Southern claims.

⁶ See, e.g., 18 C.F.R. § 385.207(a)(4), (5) (2004); see also *id.* § 381.302(a) (2004).

⁷ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (standing is established by showing causation, redressability, and injury in fact).

⁸ See *City News and Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 282-83 (2001) (withdrawing its renewal application, City News has made the case moot, "for City News no longer has 'a legally cognizable interest in the outcome'").

⁹ See Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160, at P 422, 424 (2004), *reh'g pending*.

¹⁰ See *Southern Company Services, Inc.*, 101 FERC ¶ 61,309, at P 9, 10-11 (2002). Southern also has raised this policy challenge in its requests for rehearing in Docket Nos. ER03-872-002 and ER03-1381-001 pending before the Commission.

The Commission orders:

We deny Southern's request for rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.