

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.

Docket Nos. ER02-851-004
and ER02-851-012

ORDER GRANTING REQUEST FOR REHEARING IN PART
AND TERMINATING PROCEEDING

(Issued September 22, 2004)

1. In this order, in Docket No. ER02-851-012, we grant in part a request by Alabama Municipal Electric Authority (AMEA) for rehearing of the Commission's order issued on October 2, 2003, approving, with certain modifications, an uncontested settlement agreement filed by Southern Company Services, Inc.,¹ (Southern) intended to resolve issues pending in its proceeding to establish a formula rate for bulk transmission service. *See Southern Company Services, Inc.*, 105 FERC ¶ 61,019 (2003) (October 2003 Order). In this order, we also terminate Docket No. ER02-851-004, because the issues regarding the protested compliance filing submitted in that subdocket have been made moot by the subsequent settlement.
2. In the October 2003 Order, the Commission reserved decision on whether, when AMEA begins taking transmission from Southern under its open access transmission tariff (OATT) in 2006, AMEA's rate will be calculated based on Southern's system-wide average costs, or based on the stand-alone costs of Alabama Power providing AMEA with transmission service (as preferred by AMEA). On rehearing, AMEA requests that we identify the proceeding where it may argue its position on this issue. In this order, we grant rehearing in part and explain that, as prescribed in the procedures established in the settlement agreement and approved in the October 2003 Order, AMEA will have an opportunity to make its arguments in response to the Annual Informational Filing that Southern will file each November developing the rates to be charged by Southern during the following calendar rate year.
3. This order benefits customers by providing clarity concerning the process by which

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

AMEA and other customers of Southern can raise objections to Southern's proposed OATT rates.

Background

4. The October 2003 Order reserved decision on whether, when AMEA begins taking service under Southern's OATT in 2006, its transmission rates will be calculated based on Southern's system-wide average costs or based on the stand-alone costs of Alabama Power providing AMEA with transmission service. The October 2003 Order found that the issue was premature because AMEA will continue taking transmission service under its existing contract with Alabama Power until 2006.

5. On rehearing, AMEA expresses concern that it might never get the chance to challenge this rate methodology and requests that we identify the proceeding in which it can voice its objection to the use of a system-wide average cost-based charge in a timely manner. It also expresses concern that the burden of proof remain on Southern to justify its charging AMEA for transmission services based on Southern's system-wide average costs.

6. In response to AMEA's request for rehearing, Southern filed a motion for leave to file a response and an answer to AMEA's rehearing request. AMEA filed an answer to Southern's motion.

Discussion

7. As a preliminary matter, we will deny Southern's motion for leave to file a response as an impermissible answer to a request for rehearing. 18 C.F.R. § 385.713(d) (2004). As we are denying Southern's motion, we will also deny as moot AMEA's answer thereto.

8. Reiterating arguments it raised in its protest and in its comments on the proposed settlement, AMEA argues that it is not consistent for AMEA to pay an OATT rate based on Southern's system-wide average costs, while the transmission component of Alabama Power's bundled retail and wholesale rates, and of Alabama Power's currently effective unbundled partial-requirements contract with AMEA, is based on lower, Alabama Power-only transmission costs. AMEA further argues that, when it moves from its existing Alabama Power contract to taking service under Southern's OATT in 2006, it will face an

increase in its transmission rates while Alabama Power's bundled retail and wholesale

customers will continue to pay the lower, Alabama Power-only transmission costs. AMEA is concerned that this will place it at a competitive disadvantage *vis a vis* Alabama Power.

9. Thus, AMEA argues that Southern's system-wide average cost-based rate is unduly discriminatory and anticompetitive and contravenes the Commission's "golden rule" of comparability of service, *i.e.*, that Alabama Power must provide its customers with transmission service that is comparable to its own use of its transmission system.

10. AMEA notes in this regard that Southern's new OATT formula rate is intended to obviate the need for Southern to file rate changes pursuant to section 205 of the FPA, 16 U.S.C. § 824d (2000). Accordingly, AMEA argues that Southern's system-wide average-cost-based rate will remain in place indefinitely without any opportunity for AMEA or the Commission to address this rate issue before AMEA begins taking OATT service in 2006— unless the Commission addresses the issue in this case or intends to allow AMEA to raise this issue in a timely fashion elsewhere.

11. Finally, AMEA argues that whatever venue is chosen to decide this issue the burden of proof should be placed on Southern to show that the higher system-wide OATT rate is not unduly discriminatory and complies with the Commission's comparability-of-service requirement.

Commission Conclusion

12. We find that nothing in AMEA's arguments persuades us that the issue deferred in the October 2003 Order is now ripe for decision. AMEA is not taking service under Southern's OATT and it is not presently being harmed by the alleged unfairness of the OATT rate compared to the transmission rates charged by Alabama Power. However, this determination does not preclude AMEA from raising this issue at the appropriate time in a forum where the merits of this issue may appropriately be decided.

13. We disagree with AMEA's contention that the procedures approved in the October 2003 Order did not provide a venue for AMEA to raise this issue. The October 2003 Order described the process the parties agreed upon, if there is a disagreement about the charges proposed in the Annual Informational and True-Up Filings. Specifically, the October 2003 Order explained that the parties had agreed that:

As soon as possible following any such filing, a party may communicate to Southern any questions that it may have about data inputs or *about changes*

to the fundamental predicates underlying the formula rate. Southern, Commission Trial Staff, and interested parties will have three months to resolve the problem informally. This Informal Review Period will expire on February 1 for the Annual Informational Filing and on August 1 for the True-Up Filing. If the issues cannot be resolved during the Informal Review Period, the party can make a filing with the Commission describing its position (the Formal Challenge).²

14. The “fundamental predicates” referenced above are identified in the October 2003 Order as: “the Commission’s Uniform System of Accounts; Southern’s accounting policies/practices/procedures; the Commission’s accounting directives and precedents; and the ratemaking practices of Southern at the federal and state levels.”³

15. Thus, if AMEA begins taking service under Southern’s OATT in 2006, the rate AMEA would be charged would be developed in Southern’s Annual Informational Filing, submitted in November 2005. As relevant here, AMEA and Southern would have an opportunity at that time to informally resolve the matter and, if the parties are unable to resolve their differences, AMEA could then file a Formal Challenge with the Commission concerning Southern’s filing.⁴

16. In that Formal Challenge, AMEA may raise the issue of whether AMEA’s transmission rates under the OATT should be developed based on Southern’s system-wide average costs. While the October 2003 Order found that the issue was then “premature,” this finding did not foreclose full consideration of this issue when AMEA begins receiving transmission service under Southern’s OATT.

² October 2003 Order at P 14 (footnote omitted; emphasis added); *see generally id.* at P 11-12.

³ *Id.* at P 14 n. 11.

⁴ We note that, in its request for rehearing, AMEA acknowledges that the settlement approved by the Commission in the October 2003 Order included procedures for customer challenges of the formula rate inputs and that those challenge procedures would constitute an acceptable method for it to raise its concerns.

17. Finally, in an order issued on March 27, 2002,⁵ the Commission denied a request by Southern for a waiver of the requirement to provide a revenue comparison and directed Southern to revise its proposal to include this information. In response to this directive, Southern filed a compliance filing on April 26, 2002, in Docket No. ER02-851-004, that was protested by Alabama Electric Cooperative, Inc. and AMEA. We believe that this filing has been overtaken by events and rendered moot by the settlement of this proceeding. Therefore, we will terminate Docket No. ER02-851-004.

The Commission orders:

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

(B) Docket No. ER02-851-004 is hereby terminated, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

⁵ Southern Company Services, Inc., 98 FERC ¶ 61,328 at 62,387 Ordering Paragraph (D) (2002).