

128 FERC ¶ 61,056  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Southern Company Services, Inc.	Docket Nos. ER96-780-014
Alabama Power Company	ER96-780-015
Georgia Power Company	ER96-780-016
Gulf Power Company	ER96-780-018
Mississippi Power Company	ER96-780-020
Southern Power Company	ER96-780-021
Southern Company-Florida, LLC	ER01-1633-004
	ER01-1633-005
	ER01-1633-006
	ER01-1633-008
Oleander Power Project, LP	ER00-3240-007
	ER00-3240-008
	ER00-3240-009
	ER00-3240-011
DeSoto County Generating Company, LLC	ER03-1383-007
	ER03-1383-008
	ER03-1383-009
	ER03-1383-011

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS, COMPLIANCE  
FILING, AND NOTICES OF CHANGE IN STATUS

(Issued July 16, 2009)

1. In this order, the Commission accepts an updated market power analysis filed by Southern Company Services, Inc. (Southern Company Services), acting as agent for Alabama Power Company, Georgia Power Company (Georgia Power), Gulf Power Company, Mississippi Power Company, and Southern Power Company (Southern Power) (collectively, Southern Companies). As discussed below, the Commission concludes that Southern Companies continue to satisfy the Commission's standards for market-based rate authority in their first-tier balancing authority areas.

2. The Commission also accepts several notices of change in status filed by Southern Company Services on behalf of Southern Companies and Southern Power's subsidiaries with market-based rate authority, Southern Company-Florida, LLC, Oleander Power Project, LP, and DeSoto County Generating Company, LLC (collectively, Southern Power Subsidiaries).

3. In addition, the Commission accepts Southern Companies' and Southern Power Subsidiaries' proposed revisions to their market-based rate tariffs to incorporate tariff provisions adopted in Order No. 697-A, to be effective September 18, 2007.<sup>1</sup>

4. As discussed below, Southern Companies and Southern Power Subsidiaries meet the criteria for Category 2 sellers and are so designated. Southern Companies' next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.<sup>2</sup>

## **I. Background**

### **A. Updated Market Power Analysis**

5. On September 2, 2008, Southern Company Services filed, on behalf of Southern Companies, an updated market power analysis in accordance with the reporting schedule adopted in Order No. 697.<sup>3</sup>

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<sup>1</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

<sup>2</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882-93, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9-10, App. D-1, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at Apps. D, D-1, and D-2. *See also* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 47-48 (amending in part App. D-2).

<sup>3</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that "both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable." *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

6. On October 17, 2008, Southern Company Services, acting as agent for Southern Companies, submitted revised and new tariff sheets to Southern Companies' market-based rate tariff to establish Day-Ahead and Hour-Ahead energy auctions in the Southern Companies balancing authority area.<sup>4</sup> Southern Companies proposed to implement these auctions to prospectively mitigate any ability that they might have to exercise horizontal market power in the Southern Companies balancing authority area, and to avoid further litigation over their market-based rate authority. On December 18, 2008, the Commission accepted the proposed tariff revisions establishing the auctions, subject to certain conditions.<sup>5</sup> Southern Companies subsequently accepted the Commission's conditions and the auctions were initiated on April 23, 2009.<sup>6</sup>

7. The December 2008 Auction Order and its companion order, *Southern Company Services, Inc.*, 125 FERC ¶ 61,317 (2008) (December 2008 Market-Based Rate Order), disposed of the horizontal market power issues relating to the Southern Companies balancing authority area and Southern Companies' vertical market power. Those orders, however, did not address horizontal market power in Southern Companies' first-tier balancing authority areas.

8. Consequently, in order to dispose of the issues relating to horizontal market power in Southern Companies' first-tier balancing authority areas, on December 19, 2008, Commission Staff issued a request that Southern Companies submit additional information regarding the Simultaneous Transmission Import Limit (SIL) study Southern Companies submitted on September 2, 2008. On January 9, 2009, Southern Companies submitted a filing in response to Commission Staff's December 19, 2008 request. In addition to responding to the various questions regarding their SIL study, Southern Companies assert that the must-offer/cost-based rules of the recently approved auction eliminate Southern Companies' "control" over uncommitted capacity inside, or exported from, the Southern Companies balancing authority area. Accordingly, Southern Companies contend that, once the auction is implemented, they will not control any uncommitted capacity within the Southern Companies balancing authority area, leaving them with zero uncommitted capacity that might be exported from the Southern Companies balancing authority area. On April 9, 2009, Commission Staff issued another

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<sup>4</sup> Southern Company Services, Inc., Proposed Amendment to Southern Companies' Market-Based Rate Tariff, Docket No. ER09-88-000 (filed October 17, 2008).

<sup>5</sup> *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008) (December 2008 Auction Order).

<sup>6</sup> Southern Company Services, Inc., Revised Tariff Sheets Including Commencement Date of Energy Auction, Docket No. ER09-88-002 (April 23, 2009).

request to Southern Companies notifying them that additional information concerning Southern Companies' SIL study was still needed. On April 30, 2009, Southern Companies submitted additional information in response to Commission Staff's April 9, 2009 request.

**B. Notices of Change in Status**

9. Southern Companies filed notices of changes in status on September 15, 2006, October 2, 2006, January 31, 2007, and August 31, 2007.

**C. Compliance Filing**

10. On January 21, 2009, Southern Companies filed amendments to their market-based rate tariffs identifying their seller category as required by the Commission's regulations.

**II. Procedural Matters**

**A. Notice of Updated Market Power Analysis Filing and Responsive Pleadings**

11. Notice of the September 2, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 53,214 (2008), with interventions or protests due on or before November 3, 2008. Shell Energy North America (US), L.P. (Shell) filed a timely motion to intervene and, subsequently, a protest and comments.<sup>7</sup> On November 17, 2008, Southern Companies filed a response to the Shell protest.<sup>8</sup>

12. As noted above, on January 9, 2009, Southern Companies filed their response to Commission Staff's December 19, 2008 request. Notice of the January 9, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 32,910 (2009), with interventions or protests due on or before July 8, 2009. None was filed.

13. Notice of the April 30, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 23,181 (2009), with interventions or protests due on or before May 21, 2009. None was filed.

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<sup>7</sup> Protest and Comments of Shell Energy North America (US), L.P. Regarding Updated Market Power Analysis, Docket No. ER96-780-020 (November 3, 2008) (Shell Protest).

<sup>8</sup> Response of Southern Company Services, Inc. to Comments and Motion to Consolidate of Shell Energy North America (US), LP, Docket No. ER96-780-020 (November 17, 2008).

14. The Commission previously accepted Shell's timely, unopposed motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), in the December 2008 Market Based Rate Order.<sup>9</sup> Thus, Shell is a party to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Southern Companies' answer because it has provided information that assisted us in our decision-making process.

### **B. Notice of Changes in Status Filings**

16. Notice of the September 15, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 56,517 (2006), with interventions or protests due on or before October 6, 2006. None was filed.

17. Notice of the October 2, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 61,043 (2006), with interventions or protests due on or before October 23, 2006. None was filed.

18. Notice of the January 31, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 6,555 (2007), with interventions or protests due on or before February 21, 2007. None was filed.

19. Notice of the August 31, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 52,873 (2007), with interventions or protests due on or before September 21, 2007. None was filed.

### **C. Notice of Compliance Filing**

20. Notice of the January 21, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 6,146 (2009), with interventions or protests due on or before February 11, 2009. None was filed.

## **III. Discussion**

### **A. Market-Based Rate Authorization**

21. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market

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<sup>9</sup> December 2008 Market-Based Rate Order, 125 FERC ¶ 61,317 at P 12.

power.<sup>10</sup> The Commission concludes that Southern Companies satisfy the Commission's standards for market-based rate authority, as discussed below.

### 1. Horizontal Market Power

22. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>11</sup> Southern Companies prepared the pivotal supplier and wholesale market share screens for the Southern Companies balancing authority area and the following first-tier balancing authority areas, consistent with the requirements of Order No. 697: Alabama Electric Cooperative, Duke Energy, Entergy, Florida Power & Light Company (Florida Power & Light), Jacksonville Electric Authority, Louisiana Generating LLC, Progress Energy Florida, South Carolina Electric and Gas Company, South Carolina Public Service Authority (Santee Cooper), Southeastern Power Administration-Hartwell (Hartwell), Southeastern Power Administration-Thurmond (Thurmond), Southeastern Power Administration-Russell (Russell), South Mississippi Electric Power Association, Tallahassee Municipal Utilities and Tennessee Valley Authority (TVA).<sup>12</sup> As horizontal market power in the Southern Companies balancing authority area was previously addressed in the December 2008 Auction and Market-Based Rate Orders, the instant order only addresses horizontal market power in the first-tier balancing authority areas. We address Shell's protest and Southern Companies' subsequent response as they relate to the horizontal market power analysis screen failures in the Southern Companies' first-tier balancing authority areas and the Southern Companies SIL study.

#### a. Shell Protest and Comments

23. Shell states that the Commission should be concerned with the fact that Southern Companies now fail the horizontal market power screens in the Santee Cooper and Tallahassee Municipal Utilities balancing authority areas as well as the Southern

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<sup>10</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

<sup>11</sup> *Id.* P 62.

<sup>12</sup> Southern Companies Services explains that since the three Southeastern Power Administration balancing authority areas that are first-tier to the Southern Companies balancing authority area (Hartwell, Thurmond, and Russell) have generation capacity located within their electrical boundaries but not load, Southern Companies did not apply the indicative screens to these balancing authority areas.

Companies balancing authority area. Shell disagrees with Southern Companies' assertion that these failures should be disregarded as meaningless aberrations.<sup>13</sup>

24. Shell also takes issue with Southern Companies' assertion that the failure in the Santee Cooper balancing authority area is a "nonsensical outcome" because Southern Companies' uncommitted capacity therein is zero, and thus they have no capacity to withhold and therefore cannot be pivotal. Shell disagrees with Southern Companies, claiming that historical transmission data indicates that there was a positive simultaneous transmission import capability into the Santee Cooper balancing authority area and the amount of Southern Companies' uncommitted capacity in the Santee Cooper balancing authority area is positive.<sup>14</sup>

25. Regarding the Tallahassee Municipal Utilities balancing authority area, Shell states that Southern Companies has attempted to downplay the significance of the failure by claiming that the 25.9 percent market share in the fall season "appears to be somewhat of an anomaly."<sup>15</sup> Shell concludes that Southern Companies' failure should nevertheless establish a rebuttable presumption of market power in the Tallahassee Municipal Utilities balancing authority area during the fall season.<sup>16</sup>

26. Shell argues that Southern Companies should have submitted historical trade data to support their claimed inability to exercise market power in these markets.<sup>17</sup> Further, Shell asserts that the proposed Day-Ahead and Hour-Ahead auctions and cost-based rate tariff for short-term wholesale power sales tacitly acknowledge Southern Companies' ability to exercise market power in the Southern Companies balancing authority area, but that such measures may not adequately mitigate such market power.<sup>18</sup>

27. With regard to the calculation of the SIL values, Shell argues that its analysis demonstrates that, if anything, the extent of Southern Companies' market power is likely understated by Southern Companies' analysis because that analysis contains certain

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<sup>13</sup> Shell Protest at 7.

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.* at 10.

improper assumptions and methodologies that bias the results downward.<sup>19</sup> Shell points to Southern Companies' operating reserves deduction as being between 73 and 79 percent higher than the operating reserves deduction claimed by Southern Companies in connection with their 2004 market power update filing. Shell notes that Southern Companies have failed to explain the significant changes in their own methodologies for calculating operating reserves in the Southern Companies balancing authority area.<sup>20</sup>

28. Similarly, Shell states that the SIL values contained in Southern Companies' instant market power analysis are higher than the SIL values originally calculated in their 2004 market power update filing.<sup>21</sup> While Shell recognizes that different power flow cases and modeling assumptions have been used to derive each of these SIL estimates, Shell concludes that the Commission should nonetheless further examine Southern Companies' SIL study, particularly in light of the significant impact that Southern Companies' own changes in assumptions and methodologies have had on its results.<sup>22</sup> Shell provides several examples of what it claims to be significant flaws in the assumptions and methodologies used in Southern Companies' market power analysis and states that the shortcomings it found in the September 2, 2008 updated market power analysis filing justify initiating an investigation under section 206 of the Federal Power Act (FPA)<sup>23</sup> concerning the extent to which Southern Companies may exercise horizontal market power in either their home or first-tier balancing authority areas.<sup>24</sup>

**b. Southern Companies' Response to Shell's Protest**

29. With regard to their pivotal supplier screen failure in the Santee Cooper balancing authority area, Southern Companies reiterate that this failure resulted from the fact that Santee Cooper had a net uncommitted supply of negative 959 MW, while Southern Companies had zero MW of uncommitted capacity in that balancing authority area. Southern Companies argue that a "failure" arising from the fact that zero is greater than a negative number is nonsensical; a supplier with no capacity in a given market cannot be

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<sup>19</sup> *Id.* at 12-13.

<sup>20</sup> *Id.* at 13 (citing *Southern Company Energy Marketing, L.P.*, Docket No. ER97-4166-016, Ex. SC-30 submitted on November 19, 2004).

<sup>21</sup> *Id.* at 13.

<sup>22</sup> *Id.* at 13-14.

<sup>23</sup> 18 U.S.C. § 824e (2006).

<sup>24</sup> *Id.* at 17.

“pivotal” in that market or otherwise have any ability to manipulate prices through economic or physical withholding.<sup>25</sup> According to Southern Companies, Shell’s challenges to Southern Companies’ explanation of the anomalous nature of its failure in the Santee Cooper balancing authority area, and to Southern Companies’ use of historical transmission data in place of the required approach, are collateral attacks on the Commission’s SIL-based approach to the horizontal market power analysis’ indicative screens.<sup>26</sup>

30. Southern Companies also take issue with Shell’s comments on Southern Companies’ deduction of their mandatory operating reserves requirements in the calculation of their uncommitted capacity. Southern Companies argue that the operating reserves deduction they used was performed in accordance with the April 14 Order. Further, Southern Companies claim that Shell has forgotten that Southern Companies utilized a comparable methodology for the treatment of their mandatory reliability obligations as part of their detailed delivered price test filing in Docket No. EL04-124-000, which contains extensive testimony and supporting data regarding the manner in which Southern Companies quantified the capacity committed to satisfying their operating reserves requirements. Further, Southern Companies contend that the Commission appears to have endorsed this methodology in *PPL Montana, LLC*, 120 FERC ¶ 61,096 (2007).<sup>27</sup>

31. Regarding their SIL calculation, Southern Companies claim that Shell forgets that since the 2004 market power update filing the Commission has issued guidance through Order No. 697 and subsequent clarifying orders. Southern Companies add that they have spent a significant amount of time analyzing SIL values as part of the proceeding on Southern Companies’ 2004 market power update filing (Docket No. EL04-124-000) in response to Shell and Commission Trial Staff criticisms in that proceeding.<sup>28</sup> More importantly, according to Southern Companies, the SIL values that Shell references are not even the SIL values that Southern Companies submitted for the Southern Companies

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<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 5 (citing *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at App. E (2004) (April 14 Order)).

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 6-7.

balancing authority area in the 2004 filings, but rather were in fact derived as part of analyses of import capability for first-tier balancing authority areas.<sup>29</sup>

32. Furthermore, Southern Companies state that the deficiencies that Shell alleges exist in Southern Companies' SIL study do not exist. Southern Companies contend that their submission more than satisfies the Commission's requirements. They add that Shell's comments are misplaced and, if anything, reflect a failure to fully review the entirety of the submission.<sup>30</sup> In addition, regarding two analytical flaws Shell asserts are in Southern Companies' SIL study, Southern Companies state that Shell fails to recognize Southern Companies' adherence to Commission guidance in Order No. 697. There, the Commission clarified that SIL studies must reflect historical Open Access Same-Time Information System operating practices. According to Southern Companies, in those circumstances where the methodology in Appendix E of the April 14 Order and historical practices deviate, historical practices should be followed.<sup>31</sup>

## 2. Commission Determination

33. The Commission has reviewed Southern Companies' pivotal supplier and wholesale market share screens. As noted above, Commission Staff issued requests on December 19, 2008 and April 9, 2009, requesting that Southern Companies provide additional information regarding the SIL study submitted as part of their updated market power analysis. In response to those requests, Southern Companies submitted additional information and revised SIL studies. Commission Staff requested that the other transmission owners in the Southeast that filed SIL studies with their updated market power analyses (Southeast Transmission Owners) submit similar information as well.<sup>32</sup> As detailed in an order being issued concurrently with this order, the Commission has

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<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 8-9.

<sup>31</sup> *Id.* at 9.

<sup>32</sup> There were seven separate updated market power filings submitted on behalf of the Southeast Transmission Owners. They include submissions by: (1) Duke Energy Carolinas, LLC, (2) South Carolina Electric & Gas Company, (3) Tampa Electric Company, (4) Carolina Power & Light Co. and Florida Power Corporation, (5) Entergy Services, Inc., Entergy Power Ventures, LP, EWO Marketing, LP, and Entergy Power, Inc., (6) LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, and Western Kentucky Energy Corporation, and (7) Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

made adjustments to the SIL studies submitted by the Southeast Transmission Owners, which the Commission will use in evaluating the market power analyses filed in the Southeast region.<sup>33</sup>

34. We find that Southern Companies pass the pivotal supplier and wholesale market share screens in the Alabama Electric Cooperative, Duke Energy, Entergy, Florida Power & Light, Louisiana Generating LLC, Progress Energy Florida, South Carolina Electric and Gas Company, South Mississippi Electric Power Association, and TVA balancing authority areas. We further find that Southern Companies fail the wholesale market shares screens in the Jacksonville Electric Authority, Santee Cooper, and Tallahassee Municipal Utilities balancing authority areas and are pivotal in the Santee Cooper balancing authority area. Specifically, using the Commission-adjusted SIL study results, the range of Southern Companies' market shares over the seasons for the relevant balancing authority areas are as follows: Alabama Electric Cooperative market shares of 0 percent; Duke Energy market shares range from 2.7 to 9.1 percent; Entergy market shares range from 1.8 to 4.3 percent; Florida Power & Light market shares range from 0 to 19.7 percent; Louisiana Generating LLC market shares of 0 percent; Progress Energy Florida market shares range from 0 to 19.4 percent; South Carolina Electric and Gas Company market shares range from 9.6 to 15.6 percent; South Mississippi Electric Power Association market shares range from 0 to 5.8 percent; TVA market shares range from 0.6 to 4.6 percent; Jacksonville Electric Authority market shares range from 17.9 to 24.4 percent; Santee Cooper market shares range from 0 to 24.5 percent; and Tallahassee Municipal Utilities market shares range from 20.1 to 25.9 percent.

35. Accordingly, as discussed herein, we find that Southern Companies satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the Alabama Electric Cooperative, Duke Energy, Entergy, Florida Power & Light, Louisiana Generating LLC, Progress Energy Florida, South Carolina Electric and Gas Company, South Mississippi Electric Power Association, and TVA balancing authority areas.

36. Southern Companies represent that the recently accepted auction's must-offer/cost-based rules eliminate Southern Companies' "control" over uncommitted capacity inside, or exported from, the Southern Companies balancing authority area into first-tier balancing authority areas. Southern Companies reason that once the auction is implemented, they will not control any uncommitted capacity within the Southern Companies balancing authority area, leaving them with zero uncommitted capacity that might be exported from the Southern Companies balancing authority area. Southern Companies fail the horizontal market power analysis in the Jacksonville Electric Authority, Santee Cooper, and Tallahassee Municipal Utilities balancing authority areas

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<sup>33</sup> *Carolina Power & Light Co.*, 128 FERC ¶ 61,039 (2009).

due to uncommitted capacity in the Southern Companies balancing authority area. However, as noted above, the Commission found in the December 2008 Auction Order that the auction and must offer requirement sufficiently mitigate any ability that Southern Companies may have to exercise market power in the Southern Companies balancing authority area.<sup>34</sup> Similarly, the auction and must offer requirement reduces Southern Companies' ability to export uncommitted capacity to their first-tier balancing authority areas, adequately mitigating Southern Companies' potential market power in the first-tier balancing authority areas.

37. For these reasons, Shell's arguments are rejected. Based on the foregoing, the Commission finds that Southern Companies' auction will eliminate the opportunity for Southern Companies to exercise market power in the first-tier markets. Thus, Southern Companies satisfy the Commission's requirements for market-based rate authority regarding horizontal market power in the Jacksonville Electric Authority, Santee Cooper, and Tallahassee Municipal Utilities balancing authority areas.

38. Accordingly, as discussed herein, we find that Southern Companies satisfy the Commission's requirement for market-based rate authority regarding horizontal market power in their first-tier balancing authority areas.

#### **B. Notices of Change in Status**

39. On September 15, 2006, Southern Company Services filed a notice of change in status on behalf of Southern Companies. In that notice, Southern Company Services explains that during the course of the FPA section 206 investigation in Docket No. EL04-124-000, Southern Companies filed a delivered price test that was predicated on projected data for calendar year 2005. This delivered price test included certain combined cycle capacity associated with the Murray and McIntosh Generating Facilities, which had previously been jointly owned by Georgia Power and Savannah Electric prior to their merger in early 2006.<sup>35</sup> In the September 15, 2006 notice, Southern Company Services states that as part of a stipulation agreed to by the parties in Docket No. EL04-124-000, Southern Companies would effectively withdraw the delivered price test analyses based on the 2005 data and submit new analyses based on historical data for calendar year 2004. Southern Company Services explains that "[s]ince the section 206 proceeding will no longer reflect [delivered price test] analyses that utilize 2005 data

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<sup>34</sup> December 2008 Auction Order, 125 FERC ¶ 61,316 at P 47.

<sup>35</sup> In *Georgia Power Company*, 114 FERC ¶ 62,239 (2006), the Commission approved the merger of Savannah Electric into Georgia Power.

(which included the Murray and McIntosh capacity),” it was providing notice of change in status to the extent required under Order No. 652.<sup>36</sup>

40. On October 2, 2006, Southern Company Services, on behalf of Southern Companies and Southern Power Subsidiaries, filed a notice of change in status stating that on August 31, 2006, Southern Power acquired ownership of the Rowan Facility (consisting of three 155 MW combustion turbines and one 480 MW combined cycle unit), located in Rowan County, North Carolina, in the Duke Energy balancing authority area. In the October 2, 2006 notice, Southern Company Services states that the output of the three combustion turbine units was committed to Duke Energy through the end of 2010 pursuant to long-term power sales contracts. As part of the October 2, 2006 notice, Southern Company Services provides revised indicative screens for each of the first-tier balancing authority areas that could be affected by this acquisition and notes that Southern Companies and Southern Power Subsidiaries continue to pass the screens in these areas.<sup>37</sup>

41. On January 31, 2007, Southern Company Services, on behalf of Southern Companies and Southern Power Subsidiaries, filed a notice of change in status reporting (1) potential increases in controlled capacity due to the expiration of certain power sales agreements in summer 2007 and (2) changes to “Full Load” capacity ratings of various generating units.

42. In the January 31, 2007 notice, Southern Company Services explains that two of Southern Companies’ long-term power sales contracts would expire in summer 2007. Upon expiration of the contracts, the capacity associated with them would likely be remarketed. If the capacity was not successfully remarketed, however, the uncommitted capacity would contribute towards the 100 MW materiality threshold for change in status filings. The first contract, for 25 MW in the Duke Energy balancing authority area, would expire on August 31, 2006; the other contract, for 320 MW in the Florida Power & Light balancing authority area would expire on May 31, 2007. Thus, absent remarketing, Southern Companies would have 345 MW of additional uncommitted capacity, 25 MW in the Duke Energy balancing authority area and 320 MW in the Florida Power & Light balancing authority area. Nevertheless, Southern Company Services explains that

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<sup>36</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh’g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a) (2008).

<sup>37</sup> Southern Companies and Southern Power Subsidiaries state that they did not submit a revised horizontal market power analysis for the Southern Companies balancing authority area because that area continues to be the subject of an ongoing FPA section 206 investigation.

expiration of the contract with Florida Power & Light was previously taken into account in a prior filing by Southern Power, and that filing demonstrated that the 320 MW would not “significantly change” the market screen results previously relied on by the Commission.<sup>38</sup> Southern Company Services also states that prior filings can be used to show that the 25 MW in the Duke Energy balancing authority area would not significantly change previously-submitted results.

43. In the January 31, 2007 notice, Southern Company Services also provide updates to the Commission with respect to certain requirements contracts outside of the Southern Companies balancing authority area. According to Southern Company Services, Southern Power entered into two contracts in 2006, one with Piedmont Municipal Power Authority (Piedmont Municipal) and the other with Energy United, both located in the Duke Energy balancing authority area. Under the contracts, Southern Power serves as Piedmont Municipal’s and Energy United’s requirements supplier. Southern Power serves their loads, schedules a specified portion of their generation capacity or assigned resources, and is obligated to take any surplus energy from that capacity that may arise from time to time on a short-term, transitory basis. Southern Company Services does not believe that these arrangements involve the acquisition of control. In addition, Southern Company Services states that since on an annualized basis both Piedmont Municipal and Energy United are projected to be short of capacity sufficient to meet their load, there is no net increase of uncommitted generation. Thus, although Southern Company Services believes it is not required to report these changes to the Commission, it was reporting them in order to update Southern Companies’ baseline profile and facilitate ongoing compliance with Order No. 652.<sup>39</sup>

44. On August 31, 2007, Southern Company Services, on behalf of Southern Companies and Southern Power Subsidiaries, filed a notice of change in status stating

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<sup>38</sup> Southern Company Services, Inc., Change in Status Compliance Report and Submission of Other Information at 3, Docket No. ER96-780-016 (January 31, 2007).

<sup>39</sup> Southern Company Services also provides notice of Southern Companies’ and Southern Power Subsidiaries’ revised full load capacity ratings in the January 31, 2007 notice. According to Southern Company Services, each year Southern Companies and Southern Power Subsidiaries submit to the Commission “Informational Schedules” that provide the Commission with updated monthly capacity ratings for the generation units specified in the Southern Company System Intercompany Interchange Contract. The updated information regarding 2007 Full Load ratings was filed on October 30, 2006. Southern Companies and Southern Power Subsidiaries claim that comparing the 2006 Full Load ratings to the 2007 Full Load ratings shows a 6 MW net increase in Winter; the other three seasons saw a decrease. Southern Company Services provide this information in order to update Southern Companies’ baseline.

that Southern Power entered into three agreements with affiliates of Calpine Corporation to purchase 225 MW of capacity and energy. In addition, Southern Company Services provides notice that since the January 31, 2007 change in status filing, certain generation resources owned and controlled by Southern Companies and Southern Power Subsidiaries have undergone seasonal capacity rating changes resulting in a net decrease of 19 to 30 MW, depending on the season. Therefore, Southern Company Services asserts that the net change in generation capacity being reported in the August 31, 2007 change in status filing is an actual increase of 195 MW to 206 MW, not 225 MW. Southern Company Services includes an updated market power analysis to reflect this change in status as well as the previously submitted changes in status.<sup>40</sup>

45. The notices of change in status were each filed prior to the submittal of the instant updated market power analysis and thus were accounted for in the instant updated market power analysis. With the resolution of the analyses in the home and first-tier balancing authority areas, the Commission accepts these notices of change in status.

### **C. Compliance Filing**

46. In Order No. 697-A, the Commission required that each seller include in its market-based rate tariff a provision identifying which category of seller it qualifies as in each region.<sup>41</sup>

47. As directed by the December 2008 Market-Based Rate Order, on January 21, 2009, Southern Company Services, as agent for Southern Companies and Southern Power Subsidiaries, filed revisions to the Southern Companies and Southern Power Subsidiaries market-based rate tariffs identifying their seller category. Southern Companies also include a list of assets as required by Order No. 697.<sup>42</sup> Southern Companies' revised market-based rate tariffs therefore satisfy the Commission's

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<sup>40</sup> Southern Companies and Southern Power Subsidiaries state that they did not submit a revised horizontal market power analysis for the Southern Companies balancing authority area because that area continues to be the subject of an ongoing FPA section 206 investigation.

<sup>41</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-93.

<sup>42</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-95.

requirements set forth in Order No. 697 and Order No. 697-A. Accordingly, we will accept Southern Companies' revised market-based rate tariffs, effective September 18, 2007, the effective date of Order No. 697.<sup>43</sup>

#### **D. Reporting Requirements**

48. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.<sup>44</sup> Public utilities must file Electronic Quarterly Reports no later than 30 days after the end of the reporting quarter.<sup>45</sup>

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<sup>43</sup> Southern Company Services, Inc., FERC Electric Tariff, Second Revised Volume No. 4, Second Revised Sheet No. 3A (superseding Substitute First Revised Sheet No. 3A); DeSoto County Generating Company, L.L.C., FERC Electric Tariff, Third Revised Volume No. 2, Third Revised Sheet No. 4 (superseding Substitute Second Revised Sheet No. 4); Oleander Power Project, Limited Partnership, FERC Electric Tariff, Original Volume No. 1, Third Revised Sheet No. 2 (superseding Substitute Second Revised Sheet No. 2); Southern Company-Florida LLC, FERC Electric Tariff, Original Volume No. 1, Third Revised Sheet No. 1 (superseding Substitute Second Revised Sheet No. 1).

<sup>44</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the Electronic Quarterly Report Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>45</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

49. Southern Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>46</sup>

50. Additionally, in Order No. 697, the Commission created two categories of sellers.<sup>47</sup> Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888<sup>48</sup>); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.<sup>49</sup> Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.<sup>50</sup>

51. Based on Southern Companies' representations, we find that they meet the criteria for a Category 2 seller and are so designated. Thus, Southern Companies must file an

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<sup>46</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a) (2008).

<sup>47</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

<sup>48</sup> *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 (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).

<sup>49</sup> 18 C.F.R. § 35.36(a)(2) (2008).

<sup>50</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.<sup>51</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Southern Companies' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Southern Companies' and Southern Power Subsidiaries' revisions to their market-based rate tariffs to comply with Order No. 697-A are hereby accepted for filing effective September 18, 2007, as discussed in the body of this order.

(C) Southern Companies' and Southern Power Subsidiaries' notices of change in status are hereby accepted for filing.

(D) Southern Companies are hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission. Commissioner Kelly concurring with a separate statement.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>51</sup> *Id.* P 882.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc.	Docket Nos. ER96-780-014
Alabama Power Company	ER96-780-015
Georgia Power Company	ER96-780-016
Gulf Power Company	ER96-780-018
Mississippi Power Company	ER96-780-020
Southern Power Company	ER96-780-021
Southern Company-Florida, LLC	ER01-1633-004
	ER01-1633-005
	ER01-1633-006
	ER01-1633-008
Oleander Power Project, LP	ER00-3240-007
	ER00-3240-008
	ER00-3240-009
	ER00-3240-011
DeSoto County Generating Company, LLC	ER03-1383-007
	ER03-1383-008
	ER03-1383-009
	ER03-1383-011

(Issued July 16, 2009)

KELLY, Commissioner, *concurring*:

Southern Companies' auction and must offer requirement should reduce Southern Companies' ability to export uncommitted capacity to their first-tier markets. The Commission approved Southern Companies' auction proposal in December 2008, noting that it is an innovative proposal to mitigate any potential market power they might possess and holds great promise for increasing price discovery, transparency and liquidity.<sup>52</sup>

However, I remain concerned that auction market will not operate to mitigate the potential for Southern Companies' exercise of market power. As I noted in December, I do not believe the inclusion of the \$21.43/MWh demand

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<sup>52</sup> *Southern Company Services, Inc.*, 125 FERC ¶ 61,316 (2008).

charge in the cost-based offer cap is warranted, given the single clearing-price auction structure. Also, we do not know if the auction will attract sufficient numbers of third-party sellers to impose price discipline. Thus, while the auction and must offer requirement should reduce Southern Companies' ability to export uncommitted capacity to their first-tier markets, I continue to be concerned that the interplay of various factors could allow units to charge excessive rates for short term sales.

For these reasons, I concur with this order.

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Suedeem G. Kelly